



CITY OF TOPEKA

CITY COUNCIL COMMITTEE
MEETING MINUTES

POLICY AND FINANCE COMMITTEE

CITY COUNCIL
City Hall, 215 SE 7th Street, Suite 255
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Date: November 15, 2019

Time: 2:00 P.M.

Location: Executive Conference Room (City Hall 3rd Floor) 215 SE 7th St

Attendance: Councilmembers Jeff Coen (Chair), Brendan Jensen, Tony Emerson, Catherine Walter (Assistant City Attorney), Jacque Russell (HR Director), William Naeger (THRC)

1) Call to order

Councilmember Coen called the meeting to order at 2:00pm. Committee members introduced themselves.

2) Recommendation for relocation of Chapter 9.25 (“Fair Housing Practices”) in the TMC through recodification process. - *City Staff*

Catherine Walter, Assistant City Attorney, introduced the proposal for Chapter 9.25, dealing with Fair Housing Practices, and moving it to another location within the Topeka Municipal Code. After reviewing the current code, staff is not recommending a change be made. Ms. Walter noted many other things within Chapter 9 of the TMC that would cover the concerns brought forward with regard to discrimination with regard to housing. Ms. Walter provided retaliatory actions when a tenant has complained about unsafe conditions. Ms. Walter stated she felt leaving Chapter 9.25 where it is within the TMC would be appropriate.

Councilmember Coen inquired if this chapter was reviewed by the Policy & Finance committee at the meetings earlier this year. Ms. Walter stated that the committee spent a great deal of time on Title 2 within the TMC, which discusses City of Topeka employees and there were changes made to clarify the affirmative action plan within Title 2, regarding City employees. Language was also clarified within that Title 2 which covers the City of Topeka as an employer.

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As per Governing Body Rule 8.10, Committee Chair Jeff Coen approved the minutes.

Councilmember Coen inquired if a vote would need to occur to change the placement of this item. Ms. Walter stated that a vote would not be required at this time and suggested waiting until the next meeting to propose action.

**3) Expansion of protection categories contained in Chapter 9.20
("Discrimination") - specifically, Sections 9.20.020, 9.20.040 - TTHRC
Representative**

Brent Trout, City Manager, introduced William Naeger, Topeka Human Relations Commissioner. Mr. Naeger stated that the current category does not protect against sexual orientation or gender identity within Topeka, as it relates to employment. The current ordinance covers City of Topeka employees only. The Human Relations Commission would like to propose changing the language so that individuals employed anywhere within the City would be protected.

Councilmember Jensen inquired if the proposed protections would be for the sake of employment and housing. Mr. Naeger confirmed that was the case. Councilmember Coen inquired with Jacque Russell, City of Topeka Human Relations Director, about the definitions of what is covered.

Ms. Russell stated that the proposed chapter would extend protection to individuals within the community, not simply City of Topeka employees. The recommended changes would extend to individuals doing business within the city limits.

Ms. Walter stated that the language in the proposed chapter is a general policy statement, rather than a law. The current code provision states that the city recognizes that in order to have a healthy and safe community, it is important to not discriminate on the basis of sex, race, religion, and potentially sexual orientation or gender identity. Ms. Walter continued by saying even if those groups were added to the current policy statement, there is no enforcement authority. The THRC's role would be to educate citizens, businesses and other organizations on the importance of not discriminating on the basis of sexual orientation or gender identity. This could be done through a town hall meeting, community members attending monthly THRC meetings; and that it is more of an educational component and a broad policy statement on behalf of the City as currently phrased, within our code provision. Councilmember Jensen inquired as to the definition of policy statement. Ms. Walter stated the THRC's roll would be to speak to community members about the importance of not discriminating, however there is currently no enforcement language to this ordinance.

