



Human Relations Commission Agenda

7:00 p.m. Regular Meeting

Thursday, March 7, 2019

City Hall: Large Conference Room

25 Center Street

Vermillion, South Dakota 57069

1. **Roll Call**
2. **Adoption of the Agenda**
3. **Approval of the Minutes**
 - a. February 7, 2019
4. **Visitors to be Heard**
5. **Old Business**
 - a. Update on Ordinance 1399
 - b. Update on upcoming Home Rule educational session with City Council
 - c. Update on HRC Logo
6. **New Business**
 - a. Future Educational events
7. **Adjourn**

Access the Human Relations Commission Agenda on the web – www.vermillion.us

Addressing the Commission: Persons addressing the Council shall be recognized. Please raise your hand to be recognized and state your name and address.

a. Items Not on the Agenda Members of the public may speak under Visitors to Be Heard on any topic NOT on the agenda. Remarks are limited to 5 minutes and no decision will be made at this time.

b. Agenda Items: Public testimony will be taken at the beginning of each agenda item, after the subject has been announced by the Mayor and explained by staff. Any citizen who wishes may speak one time for 5 minutes on each agenda item. Public testimony will then be closed and the topic will be given to the governing body for possible action. At this point, only commission members and staff may discuss the current agenda item unless a commission member moves to allow another person to speak and there is unanimous consent from the commission. Questions from commission members, however, may be directed to the public through the presiding officer at any time.

Meeting Assistance: The City of Vermillion fully subscribes to the provisions of the Americans with Disabilities Act of 1990. If you desire to attend this public meeting and are in need of special accommodations, please notify the City Manager's Office at 677-7050 at least 3 working days prior to the meeting so appropriate auxiliary aids and services can be made available.

As a courtesy to others, we ask that cellular phones and pagers be turned off during the meeting.

Unapproved Minutes
Human Relations Commission
Thursday February 7, 2019 Regular Meeting

The regular meeting of the Human Relations Commission was called to order in the Large Conference Room at City Hall on February 7, 2019 at 7:00 p.m.

1. Roll Call

Present: Daniel Sundberg, Quinn Thornton, Travis Letellier, Lamont Sellers, Addison McCauley, Shannon Cole, Mark Daniels, Marina Sereda

Absent: Calvin Petersen

Staff present: John Prescott, City Manager
James Purdy, Assistant City Manager

2. Adoption of the Agenda

Commissioner Daniels stated he would like a discussion of a home rule charter added to the agenda. It will be added as new business item b. Commissioner Sellers motioned to approve the agenda, seconded by Commissioner Daniels. Motion carried.

3. Minutes

a. January 3, 2019

Vice-Chairman Letellier motioned to approve the minutes with corrections, seconded by Commissioner Sellers. Motion carried.

4. Visitors to be Heard

None

5. Old Business

a. Approve final versions of complaint and respondent forms

b. Potential changed to HRC Ordinance

c. Update on HRC logo

d. Email address

5a. The Commission reviewed VHRC Form 1A, and several changes were recommended. Vice-Chairman Letellier motioned to approve form VHRC Form 1A with recommended changes, seconded by Commissioner Daniels. Motion carried.

The Commission reviewed VHRC Form 2A. Some recommended changes were moving page 3 to page 1, updating the statute cited to 32.61, and adding language regarding the transferring of complaints to other jurisdictions. Commissioner Thornton motioned to approve VHRC Form 2A with recommended changes, seconded by Commissioner Sundberg. Motion carried.

5b. Chairman McCauley stated that he has spoken to the State Human Rights Commission, and an attorney for the South Dakota Department of Labor. Chairman McCauley discussed the difference between 'filing' a complaint, and 'submitting' a complaint, and where in the review

process each term should be used. Chairman McCauley also stated that the respondent would not need to be notified at the time of submission, only at the time of filing. At the time of filing, the respondent must receive a copy of the complaint filed against them.

Chairman McCauley also discussed some additional changes in the formatting of the ordinance, and some changes in the timeline of the review process. City Staff has suggested Chairman McCauley to present an update to the City Council regarding potential changes to the ordinance at the evening meeting on March 4th. The goal of the ordinance update would be for the first reading to take place on March 18th, and the second reading to take place on April 1st.

