

The City Council of the City of Charlotte, North Carolina convened for a Strategy Session on Monday, August 2, 2021 at 5:05 p.m. in Room 267 of the Charlotte Mecklenburg Government Center with Mayor Vi Lyles presiding. Councilmembers present were Tariq Bokhari, Ed Driggs, Larken Egleston, Julie Eiselt, Malcolm Graham, Renee Johnson, Greg Phipps, Victoria Watlington, and Braxton Winston II.

**ABSENT:** Councilmember Dimple Ajmera

**AUN:** Councilmembers Julie Eiselt, and Matt Newton

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**Mayor Vi Lyles** welcomed everyone to the August 2, 2021, City Council Strategy Session. This meeting is being held as a virtual meeting in accordance with all of the laws that we have to follow, especially around an electronic meeting. The requirements also include notices and access that are being met electronically as well. You can view this on our Government Channel, the City's Facebook Page, or the City's YouTube Page.

I just wanted to mention today the City of Charlotte is following the recommendation from the Center for Disease Control and prevention, which all of us now known as CDC. We are recommending all employees wear masks regardless of vaccination status inside of City Buildings. The Government Center remains closed to the public except for Council Action Review and Business Meeting, Strategy Sessions, and Zoning Meetings, and public meetings that are being held by the Mecklenburg County Board of Commissioners in the building as well the Charlotte Mecklenburg School Board.

During our City Council Meetings, you can from see the way the meeting is set up. We are social distancing for those who choose to attend the meeting in person, and we have virtual options for those that choose to be virtual. I just want to say to this community the best protection against COVID-19 (mild to severe respiratory infection caused by the coronavirus), as well as the Delta Virus, is the vaccination. We strongly encourage everyone in the community and our City to get fully vaccinated and to schedule a vaccine appointment, find a walk-in clinic, visit [vaccines.gov](https://www.vaccines.gov) and you will be helped to be able to do this.

Today we do have the media attending our meeting as well as several citizens and I appreciate those that are in the Chamber as well as those that are joining us in a socially distant way. Because this is a Strategy Session, we really are glad that you are here to listen. We will be discussing a proposal and then we will talk about that at the next steps at the end of the Council discussion. I also wanted to make a note of something really important tomorrow. Charlotte as well as other cities and communities across this country celebrate National Night Out.

The reason that we have National Night Out is that we begin to try to look at a bond between our Police Officers and the people who live in many of our neighborhoods and in all of our neighborhoods. When you think about the past 18 months, we've made tremendous strides. We've done a lot of hard work to make our communities safer. community policing is still important and community engagement with the Police is a major priority. The work that this City Council has done and funded is really important to the safety of our City. We know that it's a partnership with our communities, our neighborhoods we can be productive and successful. National Night Out is a part of that partnership and tomorrow we have the opportunity to make it stronger. This year we have more than seventy registered National Night Out events in Charlotte. I've been told that CMPD (Charlotte Mecklenburg Police Department) Officers will be at every single one of them. So, we want to thank those that serve. We want to thank those that support this effort. I know that I will be around town and making it as often as I can and to as many events as I can. I know that you will see other members of the City Council out there also. So, we are delighted to be invited and glad to be in attendance at your event and I hope that everyone will observe National Night Out for the opportunities it presents for all of us.

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## **ITEM NO. 1: CHARLOTTE NON-DISCRIMINATION ORDINANCE**

**Mayor Lyles** said we set up these sessions so that the Council has a chance to talk through an item in an informal discussion. I don't know if there is anything informal about a discussion with the City Council as we meet. But to have this discussion so that when we look at this item, which is planned to be on our agenda for August 9<sup>th</sup>, that we have a full and deep understanding of what it is and what we're intending to do. Questions are asked and answered. So, I want to welcome Councilmember Newton to joining us tonight.

**Councilmember Newton arrived at 5:13 p.m.**

**Patrick Baker, City Attorney** said I am here to discuss the proposed revisions to the Non-Discrimination Ordinance. First, let me thank each of you, I think I have had multiple conversations with you over several months to discuss this particular ordinance, getting feedback from you, your constituents as well. It has been an interesting process and I hope that what I am presenting to you is something close that I can at least deliver to you so you can then make further tweaks and suggestions back to me that I will make sure are codified in the proposal for your consideration on the 9<sup>th</sup> of August. So, I will go ahead and get started.

I just have the table of contents here in terms of what I'm going to try to discuss with you, major changes since 2016. We'll go over a brief history of how we got here and then get right into the proposed Ordinance Amendments. Major changes since 2016, a couple of things I want to bring to your attention just right off the bat. HB-142, as you will recall that was enacted back 2017 that prohibited local governments from enacted Non-Discrimination Ordinances based in part on public accommodations and regulating private employment practices. That came with a sunset provision that expired on December 1<sup>st</sup>, 2020. So, that prohibition no longer exists. There have been a number of municipalities around the state that have enacted local Non-Discrimination Ordinances in the areas of public housing and regulating private employment. That is a part in parcel of what we are being asked to discuss. I do want to also make sure it's very clear to the Council and the community that the preemption of the regulation of access to multiple occupancy restrooms is still in effect and nothing in what I am about to discuss with you will address that. We are not recommending, and these ordinance revisions don't defy that preemption. That still exists from the General Assembly going forward.

The second matter I want to bring to your attention since 2016 is the Bostock versus Clayton County case. This was a supreme court case that was decided in June of 2020. As you see there is a 6-3 decision, the majority and the opinion written by Justice Neil Gorsuch determined that discrimination on the basis of sexual orientation or gender identity was necessarily discrimination on the basis of sex as prohibited under federal law. We take out of the Bostock case that discrimination for sexual orientation, gender identity, gender expression is part in parcel of sex discrimination and is a violation of Title VII of the Civil Rights Laws. There is some language there that just makes that point very clear from Justice Gorsuch. He also acknowledged as is typical in major supreme court cases that the opinion would raise questions on its application in fact patterns that were not before the court. In fact, the court mentioned sex-segregated bathrooms, locker rooms, and dress codes would prove unsustainable. They say that that would happen, but that wasn't before the court. What typically happens in these cases is that subsequent cases come up through the courts as well to expound upon the main case coming out of, in this case, Bostock. So, a number of cases will work their way up through the Federal Circuit, Court of Appeals, and maybe be back to the Supreme Court to further explain what Bostock means, what it doesn't mean, and that's typical as we go forward. There will be a lot of fact patterns that folks will ask you about. The way that this comes out in terms of case law is that over the course of time the cases will either expand or retract some of the findings in Bostock, but right now that's the law of the land as we speak.

For the areas that have been regulated by the City Ordinances, they include public accommodations, passenger vehicle for hire, and commercial non-discrimination policies. Those are the ordinances that are on the books right now. We are also proposing a new area of regulation and that's employment for employers that have fewer than 15

employees going forward. The classes that were previously covered included a race, color, gender, religion, sex, national origin, ethnicity, age, and disability. Proposed new classes, and I use that word a little cautiously because the question ultimately is whether it's an actual new class or is it simply an understanding that a particular class will include an additional group of individuals. With that as a caveat, we are talking about sexual orientation, gender identity, gender expression. Those are included under sex discrimination, pregnancy which is also a part of sex discrimination, veteran status, familial status, natural hairstyle. Which has been considered and I've got a page on the Crown Act that has been considered to be falling under race or natural origin discrimination. Here I've listed the categories out there for you so you can see the differences of what we had on the left and what we are adding on the right in the proposed ordinance revisions.

Federal Law, the source of the authority that we have from there, Civil Rights Act of 1964 and 1968 has governed race, color, religion, national origin discrimination of public accommodations, and employment race, color, religion, sex, national origin. Disability was added in 1990 and age was added in 1967. There was no specific law recognizing protection for sexual orientation, gender identity, gender expression until the Bostock case which read into sex discrimination protections for sexual orientation, gender identity, gender expression.

There is State Law addressing public accommodations, particularly the Persons with Disabilities Act. There is also authority under State Law for Passenger Vehicle for Hire and Procurement Ordinances and there is State EEO Law, Equal Employment Law that addresses employers above 15, 15, or more employees. Consistent with federal law also dealing with race, color, religion, sex, national origin, pregnancy, disability, veteran status, and age.

City Code provision in 1968 the City of Charlotte adopted a code provision in public accommodations protecting discrimination on the grounds of race, color, religion, and national origin. In 1972 the term sex was added to you Public Accommodations Discrimination Ordinance. The enforcement of that particular Ordinance is through the Community Relations Committee. In 1968 also the Community Relations Committee was established by Ordinance. The members were jointly appointed by the City Council and the County Commissioners. They have duties making recommendations for the elimination or reduction of discrimination and housing and public accommodations. I will speak to housing in a few moments. They also have a conciliation process where if there is a finding of discrimination, there's an opportunity for the CRC to offer conciliation services to both the complaining party and the respondent to address any issues of discrimination going forward.

Passenger Vehicle for Hire currently prohibits companies and drivers from discrimination on the basis of race, color, religion, sex, or national origin. The enforcement there is through the PVH (Passenger Vehicles for Hire) board and CMPD. They were access to potential civil penalties and revocation of operating certificates and permits and including but not limited to equitable remedies (injunctive relief) pursued through the courts.

We also have a Commercial Non-discrimination Policy. This is the ability for the City to not engage with vendors who engage with discriminatory practices. You see there are City contractors may not discriminate against vendors, suppliers, subcontractors, or customers on the base of race, gender, religion, national origin, ethnicity, age, or disability. The enforcement there is a potential rescission, a suspension, or termination of a current contract, and disqualification for bidding on City contracts from up to two years.

Let me stop there. Are there any questions about the history? We are going to go and dive right into the ordinance.

**Councilmember Eiselt arrived at 5:15 p.m.**

This is what we have for you today for your consideration. We are creating a new more inclusive term called Protected Class. So, rather than listing all of the individual classes

that are subject to a Non-Discrimination Ordinance, we are defining protected class that will cut across all of the identified areas. Particularly Passenger Vehicle for Hire and the Commercial Non-Discrimination Public Accommodations and the new Employment Discrimination Area. That will be a protected class. That will include race, color, gender, religion, national origin, ethnicity, age, and sex, disability. Those are in black. They are already protected classes. We are adding familial status and including sexual orientation, gender identity, gender expression from Bostock in the definition of sex, and in natural hairstyle, veteran status, and pregnancy, and as I said natural hairstyle, we consider to be a potential fact pattern for a race and or national origin discrimination. I do have a specific slide on natural hairstyle that I will discuss with you. We're adding sexual orientation, gender identity, and gender expression, familial status to the Passenger Vehicle for Hire Ordinance. The first three being part and parcel of sex discrimination that already exist in those ordinances and adding new definition to Public Accommodations Ordinance that also addresses sex because we are handling it as one protective class we were able to strike the references of to sex in that particular accommodation, but I want to be very clear that that sex discrimination including discrimination based on sexual orientation, gender identity, and gender expression will also be included in the protected class definition in public accommodations.

Employment discrimination again will have that new Protected Class, but we are focused on less than 15 employees. This particular provision has brought up a lot conversation. A number of the other communities in North Carolina have either, I believe Greensboro and Orange County have enacted Employment Discrimination Ordinances that are only applicable to employers 15 and above. The other communities including I believe Durham, Chapel Hill, Carboro, Apex, and Ashville have made their Employment Discrimination Ordinances applicable to all employers within their jurisdiction. Again, there is a floor at the EEO Federal and the State Law that addresses employers, actually defines employers as having 15 or more employees. There is a gap for the most part at that below 15 level. I have recommended that we focus on the gap in large part because between the federal laws and the state laws there is protection for the larger employees. Let me start that again, for employers that have 15 or more employees I believe there is certainly adequate remedy at law at both federal and state law, but there isn't one for the smaller employers and I believe it makes more sense to focus in that particular gap area. I know that has gotten a lot of conversation about why we aren't doing it for everyone going all the way up and down the line. I just believe that it is duplicative of the existing statutory framework that exist with employers 15 and above.

Enabling Authority. How can we do these particular ordinances? Obviously, the ordinances on Public Accommodations and the Commercial Non-Discrimination have already been on your books for long time. As I mentioned this new ordinance that's really the focus of this conversation, the Employments Ordinance, we believe is consistent and similar to our other Non-Discrimination Ordinance that is, we derive that power from the General Assembly through the enactment of 160A-174 our general ordinance making the police power. There you see quotes from that particular section, a city may by ordinance regulate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city.

The second source of authority comes from 160A-194. This is from the General Assembly giving to local governments the ability to regulate and license businesses, trades, etc. That's the power to regulate businesses. A quote from that statue is a city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment. On occasions the state will put out a preemption or enact a statue that preempts the local governments from getting into a particular area. I think firearms is a very good example of a specific statue that prohibits what would otherwise appear to be within the authority for a local government to delve into that particular area. That has not occurred from the state government on the issue of the employment practices. In fact, as I said in HB-142 at the outset the General Assemble was very clear in that no local government in the state may enact or amend an ordinance regulating private employment practices or regulating public accommodation but then putting a sunset on that prohibition. Which certainly suggest that we must have that authority to be able to do that because there would be no

reason to prohibit us from doing it if we didn't have that inherent authority. Those are the arguments. There was also some case law. I know that the Williams Case, which I think some of you are familiar with has been used in the past. It suggests that through a local Act, local governments are not allowed to enter into the area of employment practices. What we are doing here is not pursuant to a local Act. By a local Act I mean a local Act that has been prescribed by the General Assembly for a local government to proceed. We don't believe the Williams Case is applicable here. Again, we are relying in large part on Bostock for the piece regarding sexual orientation, gender identity, and gender expression going forward.

CROWN Act. You all have heard and maybe you didn't realize that the Crown Act is an acronym. It stands for Creating A Respectful and Open World for Natural Hair. The CROWN Act has been seen as legislation and it is a term where it suggests that there is one CROWN Act. There's many CROWN Acts, but there is not a CROWN Act that comes from the Federal Government, nor is there a CROWN Act in the State of North Carolina, but a number of states have enacted a CROWN Act. For the most part the different verbiage from state to state or locality, but for the most part it is essentially recognizing that natural hair discrimination can be part and parcel of either race discrimination or national origin discrimination. Which are typical protected class areas that are already covered. So, it just makes the causal link between natural hair discrimination and race discrimination going forward.

A number of communities that have enacted these non-discrimination clauses since the December 1<sup>st</sup> moratorium have specifically identified natural hair discrimination as part and parcel of race or national origin discrimination going forward. It will definitely be a fact specific case that would be addressed in those things. So, it's not just a case of if you have natural hair, I think we all have, well I may not have as much natural hair, but we all have natural hair. That doesn't necessarily mean that you win your case, but if you can tie discriminatory practice to your natural hair, that can see as so specific to your race or national origin, characteristic that that then end and of itself becomes race or national origin discrimination going forward.

