

MINUTES

**Montevallo City Council
Special Work Session (NDO)
March 20, 2018
5:00 p.m. at City Hall**

Mayor Hollie Cost, Council Member Rusty Nix, Council Member Willie Goldsmith, Council Member Bunt, Council Member Matt Walker and Council Member Jason Peterson were in attendance.

Mayor Cost called the Work Session to order at 5:00 p.m. The Mayor thanked the members of the public for attending the meeting and being interested and involved in this process. However, she explained that this is a work session and there would be no opportunity for public comment. There will, however, be an opportunity for public comment at the upcoming regularly scheduled council meetings. She also thanked her assistant, Katie Howard, and the City Clerk for helping to prepare the materials for discussion that evening.

The Mayor noted that the first question which needs to be considered is: Do we need a non-discrimination ordinance? Clearly, if the general opinion is that we do not, then there is no need to waste time parsing the specific language of the ordinance itself. However, if the council believes there is a need, which she said she does, then we need to proceed with discussing the proposed language of the NDO.

Council Member Nix said he thinks we do not need a non-discrimination ordinance. With no complaints being filed with the MPD, Property Managers, or Housing Authority there is no need for such an ordinance. This should be decided at the Federal or State level. We should not put the City of Montevallo or small business at risk. As a matter of fact, we should not put any business at risk.

Council Member Walker said he had reservations about the NDO at the outset. Through the deliberative process, however, he said he has become convinced that we do need an NDO.

Council Member Peterson said that as chair of the Council's NDO Committee he believes there is a need for an NDO.

Mayor Cost pointed to the feedback we received during the deliberative forums as additional evidence of a need.

Council Member Nix pointed out that there was also significant opposition to the NDO at those forums and that most of those opposed felt this was an issue better handled at the state or federal level - not by the city.

Council Member Walker said he thinks there are parts of the proposed ordinance, like the definition of an employer, which need to be changed.

Council Member Bunt said she spent a lot of time talking to local business owners who were unable to attend the forums. She said that the vast majority of them were not supportive of an NDO. She said that she personally agrees there is a need for an NDO, but she pointed out that she was elected to represent her constituents – not herself.

Council Member Goldsmith said he remains concerned about the bathroom issue. He also noted that many people at the local churches are against the NDO.

Mayor Cost summarized the comments noting that the majority of the council appears to be supportive of the NDO with some changes to the wording of the ordinance. Therefore, she suggested they move forward with considering the language of the proposed NDO.

After extensive discussion, the council edited the proposed NDO to read as follows:

Ordinance _____

NON-DISCRIMINATION ORDINANCE – AN ORDINANCE AMENDING CHAPTER 16 OF THE MONTEVALLO MUNICIPAL CODE

Whereas, the City of Montevallo desires to affirm the dignity and worth of each citizen of this city regardless of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status;

Now, therefore, be it hereby ordained by the City of Montevallo, Alabama that Chapter 16 of the City of Montevallo Municipal Code be amended to include the following:

Chapter 16 - OFFENSES AND MISCELLANEOUS PROVISIONS

Article IV. - NON DISCRIMINATION ORDINANCE

Division 1 – Unlawful discrimination

Sec. 16-70. - Purpose.

By enacting this division, it is the purpose and intent of the City Council of Montevallo, Alabama, within constitutional limits, to protect the right and opportunity of all persons to be free from all forms of discrimination, including discrimination based on race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status, and to promote the public health and welfare of all persons who live and work in the City of Montevallo.

Sec. 16-71. - Definitions.

For the purposes of this division, the following terms shall have the following meanings:

Age. An individual's status as having obtained forty or more years of age.

Discriminate, Discrimination, or Discriminatory. Any act, policy or practice that, regardless of intent, having the effect of subjecting any person to differential treatment as a result of that person's ~~real or perceived~~ race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status.

Race: Race discrimination involves treating someone unfavorably because he or she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, certain facial features, etc.)

Color: Color discrimination involves treating someone unfavorably because of skin color complexion.

National origin: An individual's characteristics related to his or her place of birth, the individual's ancestor's place of birth, language, culture, accent, ethnicity, or appearance of ethnicity.

Sex: The status and characteristics of being male or female. This shall be interpreted to include pregnancy, childbirth, and related medical conditions.

Disability: A physical or mental impairment that substantially limits one or more major life activities.

Familial status: The condition of one or more minors residing with their parent or parents or the minor's legal guardian.

Employee: Any individual employed by or seeking employment from an employer, excluding any individual employed by his or her parents, spouse, or child.

Employer: A person who employs one or more employees in the City of Montevallo or any agent of such person, other than as excepted under Sections 16-73 and 16-82 of this ordinance. Employer shall include the City of Montevallo and any city contractor.

Marital Status: An individual's past, current, or prospective status as single, married, divorced, or widowed.

Sexual Orientation: Including, but not limited to, homosexuality, heterosexuality, or bisexuality.

Gender Identity: The spectrum of gender-related identity, expression, appearance or mannerisms, or other gender-related characteristics of an individual, regardless of the individual's designated sex at birth.