Councilmember Coen stated that he read an article in the Topeka Capital Journal, where a reference was made to an "investigating body" and inquired as to what that entailed. Mr. Naeger inquired if the language was between the Human

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Relations Department and the Human Relations Commission. Councilmember Coen stated the Commission would be an investigative body for complaints and violations. Mr. Naeger stated that it is his understanding that article was to provide history, and not a call for a fundamental change to how the Commission operates. Mr. Trout confirmed that the THRC would continue to operate as it is, and there is no plan to reinstate the department. The types of functions that relate to investigation are performed by the State. Anyone who felt they were being discriminated against in one of the protected classes found in the policy statement, could take their complaint to the State.

Councilmember Jensen inquired how this policy might effect students at Washburn University, and what could be done to keep the policy from being abused. Mr. Naeger stated he did not feel comfortable speaking to this as he is not an attorney and is not sure of the law. Mr. Naeger stated that current protected class categories, it could be difficult to prove and Mr. Naeger felt the additional categories could also be difficult to prove. Councilmember Jensen inquired if various scenarios had been discussed during the THRC meetings. Mr. Naeger stated this hypothetical situation was brought forward, however, he had not heard of this instance and that there would be precautions taken on a case by case basis.

Councilmember Coen inquired if minutes from the past THRC meetings were available. Mr. Naeger stated he could get the minutes to the committee members. Mr. Trout stated the THRC minutes were not available online, but that he would be able to provide those to the Governing Body.

Councilmember Coen inquired what the definition was for a business, and if private businesses such as a Christian School, would be required to follow the ordinance. Mr. Naeger stated he did not want to speak to the definition in a legal capacity. Councilmember Coen inquired as to what the intent of bringing the ordinance to the committee was. Mr. Naeger stated the intent with bringing the issue forward was to address concerns from community members who are afraid of being fired from a job, or evicted from their home, or having harm done to them or their livelihood, for people who do not want to have their loved ones face that hardship; and to have the support from the City Government to have the potential of knowing that recourse could be taken should their livelihood be placed in jeopardy.

Councilmember Coen inquired with Ms. Walter as to the current practice or law regarding asking applicants about sexual orientation or gender identity. Ms. Walter stated that there is currently a split in the US Supreme Court within three circuits that have come to different conclusions as to whether sexual orientation and gender identity are protected under the general category of sex, as an

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individual's sex is protected. The 10th Circuit, which is the Circuit that Kansas falls under, does not recognize transgender under the definition of sex. The EEOC will accept complaints on the basis of sex and do recognize sexual orientation and gender identity as protected classes. Federal Law accepts complaints from organizations who employ fifteen (15) or more employees and would accept a complaint from an individual who says they are being discriminated against due to sexual orientation or gender identity. The State of Kansas does not currently recognize those two categories within the term "Sex Discrimination". Councilmember Jensen inquired to the length this decision could take. Ms. Walters stated a timeframe could not be given, but that petition had been filed. This is currently pending before the US Supreme Court.

Councilmember Coen inquired if the other committee members had questions.

Mr. Trout inquired with the City Attorney about the language found in 9.20.080 relates to enforcement and inquired if that was a new section. If so, that would give authority back to THRC. Ms. Walter stated that anything found after page three, which would include 9.20.080, would be considered new language, and is not currently in the code. Mr. Trout inquired if there was current language in Chapter 9 to the code. Ms. Walter stated currently, it is not.

Mr. Trout stated if the language was approved, the proposed sections would need to added. If added, complaints would have the enforcement power.

Councilmember Jensen inquired with Mr. Naeger as to the THRC's thought on the current process of going through the State to address complaints, and if the THRC felt that process was fair and equitable. Mr. Naeger noted some of the THRC Commissioners were more educated in the State's process. To his knowledge, Mr. Naeger was not aware of complaints from other categories. Councilmember Jensen restated his question to inquire if the THRC felt the State process for addressing complaints and enforcement was sufficient or if the THRC felt the City of Topeka needed to add our own regulation at this level for investigations. Mr. Naeger responded that to his understanding, the current process is adequate considering the difficult nature in proving some of the factors of the complaints.

Councilmember Emerson inquired if the committee was planning to take action at this meeting today. Ms. Walter stated that the City could put a stricter anti-discrimination policy into place than is required by the Federal Government, but that cities are preempted from protecting other categories.