The case law continues to develop on this matter. I know that there has been attempts at federal legislation as it relates to the CROWN Act. I don't know that there is anything going on in the State of North Carolina. I think there are about 30 or 31 states that are actively considering the CROWN Act, State Act in the particular states. Right now, North Carolina does not have access either to a State CROWN Act or a Federal CROWN Act.

Enforcement. This is really what I have here on the slide. This focuses on the employment piece. This is the enforcement mechanism that we have in the ordinance relating to Public Accommodations going forward as well. Looking a Section 1230, which provides that an employee may file a complaint with the conciliation division of the CRC (Community Relations Committee). CRC then investigates the claims and if they find reasonable cause to believe that there has been prohibited employment discrimination practiced by the employer, they will attempt to conciliate that situation between the employer and the employee. If the alleged violation is not able to be conciliated going forward, the complaint is then referred to the City Attorney for appropriate action and the City Attorney would notify both the complainant and the respondent going forward. The term appropriate action, this is part of the ordinance that exist right now. Appropriate action could be, and quite frankly most likely would be a potential pursuit of an action in front of the Civil Courts on the grounds of either reaching for an injunction going forward or somehow to enjoin the prohibited activity from continuing. There is no private cause of action that is created in this process. By private cause of action, I mean similar to the EEOC, where you file a complaint with the EEOC. That is a federal level and the EEOC (Equal Employment Opportunity Commission) can either take your case for you or issue you a notice of right-to-sue letter. I don't believe we have the authority to issue right-to-sue letters. So, the enforcement of our ordinances would be incumbent upon the City and that would be the efforts to enforce in that particular area.

Religious Freedom Exemptions. This has been a significant point of conversation as well. I have seen ordinances that list out basically case law developed exemptions that have

developed over the course time. What we have tried to do in this Ordinance is to simply state that we intend for any legally recognized defenses afforded to religious organization under federal and state law will apply in this Ordinance as well. We are not trying to change the law for religious organizations. We are simply referring to the law that's been developed at the federal and state level. So, if you have got recognized defenses at the federal level you would have them in this Ordinance as well. Again, it is not the intent of this Ordinance to apply new regulations on religious organizations that are not required under federal or state law. I have suggested not listing the various exceptions that are out there because the exceptions can change over the course of time based on the case law on how it develops. So, basically, whatever the state of the case law is, and we will be mirroring the EEOC as it relates to the applicability of religious liberty exceptions to various practices. They would exist under this particular Ordinance as well. General considerations just for you to think about whether we do all employers within the City of Charlotte or just the employers below 15 employees, this would be something that's new for that community. They have not been subject to these EEOC laws before. So, there's going to be some need to get them up to speed as to what the practices are, what the state of the law is, and again this would be something new for them if you enact the employment piece.

City Administration, I would anticipate again, particularly if you enact the employment piece there may be more complaints, complaints that we didn't normally receive in the past. So, we will have to make sure that we've got the staff resources to be able to process those complaints going forward. We have never done it before so I can't really predict what that's going to look like. If they employment piece is passed, I would expect that there will be more work to review complaints coming out of that.

Potential Litigation, I have seen some media reports that whatever it is that we do, we are likely going to get sued. I put together a lot of ordinance over the course of my career and I always assume that someone is going to challenge these ordinances. So, I try to look at the ordinance to make sure that as best I can, it doesn't make some mistake or silly mistakes that will automatically get us bounced out of court with an injunction preventing us from going forward. As you all know, if there is a successful argument that we have exceeded our statutory authority we also have to pay attorneys fee in that case as well. So, we take that into consideration as we are putting together these ordinances and believe we have taken some of those considerations to the extent that we can identify them into the ordinances that are in front of you today.

Also, the General Assembly. Again, I can't stress enough that we are not regulating bathrooms that we are not doing anything that violates the remaining sections of HB-142. But keep in mind the General Assembly at any time could step in and preempt local governments from enacting these Employment Discrimination Ordinances. Similar to what they did when they did HB-142 in the first place, but it is just something for you to consider going forward.

Finally, and I realized I skipped pass the Fair Housing piece. There have been questions about why we aren't amending the Fair Housing Ordinances as well. Fair Housing unlike the other ordinances is actually a creature of our City Charter. Where we have gotten specific authority to address specific discrimination in fair housing. That also includes sex discrimination. It also includes race and national origin discrimination as well. If we are going to make changes to that if we use the now defined protective class and applied, it to fair housing. That would necessarily change our directive in the City Charter and as you know we would need to go to the General Assembly to get that City Charter changed in accordance, we can't just do that on our own.

As it relates to Fair Housing I do want to clear. HUD (Housing and Urban Development) which would assist us in administrating Fair Housing has applied the Bostock case to the term sex for sex discrimination. So, gender identity, gender expression, and sexual orientation would be part and parcel of sex discrimination in our Fair Housing Ordinances and the same argument for natural hair discrimination that I raised before I believe would be applicable under the race and notional origin prohibition in our Fair Housing Ordinances that exist. So, we get there to I believe the same place, just in a little bit

different mechanism. Certainly, we could ask for specific Charter authority from the General Assembly if we wanted to apply the currently proposed definition of protected class to include the protected classes in the Housing Ordinances.

Mayor Lyles said the City Attorney has finished the presentation of the history and the recommendation that he is making for the Non-Discrimination Ordinance.

**Councilmember Egleston** said a couple of things that I want to touch on to start this conversation. One, for both those of us on Council and for the people who are watching and following along at home. I do want to make sure that we are all looking at the same version of this Ordinance. There was a version with a handful of edits that uploaded to the City website this afternoon. So, if anyone has pulled up an older version or they are looking at something from a week ago there have been some changes made and I think it's important that we are all working from the same document. So, people from the public can go to the City website where the City Council Agendas are located, and there is a hyper link to a pdf of the most up to date draft that is available on tonight's City Council Agenda. They are easy to find because it is only a two-page agenda. For those of us on Council it's in our ilegislate as an attachment to the agenda there. Just so that we are not debating a point that has already been updated.

Mr. Baker said it I think three or four time, but I think it bare continuing to repeat. We are not doing anything here that is expressive or prohibited in state law. There's no longer with this draft or something close to this draft there would be no reasonable or logical cause for a response like what we saw some years ago in the form of House Bill-2. So, for those in the community that might have PTSD (Post Traumatic Stress Disorder) from House Bill-2, just know that is something a lot of consideration was given to making sure that we don't open ourselves up to that sort of response again, that we do what we can and as Mr. Baker said we have not wondered into the territory that we expressly prohibited from wondering into with those exemptions that we have drawn out in House Bill-142.

There have been some questions about in this most recent draft, elimination of a couple of sections, but I would concur with our Attorney there is no need for us to flesh out the things of this ordinance can't and does not do. Things that are prohibited by State Law. If we started adding in all of the things that the Municipal Government in North Carolina cannot do, based on State Law we would have quite the long novel instead of an ordinance. So, I think in this case the fact that we are in compliance with those things we don't need to expand or expound on what those are. There's no need for those to be in there anymore than there is for every other thing that this Ordinance doesn't do or can't do.

But on a happy note, I think that as we start this conversation, I think it is worth drawing attention to the fact that we got a bipartisan Council here, who is in agreement that this Ordinance needs to be in place. That we need protections for people in our community and I think that's something that we should applaud because we've had a number of issues this year that have been divisive, have split the Council at a time created odd bid folds. I think it's pretty awesome that we've got something like this that a couple of years ago would have been unfathomable that an entire Council would agree at least in principle, but we might debate the details here tonight or some of the finer points of it but agree in principle that this is something we want and something we need. I hope that this is the start of something better for this term, because having an issue that we can all rallies around again can have a healthy debate on the fine points but agree that the LGBTQ (lesbian, gay, bisexual, transgender and queer) in our City needs protections, deserve protections, and we want to provide those protections. I do kind of feel like we are all in this together and I hope that our discussion tonight is reflective of that.

My one question for Mr. Baker and my suggestion if it's the will of the majority of the Council for an amendment to this most updated draft is as I look at page six of the Ordinance, it says this Ordinance should be affective on January 1<sup>st</sup>, 2022. In conversations I've had with Mr. Baker and his team, I understand and would ask him to expand on some of these details. Understand that we need a little bit more of a runway timeline wise for some of the employment pieces. I think he can explain why that is. I

know some of the other cities in our state who have adopted ordinances before we are scheduled to in a week from now, have effective dates on January 1<sup>st</sup>. That said there are other parts of this that I don't think need that long of a runway and I would ask Mr. Baker what pieces of this could be implemented and made effective sooner? How soon could they be made effective? I don't know how we want to go about this in terms of logistics tonight, but I would ask if there is a majority of Council that would agree based on what his response is to split this into maybe two different timelines. One being the employment piece, which he might make a case does need to be January 1<sup>st</sup>, and the parts that don't need that long of a timeline. Something much sooner because I know that every day, we wait these protections are not in place. I know the community wants them in place yesterday, but the best we can do is the day after we adopt it. I am wondering if that's an option. So, I hope that he can shed a little bit of light on that and then if my colleagues would agree with me that the pieces that can be done faster should be.

**Councilmember Eiselt** said I too want to thank Mr. Baker and your team for all of the work that you put into this. I also want to thank the LGBTQ community that has put a lot of time and thought into this as well and to Councilmembers who have also spoken up and asked questions. I do ask if Mr. Baker could give us some clarification however on the issue of under employment if there is a complaint that is brought forth to this Community Relations Committee and they attempt to start a conciliation process, but the employer chooses not to participate. Under our existing Non-Discrimination Ordinance, we have a system and fines in place if someone doesn't show up. Could you just explain what that is and please clarify if these additional classes are also covered under the same condition in the same system?

Mr. Baker said thank you for that question. As it relates to complaints that are going out of the Employment Discrimination Ordinance, yes. It would go to the CRC first and they would do an investigation. If they find reasonable cause to believe that discrimination has occurred that's when they would reach out to start the conciliation process. Assuming that the employer chose not to participate then the investigation would then be referred to the City Attorney for further appropriate action. Which could include again going to court to seek equitable relief and then junction to force the employer to change their practices. But yes, there are fines that are also part of our ordinance mechanism that we have in place. Though we haven't done private employment before. Again, unless you add that to the Ordinance, we don't have that experience. I have spoken with Willie Ratchford who is the Director of that Department to find out what happens when conciliation fails. For the most part conciliation rarely fails. The amount of times that had to be referred to the City Attorney I think he said in his entire career may amount to five times and those were out of the Fair Housing side as well. But employment, we have no history with employment so I can't tell you that that's going to be the case as well. We just as an organization don't have much experience with a cause finding that is unable to be conciliated between the parties, but it is quite possible and as we are putting these things together, we have to assume and be prepared for a potential situation where there's just no agreement and that we have to then employ those additional remedies that we haven't in the past.

Mayor Lyles said Mr. Baker can you go back again and just remind me what you said about the timeline if employment was January 1. Are there other areas or is that something that you are going to send to us?

Mr. Baker said no, I can address that now. The main reason for the January 1 timeline was in anticipation of an enactment of Employment Discrimination Ordinance that I believe the Administration and the Attorney's Office would need some time to get up to speed if you will in terms of who is going to be doing those investigations because right now that is not the CRC is doing. Once upon a time the CRC did handle employment discrimination claims against the City, but we have not done that according to Mr. Ratchford in roughly 20 years or so. So, I don't know right off hand what the bench looks like in terms of understanding of Employment Discrimination Law. I would expect that it would be several months to get ramped up. That to me Section 4 of the proposal is the part that I think would need some time. I will check in with staff as well, but I believe that the other pieces because they are already active and moving. You are simply adding the new Protected Class to it, the definitions of sex as put together in Bostock, the natural



hair piece as well. I think that can move much quicker. Maybe within 30 days, maybe sooner. I'm not exactly sure.

Mayor Lyles said I would just add, and this is a thought that if we were going to vote on this August 9<sup>th</sup>, the agenda would go out on the 5<sup>th</sup> on that Thursday, we could have that comment included. So, when we have the agenda go out, answer on the effective dates a recommendation from the Attorney's Office will be included on Thursday.

**Councilmember Newton** said I appreciate you bringing that up. I was just about to say that I am completely on board with that suggestion that Councilmember Egleston had made. The sooner that we can get as much of this enacted, assuming this passes next week, as much of this enacted as possible, I think the better. I know that there are many members of our community that have waited quite a while for these protections, and I think that that would be warranted.

I'm also glad that we are finally here having this conversation as well. I want to thank you Patrick for all of your hard work on this. I want to thank my colleagues for all their hard work, and for all of the many members of the community that have been a part of this conversation, for all of your hard work as well. I wanted to mention a few things here for us as Councilmembers to hopefully consider before we do vote on this next week. A couple items to maybe discuss and talk about. I know that it is not uncommon for us to talk about covering gaps in what we do. I think we traditionally talk about that within the context of financial gaps. There is a lot of utility there because we know for a fact that if we are covering financing that goes beyond just the immediate financing need. It truly is redundant. We are spending more money than is necessary. We are engaging in more activity, right then is necessary. Actually, depriving ourselves of enacting benefits in other areas. I really question if that holds true here. I have given this a lot of thought. I know you and I have talked about this Patrick. The more I think about this the more I really question whether we really should lock ourselves into this gap provision of sorts for employment and not just extend protections to people in the context of all employment or regardless of that employment is 15,14 employees or above.

I understand that there are cities across the state that have enacted ordinances that do apply to all employment. I think you might have mentioned that in your presentation. I feel like sure there are state and federal protections but what's the harm in us also enacting additional protections? That's not something that is illegal or outside the realm of possibility from what I understand. Correct me if I am wrong on that. Frankly, you look at the fact that there are state and federal protections, they overlap, right. So, it really provides more options to fight discrimination. I feel like in the context providing those options we should do that. We should help as much as we possibly can to eliminate the possibility of discrimination happening. Certainty, if we are serious about this. So, I just don't see us maybe expanding our employment protections beyond 14 or less to include all employment as redundant. I see it more as providing an additional option for our residents within the City and possibly even in an insurance policy for our residence within our City because we don't know in the future what might happen under federal or state law.

