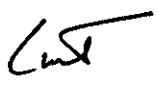




CHARLOTTE.

CITY MANAGER'S OFFICE
M E M O R A N D U M

March 29, 2010

TO: Mayor and City Council
FROM: Curt Walton, City Manager 
SUBJECT: Amending Equal Employment Language in Human Resources Standards and Guidelines to Add Sexual Orientation

Through the City Code, the City Council has delegated to the City Manager the authority to “promulgate and put into effect rules and regulations governing the appointment, promotion, transfer, layoff, removal, discipline, and welfare of city employees” (City Code Section 2-121). That delegated authority appears in the form of our Personnel Rules and Regulations. The current Equal Employment language in both the City Code and the City’s Standards and Guidelines states the following:

“Employment shall be based on merit without regard to race, religion, color, sex, national origin, age, disability, or political affiliation.”

It is absolutely not the City’s intent to discriminate against anyone for any purpose. I have not heard concern from the workforce relative to discrimination based on sexual orientation; however, I have heard from various segments of our community that they fear discrimination based on sexual orientation does exist and, moreover, that the absence of sexual orientation in the City’s Equal Employment language is a glaring omission. Given that we do not discriminate against anyone for any reason, if that concern is there, then I agree the Equal Employment language should be amended.

Therefore, I have amended the Standards and Guidelines to replace the current language with the following, effective immediately:

*“No employee or applicant for employment shall suffer discrimination because of race, religion, color, sex, national origin, **sexual orientation**, age, disability, or political affiliation.”*

The manner by which these changes have been implemented are outlined in the attached memo from the City Attorney.

Mayor and City Council
Page Two
March 29, 2010

As background, many major employers and major cities in the United States include sexual orientation in their anti-discrimination policies. In 1998, an Executive Order was signed to provide a uniform policy for the federal government to prohibit discrimination based on sexual orientation.

Local governments in North Carolina with similar policies include Raleigh, Greensboro, Durham, Winston-Salem, High Point, Boone, Mecklenburg County, Durham County, Guilford County and Orange County.

I feel this is an appropriate action and in keeping with the intent of City Council when it adopted the following Human Resources Philosophy in 1993 and revised in 1995 which states:

“Employees will be treated with respect and without regard to race, sex, age, creed, handicap or for any other reason not related to their organizational contributions. Diversity will be respected and viewed as an asset to our workforce.”

If you have any questions or concerns, please do not hesitate to give me a call.

/Attachment

CITY OF CHARLOTTE
OFFICE OF THE CITY ATTORNEY
Memorandum

PRIVILEGED AND CONFIDENTIAL

TO: Curt Walton, City Manager

FROM: Mac McCarley, City Attorney *DM*
Hope Root, Sr. Assistant City Attorney *H. Root*

DATE: February 23, 2010

RE: Amending Equal Employment Language in Personnel Rules

At your request, we have reviewed the City's options for amending the language in the City's equal employment provisions. Currently, the equal employment language is contained in the City Charter and the Personnel Rules and Regulations. The language in the Personnel Rules and Regulations mirrors the language in the Charter, and states:

Employment shall be based on merit without regard to race, religion, color, sex, national origin, age, disability, or political affiliation.

Through the City Code, City Council has delegated to the City Manager the authority to "promulgate and put into effect rules and regulations governing the appointment, promotion, transfer, layoff, removal, discipline, and welfare of city employees." (City Code §2-121)

There remains a question whether the City Council has the ability to adopt an ordinance which prohibits discrimination in employment based upon an employee's sexual orientation. This question is based on the following: (1) federal law, through Title VII and the courts' interpretation of that statute, does not prohibit discrimination based on an employee's sexual orientation; and (2) the legislature, through the City Charter, has limited the equal employment language to those characteristics stated above (race, religion, color, sex, national origin, age, disability, and political affiliation).

Based on City Council's possible legal limitation on adopting an ordinance that is inconsistent with the City Charter, it is our recommendation that, if you wish to include sexual orientation as a prohibited basis for employment discrimination, you should use your delegated authority to amend the Personnel Rules and Regulations. Although your authority, like City Council's, may possibly be limited by the City Charter language, we feel that our recommendation is the most legally defensible way to include sexual orientation in the City's equal employment language without first requesting a Charter amendment from the legislature.

Amendment of the Personnel Rules and Regulations to include a prohibition of discrimination based on an employee's sexual orientation is consistent with the City's

Human Resources Philosophy, which was approved by City Council in 1993 and revised in 1995, and which states:

Employees will be treated with respect and without regard to race, sex, age, creed, handicap or for any other reason not related to their organizational contributions. Diversity will be respected and viewed as an asset to our workforce.

