

DURHAM CITY COUNCIL WORK SESSION
Thursday, April 7, 2016 @ 1:00 p.m.
2nd Floor Committee Room – 101 City Hall Plaza

Present: Mayor William V. "Bill" Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eddie Davis, Jillian Johnson, Don Moffitt, Charlie Reece and Steve Schewel.
Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick W. Baker and City Clerk D. Ann Gray.

Mayor Pro Tempore Cole-McFadden called the meeting to order and welcomed all in attendance.

The Mayor Pro Tempore asked if there were any announcements from the City Council.

Council Member Reece stated at the appropriate time he would like to introduce a resolution regarding House Bill 2.

Mayor Pro Tempore Cole-McFadden asked for priority items from the City Manager, City Attorney and City Clerk.

City Manager Bonfield and City Clerk Gray had no priority items.

City Attorney Baker stated he might have a priority item on House Bill 2 once the Mayor arrived.

Mayor Pro Tempore Cole-McFadden announced each item on the printed agenda; and the following items were pulled for further discussion and/or comments:

SUBJECT: HARVEY ANN GOODWIN

Ms. Goodwin expressed concerns that she had been treated unfairly by city staff; stated that a city construction project was underway at the back of her property to which she had not received any notices; expressed frustration with the City Manager's Office and City Attorney's Office regarding access to contracts; and wanted to know who the contractor was conducting the work.

Mayor Pro Tempore Cole-McFadden recommended that Ms. Goodwin contact the City Clerk's Office for a copy of the desired contract; stated she was willing to obtain the contract for Ms. Goodwin; and apologized for any mistreatment caused by city employees of whom Ms. Goodwin had been unfairly treated.

Mayor Bell acknowledged that after the City Attorney's report on HB2, Council Member Reece would introduce a resolution that required Council action.

SUBJECT: PUBLIC HEARING ON THE DRAFT FY2016-17 ANNUAL ACTION PLAN

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The Department of Community Development recommended that the City Council hold a public hearing on April 18, 2016 to receive public comments on the Draft FY 2016-2017 Annual Action Plan for the use of CDBG, HOME, ESG, and HOPWA funds; approve the Draft FY2016-17 Annual Action Plan for submission to the U. S. Department of Housing and Urban Development; and authorizing the City Manager to execute all administrative requirements.

At the request of Council Member Moffitt, Wilmur Conyers explained the board makeup of CHDO (Community Housing Development Organization); and referenced organizations being able to obtain technical assistance from the Community Development Department regarding their projects.

City Manager Bonfield responded that pre-submittal conferences were conducted as a normal practice.

Regarding the Durham Community Land Trustees, Ms. Conyers stated the department made contact with the organization making them aware that they had included funding in their application which did not exist at the time.

SUBJECT: REPORT ON HOUSE BILL 2

Mayor Bell recognized City Attorney Baker for a report on HB2 as it pertained to the City of Durham.

City Attorney Baker provided Council with a memo, dated April 4th; and stated his intent was to review HB2 and try to determine if any changes in city operations; policies; ordinances; etc. needed to be made as a result of the legislation. The City Attorney briefed the council on each of the following 3 categories:

1. Section 1.3 Single Sex, Multiple Occupancy Bathrooms and Changing Facilities

This is a new statute that purports to require the City to designate every multiple occupancy bathroom or changing facility on City property for and only used by persons based on their biological sex. The statute explicitly allows the City to provide an accommodation upon request such as providing a single occupancy bathroom or changing facility but under no circumstances can an accommodation result in allowing a person to use a multiple occupancy bathroom or changing facility for a sex other than the person's biological sex. The following terms are defined in the statute.

- Biological sex. – The physical condition of being male or female, which is stated on a person's birth certificate.
- Multiple occupancy bathroom or changing facility. – A facility designed or designated to be used by more than one person at a time where students may be in various states of undress in the presence of other persons. A multiple occupancy bathroom or changing facility may include, but is not limited to, a school restroom, locker room, changing room, or shower room.

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- Single occupancy bathroom or changing facility. – A facility designed or designated to be used by only one person at a time where students may be in various states of undress. A single occupancy bathroom or changing facility may include, but is not limited to, a single stall restroom designated as unisex or for use based on biological sex.

With regard to bathrooms and changing facilities, the City's longstanding practice has been to simply designate bathrooms for "Men" and "Women". The statute provides no particular guidance as to whether the City needs to further elaborate the designation "Men" or "Women" through additional signage that articulates the statutory definition of biological sex. It should also be noted that the statute does not provide a particular penalty for an individual who uses a bathroom that does not correspond to the sex identified on their birth certificate¹. The directive is to the City to properly designate the restroom/changing facility. At this stage, I would not recommend the City to incur costs associated with additional explanatory signage at our bathrooms and changing facilities to articulate the new statutory definition of the term, "biological sex" beyond the current designations of "Men" and "Women". Because this statute applies to all State controlled restrooms as well, it may be prudent to monitor what if any changes in bathroom designation are enacted by the State government to comply with the statute. Additionally, if there is evidence that individuals are confused as to which bathrooms they should use, the City could take additional steps at that time to further designate these facilities on its own initiative.