So, I really question whether we would want to lock ourselves in that regard. I appreciate how when we talk about penalties here. I appreciate how we have this process in place with the CRC reviewing complaints. Making a decision independent of the Council as well as the City Attorney's Office. I can tell you that withing the context of seek an injunction, that there are penalties that are associated with that. If there is any violation of injunctive relief a court can institute financial penalties and fines and could even put someone in jail frankly. At the same time, I think from the context of us ensuring that we do prohibit these forms of discrimination that we are talking about here. I really question too whether we want to maybe take this a step further. I mentioned a moment ago that there are ordinances across state that have items that are a little bit stricter than what we are considering here. I feel like they are not being challenges in court so why would we follow that example? In this instance when we we're talking about penalties there are other ordinances that include fines. I think they ran from maybe like \$100 to \$500. There is some question as to whether something like that was instituted if that would be something

that would be an ongoing fine? I feel like to really prohibit this type of discrimination that we are talking about to provide that deterrent that's maybe something that we should also consider. Placing some fines in there that will function along the side of penalties associated with injunctive relief which could take quite a while, right. Thirty days and then however long it takes to go to court, get the order from a judge, which could be another month, two months, what have you. Hopefully it wouldn't take that long, but we don't know for a fact, right. So, I just wanted to put that out there for my colleagues as well.

The housing piece on this too so, just for anyone asking the question, I know I had this question about how we would prevent this type of discrimination in housing. I think you answered it for me, Patrick, but I just wanted to touch on it. You had mentioned that it's within our Charter and so that protection for all intensive purposes already exist is what it sounds like. Is that correct?

Mr. Baker said that's correct.

Mr. Newton said okay. I don't know what the enforcement of that would look like. What penalties may be attached to that? It sounds like it is prohibited under our Charter, but could you speak to how that would function if someone were to violate that part of our Charter what are the consequences?

Mr. Baker said I don't know if Mr. Ratchford could speak to that because his Department is very vested in those Fair Housing Discrimination complaints. They would do their investigation as I understand it. If they find cause that the Fair Housing discrimination has occurred, they will attempt to conciliate between the landlord and the tenant is typically how it works. I don't know that they have failed to conciliate. In the past I think it's been many years that it has happen, but there are potential fines that are associated with that. There are default fines related to violations of our City Ordinances. Again, I don't know if Mr. Ratchford can speak specifically to that or not. I am happy to turn the microphone over to him if he is available.

Mayor Lyles said we are going to get Mr. Ratchford to come in. I think you said that over his career with the City there have been five that have gone beyond conciliation. I think Mr. Ratchford is worked here at least 40 years. So, he's a very skilled conciliator.

**William Ratchford, Director of Communication Relations Committee** said Mr. Newton could you please repeat the question?

Mr. Newton said yes, sir. Thank you for being here tonight, Willie. I appreciate it and I know everyone does. My question was within the context of housing discrimination. Particularly on the basis of sexual orientation, gender identity, natural hairstyle, and the other categories that we have identified here tonight. If there were to be someone who were to deny someone housing on those bases, engage in that type of discrimination, certainly our Charter would prevent that, but what are the consequences when that occurs?

Mr. Ratchford said okay, so let me make sure that I am understanding your question. If someone files a complaint on any bases, we will start an investigation process. Actually, we have two-fold process. Conciliation really should start at the very beginning of the process and it should run separate in apart from the investigation. Such that we might we receive a complaint, we inform the respondent that we would like to conciliate it while we are in the process of investigating. If we are successful with that conciliation prior to completing that investigation, then we would close the case administratively without making it a fine and a fact because the investigation itself is design to get us to conciliation itself.

If we make a cause finding, we attempt conciliation if we are not successful. The Ordinance then requires that we have a public hearing, which consist of five members of the Community Relation Committee who are appointed by the Chairmen of the Community Relations Committee. Those five hearing officers would hear both sides and make a decision as to whether they think the finding that the Community Relations

Committee Staff investigator made was correct or if the respondent had to prevail an argument that says that that discrimination did not occur. If the hearing panel agrees with us, then by law or by ordinance we again are required to attempt conciliation and if we are not successful with that then we take it to the City Attorney's Office and then they would then file a lawsuit against the respondent. As far as any potential fines for failing to conciliate there's nothing in the ordinance that covers that.

Mr. Newton said so, Patrick my question would be is that something seeing as how it is a part of our Charter and I understand the effectiveness of filling suit, don't know if that would include injunctive relief, I think it probably would, right, but what challenges might we be faced or posed with if we were talking about something to the extent of say fines? Like it sounds like we would be much more able to do in these other context employment and taxi cabs etc. that we are talking about within the ordinance now. What challenges would we face if we were to take that additional step in our Charter?

Mr. Baker said I have not looked at our Charter authority for that specific question, but I would like to determine whether or not the Charter order speaks to what the remedies are and why we are using the remedy that we have been using and whether we've got that flexibility. That is a question that I have noted and can certainly provide that response to you quickly.

Mr. Newton said thank you so much. I appreciate that and I really look forward to having the conversation with my colleague here over the next week over some of these others points that I mentioned.

Mayor Lyles said actually Mr. Newton I think this is the time to have that conversation. We set up these meetings so that they are actual discussions. I hope that I have captured everyone. But you have asked whether or not we should have more restrictions like other cities. I'm not sure what the comparison of your other cities are. You have also asked whether or not we should increase the penalties with actual fines in that area. I think this is the time that we actually are supposed to engage in this discussion. As I said this goes out on Thursday as a recommendation, but it's very helpful for the City Attorney to know the guidance from the Council to prepare for that distribution of the agenda. It also helps us bring forward whatever we are going to do to the community. When that agenda goes out, I can't remember how many people will get it, but that's the item that people are expecting us to debate and then vote. So, this is the appropriate time. I don't know if anyone on the Council would like to respond to Mr. Newton's question.

Mr. Newton said just to clarify. So, I think I have three points for discussion. The first one would be whether we will broaden our protections in the context of employment to include all employers rather than just employers who employ 14 and below employees. So, broadening employment. That's my first one. The second one would be assessing whether or not we would want to have fines levied against offenders alongside the possibility of injunctive relief. Now how we asses with those fines would maybe be if we want to peruse that would be the next topic of conversation. How much whether it would be ongoing and then the third one is whether or not to pursue any additional types of penalties for relief, fines in the context of someone engaging in housing discrimination under our Charter. So, those would be the three points that I was bringing up.

Mayor Lyles said would Council like to hear from other folks that have got questions from Mr. Baker and then come back to Mr. Newton three questions for discussion? So, I'm going to go ahead and have every Councilmember that would like to address questions, complete that. Then we will come back.

**Councilmember Driggs** said I want to say first that I agree with Mr. Egleston that there is a consensus among us on the issue of wanting to prevent any mistreatment of members of these new protective classes. I'm certainly in agreement with that. I think it's wrong if somebody is denied a table at a restaurant or suffers in any way by virtue of their membership of one of these groups. So, I'm hoping we can reach a conclusion that I can support. There are some issues though and I think we need to be aware that this

environment is contentious, and we would not be doing justice to the subject if we weren't kind of respectful of some concerns that people might have.

In my case the biggest concern is about the employment. The Federal Government expressly did not include these small employers 14 and below in the safeguards that it put in place to prevent discrimination. Which have been in place since the 60s as we just heard, had been placed through various Administrations and majorities in Congress and that extension down to the smallest employers has never come up or been acted on, and I think there are reasons for that.

We need to think about what those reasons are before going into this arena with good intentions. We also have a responsibility to small businesses, and we have lately engaged in various relief efforts on behalf of small businesses because of the effect that COVID had on them. We have acknowledged the importance of small businesses in creating jobs and opportunity for members of, in fact some of these protective classes. To take an action that could place a burden on small businesses that is not in line with the rules that they have to play by according to the state and federal law is something we should be thoughtful about. I'll explain why this is an issue. The problem generally with non-discrimination and I say this as somebody who had subordination in my professional life the problem that can arise is that it basically makes members of the protected classes somewhat untouchable. It means that if you have an underperforming employee who happens to be a member of a protected classes, the remedies that you would have against an employee who is underperforming and wasn't a member of a protective class are more limited. You would have to be prepared for allegations and any action you take against them and any failure to promote them or anything else is going to result in some sort of a protest, legal action or whatever. This is particularly important for these small employers because they just don't have the resources. They don't have the time to show up at all of these hearings. They don't have the lawyers. They do not have the ability to defend themselves against these actions and could therefore find themselves in certain circumstances being held hostage by somebody that was legitimately nonperforming. I want to emphasize that this is not about the fact that they are a member of a protective class or not. It's about the fact that they are an underperforming employee. This happens. It happens among people who are not in a protective class and those who are.

So, we have to be mindful of unintended consequences when it comes to putting this burden on small employers. One question I do have, I guess, for the staff. I'm not sure who to address this to. What kind of outreach have we done to find out whether employers in the category are concerned about the effects that our ordinance could have on them? Have we engaged? Do we have input from them? Did they participate in the formulation of this? Can anybody answer that?

Mr. Baker said I personally have been on the phone, I think, on Friday with some business interest that were specifically asking questions from the small business prospective, but I don't know how much engagement has occurred beyond that one conversation from my perspective.

Mr. Driggs said in any case I would like to hear more from them and be sure that this possibly theoretical concern. Again, from my experience working with a large employer we spent a lot of time and money on lawyers dealing with the existing non-discrimination provisions. If you ask an employee for example who is past a certain age and was really out of touch and was not performing anymore you knew that there was no way to end that employment that was not going to invite some sort of a counter action. Usually what happen was you had to offer them some sort of a package or incentive in return for their signing a waiver of any action they might take based on the fact that they were a certain age. So, I do feel this is an issue. I'd like to get more comfortable about it. Again, I feel all discrimination is bad. I think it's bad to discrimination against who are of smaller stature. It's bad to discriminate against people who went to the school you don't like. So, it's difficult when we create these protected classes to suggest that anybody who is not in a protective class can be treated any which way.

Mayor Lyles said Ms. Eiselt wanted to respond to your comment about the business. Is that okay to do that now?

Mr. Driggs said I'm not yielding. I'll take a question, but I will have others.

Mayor Lyles said you asked a question. So, Mr. Baker answered, and she would like to also address it and then we will come right back to you.

**Councilmember Eiselt** said does anyone have that information? I just wanted to put it out there that the Charlotte Small Business Coalition and I believe the Charlotte Regional Alliance is in support of this.

Mr. Driggs said I know some small businesspeople. I would just like to find out myself. If there doing that, that's good. I'm still concerned that if the federal law expressly, there was an omission on the part of the framers of the federal law. It was a distinct provision where they said anybody 14 and under is not included in these protections and I think there could be a question and I believe the lawyers have suggested there might be a question as to whether for us to take upon ourselves to afford those protections to them in fact violates the intention of the federal law. It is not inaction in the federal law. It is an action of the federal law that they are not included in federal protections.

Mr. Ratchford you were talking about sequences of events, including the possibility that if the thing makes its way back to the City Attorney, the City Attorney might sue. Is that right? Could this end up in court? If so, based on what statutes?

Mr. Baker said out of the ordinance, the way that the ordinance is written there is the conciliation efforts, and it would be referred to the City Attorney, I think the words are further or appropriate action is what's in the books right now. That is the basis of the authority that is coming directly out of our ordinances. That's what's on the books.

Mr. Driggs said I get that, but this is a critical issue, what the remedies are and so far, we have this thing making its way to the desk of this City Attorney. At the end of the day what could happen to somebody who is uncooperative in this process?

Mr. Baker said if there is a cause finding of discrimination under the ordinance and we are not able to conciliate and they are only coming, by then I mean the employee, are only pursuing remedies under the City Ordinance, not state law or federal law, that's a completely different animal. Then what I am suggesting is the language of the ordinance speaks to the City Attorney seeking further appropriate relief, which for the most part would look like a lawsuit brought in Civil Superior Court, seeking an injunction to enjoin the employer from continuing to employ the discriminatory practices. It's not been done before as my understanding, but I believe that's how it would play out.

Mr. Driggs said how many accidents of any kind related to discrimination? You mentioned there were only five actions that have made it to the attorney in the pass. How many under the Non-Discrimination Ordinance cases have actually been brought to the body that looks at these? Is this common?

Mr. Ratchford said Mr. Driggs in the 41 years that I have worked for the Community Relations Committee administering the Fair Housing Ordinance we have had five actions that have been referred to the City Attorney's office. On at least four of those, they were resolved before any court actions was taken. Maybe on all five of them, they were resolved before court action was actually taken. You had mentioned earlier some concern about low performing person using their protected status as a way of getting around the law. Everybody in this room, everybody on this call is a member of some protected class. You can't get around not being a member of a protected class. Everybody is.

Mr. Driggs said I am certainly protected on the basis of age, so I feel good about that. So, thank you Willie. Mr. Baker you referred to the fact that there are federal laws that relate to religion and to the extent to which people are protected by virtue of religion. I guess offline I'd like to know a little bit more about what those are and therefore what the

environment would be for protection of religious grounds. In our Ordinance, here and again the problem is that there are some people who have valid conviction, and the fear is that there are some people who would plead religion when it's really just malice.

Our challenge is to make the proper distinction between those two and not impose on somebody who has grown up or demonstrated by other behaviors a lot of sensorily and conviction about their beliefs to make them do something that violates their belief while not allowing others to claim that they have a religious reason for discriminatory action and in fact they don't. So, if Mr. Baker, if we could just follow up on that one and help me to understand how much protection there is under federal law as it relates to people's practice of religion. So, I guess I'll just conclude by saying I'm very supportive generally of the goals and most of the content of protective classes. I am worried about the employment thing and I want to make sure that other people's rights are not infringed on, as we go to protect those members of these protective classes.

**Councilmember Phipps** said I wanted to get some clarification on the inclusion of our protective classes. We have sexual orientation, gender identity, gender expression. Is that going to be lumped in parenthesis under sex or are we still going to list those as protected classes? The same with pregnancy which you said could be under sex and natural hairstyle could be under race and national origin?

Mr. Baker said that's a very good question from my perspective I'd like to stay in what is a protected class rather than putting out multiple phases or perspectives of a protected class, it just this is the class. Giving the conversation that has occurred around sexual orientation, gender identity, gender expression is where I added the parenthetical to make sure that folks understand that those particular divisions of sex discrimination are part and parcel of sex discrimination. So, ideally it would continue to use the words sex discrimination as the protected class but given the recent changes coming from the Supreme Court, I just want to make it very clear that sexual orientation, gender identity, gender expression is part in parcel sex discrimination.

Mr. Phipps said that's the same with natural hairstyle, with race, and national origin?