Vice-Chairman Letellier motioned to approve the amendments to the ordinance as presented, seconded by Commissioner Daniels. Motion carried.

5c. Shannon Cole stated that the file City Staff provided her to create a VHRC logo was not in the correct file format. City Staff will continue to search for the original file in the correct format, and forward it to Shannon if found.

5d. James Purdy, Assistant City Manager, stated that an email address for the VHRC has been created, and that only he and John Prescott, City Manager, have access to that account. The address is vhrc@cityofvermillion.com

6. New Business

- a. Review of poster designs
- b. Discussion of home rule municipalities (added item)

6a. The Commission reviewed two poster designs, and some changes were suggested. Shannon Cole stated that she will work on posters for specific VHRC events, and will hopefully be able to incorporate the new VHRC logo in those designs.

6b. Commission Daniels stated that he is interested in the home rule concept, and that he has been researching how it could help the VHRC protect groups of people beyond what is enumerated in current state statute. James Purdy, Assistant City Manager, stated that there is current interest within the Council to explore the benefits of a home rule charter. James Purdy stated that City Staff is hoping to present some possible benefits of home rule to the Council at an upcoming noon educational session. James Purdy stated that he will give Commissioner Daniels and other members of the Commission a firm date so that they may attend the session to voice their support.

7. Adjourn

Moved by Commissioner Sellers to adjourn, seconded by Commissioner Daniels. Motion carried at 8:39 p.m.

Vermillion Human Relations Commission

Lamont Sellers, Secretary

Council Agenda Memo

From: James Purdy, Assistant City Manager

Meeting: March 4, 2019

Subject: First Reading of Ordinance 1399 – Amending Vermillion Code of Ordinances Title III: Administration, Chapter 32: City Organizations

Presenter: Addison McCauley, Vermillion Human Relations Commission Chairperson

Background: On July 7, 2018, the City Council unanimously approved Ordinance 1377 to establish a Human Relations Commission for the City. The VHRC is charged with two primary tasks: 1. Education through disseminating information and conducting public meetings regarding inclusivity and anti-discriminatory practice; and 2. Receiving complaints of alleged discriminatory practices in employment, housing, labor organizations, education, property rights, and providing public accommodations or services.

The Commission meets the first Thursday of every month at 7:00 PM, and these meetings are open to the public. We have had five regular public meetings since our first meeting on September 18, 2018 as well as one 4-hour special afternoon meeting in December. During the special meeting in December, the Commission discussed and agreed upon the specifics of the complaint alternative dispute resolution (ADR) procedures and policies.

Discussion: Since appointed, the Commission has been focusing on finalizing and disseminating the complaint ADR timelines, templates, and policies that would allow us to begin to fulfill our second primary task. Looking to our current ordinances, we had a general outline to follow to help us accomplish these goals. However, as we discussed the practical implementation of our procedures, and conferred with representatives from the State Commission of Human Rights, the Chairpersons from the Brookings and Sioux Falls HRCs, and the City Attorney, we came to realize that some amendments to the adopted ordinance would be required to accommodate for regulations in State statutes as well as the practical implementation of the complaint ADR procedures.

To be clear, the procedures are still in line with the agreed upon procedures provided by the April 18, 2018 Policies and Procedures Committee meeting. The amendments in proposed Ordinance 1399 address policies regarding the procedure timeline and mode of notification for both parties, the addition of a Commission Subcommittee charged with the preliminary review of received complaints, a statute workaround with regard to the

8. New Business; item a

definition of officially “filing” a complaint, and other basic formatting alignment corrections.

Financial Consideration: The cost of publication.

Conclusion/Recommendations: Administration recommends that the City Council approve the first reading of Ordinance 1399, which would amend Title III: Administration, Chapter 32: City Organizations.

PROPOSED ORDINANCE NO. 1399

AN ORDINANCE AMENDING CITY OF VERMILLION CODE OF ORDINANCES TITLE III, ADMINISTRATION; CHAPTER 32, CITY ORGANIZATIONS; SECTIONS 32.41, 32.47, AND SECTIONS 32.50 THROUGH 32.61 AMENDING DEFINITIONS, CORRECTING FORMATING, CLARIFYING A QUORUM, AND DISMISSAL, PRELIMINARY REVIEW, AND INVESTIGATION OF COMPLAINTS.

