



MEMORANDUM

TO: Mayor Diane Wolfe Marlin and City Council Members
FROM: Carol Mitten, City Administrator
DATE: January 14, 2021
SUBJECT: An Ordinance Amending Urbana City Code Chapter 12 (Exceptions to the Human Rights Ordinance)

Introduction: The Urbana Human Relations Commission (HRC) does not have jurisdiction over Federal or State agencies. The Human Rights Ordinance is not explicit as to whether the City of Urbana is subject to the HRC's jurisdiction, although the implication is that the City is not. The purpose of the proposed Ordinance is to clarify that the City is not subject to the HRC's jurisdiction.

Discussion: The issue of jurisdiction by the HRC over City staff or City agents has been formally considered three times since the creation of the Human Rights Ordinance based on records that I researched going back to 1991. The first one was in May 2013 and the second one was in June 2020. There was one instance in 2005 where a formal hearing was not convened, but the HRC assisted in facilitating a policy change with the City in order to address some perceived discrimination by the City.

In both instances prior to the informal hearing conducted on November 10, it was understood that the HRC did not have jurisdiction over City staff. It has also been a long-standing intention of City staff to bring an amendment to Council to clarify this issue for the public and the HRC members. The attached Ordinance is intended to clarify the jurisdictional issue.

The HRC, at its meeting on January 13, 2021, passed a Resolution to recommend that the Council clarify their jurisdiction over the City of Urbana, without taking a position as to whether they should or should not.

The issue of jurisdiction is not motivated by the City's desire to have the freedom to violate the provisions of the Human Right Ordinance. Therefore, Ordinance the includes a new section which explicitly states the commitment of the City of Urbana to conform to the requirements of the ordinance in its own employment practices and the provision of city services to the public.

Rather, the proposed Ordinance is to deal with the infeasibility of the City being both the prosecutor of a complaint (through the HRC) and the defender of the complaint (through whatever person or office is named) when everyone involved is, in effect, "the City".

To read the ordinance in a way that makes the City subject to the ordinance would result in a situation that would be rife with conflicts of interests, ex parte communications, and the appearance of impropriety. For example, in the case from November 10, the City was the "respondent" in this matter. Even though individual staff members and the Civil Service Commission were named in the original

complaint, it must be remembered that City staff (i.e., City Legal, HR/Finance, and the HRO), are agents of the City. The Civil Service Commission, which was established by City Council, is appointed by the Mayor, and operates under the authority of our City Code, is also an agent of the City, as are its individual members. The HRC, established by our City Council, appointed by the Mayor, and which operates under the authority of our City Code, is an agent of the City, as are its members. Hence, subjecting the City to the jurisdiction of the ordinance would essentially be requiring the City to investigate and prosecute itself, while at the same time asking the City to defend itself and to act as the hearing body. Aside from the practical impossibilities of this situation, the credibility of the entire process would suffer.

Recommendation: I recommend that City Council approve the attached Ordinance, which will clarify that the HRC does not have jurisdiction over the City, its employees, or its agents. The Ordinance states the commitment of the City to conform to requirements of the Human Rights Ordinance in its own employment practices.

Attachment: Draft Ordinance

ORDINANCE NO. 2021-01-003

AN ORDINANCE AMENDING URBANA CITY CODE CHAPTER 12

(Exceptions to the Human Rights Ordinance)

WHEREAS, the City Council of the City of Urbana (“City Council”) desires to amend the Urbana Human Rights Ordinance to clarify the jurisdiction of the Human Relations Commission; and

WHEREAS, the current language of the Human Rights Ordinance implies but is not explicit as to the Human Relations Commission’s jurisdiction over the City and its employees or agents; and

WHEREAS, this jurisdictional issue, if not clarified, would result in the City being put in the position of simultaneously prosecuting and defending itself; and

WHEREAS, the Human Relations Commission has also recognized that clarification is required as has passed a resolution requesting that the City Council clarify the Human Rights Ordinance as to the Human Relations Commission’s jurisdiction; and

WHEREAS, the City Council desires to clarify that the City, its employees and agents are not subject to the Human Rights Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Urbana, Illinois, as follows:

Section 1.

Urbana City Code Chapter 12, “Human Rights,” Article I, “In General” is hereby amended by adding Section 12-1 that shall read as follows (added language is underlined):

Sec 12-1. – Intent and Commitment

It is the intent and commitment of the City of Urbana to conform to the requirements of Article III, Division 2 of this Chapter (sections 12-61 through 12-80) in its own employment practices and the provision of city services to the public.

Section 2.

Urbana City Code Chapter 12, “Human Rights,” Article II, “Commission on Human Relations,” Section 12-22 – Duties; cooperation with city offices.” is hereby amended by adding subsection (g) that shall read as follows (added language is underlined):

Sec. 12-22. – Duties; cooperation with city offices.

(g) The Commission shall receive any reports by individuals who believe that the City of Urbana is engaged in a discriminatory practice as defined in Article III, Division 2 of this Chapter. The commission shall review such reports and work with the mayor, city council, city departments, agencies, and officials in order to correct any discrimination that may exist. The commission shall notify the public of the outcome.

Section 3.

Urbana City Code Chapter 12, “Human Rights,” Article III, “Discrimination,” Division 1, “Generally,” Section 12-39, “Definitions” is hereby amended as follows, with added language underlined and deleted language shown in ~~strike through~~:

Sec. 12-39. – Definitions.

Person. One or more individuals, labor ~~unions~~organizations, employers, employment agencies, partnerships, associations, creditors, corporations, cooperatives, ~~legal representatives, government agency,~~ trustee, owners, or any agent or representative or any of the foregoing.

Section 4.

Urbana City Code Chapter 12, “Human Rights,” Article III, “Discrimination,” Division 4, “Administration and Enforcement,” Section 12-105, “Exceptions” is hereby amended by the deletion shown with a ~~strike out~~ to subsection (d) and by adding a subsection (e) underlined as follows:

Sec. 12-105. - Exceptions.

(d) The provisions of this article shall not apply to ~~other~~ units of government, including the Federal government or any of its agencies, the State of Illinois and any other political subdivision, municipal corporation or their agencies, including the City of Urbana.

Section 5.

Those sections, paragraphs, and provisions of the Urbana City Code that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Urbana City Code other than those

expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

Section 6.

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 7.

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the “ayes” and “nays” being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED BY THE CITY COUNCIL this date day of Month, Year.

AYES:

NAYS:

ABSTENTIONS:

Phyllis D. Clark, City Clerk

APPROVED BY THE MAYOR this date day of Month, Year.

Diane Wolfe Marlin, Mayor