Mr. Baker said yes. I do want to be clear about the CROWN Act because there isn't an applicable CROWN Act in North Carolina yet either at the state level or the federal level but everything that I have seen coming out of those jurisdictions that have impose the CROWN ACT essentially say that can be the basis of a race or national origin complaint. Which are already part of those well-established protected classes going forward. So, you have it appears to be a legitimate fact-based argument, again depending on the circumstances.

Mr. Phipps said another question I have relates to on page two. You have some mandatory Non-Discrimination Contract Claus in it. It speaks to if a business is held to be in violation of discriminatory practices that it causes from disqualification of the company from participating in the City contracts or other sanctions. My question is, is there a time limit by which a company can be reinstated after having successful adjudicated its case and provided sufficient remedies? Is this a disqualification forever or is there a redemption period?

Mr. Baker said it is not a disqualification forever. I don't have the specifics on what that looks like. I will get you some information rather than guess.

Mayor Lyles said we will send that out on Thursday.

Mr. Phipps said my last question was answered when Mr. Driggs asked about, I was looking for available matrix from the Community Relations Committee about the volume and scope of discrimination classes, but you have answered that. It's been like five in 41 years or something like that. One other final question I had about when the CRC finds that there was no violation. It's says in this document that we have that you would inform the person in a reasonable time. What exactly is that? What is this reasonable time? Is there a specific time?

Mr. Ratchford said the standard that we have used since I have worked for CRC has been ten days. Within ten days of what we call a no-cause finding where we believe discrimination did not occur after our investigation, we will inform the respondent and the complainant as well as HUD that we have made a no-cause finding and that the case is being closed out.

**Councilmember Bokhari** said first and foremost I want to say thank you to the group of young Republicans who have done over eight months of hard work, led by Kyle Lukey who is with us in the room today as well as Mya (inaudible), and Brad Thomas. Your tireless work over these months and months and months working sessions have been so much appreciated and you guys have really worked together to do something I think is really special with conservative principles for the first time that I have seen which is thread a needle that is so complicated and difficult and really walk that fine line between protecting against all discrimination but also not infringing on the rights of folks, and basing that in that conservative principle of individual liberty. It is really amazing. The work you have done and the conversations you have had, and all along protecting those that need protection while not requiring adoption of those beliefs and not infringing on other rights. I think if we could do more work like this ongoing the world would be a better place. So, I first and foremost applaud you for all of that work and thank you so much.

I think that your work also is the reason why we are here in many cases today. May have been working on this for a long time and care deeply about it, but I think there is no doubt that your work and what you've done there has pushed the conversation to another level and definitely helped apply the pressure that brings us forth today. So, with that a lot of things have been incorporated that I think probably wouldn't have otherwise that we see in here. I applaud that. There are four things left in this version that has been rolled out that are in a range of concerning to me all the way up to things that unless we rectify in the next week, I can't be in a position to support it no matter how much I am appreciative of have we gotten here.

The first one and Councilmember Phipps already kind of mentioned this but I will hit it again. I hadn't seen this come up before but around the City Contractors piece requiring all of these companies to attest up front in this affirmative proactive way while maybe well intended is probably riddled with unintended consequences that I don't think are necessarily worth the squeeze ultimately there. Having been in a career with vendor-management and things of that nature, saying someone has to do and comply with certain things and then we will hold them accountable in a reactive kind of manner with the CRC is one thing. Having them proactively have to attest that they will adopt the policies that the City utilizes internally and have those in place. There are so many small businesses that could never ever do something of that nature. I think there has got to be a way to respect the spirit and intent of what we trying to do without putting crushing bureaucracy on all of these folks. So, that's the first one.

The second one, and I will just give you an example here cause this touch both the broadening of that employment beyond 15 as well as housing. If a black woman for example with natural hair right now after this proposal would be in place would be able to be fired with no recourse that a company with 15 or more employees or would be able to be discriminated against when seeking to buy for example a home that is for sale by owner. So, these are two very specific cases and examples and then there are others in the other topic with LGBTQ+ community and others. These are two examples that would be exposed in that risk even with the current draft language. So, we need to look at that employment and housing concepts that did not mirror that of which the young republican version has been brought out.

Third, here is another example that is not protected explicitly after this version would be voted positively in this manner. A religious organization school or nonprofit could be forced to go to court to ensure it doesn't need to hire someone whose actions go against their beliefs. It's quite clear and I think you would agree Mr. Attorney that they wouldn't per the Supreme Court. However, when we aren't clear in our ordinances the only alternative is for them to have to go to court. That's costly. That is a process that bogs down the system. There is no reason for us not to be clear and explicit in our statements

there, even though they are maybe unpopular with some support groups that don't want that explicitly stated. I'd go further to add that removing the things that we are explicitly stating in our version. Like religious protections or like clearly addressing the bathrooms that were in the previous version. That's not just dangerous, I think it's a route cause of what happen in HB-142. Communication with our partners statewide and otherwise and explicitly showing them we are just as concerned of protecting rights that they care about, it's not just good practice, it's how we make sure we defend all of those that are in need and we don't end up getting in some kind of protracted fight.

Finally, the fourth item in the current version that is different our version that we bought out, a Republican for example could be fired from their job just because they are a registered Republican, or they marched in a protest and it was seen by their employer. A Republican can be denied service at a coffee shop because they are wearing a Republican theme t-shirt. So, creating this protected class for political affiliation or expression is not only relevant in today's environment, it is the beginning of an anecdote for the cancel culture we have come to unfortunately expect. We must oppose all forms of discrimination if we are truly for this path we are going down.

So, I hope that one day all of this protected class conversation that we are having here is not necessary and we are beyond it, but for today I think it's a reasonable approach that we have come to and if we can address those four items, I think we will be in a good spot a week from now.

**Councilmember Johnson** said I just had some questions. I had reached out to the City Attorney to ask a couple of question. I want to get those answers publicly. What percentage of employers would this effect, who have 14 and under employees in the City?

Mr. Baker said I know the overall number of 14 and below is something in the range of 13,300. Unfortunately, I didn't do the percentage. I don't know if someone know off of the top of their head the number of employers that we have. I was focused on the number of employers that would be impacted but I can certainly get that for you quickly.

Ms. Johnson said we also talked about criminal background being a part of that language. Can you talk about that?

Mr. Baker said so I have not seen any ordinances that specifically call out criminal background and make it some sort protected class, but what I have seen is that the misuse of the criminal background process could create a race discrimination claim based on how they are using it. For instance, the inconsistent application of a criminal background process. So, you are using it for some people and not others and it may be based on race, sex, or national origin or what have you. That could be cause for a discrimination claim depending on the facts of those cases if there is inconsistency in the application.

I've also seen arguments made for potential dispirit impact claims and that is when particular when the actual criminal prohibition that you are trying to address. The convictions that you think are disqualifying when there not really tied to the employer's business relationship if you will, or a business necessity and that it has a dispirit impact on a certain protected class. That could also create a claim if you will of discrimination.

Ms. Johnson said also one of the things that Willie said that you'd only seen five claims go to the City Attorney in 46 years. I would argue almost or bring up a concern if the public is aware of the CRC process, because I remember the conversation about the source of income discrimination. There were only two or three cases that you were aware of, but I have a text from someone that had reach out to 32 complexes just in six zip codes yesterday and is getting the answer that they don't take the housing choice voucher or whatever voucher. So, I think there is a bigger problem out there that maybe the information is not being captured. So, for that reason I would want in our draft, Patrick if you could delineate or really outline what the course of actions or what the recourse is because we've asked directly if a lawsuit was a part of it. Even in the answer it's seems very descriptive, like the lawsuit would say please don't do that anymore or whatever the



language was, but I didn't hear monetary. So, I also want clarification on what's the difference between going to the CRC Department for that process conciliation and then being referred to the City Attorney' Office versus private cause of action. So, what is the difference there? If you can answer that now if you will and then also maybe put that in writing so that we are clear.

Mr. Patrick said so local governments have the authority to enforce their ordinances either through fines or some other process that's set up within the ordinance. What I haven't seen is the local governments having the ability to basically as in the EEOC case, when the EEOC does review of a discrimination case they can give you a right to sue letter and that is the ticket that allows the private employee to get legal counsel to bring a lawsuit against their employer. I have not seen that type; I don't know that we have an authority to say that here is your right to sue on the grounds of a city ordinance. Cities are given the power to enforce their ordinance through typically fines or some other process like we have created here with the CRC or some equitable injunctive relief is typically the statutory provision for a city enforcing its ordinance. I have not seen a situation where a city could have its ordinance enforced by giving a private entity a right to sue on an alleged violation of the City Ordinance. I'm sorry

Mr. Johnson said that's okay. I'll just have to see that in writing. Maybe the comparisons.

Mr. Baker said sure.

Ms. Johnson said because ultimately, they have a right to sue, right if it goes through the steps of CRC and the Attorney? It sounds to me like the outcome is the same or the recourse is the same?

Mr. Ratchford said Ms. Johnson under the current Fair Housing Law to the City Attorney's point, we do not have the authority to grant anyone a right to sue after say a no cause finding on a Fair Housing complaint. We do advise them that they have a right to sue, and it stops at that point. We simply advise them that we have made a no cause finding. We don't have reason to believe that discrimination happened based upon our investigation. However, if you disagree with that you have the right to sue if you choose to and it stops there. We don't give them an official notice letter of right to sue. We are not authorized to do that.

Ms. Johnson said okay. I understand. Maybe if you will explain what is private cause of action? That's private cause of action so I can hear the difference. Maybe when you send that out Thursday, I can't be the only one who is not clearly hearing the difference. So, what is private cause of action versus what the proposed recourse will be?

Mr. Baker said when I say private cause of action, I mean given this citizen the right to sue. Bring their own legal action in their own name with their attorney or without against an individual for violation of a City Ordinance. That's what I mean, and I will provide more information to clear that up for you.

Ms. Johnson said okay, but in our case the proposed recourse is that the City Attorney would bring the action.

Mr. Baker said that's the mechanism that you have right now on the books. I put the employment piece in that same vein as the public accommodations piece simply because we've already got a system there and was just trying to keep it consistent.

Ms. Johnson said so this could be perceived as a stronger level of enforcement?

Mr. Baker said yes. It just hasn't been used very often getting to that level.

Mayor Lyles said I think what we are trying to do tonight is to give the City Attorney sufficient guidance of some sort to craft something that would come out to us on Thursday in addition to the questions and responses that he has committed to do.

**Councilmember Winston** said Mr. Baker, I believe in Section 4 where we should explicitly acknowledge in the Ordinance the existence of the state and federal protection for employees of employers that employ over 15 people by citing the General Statute and the U.S. Code that protects such employees. Is that possible to do?

Mr. Baker said so essentially what I'm hearing is that you want the Employment Discrimination Ordinance to include all employers in the City, not just employers 14 and below?

Mr. Winston said no sir. I see in Section A; I don't want to add to Section A. If there is a Section B to be added the acknowledgement that protections do exist, but they exist on the federal and state level. For instance, this Ordinance is a resource, right when an employee believes he or she has been discriminated against or they have been discriminated against, they would go to the law and say hey, look I have something to back me up. They should know when they look at our local law all of the places that they can go for recourse. Whether that be local, state, or federal resources.

Mr. Baker said I understand now.

Mr. Winston said I have a few questions that relates to something else. Mr. Attorney is there a legal definition of racism?

Mr. Baker said of racism?

Mr. Winston said yes.

Mr. Baker said I only focus on race discrimination, so I don't know if there is a specific legally accepted definition of racism.

Mr. Winston said okay. Has the City of Charlotte or the City Council taken any position on the criminal legal system of the State of North Carolina and of the United State of America?

Mr. Baker said in terms of whether it is racist?

Mr. Winston said have we taken any position? Have we acknowledged any, whether we like it, we hate it, is it fair or unfair?

Mr. Baker said I feel like I have had conversations over the course of time, but I don't know that you've taken an action as a body speaking to the criminal justice system.

Mr. Winston said so more specifically, is it the position of the City of Charlotte or the City Council that the criminal legal system of the State of North Carolina and United State of America is fair and equitable?

Mr. Baker said I don't know that the Council has formerly adopted a resolution or position on that.

Mr. Winston said so is it the position of the City of Charlotte that the legal system of both the State of North Carolina and the United States of America are fair and equitable?

Mr. Baker said again I don't know that this body has issued a formal statement in that regard.

Mr. Winston said is it the position of the City of Charlotte or the City Council that the criminal legal system of the State of North Carolina and or the United States of America is racist?

Mr. Baker said I don't know that this body has taken a position on that.

Mr. Winston said if Mr. Baker can answer this or I direct this question to both Mr. Baker and Mr. Jones. Over the past several years have you or any of us that are employed by the City of Charlotte acknowledged the existence of structural or systemic racial discrimination in the laws and policies of the City of Charlotte, the State of North Carolina, and or the United State of America?

Mr. Baker said speaking for myself I have not taken an official position as the City Attorney of Charlotte on any of those. I have my own personal opinions but not as the City Attorney of Charlotte. No, I've not made any statements.

Mr. Winston said thank you and Mr. Jones has been here a couple more years and we've probably been part of a few more community conversations with different types of context around structural racism. Especially at the Opportunity Task Report was released in the (inaudible) study. So, I guess I will repeat it Mr. Manager. Over the past several years have you or any of us that are employed by the City of Charlotte acknowledged the existence of structural or systemic racial discrimination in the laws and policies of the City of Charlotte, the State of North Carolina, and or the United State of America?

**Marcus Jones, City Manager** said Councilmember Winston, much like the City Attorney, I would say no. I will say that as you are aware the (inaudible) Opportunity Report, which I believe that maybe came out in 2015 lays out some of the issues that I believe you are speaking to.

Mayor Lyles said Mr. Winston I'm just wondering if you can help us understand where we are going.

Mr. Winston said I will get there in my line of questioning when it's done. So, what I heard is no. So, does that mean the City of Charlotte denies the existence of structural and systemic racism or discrimination of protected classes in the laws and policies of the City of Charlotte, the State of North Carolina, and or the United States of America?

Mayor Lyles said who are you directing the question to?

Mr. Winston said Mr. Jones and Mr. Baker.

Mr. Baker said I would simply say that I'm not aware at the City Council has spoken as a body on this issue.

Mr. Jones said I agree.

Mr. Winston said Mr. Baker are there specifics (inaudible) state or federal laws that allow employers to discriminate against employing peoples who debt to society is adjudicated and sentence is fully completed, are certain bodies legally allowed to discriminate against employment of those people?

Mr. Baker said taking your question literally, I have not seen the inclusion of a debt to society prohibition in any of the Federal Employment Opportunity Laws as I mentioned to Ms. Johnson. I have seen situations where the inconsistent application of certain standards and procedures based on criminal behavior, criminal background could actually create a valid discrimination claim. In terms of just a general blanket prohibition against employers in that regard, I have not seen that no.