Place of Public Resort, Accommodation, Assemblage, or Amusement: Any place, store, or other establishment, either licensed or unlicensed, that supplies accommodations, goods,

or services to the general public, or that solicits or accepts the patronage or trade of the general public, or that is supported directly or indirectly by government funds. The term does not include any of the following:

- a. Any lodging establishment which contains not more than three rooms for rent and which is actually occupied by the proprietor of such establishment as a primary residence.
- b. Any private club, bona fide membership organization, or other establishment that is not in fact open to the public.

Religion: All aspects of religious belief, observance, and practice.

Veteran Status: An individual's status as one who served in the active United States Army, Air Force, Navy, Marines or Coast Guard, and who was discharged or released under conditions other than dishonorable.

Sec. 16-72. - Civil Rights Declared.

Within constitutional and statutory limits, the right of an otherwise qualified person to be free from discrimination because of that person's race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status is recognized as and declared to be a civil right, the deprivation of which is declared to be a violation of this division subject to penalty as provided in Sec. 16-75. This right shall include, but not be limited to, all of the following:

1. The right to obtain and hold employment and the benefits associated therewith without discrimination.
2. The right to the full, reasonable enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement without discrimination.
3. The right to engage in property transactions, including obtaining housing for rental or sale and credit therefore, without discrimination.
4. The right to obtain an education free from discrimination in a safe and supportive learning environment.
5. The right to exercise any right granted under this division without suffering coercion or retaliation.

Sec. 16-73. - Exceptions.

Notwithstanding the foregoing, the following are not discriminatory practices prohibited by Sec. 16-72 of this division:

1. A religious corporation, association, or society that employs an individual of a particular religion to perform work connected with the performance of religious activities or any operation or other activity undertaken by the religious corporation, association, or society.
2. An employer who observes the conditions of a bona fide affirmative action plan or a bona fide seniority system which is not a pretext to evade the purposes of this ordinance.
3. County, State or Federal governmental employers, contractors or sub-contractors who observe the conditions of their own non-discrimination policies.
4. An employer or owner/operator of a place of public resort, accommodation, assemblage, or amusement who makes a good faith effort to make reasonable accommodations and is able to demonstrate that additional accommodations would impose an undue hardship on

the employer or owner/operator. In determining whether an accommodation would impose an undue hardship, the factors considered may include, but are not limited to:

- a. The frequency with which members of the public will be served by the accommodation.
 - b. The size of the employer or place of public resort with respect to physical size, annual gross revenues, and the number of employees.
 - c. The extent to which persons with disabilities will be further served by the accommodation.
 - d. The type of operation.
 - e. The nature and amount of both direct and indirect costs of making the accommodation and the reasonableness for that location to finance the accommodation.
 - f. The extent to which any persons may be adversely affected by the accommodation.
5. An individual or family who employs a person or persons in their private residence. This includes, but is not limited to: in-home child care (nannies and babysitters), individuals hired for household work, and individuals hired for home repair and maintenance.

Sec. 16-74. - Complaints.

1. A person must file a complaint under this division within 180 days following the occurrence of the alleged unlawful discriminatory action.
2. The City Clerk's office is the official depository for all bona fide complaints for alleged violations under this division.
3. Within 30 days of receiving a complaint, the City Clerk's office shall review the allegation with the alleging party.
4. A complainant that continues to allege a violation of this division shall be referred to the Municipal Court for adjudication of the complaint and imposition of a penalty as provided in Sec. 16-75 of this division.

Sec. 16-75 - Penalty for violation.

A violation of this division may be punished by a fine of not more than one hundred dollars (\$100.00) at the discretion of the municipal court. Each day that any violation continues shall constitute a separate offense.

Division 2 - Municipal contracts

Sec. 16-81. - Nondiscrimination provisions to be included in municipal contracts.

Except as expressly excluded under Sec. 16-73, the city and all city departments and agencies shall include in every municipal contract hereafter entered into the following provisions:

"During the performance of this contract the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their of race, color, religion, national origin, sex,

sexual orientation, gender identity, age, disability, marital status, familial status, or veteran status. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further municipal contracts.

Sec. 16-82. – Exceptions.

1. This division shall not apply to contracts between the city and units of government, including but not limited to federal government, state government, county government, municipal government, public school systems, and public institutions of higher education.

2. The city council may waive or suspend the application of the provisions of this division in cases where the size or nature of the purchase, contract, job or services or other special circumstances make compliance therewith impracticable or unnecessary.

Division 4 – Severability

If any provision of this ordinance or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this ordinance.

Adopted and approved this ____ day of _____, 20__.

Hollie C. Cost, Mayor

ATTEST:

Herman Lehman, City Clerk & Treasurer

The Mayor stressed that everyone had agreed that the NDO would not be considered until all council members were present. As such, she set the date for the first reading of the proposed ordinance on the evening of their first meeting in April.

There being no further business before the council, the Mayor declared the work session adjourned at 6:38 p.m.

Submitted by:

Herman Lehman
City Clerk