BE IT ORDAINED by the Governing Body of the City of Vermillion, South Dakota that sections 32.41, 32.47, and sections 32.50 through 32.61 to read as follows:

§ 32.41 DEFINITIONS.

COMPLAINANT. A person for whom, or on whose behalf, a verified complaint alleging unlawful discrimination has been ~~filed or issued~~ submitted to the Commission.

DISABILITY. A physical or mental impairment of a person resulting from disease, injury, congenital condition of birth or functional disorder which substantially limits one or more of the person's major life functions; a record of having an impairment; or being regarded as having an impairment which:

(A) For purposes of § 32.49 (A) through (C), inclusive, is unrelated to an individual's ability to perform the major duties of a particular job or position, or is unrelated to an individual's qualifications for employment or promotion;

(B) For purposes of § 32.49 (D) and (H) is unrelated to an individual's ability to acquire, rent, or maintain property; and

(C) For purposes of § 32.49 (E) and (F) is unrelated to an individual's ability to utilize and benefit from opportunities, programs, and facilities of accommodations and services.

This term does not include current illegal use of or addiction to marijuana as defined in SDCL subdivision 22-42-1(7) or a controlled substance as defined in SDCL subdivision 22-42-1(1).

DISCRIMINATORY OR UNFAIR PRACTICE. Any unlawful act or attempted unlawful act which, because of sex, race, color, creed, religion, ancestry, disability, national origin or familial status, results in the unequal treatment or separation or segregation of any person, or denies, prevents, limits or otherwise adversely affects, or if accomplished would deny, prevent, limit or otherwise adversely affect the benefit or enjoyment by any person of employment, a labor union membership, housing accommodations, property rights, education, public accommodations, and public services. **DISCRIMINATORY OR UNFAIR PRACTICE** as defined above is unlawful and is a violation of this subchapter. In addition, it is the policy of the City that discriminatory practices based on marital status, military or veteran status, gender identity, or sexual orientation, while not prohibited by state law, constitute unfair practices which adversely affect people. The Commission, through public information promotion and as permitted by § 32.50, will seek to improve human relations and eliminate such unfair practices. Accordingly, discriminatory practices based on marital status, military or veteran status, gender

identity, or sexual orientation will not be investigated or be the subject of complaint resolution procedure until permitted by state law. However, such acts may be brought to the attention of the Commission by a complainant in the form of a verified complaint, which is consistent with the provisions of § 32.51 for record keeping and referral purposes.

FILE. ~~A verified complaint is officially FILED with the Commission, the respondent, or any court of competent jurisdiction when the Commission has completed a preliminary review of said verified complaint and determined that an investigation of discriminatory or unfair practice shall commence in accordance with SDCL 20-12-4.~~

PARTY. The complainant or the respondent.

REAL ESTATE BROKER OR REAL ESTATE SALESPERSON. A real estate broker and a real estate salesperson as defined by SDCL § 36-21A-6 or as licensed pursuant to SDCL § 36-21A-47.

RESPONDENT. A person against whom a verified complaint alleging unlawful discrimination has been filed ~~or issued.~~

§ 32.47 QUORUM/RULES AND REGULATIONS.

(A) A majority of the voting members of the Commission then holding a current appointment shall constitute a quorum for the transaction of all official business.

~~**(A)(B)** Any decisions made by the Commission regarding actions to be taken on any official business shall be determined by a majority of a quorum.~~

§ 32.50 SUBSTANTIVE AND PROCEDURAL AUTHORITY AND DUTIES.

The authority and duties of the Commission shall be to:

(O) Hear and inquire into verified complaints alleging discrimination regarding the City of Vermillion in accordance with the procedures set forth in this subchapter. Pursuant to state law, there is presently no legal authority to investigate verified complaints alleging discrimination because of marital status, military or veteran status, gender identity, or sexual orientation. Accordingly, until state law authorizes municipalities, pursuant to SDCL 20-12-4, to investigate discriminatory practices based on marital status, military or veteran status, gender identity, or sexual orientation, these discriminating practices cannot be investigated by the Commission. However, such acts may be brought to the attention of the Commission by a complainant in the form of a verified complaint, which is not inconsistent with the provisions outlined in § 32.51, for record and referral purposes. The Commission shall have no regulatory enforcement powers which are inconsistent with the provisions of this subchapter.