Mr. Winston said let me ask that a different way. Are there certain jobs that people are legally barred from if they have been convicted of certain crimes even after their sentences have been fully adjudicated and completed?

Mr. Baker said yes, my understanding I believe that is certain law enforcement agencies there may be some criminal prohibitions if you will of becoming a Police Officer for instance if you have a certain criminal background. I know there is an extensive process to be certified with the North Carolina Bar Association and to get the Bar License that is dependent upon your criminal background. Also, I have seen situations where attorneys

have been disbarred for criminal activity. I would imagine that there are more professions beyond just law enforcement and the attorneys for that.

Mr. Winston said are you unaware of any financial service sector jobs that people who are convicted of certain crimes are unable to attain even after they complete their sentences?

Mr. Baker said I have seen situations where the handling of money directly or indirectly and the commission of a crime of say, embezzlement or some sort of financial miscalculation or what have you has been used as a basis for not allowing that person in that particular position of trust.

Mr. Winston said so that sounds like a yes. Are there specific state and/or federal laws that allow landlords to participate in similar discriminations against people even after their sentences have been fully adjudicated and completed?

Mr. Baker said I am aware that landlords typically do criminal background checks and based on what's in those background checks could be a basis for denying housing in that particular contract, yes.

Mr. Winston said you answered a different question. You answered a question about whether landlords' practice that, but are there any specific laws whether either state or federal that allow the discrimination of a person from obtaining housing based on a prior conviction?

Mayor Lyles said Mr. Winston, the subject matter that we have on the agenda today is a Non-Discrimination Ordinance. I hear you asking the Attorney and the Manager questions about law in general that deny certain rights. I wonder if you could help us by focusing on the -

Mr. Winston said if he can answer the last question whether not there are laws on the books that allow discrimination because this is a Non-Discrimination Ordinance I'm asking about, and I will connect it to classes here in a second, but I am literally asking about the laws on the books that allow discrimination and/or protected classes. So, I think it's completely germane to this subject at hand.

Mr. Baker said my experience is that laws typically prohibit activity as oppose to allow activity and I have not seen laws that prohibit the consideration of criminal backgrounds in those areas.

Mr. Winston said I would posit that the legal system of both the State of North Carolina and the United States of America is a proxy to (inaudible) up discriminatory laws and policies. Nowhere is that more clear than the ability for people to find housing after they have been convicted of a crime. While we are all subject to the effects of the criminal legal system there is no question that this proportionally targets and negatively affects black people.

The City Council I believe should adopt a resolution that acknowledges that the de-facto racist systems of the North Carolina, the United States legal systems. The Council should resolve that using a person interaction with the legal systems of North Carolina and the United States discriminate against housing individuals who would otherwise be eligible to be rented or sold a place to live. If this body acknowledges the existence of the violation of rights of protected people, then we have the mandate and duty to protect our citizens. I think that is the bridge that we can get to that acknowledges similarly to how the discrimination around natural hair relates to race. I think that's how we get there to make sure that people who have paid their debt to society cannot be discriminated against when it comes to housing. We know that this is an issue. We know that this is problem, and we know whether, although this body has yet to acknowledge it that the criminal justice system is being used as a de-facto racist policy in this state and in this country.

If we are going to do this, I say we do this with as much force as possible. I talked to Mr. Baker about this earlier. This is not changing the ordinance. This would not be doing anything to the ordinance. We have the power to protect protected classes of people. We are not expanding as Mr. Baker will say over and over again, we are not expanding the definition of people who we protect as Mr. Bokhari suggested we do. He suggested that we create a new class of protected people from their political persuasion. That's not something I think we should do, but if we acknowledge and categorize people that are affected by a racist system as being protected, that gives us the mandate and duty to find ways to protect them using this Non-Discrimination Ordinance. I would be happy to work with Mr. Baker to figure out the proper language to do so this Thursday.

Mayor Lyles said Mr. Winston, said this is an issue that I care deeply about because I do believe that re-entry is the most difficult situation that people can have. I would like to ask you to consider doing some work around it that doesn't delay the Non-Discrimination Ordinance. I tell you why because this is something because I have worked on it. How many do we people do we have that live with vouchers in this community? How many of those folks live on federal property in public housing under INLIVIAN? The Federal Government will not allow for re-entry into their units. We would be creating something that would create two groups of people that need housing. I understand where you are going, and I think that this is something that we ought to get behind in a way that is addressed for everybody in this City. I believe that it is something that we ought to research, look at, and determine the best way to legislate this and how to do it. While I have great appreciation for the questioning and great appreciation for what it does for people and how it harms us, but I do believe that doing as a part of this action would create, I think even a greater disparity among people in this community with vouchers and that live an existing federal housing.

Mr. Winston said just to be clear I'm not suggesting including this as part of the NDO. I am not suggesting that we delay the NDO. What I suggested is that we create a separate resolution around acknowledging the de-facto racist system that the State of North Carolina criminal legal system is, and the United State of America legal system is and therefore that is the bridge that would give us the mandate under our NDO to enforce that Non-Discrimination of the protected class.

Mayor Lyles said I think that is a fair thing to do. I would hope that if you would take the time to work on it and do some research on it that would be something that we could have brought forward in one of our additional Strategy Sessions or times that we have the opportunity to talk about what we are trying to do legislatively because it will take, not just the Non-Discrimination Ordinance. It will take a lot more to balance out what I think could create an unintended consequence. So, I would like to ask that we think about that. Get some research done on it and then come back and figure out what can we actually manage or what do we choose to manage? Is that fair Mr. Winston.

Mr. Winston said yes ma'am, absolutely.

Mayor Lyles said before we go back around, we have had everyone speak. We need to get to some of these other issues that we have outlined. I've got about 12 items that we need to give the attorney some guidance on. So, we probably will be talking about your questions again. Let's try to get Mr. Graham in and then go and then go back to those areas that we are seeking guidance for next week. We have made a commitment and commitments can be broken but we did say, and we are striving towards an August 9<sup>th</sup> date for this Ordinance that we have on the agenda tonight. If the Council chooses to change that date, we need to do that now. That's why I think it's so important for us to go back and address the issues that were raised so that we can give the Attorney some guidance.

Ms. Johnson said I wasn't able to elaborate on Matt's question. So, I wanted to ask Mr. Winston a question if that is okay.

Mayor Lyles said sure.

Ms. Johnson said Mr. Winston I wanted to ask you to clarify what that you would be requesting as far as the resolution and how that would impact the NDO? Are you seeking like a proclamation or resolution and how does that impact this current (inaudible)?

Mr. Winston said it would not affect the NDO. The NDO allows us, state law and federal law allows us to protect protected classes of people and that is what the NDO does. I'm not suggesting that we do anything to the NDO itself. What I'm asking us as the City Council to consider is to consider taking a position, a resolution on the legal justice system of North Carolina and the United States of America.

Mayor Lyles said Mr. Winston I think you have answered. A resolution that he would like to have on the issue of the legal justice system of the State of North Carolina and the country.

Mr. Johnson said Mr. Winston let's talk offline and see where the political will is because we know that there is re-entry and source of income and all of that is in Committee. We know that this issue has been kicked down the can for a long time. So, I'm happy to talk to you about that to see if this Council does have the will to do more than a proclamation for so many of our vulnerable citizens in the City.

Mr. Winston yes ma'am we can talk offline and work together on that.

**Councilmember Graham** said I just want to go on record as supporting the Non-Discrimination Ordinance. I want to thank the City Attorney, Councilmember Egleston, and Councilmember Eiselt for helping us lead the charge on it. Racism, hatred, discrimination in all forms is not in the best interest of any civil society. I think this Ordinance narrowly tailored demonstrates that here in Charlotte that we want to put reasonable guidelines, reasonable parameters that impact those types of situations.

I am willing to have a further conversation with Councilmember Newton on the three area that he brought up which was I think broadening the protections for all fines and penalties and additional penalties for housing discrimination. I think those were the three that he brought up. I just caution the Council that we ought to have a narrowly tailored approach that we ought not to be concerned about any potential future litigation. We are the 15<sup>th</sup> largest City in the country and doing this type of work maybe this cost of doing business. So, I look forward to further discussion.

Mayor Lyles said so Mr. Bokhari and Mr. Driggs had a question. So, I'm going to ask them to state their question and then we will go ahead and begin the issues discussion so that you have time to be ready to address their questions. It will be at the end of those question and issues that we brought up. Mr. Bokhari, what is your question?

Mr. Bokhari said it's just a clarification. I want to make sure I heard the City Attorney correctly. So, I think you said that housing' granted to us by the General Assembly under our Charter and our Charter grants sex and race under that what we can regulate. I just want to make sure I understand because I thought I heard two things.

On one side I thought you said that in the order do add sexual orientation and gender identity and natural hair we have to go back to the General Assembly to change the Charter because those area are above what's currently allowed. Then also in another context I thought you said that we can interpret sex and race under our Housing Act to incorporate sexual orientation, gender identity, and natural hair. You understand what I am saying?

Mr. Baker said absolutely.

Mayor Lyles said we will come back to you with answer. I have lost Mr. Driggs.

**Councilmember Egleston** said I know this is not what you are implying, but I think people will grab on to something that was said a moment ago about commitments can be broken. I don't think this one should be, and I don't think that you were implying that we should, I

think if this meeting needs to be as long as it needs to be or Councilmembers have to do extra work this week to get on the same page, the commitment on August 9<sup>th</sup> is something I very much think we need to fulfill, and I don't see any reason given how much agreement there is on the core of this Ordinance why we could not adopt it on August 9<sup>th</sup>. Mr. Winston and others have brought up points that I think can and should be addressed but can be done so outside of the scope of what we are working on here.

Mayor Lyles said well thank you Mr. Egleston. I agree with you. I didn't mean that commitments should be broken. What I really meant was to get it right and to do it with the Council given enough guidance to the Attorney. I don't want the community to have an ordinance that's significantly different from what will go out on Thursday without the discussion by this group which is why I'm going to now go to the discussion first on the private sector being included in the Ordinance.

I think this was Mr. Newton's first question. We have it so that what the City Attorney recommended is because federal law covers over 15 and the City' ordinance would cover under 15 and it was just a question of redundancy, but I think philosophically some people were saying it is actually an additional opportunity. So, Councilmembers if you have some thoughts about this it would certainly be helpful now to express your ideas. I think we have heard the arguments from Mr. Newton, and he has asked for your comments about this. I'm just looking to see if anyone has given it some thought.

Mr. Graham said I am hearing you say that you would want to have to apply for employers under 15 and below?

Mr. Newton said what I am suggesting, to be clear I will be supportive of this Ordinance on Monday because I think it is so important that we do this. I think that there is so much substance in what we have in front of us today that needs to pass. Having said that this is certainly something that I would prefer us to look at and consider the idea that we expand protections beyond just 15 and less employees to all employers. So, we affectively fill the gap that exist for 15 and below and provide an additional option to combat discrimination within our City.

State and federal remedies can be difficult to pursue. They can be complicated and complex. They can be more costly and us instituting a measure within our Ordinance could be an option that can be pursued by folks that don't have that expense, that time, that ability to pursue state and federal remedies. This would be an option that may be simpler, more affective, and less costly. That's what I am asking us to consider expanding it for the sake of creating that additional option.

Mr. Winston said Mr. Newton, I feel like this is something that I often try to see that we can be the place to provide services even if this is something that for instance the City Attorney wouldn't handle. Maybe we act as a clearing house to help folks through that convoluted and complicated process. So, perhaps maybe this isn't something that exist within the Non-Discrimination Ordinance. Maybe this is something that we work with CRC to say hey, is there an office that people that are part of larger corporations can come to within the City that can help facilitate some of those more complicated state and federal processes to at least like get them started on the right direction. I guess what I'm saying is it seems like this might be a budgetary thing. It might be a staff thing that is part of our Non-Discrimination efforts but isn't something that lives in the Ordinance. Does that make sense?

Mr. Newton said and I'm on board with that too. I wonder if that would actually be more expensive than us just expanding this and using the existing process that's already in place through our CRC and by virtue this Ordinance an enforcement remedy through our City Attorney. Why not just take that route, but I'm on board with that too. I'm not saying not to explore any and all options that could be at our disposal and exclude any possibilities. That works for me as well.

Mayor Lyles said so let's try to get the feedback from the Councilmembers and go back to see where we are.

**Councilmember Watlington** said I just I was wondering from a process standpoint, are we doing some kind of straw votes or how are we supposed to register our concurrence if we didn't have an issue? Is the intent that before the night is over these 12 items you've got listed, we got clear direction to the Attorney or are we just kind of still taking comments?

Mayor Lyles said well this is how I've looked at it. I know there have been some questions about the straw vote and the process and whether that's a valid way to look at this. At the same time what I look at and what I was trying to glean was how many people were actually reacting and commenting and offering a yes or positive statement around it. That's what I was hoping, but if you would prefer the straw votes process that's certainly something we can consider. This is about the Council getting an ordinance for next week. So, whatever process as we are working through this, what makes it work for you best is what I would like to do.

Mr. Watlington said okay, I'm not partial to either one necessarily. If we are not doing any kind of like formal vote, I just wanted to lift up our plus one if you will. I have no issue with it including the housing piece in this ordinance even if it comes off redundant if you will. I also have no issue expanding to all employers either. So, I just wanted to put those two there. You can add my name to support for those.

Mayor Lyles said the next issue that I think Mr. Newton brought up was fines and increasing fines along with the injunctive relief. Did I say that correctly Mr. Newton?

Mr. Newton said yes ma'am. So, basically, it's just us creating the most significant deterrent possible to combat and prevent the forms of discrimination that are codified within the ordinance. Certainly, I think that conciliation and injunctive relief can be affective, but I think it's also possibly more affective if we have conciliation and injunctive relief alongside fines.

Mayor Lyles said I also would say that Mr. Driggs had suggested that this is something that's going to be new and different if we include all employers. I wonder Mr. Newton if it would be appropriate to look at a year, 18 months to see what's going on before we decide to change something that's been on the books that people understand readily. I understand what you are saying, but I think that we need to probably get something under some data that would allow us to see where it works, and where does relief or things are not working, or are the cases being followed. We may not have to do that. That would be my thought is that this something new and especially as we are doing for small businesses if the council is going that direction if we should just wait a year to see where we are.

Ms. Johnson said It is my understanding that the employer with 15 or more employees have to already follow these policies, right?

Mr. Baker said yes, they are covered under federal and state.

Ms. Johnson said so, if we added it to our ordinance, I know it could be labeled I guess called redundant. What are the pros and cons of us doing that?