PUBLIC COMMENT

- Alvin Hickman - lifelong citizen of Topeka. Does not think there is a difference between citizens as citizens. All citizens should be treated equally.

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- Phillip Cosby, American Family Association – Noted the case in the 10th Circuit of the Supreme Court found sincerely held religious beliefs were protected. Inquired what the staff/commission had done to review that legal term.
- Houston Thompson, Topeka citizen, Veteran, and Christian, feels this proposed ordinance would create a hostile work environment regardless of the enforcement ability. Does not want to see laws for businesses be imposed upon the owners that infringe on their strongly held religious and moral beliefs.
- Heather Brown, small business entrepreneur, feels that without clearly defined language, the discussion lends itself to a rally. Ms. Brown feels all rights should be protected, including the business owner.

Councilmember Jensen asked Staff for clarification. Councilmember Jensen stated he was under the impression that the proposed change is only to cover employment and housing, not who small business owners chose to serve as a customer. Ms. Walter stated the language submitted to Legal is a bit unclear. The language would need to be made clear if amended actions were taken. Councilmember Jensen inquired if the proposal could be remanded back to the THRC to get that clarification, should the committee decide to make that recommendation. Ms. Walter confirmed and included the Committee could also make a determination if they wanted to extend the definition. Councilmember Jensen asked Mr. Naeger what the initial scope and objective of what the THRC wanted to see accomplished at the Committee meeting was. Mr. Naeger responded the THRC voted to consider the measure and had discussed housing, employment, and public accommodation. None of the current THRC Commissioners have the legal or have the experience with this to enable them to provide expertise on the language included in the proposal. Councilmember Jensen stated that the goal of the committee meetings is to have the conversations and to work through these concerns while also crafting something that provides balance for the people within the community.

- Kirk Nystrom, private practice attorney, would like to see the City hold the current position and not move forward with proposed changes at this time.
- Gary Shook, Topeka resident of 13 years, feels the current language is adequate.
- David Epps – Stated he loves all people. Does not want to see the current language changed or added to.

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- Melvin Adams, Topeka transplants from Hayes, Kansas eight years ago. Mr. Adams stated he would not be in favor of making changes to the current policy statement.
- Pastor Mike Kahn - Does not want to see changes made to the current policy statement.
- Sheline Fredrick, community member, does not want to see changes made to current policy statement.
- Chris & Theresa Gartner - believes current policy covers what it needs to and that adding to the law is a waste of resources.
- Jan Medley, longtime Topeka resident, addressed the committee from a job applicant's viewpoint. If the applicant is qualified for a job, the personal life does not need to be brought into the equation. Ms. Medley is against changing the current policy statement.
- Jane Apter, retired teacher, is against making changes to the current policy statement.
- Janet Mitchell, lifelong Topeka resident and former USD 501 school counselor, stated the school district had a policy regarding students within the sexual orientation and gender identity category. The policy went against Ms. Mitchell's beliefs and she quit her job. Ms. Mitchell is against changing the current policy statement.

Councilmember Coen inquired if the THRC was allowed to become an enforcement body, and what the effect might be between the City and some of their economic development partner organizations. Mr. Naeger stated he was unaware of any business set-back due to this type of policy being put into place, and reversely, there have been instances where businesses boycotted municipalities that did not have additional language for protection within the two classes.

Ms. Russell inquired with Mr. Naeger about the investigation process and who, within the THRC, would be responsible for leading that process, and what the vision of the THRC was when they wrote the proposal. Mr. Naeger stated the THRC Commission did not discuss the enforcement powers, as that would require the

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reinstatement of the Human Relations Department. The THRC is not seeking to re-establish the department.

Councilmember Jensen asked who wrote the proposed policy. Mr. Naeger stated community members came to him, and to the THRC to inquire about it. The Commission discussed the topic and decided it was something to move forward with. Mr. Naeger had an acquaintance who is familiar with this topic, assist with writing the proposal. Councilmember Jensen asked if an actual lawyer had drafted the language in the proposal. Mr. Naeger confirmed that had taken place.