§ 32.51 ~~SUBMITTING~~FILING A VERIFIED COMPLAINT.

(A) Any person claiming to be aggrieved by a discriminatory practice may ~~submit~~file to with the Commission a verified complaint which shall state the name and address of each person complained against (respondent[s]) and shall set forth the pertinent facts as known to the complainant.

~~(A)~~(B) Any verified complaint shall be submitted to the Commission by means of completing and submitting a verified complaint form made available to the public by the City.

(C) Any verified complaint ~~submitted~~filed with the Commission under this subchapter shall be ~~submitted~~filed within one hundred and eighty (180) calendar days after the last occurrence of an alleged discriminatory or unfair practice.

§ 32.52 DISMISSAL OF COMPLAINT PRIOR TO FILING.

The Commission may order the dismissal of any verified complaint prior to investigation if the Commission determines in good faith that:

(A) The unlawful act or practice complained of occurred outside city limits;

(B) The verified complaint has been abandoned or withdrawn by the complainant;

(C) The City is not authorized by state law to investigate the verified complaint;

(D) The complainant fails to state a claim within the verified complaint form upon which relief can be granted;

(E) The unlawful act or practice complained of has been satisfactorily eliminated and that further proceedings are unnecessary; or

(F) The allegations complained of are being processed or have been addressed to the satisfaction of the Commission by another agency or by a court of competent jurisdiction.

~~(B)~~ **§ 32.53 COMMISSION SUBCOMMITTEE PRELIMINARY REVIEW.**

(A) Promptly upon the receipt of any verified complaint, either the Commission Chairperson or Vice Chairperson shall meet with two additional Commission Members within ten (10) calendar days to review and recommend whether or not said verified complaint shall be dismissed as prescribed in § 32.52. These three Commission Members shall be referred to as the Commission Subcommittee for said verified complaint.

(B) Promptly after the review of any verified complaint by a Commission Subcommittee, the Commission Subcommittee shall submit a report to the Commission summarizing their recommendation and reasoning therefor.

(C) The Commission shall meet to review any Commission Subcommittee report within five (5) calendar days of the completion of said report.

§ 32.542 SERVICE OF RESPONDENT AND VERIFIED ANSWER.

(A) Upon review of any Commission Subcommittee report, the Commission shall promptly either:

(1) Dismiss the verified complaint as prescribed in § 32.52 and serve a notice of complaint dismissal, by personal service or registered or certified mail, unto the complainant; or

(2) File the verified complaint and serve a notice of complaint investigation, by personal service or registered or certified mail, unto the complainant and a notice of complaint and investigation and verified response form, by personal service or registered or certified mail, unto the respondent.

(B) Promptly upon the filing of any verified complaint with the Commission, the Commission shall serve a copy thereof, by personal service or registered or certified mail, unto the respondent. The respondent shall file a verified answer thereto within ten (10) business days after receipt thereof or within any period of extension granted by the Commission Chairperson. The verified complaint and verified answer shall remain confidential documents until such time as the matter is referred to either a court of competent jurisdiction or to the State Commission of Human Rights. Within fifteen (15) calendar days after the service of a notice of complaint and investigation, or within any period of extension granted by the Commission Chairperson, the respondent may submit to the Commission a completed verified response form.

§ 32.53 DISMISSAL OF COMPLAINT.

(A) The dismissal of a verified complaint may be ordered by the Commission if:

(A) The Commission determines in good faith that the allegations of discrimination are not well founded, or that the supporting facts presented do not amount to probable cause to investigate further;

(B) The Commission determines that the verified complaint has been abandoned or withdrawn by the complainant;

(C) The Commission determines that the verified complaint has been abandoned or withdrawn or because the City is not authorized by state law to investigate it;

(D) The complainant fails to state a claim upon which relief can be granted;

(E) The Commission determines in good faith that the unlawful act or practice complained of has been satisfactorily eliminated and that further proceedings are unnecessary; or

~~(F) — The allegations complained of are being processed or have been addressed to the satisfaction of the Commission by another agency or by a court of competent jurisdiction.~~

~~(B) Upon the determination to dismiss a verified complaint, the Commission shall within five (5) business days, serve notice of the determination and reasoning upon the complainant and respondent by personal service or registered or certified mail.~~

§ 32.554 COMPLAINT INVESTIGATION; DETERMINATION OF PROBABLE CAUSE AND REFERRAL.