Mr. Baker said for me personally I've been focused on the gap just as you lawyer. To focus on the areas that are missing. The potential legal arguments about, and I've seen other communities that have gotten into the 15 and above range. Their potential arguments for whether or not that is a proper place for our local government, because we haven't done it in North Carolina. I've seen it in other states where other communities have their own local, I think the city of Phenix has one that's local that has the same classes but applies to all employees withing their jurisdiction. So, with this a little bit of uncertainty in terms of whether we can get involved in these areas or not. I've really just been focusing on the gap piece because now you are talking about an entire new class of employers that were potentially now investigating for employment discrimination. Things that are already on the books now for the federal and state governments to handle.



Ms. Johnsons said one of the things that we might do Madam Mayor is hear from our public. We are going to hear from them next week. So, maybe this is an issue we don't decide today, but most things we need to hear from our public. What's going on outside this room. So, this is an issue that doesn't feel like that it would be any harm in adding that to the ordinance, especially if there already covered under federal and state. Many of these issues we need to hear from the public. They have heard the discussion. Maybe these 12 items or whatever items we decide on, not try to make a decision tonight.

Mayor Lyles said we are not making a decision tonight. I'm just giving an attorney the ordinance to send out that would be visible for the public and then they comment and bring back any idea all the way across. There probably going to be a lot of other suggestions made. No way are we limiting that meeting. So, as I've told people, 11:00 a.m., 11:30 a.m. sounds like a good time to end that meeting on the 9<sup>th</sup>.

Ms. Johnsons said I would support this in the local ordinance also.

Mayor Lyles said I think you and Ms. Watlington have said that now. So, going to go and make sure that we have gotten that. So, that is one that you have seen some support for, but also Mr. Newton has said I can live with what we've got in this ordinance if I said that correctly. You did say you could live with it.

Mr. Newton said for the changes, yes.

Mayor Lyles said for the questions around the fines. I'm asking Mr. Newton can you live with the idea of coming back and doing the data because you can always correct the changes and the fines and the junctions, but we don't have any date right now and I think it would be something that could impact what we would do based upon what experience we have?

Mr. Newton said I feel like I could live with it even though I would hate to find ourselves in a situation where could have prevented discrimination sooner or alternatively prevented it all together just by having once again, the most significant deterrent possible to do so. I loved Councilwoman Watlington's idea of straw votes too by the way where we could really just cut to the chase on many of these as quickly as possible to give the City Attorney the direction, he needs to put something together so we're not delaying this any longer.

Mayor Lyles said ooh I'm fine with that. Unless someone objects, we will do straw votes on each of these after we're done. Mr. Winston do you object to that? I had Mr. Winston next. Do you object to having straw votes on these items?

Mr. Winston said no.

Ms. Eiselt said I just have a question for in practice of how something would work if we voted to include an increased fine, a clause that increases our fines, but then we've also included employers over 15, and have let's say a large employer that somebody brings a complaint against. Then it goes to the CRC and they don't show up. Then they say no we'll take it up with the EEOC, we don't have to answer to you the City of Charlotte and then we start imposing these fines, and their legal department is bigger than our legal department. I'm just wondering how that really plays out if we do both of those things at the same time, yet we really have the authority to compel a large corporation to comply with what we have passed. Can you talk about that Patrick?

Mr. Baker said again when conciliation fails and that could be early on in the process where the employer, again we haven't done this before, but if the employer decides you know what I don't recognize the City Ordinance anyway and I'm not going to be bothered with it they can take me to Federal Court with EEOC or what have you then we are left with a referral back as written to the City Attorney to determine what appropriate relief is available and again we haven't seen the situation where the CRC doesn't even get the opportunity to do a review.

Now it is quite possible that the City, we could be hauled down to the courthouse as well for an injunction basically saying that our ordinance is not valid if that's what they wanted to do. It's really hard to see how it's going to play out either just ignoring us or potentially just going straight down to court and challenging our authority to have the ordinance in the first place, but we would have to see how it went out because we don't have that on the books right now. I wish I could have a more definitive answer, but this is all brand new if you go down this road.

Ms. Johnson said do you have any guidance? I know that when you researching you focused on the gaps, but now that we are here tonight do you have any guidance for us?

Mr. Baker said guidance in terms of?

Ms. Johnson said if we should add it into the ordinance or not?

Mr. Baker said when we recognize that there was a gap and my preference legally would be to focus on the gap first to see if we can address that and if it appears that we need to go above and into the areas where the federal and state laws exist then we look at that as we go further down the road because we have never done this before. I will say and I won't use a particular employer but picture a major employer in Charlotte and an individual decides you know what; I'm going to go to the City Ordinance for discrimination. Forget the federal and state because I don't want to hire an attorney and I don't want to go through that process. I want to go straight to the City, and I want Mr. Ratchford' group to do an investigation of a major, major employer, again as the Mayor said may have more lawyers in the department that we do. I could see a situation where we are significantly burdened trying to get all of this information. We don't have the ability as exist under EEOC Law of subpoenas, bringing folks in and forcing them to comply. We've just got an ordinance, and an untested ordinance at that. That's why my preference would be to start lower with that group because we know that is a group that has been unprotected throughout the process of these discrimination claims. Then see whether we have got the ability to handle these complaints, investigate the complaints and build up because we have no bench whatsoever right now to affectively become our own EEOC department going forward.

Mayor Lyles so I am going to come back. Mr. Newton suggested that we do straw votes. What I'd like to do is start off with the straw votes of the recommendation that the City Attorney has made and present it today to say would you support the ordinance as drafted to be on the agenda on August 9<sup>th</sup>. I want you to consider this is a straw vote acceptance of the draft.

I think then the City Attorney will provide answers and rationale to the questions that you have raised as information and that way not only the Council, but the community would have answers to the questions and perhaps a little bit more than on the feet reaction that he is having to do right now to some of the suggestions. I thought that most of you had an opportunity to talk with him about these in a little bit more detail, but I also understand that's a hard thing to do when it's on our break month and so we can try to figure this out. I would like to say that we can take a straw vote on the ordinance as submitted this afternoon and have the City Attorney address those amendments and those that he would recommend I guess in conjunction with the CRC and the impact of doing those of the list that we have. We can just make sure that we have a complete list.

Mr. Egleston said I guess I need to clarify and make sure I'm understanding. I am in support of us taking a vote on the ordinance as we've guided next Monday, but I do think there some things, and I will give everybody the benefit of the doubt because I think I believe to a person everyone has had conversations in most cases multiple conversation with Mr. Baker. What we might not have had a chance to do is all talk with every other Councilmember to see where there's agreement and disagreement on certain things we might have discussed with Mr. Baker so, I think that's affair discussion to have tonight.

I think some good points have been raised. Some of which if we were to straw votes individually, I would have a hard time being a yes or a no. I would be a yes if the question

was is this something, we think has some merit and deserves some additional research and consideration I'd be a yes. If it were something that we were saying we wanted to try to tack on to this ordinance in short order or something we wanted to tack on to this ordinance which would delay the vote on this ordinance, then I'd be a no.

So, I'd like to see us move forward with the ordinance as is. If there are tweaks that need to be made to the pieces and elements that are already there, I think that is fair game for discussion tonight and any day between now and hopefully Thursday. I think we ought to have this put to bed so that the public can see specifically what we are voting on, but some of these other things I do think are worth exploring. I just think they should be done separate and apart from this Non-Discrimination Ordinance. So, happy to dig into to any of those other things but would like to see us move forward with what we've got so that we can get it in place as quickly as possible.

Mayor Lyles said Mr. Egleston you said that very well. I guess what I was saying was giving the City Attorney the opportunity to give the Council a specific list of what has been discussed so that it can be distributed and if as Ms. Johnson' point is that citizens can come in and say well this is something that we want to do, and this is how we see it but there would be the ordinance if Council agrees that Mr. Baker has submitted tonight and then there would be a list of those request that have been made by the Councilmembers and there can be further discussion but that list could be available for the citizens to review as well as the Councilmembers to review and at that point on the 9<sup>th</sup> you'd actually have to have six votes to get it placed into the ordinance. So, does that make sense?

Mr. Egleston said I would be a little weary of amendments to the Ordinance on the 9<sup>th</sup>. I think that could get tricky. I mean I guess if we had the potential amendments spelled out in advance. I think if we are trying to word smith from the dais on the 9<sup>th</sup>, we are setting ourselves up for failure.

Mayor Lyles said I was hopeful that the City Attorney would make recommendations and that they would either be accepted or modified. I would hope that it would not be word smithing the document. I think what we have had is a list of topics that people have suggested specifically. Small business, religious exemptions. Things like that. This is something that is very important to get done and we understand that. We are impacting people's lives.

Mr. Egleston said I would be supportive and maybe I'm the only one in this space, but I would be supportive of exploring it, but I think it's going to take more than the week that we have. So, to me if some of the folks who have brought these forwards were to say tonight yes this probably requires more than a weeks' worth of work, I would be supportive tonight in saying then yes, let's commit to doing that work. If on Monday it was put forward as an amendment to potentially add into the ordinance, I'm not sure we would have done the due diligence that those issues deserve.

Ms. Eiselt said so my comments were similar to Mr. Egleston's. I feel like if we could get exact language by August 5<sup>th</sup> that every Councilmember could look at I for one would be willing to look at the Ordinance as it is, but then substitute motions to add those additional things, but we have to have that language. I've said it before I can't process on the fly like that. I can't look at language and then decide in the moment that I would vote for it on something that is so consequential. So, if there was an agreement on Council that we could get this language from the legal department by August 5<sup>th</sup>, and we knew what we were going into with those additional amendments then I would support it. I could be in a position to support or oppose a substitute motion, but I do think for instance if we increase the fines, I guess what I was trying to say along with including all employers that might change the way I vote with including all employers just because of the enforceability of it.

So, whatever we do I just think we need to know this by August 5<sup>th</sup> and that the language is out there. We go into Monday night know exactly what we are going to do and what we are going to vote on.

Mayor Lyles said so Ms. Eiselt I think you were suggesting that along with Mr. Egleston that we use the draft that came to us for tonight and then make a decision later following the 9<sup>th</sup>, if I heard the discussion of the additional items that were add unless the Council as a group could come to some agreement over the next several days and that would really basically be where you have decided to make a substitute motion that your colleagues would support. Am I saying that correctly?

Ms. Eiselt said yes, so we agree on this base document and with any additions that we get that language, we have the conversation with each other, but when we go to vote on it as substitute motions or additions, we know what the language is. I just ask my colleagues if we would refrain from coming up with that language on the fly the night that we are going to expect to vote on it?

Mayor Lyles said let me check with Mr. Baker to see after all of his list today of the comments and I think we have had everyone ample opportunity that you could check with them. I know Ms. James has also been writing furiously that you could actually say this is what I heard and get something out to Councilmembers tomorrow that this was the change that I requested (inaudible).

Mr. Baker said I don't know if this would help or not. There are some key items that would be helpful for me and I think would be helpful for you. Big items that we can sort of check off and if we are talking on the 9<sup>th</sup> kind of working around the edges that fine. I've proposed a protected class that has all of the element there and I would say would be really helpful to me if Council could either agree to accept the protected class as I put out there or if you want to add elements to the protected class or subtract, that would be one that I could just push aside. I don't have to worry about that one anymore.

Do you want to get into the Employment Discrimination realm, yes or no? As to whether or not you want to adopt an Employment Discrimination Policy? If yes, then what's the group that I'm looking at? Am I looking at 14 and below? Am I looking at everybody? I think those are the two main choses is whether or not we want to go with a smaller group or have that policy apply to every employer within in the City?

The third thing for me and we have been struggling with this is the way to identify and articulate the protection for religious liberty that exist in law right now. I put some language out there that I have tried to make clear basically if we are going to do employment discrimination as a unit, City of Charlotte that we should be following established federal EEO law, including any changes in the law that occurs. Sex discrimination shouldn't be one thing in Charlotte and a completely different thing in another community in North Carolina. We're following EEO laws, and it would be helpful to have some language that we can agree on to adequately protect those exemptions that exist already at federal law to codify them into here. I have tried to have a blanket language so that we don't have to argue over, maybe argue is not the right word, but discuss every single potential exemption that again as case law gets developed the case law could change.

I'm just basically saying whatever your defense is or requirements are at the federal EEO laws would be your defenses and requirements with the City of Charlotte. Those items would be really helpful for me. Then I think that leaves you sort of clipping around the edges going forward. I can tell you that's where I spent the majority of our time trying to define that protective class and then address the employment piece.

Mayor Lyles said you have heard the City Attorney say that these are the three issues that he would like some guidance on from the draft that he has proposed tonight. They are protected class definition as he has written here, employment discrimination, is it for 14 and below or is it for all. Then third, Patrick can you identify the section where the religious liberty is?

Mr. Baker so I've included it in Section 1231. It's on page four. Basically, what I am trying to say is that there's nothing in our ordinances that creates a unique requirement that doesn't exist under federal and state law. I have specifically stated, in fact that section

ends with this includes but is not limited to applicable legal exemptions for religious organizations.

I'm just trying to make sure that the community understands that we are not doing something brand new here except for the fact that we were doing employment discrimination, but the actual discrimination isn't something unique to Charlotte that doesn't exist if they went to the Federal Courthouse. It's going to be the same case law that we are going to be looking at. So, there is some consistency for employers to be able to rely on.

Mayor Lyles said so I am going to repeat those three things and what you have done in the draft that you submitted is to recognize where federal law and state law is covered and acknowledge that without repeating it, but also make sure that it is applicable.

Mr. Baker said correct.

Mayor Lyles said is that acceptable to the group to have the process that the attorney needs, the three steps for guidance on by a straw vote? Then to have the other items explained in a memo that would come out with the agenda item on Thursday by which the Councilmembers would engage and see if there would be the opportunity for a substitute motion I believe, or it would be an amendment to amend what would be the draft. Does that make sense? Are you saying it doesn't make sense or you don't agree with it?

Mr. Bokhari said I don't agree with it.

Mayor Lyles said that's fine. I am just trying to make sure that it makes sense right now.

Ms. Johnson said it sounds like some of the items that we are talking about are included in those three (inaudible).

Mayor Lyles said yes, they are.

Ms. Johnson said if we are not able to decide that maybe we should include all of the items on the memo and then we talk about them.

Mayor Lyles said well let's see how far we get. That might be better. Let's take step one and see if we can get there.