Councilmember Coen inquired if the THRC had discussed placing fines or other types of punishments for violations to the policy. Mr. Naeger stated that any punishment would be decided on by the Governing Body, but thinks the punishment or proposed punishment, be the same as for any of the other protected classes.

Councilmember Jensen inquired if THRC had discussed the balance of religious freedom versus some of the proposed changes. Mr. Naeger responded that the current language of the policy statement already provides protection for religious beliefs. When the religious belief begins to impose something on someone else is where the problem begins. Councilmember Jensen stated he felt both sides of the argument needed to be considered, and appreciated that the Committee and THRC was willing to make those considerations.

Councilmember Coen stated that Topeka has come together over the past five years, and that this topic is incredibly divisive. Councilmember Coen does not feel Topeka is ready to dig into such a divisive subject at this time.

Public Comment Resumed

- Lou Dalton - opposed to proposed policy statement.
- Huston Thompson - Concerned about the proposed fines that are currently found on the books.

Councilmember Jensen thanked Mr. Naeger for introducing this draft, and feels it is an important conversation to have.

Councilmember Emerson stated he has some concern regarding the proposed policy statement. As a small business owner, Councilmember Emerson has some concern regarding the proposal.

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Councilmember Coen inquired if a recommendation would be needed today. Mr. Trout stated that action, of some type, would be necessary at some point as the Committee was tasked with this by the Governing Body. If the Committee does not want to make a recommendation for consideration to move this proposal forward, the Chair could note this during the report to the Governing Body. If at some point in the future, the Governing Body or future Committee members would want to reconsider it, they would need to bring it back to the Committee. If a motion to move the proposal forward were made, City Legal staff would re-draft the language to reflect standards of the City Legal Department.

Councilmember Coen inquired if there was a regulation regarding when the item was referred from the Committee and when it could come back to the Committee again. Mr. Trout made the recommendation of a six-month timeframe, stating that is the standard practice when no action is taken on other Governing Body items. Ms. Walter stated that if the Committee reported back to the Governing Body, and the Governing Body voted not to bring it forward, she would agree with the recommendation from City Manager of six months.

Councilmember Jensen stated that at this time, he does not feel comfortable making a decision while there are numeral pieces going through the US Supreme Court currently and that he would prefer to wait until a decision had been made at that level. Mr. Trout stated that Mr. Naeger could use the six month timeframe to take the proposal back to THRC, and the Commission could use the time to revise the language, narrow the scope of their proposal, and hold further discussions at their level to decide if it should come back to the Governing Body.

Councilmember Jensen does not want to see the issue completely dismissed as there are people of the sexual orientation and gender identity class who are genuinely discriminated against; however, he would like to wait to see what the higher up courts and agencies act on.

Councilmember Coen inquired if the committee would like to wait.

Councilmember Jensen inquired if the committee would want to remand the proposal back to the THRC to review and narrow the scope. Councilmember Coen inquired if the THRC meetings were open to the public. Mr. Naeger stated that the meetings were open to the public, with December being an exception. Mr. Trout elaborated that the December THRC meeting would not be open to the public as it would be a goal setting and strategic planning meeting for the Commission. The Topeka Human Relations Commission meetings are held at 6:00pm on the first Monday of the month.

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Motion made by Councilmember Jensen to remand the proposal back to the THRC. Councilmember Emerson seconded. Motion passes 2:1, with Councilmember Coen opposing.

**4) Addition of a “Definitions” section in Chapter 9.20 (“Discrimination”) -
*TTHRC Representative***

{Comments and concerns referencing proposed additions to this section were included in item 3}

5) Subjects to address at next Committee meeting, if any

None. Ms. Walter stated that a committee report needed to be sent to the Governing Body within 90 days. The new Councilmembers would take office in January. Mr. Trout stated the report could be added to a December Governing Body agenda.

6) Schedule next meeting

None scheduled at this time.

7) Adjourn

Councilmember Jensen made a motion to adjourn the meeting. Councilmember Emerson seconded. Councilmember Coen adjourned the meeting at 3:26pm.

Video of this meeting can be found at: <https://youtu.be/ieimpKTUxQ8>