~~(A) Except to the Commission and either party involved in a verified complaint, any and all documents submitted to or created by the Commission, or copies thereof, regarding an allegation of discrimination asserted in said verified complaint shall remain confidential documents until such time as the matter is transferred to either a court of competent jurisdiction or to the State Commission of Human Rights.~~

~~(A)(B) Within five (5) calendar days following the fifteen-day wait period, or following any period of extension granted by the Commission Chairperson to allow for a respondent to submit a completed verified response form, t~~The Commission shall meet and proceed in good faith to investigate a verified complaint and verified answer to determine whether there is probable cause to support anythe allegations of discriminatory or unfair practice. ~~The investigative information and materials are confidential until determination of probable cause or lack of probable cause.~~

~~(B)(C)~~ If the respondent does not wish to file submit a verified response answer form to the verified complaint, probable cause shall be determined with regard to the information available to the Commission.

~~(D)~~ The Commission may request the complainant and/or the respondent to appear before the Commission for a pre-determination conference if deemed necessary by the Commission.

~~(C)~~

~~(D)(E)~~ Upon the completion of any investigation of discriminatory or unfair practice by the Commission, ~~if the Commission determines there is no probable cause to support whether the allegations of discrimination are well founded, the Commission shall dismiss the verified complaint and promptly notify both parties via personal service or registered or certified mail along with the reasons for the dismissal. If probable cause is found to support the allegations, the Commission shall promptly transmit serve at the~~ notice of determination of probable cause ~~along with the reasons for the determination, by personal service or registered or certified mail, unto both parties to both the complainant and respondent via personal service or registered or certified mail.~~ Additionally, referrals to appropriate state regulatory bodies and other relevant resources that may help to remedy the matter may ~~also~~ be sent along with the notice of determination of probable cause, ~~if any. Both the complainant and respondent shall be permitted to inspect any documents not prepared by the Commission in the files of the Commission that are relevant to the determination of probable cause.~~

~~(E)(F)~~ The Commission shall keep for record any and all documents, or copies thereof, regarding an allegation of discrimination asserted in a verified complaint form filed-submitted towith the Commission. Both parties shall be permitted to inspect any documents not prepared by the Commission in the possession of the Commission that are relevant to the determination of probable cause upon request.

§ 32.565 CONSULTING WITH THE CITY ATTORNEY.

(C) The Commission shall only request to employ the consultation services of the City Attorney when the Commission members believe that it is necessary for the just and competent effectuation of their duty to determine probable cause regarding a specified matter, or specified matters, within a verified complaint that has been filed-submitted towith the Commission.

§ 32.576 TRANSFER AFTER PROBABLE CAUSE DETERMINATION.

If the matter before the Commission is not resolved informally, either party must elect to assert their claims in circuit court in order to have them determined. If such election does not occur within twenty (20) calendar days following notice of probable cause determination, the matter shall be dismissed by the Commission.

§ 32.587 TRANSFER OF COMPLAINTS TO STATE COMMISSION.

Upon the filing of any verified complaint, the parties to the verified complaint shall be notified that any party thereto may, within fifteen (15) calendar days of the date of receipt of the notice of the proceeding, demand as a matter of right that the matter be transferred to the State Commission of Human Rights, which shall process the verified complaint under the provisions of SDCL Ch. 20-13. Immediately upon receipt of notice of a party's demand to transfer the verified complaint under this provision, the Commission shall forward the verified complaint to the State Division of Human Rights and shall thereafter have no further jurisdiction with regard to the verified complaint.

Statutory reference:

Similar provision, see SDCL § 20-12-9

§ 32.598 RIGHTS OF PARTIES NOT ABRIDGED.

§ 32.6059 APPLICATION TO OTHER DISABILITIES.

§ 32.610 SEVERABILITY CLAUSE.

Dated at Vermillion, South Dakota this 18th day of March, 2019.

THE GOVERNING BODY OF THE CITY
OF VERMILLION, SOUTH DAKOTA

BY _____
John E. (Jack) Powell, Mayor

ATTEST:

BY _____
Michael D Carlson, Finance Officer

First Reading: March 4, 2019
Second Reading: March 18, 2019
Published: March 29, 2019
Effective: April 18, 2019

DRAFT