Mr. Bokhari said I'm just a little confused because we have brought forth from the Republican side a bate version legally vetted and communicated across the state almost two months ago where we had no dialogue, no discussions, and then a week ago we saw the first wording that I have ever seen, and that the public has ever seen. Now we talking about well we have the last-minute jam through, and we don't want people adding wording on the fly and I feel like we are about to do some sleight of hand here where we are not going to get an opportunity of adding in several more things. Other things that we have crafted have found their way in here. Some things have not, and these are very important things around religious protections, around the natural hair, and pieces of employment over 15 that aren't included and covered. There is a gap there that exist around housing. There is a gap there, and then around political affiliation where there is discrimination going on. So, I would personally say we've put eight months of work into this at a minimum I would hope since there's some mad rush now for this all to be passed and us not to slow the process down when we have been waiting for months. We at least do a straw vote on the four things that this version is not as strong as the young Republican version that has been vetted and in the public for months now.

Mayor Lyles said so what would be those four things Mr. Bokhari?

Mr. Bokhari said one, that the city contract piece be taken out because of the small business burden that puts on and the inability for the small businesses to follow that. Two,

the pieces that I mentioned around employment being over 15 and included, and housing because there is a gap.

Mayor Lyles said exclude the employment over 15?

Mr. Bokhari said employment over 15 and housing because the gap exists for one example with natural hair like I stated earlier. Our version of that, the wording that is public and out there, we don't have to figure something net new out. That just has to be incorporated.

Three, the religious protections that again show deference to not infringing on the individual liberty of other individual' organizations. Four, the addition of political affiliation and actions. I like those straw votes if we can't form words and talk about them.

Mr. Phipps said is it conceivable that at the public hearing that we would receive more comments that should have due consideration, deliberation by us in the same manner that we are undertaken with this exercise tonight? It seems like we are foreclosing those comments already before we even hear them and rushing to vote. Have the public hearing and the vote on the same night. So, what do we do with the comments that are given to us in good faith by the public? That's what I'm concerned about and confused about.

Mayor Lyles Mr. Phipps I think you know me well enough to know that our agendas go out on Thursday, people can sign up to speak on any agenda item. We don't generally send out a preview except through this type of meeting, which is what we are trying to do now and if the Council doesn't agree that they have sufficient information or agreement on an ordinance you can say it will be delayed. The public comment comes down and speaks on these items often and then there is a vote, but if you do not feel like you can incorporate those changes that you hear from the community and I would expect someone would make a motion to defer until you have time to incorporate those things from the community.

Mr. Phipps said but it would seem to me that we are already jumping to the conclusion right now that the vote would occur regardless of what the public would say on it. So, that's what I'm trying to come to grips with.

Mayor Lyles said well we have told and said as to Mr. Egleston's point we have been talking about his for several weeks. That we did say that we would have a vote on August 9<sup>th</sup> and that we would have this process. I think I talked with everyone except Mr. Bokhari that we would have this meeting and then we would have it on the agenda. That's where we are. I'm just going to say this, this is so important that we need get it right. If the Council feels that it's not right, then we keep working on it. That's basically all of our items are that way. I mean, we have had some tough items and we worked through them until we got to a place where it was time to vote.

In this case I think that we can either do as I suggested the first one was to accept the draft from the City Attorney and then have him get the guidance on those three items. Then if those are approved, he would draft the ordinance in the way that incorporates those three. He would also send out the list of those things that were questioned that would go out tomorrow and his responses to those questions would go out on Thursday. I think he has agreed to do that. So, that's option one.

The second option would be to do that very same thing and then vote on a straw vote that Mr. Bokhari had suggested. Taking out the City Contracting, including the employment housing and discrimination, and changing the wording on the religious protection. So, that would be the second option. Does everybody understand those two options?

So, I am going to ask. We definitely have to have the City Attorney prepared. So, I'm going to ask for raising your hand on the protected class definition as incorporated in the draft ordinance that everyone received in their packet today.

Mr. Phipps said I was going to vote on it, but I wanted to get clarification on whether or not we were going to put them in parentheses based on the primary protected class category like sex in parentheses.

Mr. Baker said to include sexual orientation.

Mr. Phipps said right, yes.

Mayor Lyles said that was in the draft that you have. It would be as stated in the draft that you have.

The straw vote was taken and recorded as follows:

YEAS: Councilmembers Egleston, Eiselt, Graham, Newton, Phipps, Watlington, and Winston.

Mayor Lyles said that's seven people that support that.

Ms. Johnson said I also wanted to speak with Mr. Winston prior to. I know this is not the actual vote because I think there might be an opportunity to discuss including individuals with criminal background or would that be parenthetical to race? So, of course I'm going to support this group but if there is an additional class that we are able to add parenthetically or directly I'd like to at least be able to discuss that.

Mayor Lyles said I think we were going to try to figure out what the reentry definition was with the position paper. I think that's what it was when I spoke to Mr. Newton on video to actually get some research on what that is. That's what I thought we were doing.

Ms. Johnson said I still like the idea of getting some more information before we are actually making decisions. Like if you can get something to us by the 5<sup>th</sup> and it give Council time to review and look at things in writing rather than just discussing this.

Mayor Lyles said okay, let me be clear. It would not include the re-entry research on Thursday. That was beyond what we were trying to do for this Ordinance, but it would be later. Is that what your understanding was Mr. Winston/

Mr. Winston said yes ma'am?

Mayor Lyles said Ms. Johnson is that okay with you? I just want to make sure. I don't want us walking out with us knowing an agreement.

So, the next item that the Attorney has asked that he has recommended the 14 and under for employment discrimination. You've heard him state several times the reason and the rationale for doing that. You've heard Ms. Eiselt address some of those concerns from her perspective. So, let's have a straw vote on first, including employment discrimination and then we will come back to decide whether or not it's all or 14 and under.

Mr. Winston said I just wanted to comment when we get to the part about whether it's all or 14 and under.

Mayor Lyles said well let's start off with employment discrimination. Are we in favor to include employment discrimination in the ordinance?

The straw vote was taken and recorded as follows:

YEAS: Councilmembers Bokhari, Graham, Johnson, Newton, Phipps, and Watlington.

Mayor Lyles said I think that is unanimous for all that's in attendance. Now the first question that I have is do we include the next item, which is to include 14 employers or 14 and below? Those are the ones that are not covered by federal and state current law.

Mr. Winston said I think many of you know that I am a member of two unions. I am all about worker's rights and strengthening worker's position. I think we need to understand what is written here and what Mr. Baker is proposing. This is something new and I think he wouldn't propose anything that he is incompetent that can defend. If we go 15 and over, I think that one of the challenges is we are going to put an undue burden on him defending this because we will be providing a solution that already exist. In fact, those two solutions, those state and federal remediations to that issue supersede anything that we can do in the absence of anything of 14 and under I think this would give us the best chance to give all workers in Charlotte recourse should they believe that they are facing this discrimination. I would really hope that we give our Attorney the best chance to succeed as we try to do something new and cutting edge as he, I'm pretty sure will have to defend it at some point.

Mayor Lyles said okay so for employment discrimination and including 14 and below please raise your hand.

The straw vote was taken and recorded as follows:

YEAS: Councilmembers Bokhari, Eiselt, Egleston, Graham, Phipps, and Watlington.

Mayor Lyles said so that is six. Alright, six folks supporting that.

Mayor Lyles said including all.

Mr. Bokhari said I would say I don't agree at all with the last comment on the bandwidth and the ability. This is something that is very much part of the CRC process and can be adopted there and is as much as we can bite and chew off and as need to. But, on the 15 and above I just want to be clear, there is a gap there. A black woman with natural hair would be able to be fired with no recourse at a company at 15 or more people if we do not designate that. That's why it's in the young Republican version that we have ignored to this point.

Mr. Newton said yes, I agree, and I appreciate that. I of course are in favor of including all employers, but I want to be clear as well that I'm also in favor, so in leu of that, I am in favor 14 and below. So, I didn't want my voted a second ago to be misconstrued into thinking that I wasn't in favor of 14 and below.

Mayor Lyles said let me start it this way. The restatement, would you like to include the restatement of federal and state law in our ordinance? That's probably a better way to describe this vote. Mr. Bokhari has made it a point that it includes the CROWN as it is in a company.

Mr. Egleston said so this straw vote would remove the size designation from our ordinance and would just say this would apply to all employers?

Mr. Bokhari said correct.

Mayor Lyles said is that correct Mr. Baker?

Mr. Baker said yes, that's the question that would be helpful for me to be answered.

Mayor Lyles said so, is everybody ready? Everybody understands it.

Ms. Eiselt said no, I just need you to repeat one more time Madam Mayor.

Mayor Lyles said so, I'm going to say this that we would include all employers in the City. One, two, however many in the Employment Discrimination Ordinance. We would restate that we would include the federal and the state protections in addition to those under 14. Am I stating that correctly?

Mr. Baker said as my understanding, yes.

mmm



Ms. Eiselt said I think I heard Mr. Baker saying this and maybe you could clarify that there would be language in there that says in accordance with existing federal and state law to point out that they are covered. I don't have a problem stating it in there, but Mr. Baker would you include that language in there?

Mr. Baker said in addition to the language that I already have in here?

Ms. Eiselt said if we are going to cover all employers would you be stating in there that there are protections existing for companies 15 and over under federal law?

Mr. Baker said yes to be clear we would be using any applicable case law that's coming out of the federal EEO decisions. So, it will all be the same law that's being reviewed, except we are now going to be in the employment discrimination game for employers 15 and above.

Mr. Bokhari said federal law does not cover natural hair.

Mr. Baker said so federal law covers race discrimination. CROWN Act essentially says natural hair discrimination is part and parcel of race discrimination. That's the argument that's there, but you are correct I do not have a case that says one way or the other, whether or not that's the situation.

Mr. Bokhari said which the premise of the months and months of the young Republican working group came to was if that was valid on the federal front there wouldn't need to be a CROWN Act currently underway working its way through the General Assembly. So, we work under that premise so that's why again the thoughtful approach we took for eight months that hasn't been debated and discussed until this mad dash one week until it's time, again needs to be held with a little more warrant. We should have been having these conversations two months ago.

Mayor Lyles said Mr. Bokhari did you send a copy of that to the Councilmembers?

Mr. Bokhari said absolutely 100%.

Mayor Lyles said I did not receive a copy of your ordinance that you are referring to, so I think that it's a little bit disingenuous.

Mr. Bokhari said you did not see that Madame Mayor?

Mayor Lyles said I saw something on your website, and I saw two changes, but I did not receive an official copy as Mayor to say this is something, I would like the City Council to consider. Maybe I missed it. Did any other Councilmembers receive it?

Mr. Bokhari said did anyone not see it?

Mr. Eiselt said Mr. Bokhari I'm with Madam Mayor. We've been working on this for months as well because we are working through our Legal department and I have called Councilmembers. Mr. Bokhari, I saw you campaign email that got sent out, but you didn't send that to Councilmembers. I appreciate the work you are doing, and I am fine with including that language in there if it's covered, it's covered. Let's just clarify. This should not be a political argument. This is about people's rights and expressing that we value the protection against discrimination for all people. This should not be a political discussion. That's the language we need in there, that's fine but let's just move on.

Mr. Bokhari said I couldn't agree more.

Mayor Lyles said I think that Mr. Baker is saying that the CROWN Act is covered under the ordinance that he has provided for employment discrimination.

Mr. Baker said what I have in front of you and what I'm saying is by the wording that we have used, and this is the wording that other municipalities have use, they are essentially

making the bridge that the CROWN Acts typically makes that natural hair discrimination can be part and parcel of race discrimination. I have limited it to 14. Mr. Bokhari's point is that it is not so clear at 15 and above because right now the State nor EEOC has weighed in on that piece. It is possible that they may and just determine because you can recreate protective class by both statutorily doing it. You can also do it through case law as well. I suspect that one or the other will happen.

Mr. Graham said I support the attorney's recommendation. I hope that the Council will move forward with that.

Ms. Johnson said as a black woman with natural hair and whose child whose actually been discriminated against based on natural hair, I would want to see as much enforcement and as much reiteration of this policy as possible. So, if there is a gap and we know that there is a gap I don't understand the debate. If it only helps our citizens.

Mayor Lyles said I don't know that there is an agreement that there is a gap and maybe I should ask that question. We are saying, you said if there is a gap. Is there a gap or is it covered under racism or is it covered? Is there a gap Mr. Baker?

Mr. Egleston said I think the answer is we don't know for sure.

Mr. Newton said you can make an argument, but it's not been definitively decided. That's why Councilman Bokhari does have a point.

Mayor Lyles said I think we were still able to get to, we have the 14 and below and we have all decision and we have not voted on that. So, let's go to all employment in this so that we have a straw vote for the Attorney.

So, for all that are in favor for including the state and federal protections raise your hand.

The straw vote was taken and recorded as follows:

YEAS: Councilmembers Bokhari, Graham, Johnson, and Newton.

Mr. Newton said or saying that our ordinance applies to all employers not just those that are 15 and less, correct?

Mr. Baker said that is what I believe you have questions.

Mr. Winston said I'm confused as to what we are actually voting on; you said including the language around that state and federal law for Texas or a separate thing of our ordinance will cover everybody. I think those are two different things.

Mayor Lyles said I thought it was a statement of, but maybe -

Mr. Baker said so, let me through this out. Between Mr. Bokhari and I, we have identified this issue of whether or not natural hair would actually be seen as race discrimination for 15 and above which would be at the federal level. All I could tell you is it's unclear. It's definitely unclear, but in all of the other areas, you get the whole bucket of discrimination. Not just one piece of it. You get the entire protected class now in areas that are clearly covered under federal law. So, a potential way out of this if we are just focused on this potential gap that exists with natural hair for employers 15 and above is to literally say that natural hair discrimination in the City of Charlotte will apply to all employers in the City of Charlotte.

Mayor Lyles said so the motion is that natural hair will apply prohibition for discrimination of the CROWN will apply to all employers in the City of Charlotte.

Mr. Winston said Mr. Baker in your opinion does this language change, would it change the way you approach defending a challenge to this in court?

Mr. Baker said we would only be talking about natural hair discrimination as opposed to everything else in the protected class. If you are interested in focusing on filling the gap, and there is at least a theoretical gap on natural hair 15 and above, this is a way to narrowly tailor it to where we are only swimming on the natural hair side as opposed to now any race discrimination claim from sex discrimination from the largest employers are now going to be covered under a City Ordinance. That is a suggestion that I am offering (inaudible).

Mayor Lyles said I'm going to say it back to you and Mr. Winston so that we are saying the same thing. Mr. Baker will draft to make sure that the CROWN is covered for those over 15 employees specifically for the City of Charlotte's Ordinance.

Mr. Baker said that would be for all employers in the City of Charlotte.

Mr. Bokhari said so all you have to do is not have the words 15 and under, right?