Attached for your review is a copy of the applicable provisions of the Personnel Rules and Regulations that should be changed in order to amend the equal employment language to include sexual orientation. We recommend the following changes:

- Section 1: Take out subparagraph (1)
- Section 2: Substitute the following language:

No employee or applicant for employment shall suffer discrimination because of race, religion, color, sex, national origin, sexual orientation, age, disability, or political affiliation.

- Section 3: Substitute the following language:

These Personnel Rules and Regulations are administered by the Human Resources Director under the direction of the City Manager. These rules shall cover and be equally applicable to all employees in the City's service. Policies may vary for groups of employees, based on their designation as regular full-time, regular part-time or temporary employees.

We are not recommending that you include "gender identity" as a protected status. This is a relatively new term, has no recognized legal definition, and is highly subjective.

Please do not hesitate to contact either of us if you have any questions regarding this recommendation or wish to discuss this matter further.

cc: Tim Mayes, HR

CITY OF CHARLOTTE
HUMAN RESOURCES STANDARDS AND GUIDELINES
(Personnel Rules and Regulations)

RULE I GENERAL PROVISIONS

Section 1. Purpose

In accordance with Section 4.05 of the City Charter and Sections 2-121 and 2-122 of the City Code, it is the purpose of these standards/rules to establish procedures that will serve as a guide for administrative actions that concern personnel activities. All human resource related decisions should be consistent with the following general standards:

- (1) Employment shall be based on merit without regard to race, religion, color, sex, national origin, age, disability, or political affiliation.
- (2) Conditions of employment shall be maintained to promote efficiency and economy in the operation of the City government.
- (3) Position classification and compensation plans shall be established and revised as needed to meet changing conditions.
- (4) Hiring decisions and promotions shall be made solely on the basis of merit and organizational needs.
- (5) All City of Charlotte employees are at-will employees whose tenure of employment is subject to satisfactory performance of work, personal conduct that is compatible with the trust inherent in public service, necessity for the performance of work, and/or the availability of funds.

These Personnel Rules and Regulations should not be viewed as a contract of employment and all employees remain at-will employees subject to termination.

Section 2. Employees Covered

These standards/rules shall cover and be equally applicable to all employees in the City's service without regard to race, religion, color, sex, national origin, age, disability or political affiliation. Policies may vary for groups of employees, based on their designation as regular full-time, regular part-time or temporary.

Section 3. Administration

These rules are administered by the Human Resources Director under the direction of the City Manager.

Section 4. Employee Organizations

The City recognizes the right of its employees to belong freely and without retaliation to a union or other employee association of their choice. Equally, the City recognizes the right of its employees not to belong to a union or other employee association. The City, therefore, will not coerce or retaliate against any employee, nor will it knowingly permit coercion or retaliation against any employee, in the exercise of his/her right to join a union or other employee organization.

Section 5. Employee – Employer Relations/Conditions of Work

5.1 Salaries, Wages, and Employee Benefits

It is recognized that salaries, wages and employee benefits affect the budget and are affected by the budget, and that the budget is of concern to all citizens. It is, therefore, deemed appropriate that employees, individually and as a group, together with employee organizations, citizens and citizen groups be given an opportunity at the appropriate time to present their suggestions concerning salaries, wages and employee benefits.

The following timetable is established for considering such suggestions:

- (1) Employees, employee groups and organizations, citizens and citizen groups who desire to make requests and suggestions concerning salaries, wages and employee benefits shall submit their requests and suggestions in writing to the City Council prior to February 1st of each year.
- (2) The City Manager shall analyze and consider such requests and suggestions in the preparation of the recommended salary and wage schedules to be included in the preliminary budget. The City Manager shall then submit the recommended salary and wage schedules to the City Council on or about June 15th of each year.
- (3) Within ten days after the receipt of the preliminary budget and recommended salary and wage schedules and after the City Manager has completed his/her presentation on program needs for the City as a whole, the City Council shall schedule hearings on the proposals and will consider statements from interested citizens or groups. The Council reserves the right to establish time limits for each speaker based upon the number of people desiring to be heard.
- (4) After giving due consideration to all requests, the City Council will make its final decisions and adopt an appropriation and tax levy ordinance as provided by law.

Requests for consideration of salaries, wages and wage related benefits must be submitted within the time limits set forth above.