2. Section 2.1 Wage and Hour Act Local Preemption

This section appears to relocate a statute enacted in 2013 that prohibited cities from imposing requirements on employers pertaining to compensation of employees (i.e. wage levels of employees, hours of labor, payment of earned wages, benefits and leave) or well-being of minors in the workplace. The most common impact of this 2013 law was to prohibit local governments from requiring employers to pay their employees a "living" wage. This section continues to allow a local government to pay its own employees a living wage.

While the City has made the policy decision to pay its workers a living wage, there are no local ordinances or regulations that impose wage and hour requirements on employers. The City does have a non-binding policy statement on livable wages which states as follows:

***Livable Wage** - The City of Durham desires that firms doing business with the City pay their workers an hourly wage while working on City contracts such that, if annualized, a person working 40 hours per week will earn enough money to support a family of 4 above the poverty level, as poverty is defined by the United States Census Bureau. Currently, that wage is \$12.53 per hour.*

This statement appears on the City's bid postings website. Because this statement is not binding on employers, the City is not out of compliance with this Section and as such, this Section has no impact on current City policies and practices.

3. Section 2.3 Prohibition of Imposing Local Equal Employment Opportunity and Non-Discrimination Requirements on Public Contractors

This section as amended prohibits a city from imposing regulations or controls on a prospective contractor's employment practices or provision of goods and services to the public as a

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condition of bidding on a public contract or qualification based selection except as allowed by State law. This typically arises when a contractor is required to abide by a city's EEO or non-discrimination policy as a condition of contracting with the city.

The City does have an EEO and non-discrimination policy statement, also posted on the city's Bid Postings website, which reads as follows:

Values Regarding Treatment of Employees of Contractors

Statement of City EEO Policy - *The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information. Therefore, it desires that firms doing business with the City:*

In conclusion, the City Attorney stated he was not recommending any changes to City policies, practices or ordinances at this time. City Attorney Baker referenced a couple of lawsuits filed directly against the State on House Bill 2; stated there was a case coming out of the State of Virginia Fourth Circuit of Appeals relating to transgender and gender identity regarding which facilities individuals could use; and stated the State of North Carolina fell under the Fourth Circuit. Also, City Attorney Baker stated he had also been inquiring about changes for designation other than male and female on the bathrooms; and stated at the present he was unaware of anyone posting a new definition of biological sex; and suggested to retain signage at this stage until further direction was warranted.

City Attorney Baker stated the living wage requirement was sort of moved around into another statute; and stated based on the Council's action in 2013, no changes were necessary.

Mayor Pro Tempore Cole-McFadden shared the statement from the National League of Cities on HB2 entitled "Cities Stand United In Support of Local Authority and Inclusiveness in face of State Actions to Preempt Local Control." Also, she stated the Executive Committee of the NLC Board confirmed Charlotte, North Carolina as the host city for the 2017 City Summit.

Mayor Bell thanked the City Attorney for his report.

SUBJECT: RESOLUTION OPPOSING HOUSE BILL 2 AND CALLING FOR THE REPEAL

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Schewel to suspend the rules of the Council to introduce a Resolution Opposing House Bill 2 was approved at 1:29 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Davis, Moffitt, Johnson, Moffitt, Reece and Schewel. Noes: None. Absent: None.

Council Member Reece thanked members of City Council for their assistance in working through the draft Resolution; and read the following:

**RESOLUTION CELEBRATING AND AFFIRMING
THE RIGHTS AND DIGNITY OF LESBIAN, GAY, BISEXUAL, AND
TRANSGENDER PEOPLE IN DURHAM AND THROUGHOUT NORTH CAROLINA
AND CALLING FOR THE REPEAL OF SESSION LAW 2016-3/HOUSE BILL 2**

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WHEREAS, on February 22, 2016, the Charlotte City Council enacted a local ordinance that added marital status, familial status, sexual orientation, gender identity, and gender expression to the list of categories protected from discrimination in Charlotte's city contracting and public accommodations; and

WHEREAS, on March 23, 2016, in response to that Charlotte ordinance, the North Carolina General Assembly in special session ratified, and Governor Pat McCrory signed, House Bill 2 (Session Law 2016-3), the Public Facilities Privacy & Security Act; and

WHEREAS, House Bill 2 appears to repeal the Charlotte ordinance by establishing new statewide standards for what constitutes discriminatory practice in employment and public accommodations; and by establishing new statewide requirements for bathrooms and changing facilities in all public agencies, including schools; and