Mr. Baker said for natural hair.

Mr. Bokhari said well because for everything else there is no gap? So, you don't have to get complicated with the language.

Mr. Baker said if everyone can agree let's focus on the theoretical actual gap, let's focus on that, then yes, it's a sentence.

Mayor Lyles said alright, so we have that we are closing the gap on the natural hair for all employers in the City of Charlotte. I have Mr. Newton. Mr. Graham are you okay?

Mr. Graham said I am so confused.

Mayor Lyles said I think it's closing a gap that Mr. Bokhari has raised.

Mr. Newton said I am in support of that, but at the same time, I would ask us not to forget to also vote on all protected classes as well. So, not to kind of separate this out and then forget a consideration of all employers as it pertains to all protected classes.

Mayor Lyles said we are going to vote on closing the gap for natural hair. The attorney understands what he is trying to accomplish. Mr. Bokhari agrees with him.

Mr. Graham said so that's an amendment of your language that we are voting on?

Mr. Baker said yes. That addresses this gap that we are talking about because the EEOC has not said as of yet that natural hair discrimination is race discrimination. That has not occurred yet.

Mr. Graham said and we are amending your language?

Mr. Baker said yes, I would add a sentence to where in the City of Charlotte all employers who engage in natural hair discrimination would be covered under this Ordinance.

Mayor Lyles said raise your hands if you are in favor of closing this gap as the City Attorney would provide in the Ordinance. Please raise your hands.

The straw vote was taken and recorded as follows:

The vote was unanimous.

Mr. Phipps said would this apply because you also said that this natural hair comes under race and national origin? So, the natural origin piece would be included too?

Mr. Baker said it would be included through the process. For the most part, we've seen natural hair discrimination be part of race discrimination, but I have seen some cases where natural hair is part of an individual's national origin. That's why I provided both.

Mayor Lyles said okay, the next question I think is, I'm going to come back to Mr. Newton, who would like to include all protected classes under the 15 and over in the ordinance, but I'm going to finish the City Attorney's list first. The third question that the City Attorney asked was identifying religious liberty. What he has done is incorporated federal law into the draft and I think that Mr. Bokhari had made a counterpoint. Mr. Bokhari, can you restate your counterpoint?

Mr. Bokhari said what is the topic?

Mayor Lyles said the religious protection.

Mr. Bokhari said so, the difference between this version and the version we had put out is around clarity of religious organizations and individual protections. So, in the example, I use earlier religious school and non-profit organization could be forced to go to court to ensure it doesn't need to hire someone whose actions go against their beliefs and it's clear they wouldn't. At the end of the day, it's one of these things where we can explicitly state something like we have in our proposal and prevent people having to ultimately go to court to have that. So, I think just adding those clarifications in are pretty simple and I can give you the exact language, but it is something that has already been provided.

Mayor Lyles said Mr. Baker has said that the section that he says this includes but is not limited to applicable legal exemptions for religious organizations covers that in the Ordinance. Is that correct?

Mr. Baker said that was my attempt to in broad language, which is pretty much that entire paragraph just to reiterate to the community that the federal laws that would be applicable to those above 15 would be applied here as well. Which would include any accretions of religious liberty and freedom that would be accepted at the federal law. I've tried to just create a blanket statement, but I am happy if need be because I think we are all on the same page of we're not trying to destroy religious freedom that doesn't exist in federal law right now. How we get there, I am just trying to give broad, because that changes. I expect particularly with the Bostock case that they are going to be cases that are going to be discerning this language. How we get there, I am fine with pulling that language that Mr. Bokhari has put together because I don't think that he and I are in disagreement with what we are trying to get to. It's a word thing but I think we can get there.

Mr. Bokhari said and again I totally agree with your sentiment. I think we are in theory and in spirit there. I think that this is another case of us very specifically stating it because there is a lot of people from the religious community who are very concerned that they are going to be forced to agree with a perspective or forced to bake a cake against a religious view and we are very much not trying to infringe on those liberties and protection, but we are trying to protect those from being discriminated against on the other side. So, explicitly stating that is the kind of bridge-building that we should be doing right now to ensure that everyone kind of walks away with the saying, okay I understand.

Mr. Newton said it sounds like this is already existing in law?

Mr. Baker said yes.

Mayor Lyles said the question is I think both people have excepted the theory and the substance of what's being said. The question is how many words you put in it and how is it written, and I think that's the question based upon what was in the red striking versus what's the blue striking on your document that you see that's in front of you.

Mr. Bokhari said there is a practical. It's not just a touchy-feely thing, there's a practical reason too, which is when we are not clear and explicit in our ordinance language people ultimately have to go to court when something arrives and conflict versus we can be very

clear about now. So, the language that we are referring to is a religious organization, I have the language here. You've seen it before. So, we can forward that over, but I think it's the theory that makes sense for right now.

Mayor Lyles said I'm going to suggest then that we do understand what we are trying to do that Mr. Baker you work and look at the language and bring us back a draft. Is everybody okay with that?

Mr. Baker said I can have that to everyone by Thursday and certainly Mr. Bokhari, I'll get that to you soon just to make sure we're on the same page.

Mayor Lyles said so those cover the three. Is everyone accepting that premise? Raise your hand if you are okay with that premise. Now, Mr. Baker has what he needs to bring a draft ordinance back to the Council.

We then have to go back, and Mr. Newton raised the question of having all protective classes in the 15 and over employment discrimination. So, we've talked about this a lot. So, if you are in favor of all the protected classes being in the 15 and above beyond the CROWN, please raise your hand.

The straw vote was taken and recorded as follows:

YEAS: Councilmembers Bokhari, Egleston, Eiselt, Graham, Johnson, Newton, and Watlington.

The next item comes from Mr. Bokhari.

Mr. Baker said so on that point and I think Mr. Bokhari is referring to Section 2167, contractor bid requirements. That is not language that has been changed. That is a language that has been in existence since 2002. The only changes would either appear underlined or strikethroughs. What we tried to do is in any section that had a change, we showed you the entire Section and the changes. So, the areas, and I think the first sentence about, shall include a certification to be completed by the bidder, that's the original language in the Ordinance. We have not touched that.

Mayor Lyles said I recall when that was done there were some issues.

Mr. Baker said I believe that how it's been used the entirety of the ordinance.

Mr. Phipps said as a part of the bid solicitation process does the city request a copy of the bidder's non-discrimination policy or do, they just ask for attestation?

Mr. Baker said I have only been focused on the revisions.

**Lina James, Deputy City Attorney** said I don't think we require that, but I think we have this language that's in the ordinance incorporated into all contracts. So, this exact language is included into contracts typically. By signing it they are certifying that they will abide by the terms of the ordinance.

Mayor Lyles said so I do believe they do some testing of it though, Mr. Phipps. I do think that they do kind of like a regular kind of check did everybody do everything right, but not every contract. Does that make sense? They sample it.

Mr. Phipps said we don't ask to see a copy of their non-discrimination policy, right?

Mayor Lyles said I can't answer that, but I know that they sample, and they check whether or not they have followed through on these items in a sample group. That's the only thing I recall.

Mr. Baker said and that's the information we can follow up with before Thursday.

Ms. James said if I may add one thing to what Mr. Phipps had asked earlier on the disqualification. The answer to that which is already in the Ordinance is disqualification up to two years.

Mr. Phipps said it's not in this.

Ms. James said it's not in what's before you because it's in a different section. It's been on the books since 2003.

Mayor Lyles said okay, the next one I think we addressed is the employment over 15. Is there anything else to add there? The last thing that I have listed is religious protection and we have an agreement on that.

Mr. Baker said Mr. Bokhari and I will be working on that together.

Mr. Bokhari said I have my item. Are you coming to that or is it already done?

Mayor Lyles said we just talked about the City Contract and we haven't taken an action on it yet. So, it has been included since 2003. Is there a direction to take that out? Please raise your hand.

Mr. Bokhari said it's obviously more complicated given that it has existed before now we are adding to it. I think your takeaway is to get us some more information because we would not just be tweaking something and not including it, we'd be changing something that's been in there for a long time. I'm just concerned about the burden, particularly on small businesses.

Clearly, the spirit is we don't want people we do business with to discriminate. I'm 100% on board with that, but then how we implement and leave that into the bureaucracy does concern me greatly because we are trying to give people, especially small businesses to be able to work with us.

Mr. Baker said sure.

Mr. Bokhari said and to get contracts. If they have to come through it could be a very difficult daunting task to say yeah, I am a seven-person mom-and-pop shop that doesn't have 700 different policies in place, like I am non-compliant, right.

Mr. Baker said what I'd like to do is bring some information back from the administration to you about that because the only reason that 2186 is even in front of you is because we dropped in a new protected class in that. Not because of the situation that you raised.

Mr. Bokhari said I will hold back any judgment on that, but my hope would be not just to bring something back, but in the time, we have is there some way where the spirit of preventing discrimination from a reactive perspective can be put in there but not have to weave in proactive bureaucracy on top of the small business that may not very well be in a position to produce the documentation that this would require in testing or whatever it may be.

Mr. Baker said sure.

Mayor Lyles said so you will get information about that. Is there any additional request from the Council about the information? I think one of the things that I would say is how many contracts are a really small business that we include this in because I don't think that most of our contracts that fall under \$500,000, and I think the level of it, it's probably for those larger contracts and not for just small businesses? Let's find out who does it and how do they do it?

Mr. Graham said how do we define a small business, which is really important because a small business could be a company with 1,000 or more employees, right. If you go by the Commerce Department definition of it, right. So, I think we need to be careful about

the word choice and how it impacts individuals and companies because we could be protecting someone that does not need protection.

Mayor Lyles said we've got the notes there. I do not expect that will be as easy to get by Thursday. Is that a fair assessment?

Mr. Baker said that's beyond the purview of the City Attorney's Office. This is really squarely within the Administration's perspective.

Mr. Jones said so Mayor, what we will do is gather information for the Council to see if there is a problem that exists.

Mayor Lyles said okay so we will look and see if anybody has ever objected to it first. Then go and find out what the information is because we can always adjust that. Mr. Bokhari, after City Contracts and small business, what was your next one?

Mr. Bokhari said it is inserting as a protected class political affiliation and expression.

Mayor Lyles said do you want to make any comment about that?

Mr. Bokhari said based on what I said before the place is, so we know specifically where it goes, Article 3, Section 1258 prohibited acts just adding in Section A there, Political Affiliation, B, Political Affiliation in there with the rest of the items. Then Article 4, Section 1283, Prohibited Discrimination and Employment, adding that there as well.

Mayor Lyles said how do you define political discrimination.

Mr. Bokhari said your registered affiliation in Mecklenburg Board of Elections.

Mayor Lyles said is it by official parties like the green party and everybody? How do you define it?

Mr. Bokhari said how you are signed up formally inside the Board of Election website. Affiliation and then the expression is defined as a legal action of expressing that affiliation. So, if it's a march or walking into a coffee shop with a Republican shirt on or whatever it is. The whole premise is, we should be opposed to all forms of discrimination.

Mayor Lyles said would that include planned parenthood and organizations like that?

Mr. Bokhari said I don't believe that's political affiliation.

Mayor Lyles said I mean it's a point of view. I was just asking. I really don't know the answer to it. I'm just asking.

Mr. Bokhari said political affiliation is a very specific word of like our party system in the country.

Mayor Lyles said so would the party system include those areas?

Mr. Bokhari said if you are marching for or against planned parenthood, yes. Being fired because your employer saw you lawfully doing that and having disagreed with it, would be a form of discrimination, yes.

Mayor Lyles said so you've heard the definition and the request for that protection. Those in favor of it please raise your hand.

The straw vote was taken and recorded as follows:

YEAS: Councilmember Bokhari.

Mayor Lyles said so with that Mr. Baker do you have everything that you need?

mmm

Mr. Baker said I think so.

Mr. Newton said I had one more thing that I think potentially could be covered on two grounds here. Maybe two things that we can resolve at one time and that's the fines. I had mentioned earlier whether or not to include fines alongside injunctive relief and conciliatory relief. So, I recalled in our conversation that it seems somewhat confusing a bit, kind of convoluted there, but I think that Julie might have mentioned or maybe you, Patrick kind of preparing some language for us to review for that but I don't know if that's what we concluded and frankly, it's not something that the City Attorney said that he needed, but I do think I would like to have some clarification on exactly how we are going to consider and approach that.

Mr. Baker said I thought we would bring to you by Thursday how that's set up in terms of fine structure. It's baked into the Ordinance. That's not been a point to focus on, but we can certainly have that information so you will at least know what is potentially there, and then you can make any decisions.

Mr. Newton said would you be able to draft the proposed language associated with that too because I think that was the previous request was kind of seeing how that would look in writing for us to consider on Thursday and if potentially it is something that we would like to proceed with, potentially could serve as an amendment proposed on Monday night.

Mr. Baker said yes, we can have that information for you absolutely.

Mr. Phipps said I'm trying to figure out at what point would fine be levied. Would they be levied after the case has been adjudicated and determined? Could it be conceivable that the court would levy any kind of fines and then we would levy fines on top of that?

Mr. Baker said that will be part of the information that I bring back to you. I just don't know it right off the top of my head in terms of when fines would accrue. I would assume there would have be some level of determination that wrongful conduct has accrued and is not being remedied, but I will have more information about when that could accrue.

Mayor Lyles said I think we are doing a lot of things that we need to get a track record on. I understand the need for fines if we're not getting compliance, but we don't know what we have and what we don't. I just am very concerned that we have introduced a number of factors into this that are very very acceptable to a lot of people. Then to have people walk away, I think Ms. Eiselt said at the beginning to do something so good and have people walk away feeling so harmed is not where I think this Council wants to be. So, to me, I think having the language is fine, but I would say to you that my suggestion would be to get some data like we do on our other areas where, how often, what's going on, where is it working, if it's not before we begin to talk about changing some of our processes in terms of injunctions and fines. If it's the first one out and we all say that is it, but what if it's only one out 100. There's a certain amount of thoughtfulness there. Mr. Newton, I agree with you. It needs to work, but I also don't know that we could say that it is not working and until we have a definition, that would be my position.

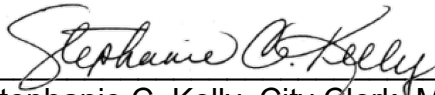
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## ADJOURNMENT

Motion was made by Councilmember Egleston, seconded by Councilmember Newton, and carried unanimously to adjourn the meeting.

The meeting was adjourned at 8:23 p.m.

  
Stephanie C. Kelly, City Clerk, MMC, NCCMC

Length of Meeting: 3 Hours, 18 Minutes  
Minutes Completed: August 22, 2021