WHEREAS, the statute's omission of sexual orientation, gender identity, gender expression, and other categories from the statewide list of categories protected from discrimination means that not only do protections on these other bases appear to be unavailable under state law, but also that local governments appear to be preempted from offering these important protections to their residents; and

WHEREAS, the legislation also appears to eliminate the right of any person to bring a civil action in the state courts of North Carolina for a claim of discrimination in employment or public accommodations on account of race, religion, color, national origin, age, or biological sex (as well as handicap for employment only); and

WHEREAS, the legislation appears to be inconsistent with the Equal Protection Clause of the United States Constitution, which provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws" (US Const amend XIV, § 1); and the legislation is mean-spirited and "born of animosity toward the class of persons affected" (*Romer v Evans*, 517 US 620 [1996]); and

WHEREAS, the legislation has come under legal challenge in the U.S. District Court for the Middle District of North Carolina, in a lawsuit filed by Equality North Carolina, the American Civil Liberties Union, the ACLU of North Carolina, and Lambda Legal, in which one of the plaintiffs is Angela Gilmore, a Durham resident and professor at the North Carolina Central University School of Law; and

WHEREAS, over 120 major CEOs and business leaders from across North Carolina and all over the United States have signed a letter to Governor McCrory in which they argue that the legislation (quoting their letter) "is not a bill that reflects the values of our companies, of our country, or even the overwhelming majority of North Carolinians" and strongly urging the Governor "and the leadership of North Carolina's legislature to repeal this law in the upcoming legislative session"; and

WHEREAS, community organizations and business groups here in Durham have expressed their opposition to this legislation, including the Durham Convention and Visitor's Bureau, the Durham People's Alliance, and the Durham Committee on the Affairs of Black People; and

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WHEREAS, Durham is an open and welcoming city dedicated to the principles of equality, diversity, acceptance, nondiscrimination, and full inclusion and engagement by any resident in the civil rights, benefits, and privileges of all residents regardless of race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. The Durham City Council reaffirms its support for protecting and advancing the constitutional rights and equitable treatment of all of its residents and its opposition to discrimination in employment and public accommodations because of race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information.

SECTION 2. The Durham City Council respectfully urges the North Carolina General Assembly to repeal House Bill 2 at the earliest opportunity.

SECTION 3. The Durham City Council respectfully calls on all businesses providing public accommodations in the City of Durham to show their support for the rights and dignity of all people by openly welcoming LGBT people to their places of business, by providing gender-nonspecific bathroom facilities for their customers and employees wherever practicable, and otherwise to encourage their customers and employees to use the bathroom facilities that most closely align with their gender identity.

SECTION 4. The Durham City Council asks the City Clerk to send copies of this resolution to the members of the Durham County delegation to the General Assembly, the chair of the Durham County Board of Commissioners, the Speaker of the North Carolina House, the President Pro Tem of the North Carolina Senate, and the Governor of North Carolina.

This the seventh day of April, 2016.

A motion was made by Mayor Pro Tempore Cole-McFadden seconded by Council Member Moffitt to approve the resolution.

Council Member Johnson stated there were citizens present who wanted to speak on the resolution.

Mayor Bell recognized the following citizens for comments:

Rose Sanchez, a resident of Durham, stated she was in support of the Governor and felt he was right; and stated she felt many other citizens supported him despite the resolution that was being proposed today.

Luke Hirst, Patty Adams and LGBTQ Center of Durham Executive Director Helena Cragg, voiced support for the resolution; and Ms. Cragg requested that the council do more. She hoped that the council's work was not going to end today; and hoped the council could show the sort of leadership that Charlotte did; and at every opportunity proactively working to repeal HB2.

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MOTION by Mayor Pro Tempore Cole-McFadden, seconded by Council Member Moffitt, to adopt a Resolution Celebrating and Affirming the Rights and Dignity of Lesbian, Gay, Bisexual, and Transgender People in Durham and Throughout North Carolina and Calling for the Repeal of Session Law 2016-3/House Bill 2 was approved at 1:44 p.m. by the following votes: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Davis, Johnson, Moffitt, Reece and Schewel. Noes: None. Absent: None.

RESOLUTION #9969

Mayor Bell thanked Council Member Reece for his contributions in creating the framework and listening to others; and stated as a result the council had a resolution which they all unanimously supported.

Settling The Agenda – April 18, 2016 City Council Meeting

City Manager Bonfield announced the following items for the April 18th City Council Agenda: Consent Items 1 through 5; and General Business Public Hearing, Item 6.

MOTION by Council member Moffitt, seconded by Mayor Pro Tempore Cole-McFadden, to approve the agenda for the April 18, 2016 City Council Meeting as stated by City Manager Bonfield was approved at 1:44 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Davis, Johnson, Moffitt, Reece and Schewel. Noes: None. Absent: None.

There being no further business to come before the Council, the meeting was adjourned at 1:45 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk