

**CITY OF ROCK ISLAND
CITY COUNCIL STUDY SESSION
May 23, 2022 - 5:30 p.m.**

**City Council Chambers, City Hall, 3rd Floor
1528 Third Avenue, Rock Island, IL**

5/23/2022 - Minutes

CALL TO ORDER

Mayor Thoms called the meeting to order at 5:02 p.m. and welcomed everyone.

THIS MEETING WILL BE CONDUCTED BY AUDIO AND VIDEO CONFERENCE WITHOUT A PHYSICALLY PRESENT QUORUM OF THE ROCK ISLAND CITY COUNCIL DUE TO THE DISASTER DECLARATION ISSUED BY GOVERNOR PRITZKER.

ROLL CALL

Mayor Thoms asked City Clerk Samantha Gange to call the roll.

Present: Alderpersons Judith Gilbert, Jenni Swanson, Mark Poulos, Bill Healy, and Mayor Mike Thoms.

Absent: Alderpersons Moses Robinson, Randy Hurt, and Dylan Parker.

Staff: City Manager Todd Thompson, City Attorney Dave Morrison, City Clerk Samantha Gange, and other City staff.

PUBLIC COMMENT

Donica Johnson addressed Council via remote connection. She indicated she had a request for a gender neutral restroom in the new federal building that is being built in the downtown area. Hector Lareau, City Attorney remarked the federal building is not under City jurisdiction and that this request would need to be made through the Chief Judge, Honorable Sarah Darrow who is in charge of erecting the building.

PRESENTATION FROM DAVE MORRISON, CITY ATTORNEY ON THE HUMAN RIGHTS COMMISSION ORDINANCE

Mr. Lareau provided Council with an overview of the current Human Rights Commission ordinance and explained that members of the Commission and City Council asked for the power to issue subpoenas to aid in an investigation, if needed. He noted the current ordinance is very brief and only provides general duties and powers. It does not grant authority to render a judgement or enforce a policy related to discrimination. The legal team has spent a considerable amount of time reviewing the Illinois Human Rights Act as well as consulted with other municipal councils of similar size about their ordinances. He noted the process was very detailed and resulted in the proposed new ordinance.

The new version allows the Commission to engage complaints and require parties to respond. One of the most important provisions from an operational standpoint includes the separation of the Commission into two bodies; one body consists of seven members who serve as the fact finders and enforcers of the law and the other 6 members act as investigators. All complaints are routed through the Executive Director, who will then appoint two investigators from the Commission to investigate and determine if there is probable cause. In the event that probable cause is identified, a written complaint detailing the facts is issued to the responding party via certified mail or by a personal process server. At this point in the process, the investigators can try to engage with an alternative dispute resolution. If the complaint is resolved during the alternative dispute resolution process, then the case is closed and the Commission retains jurisdiction for one year to ensure any agreement reached between parties is honored.

However, if the complaint is not resolved with the alternative dispute resolution process or the complaint is dismissed, an informal public hearing can be held. Three of the seven fact-finding Commissioners hear the case and if the case still is not resolved or is unsuccessful, then a public hearing with a hearing officer and the City Attorney is held that is similar to a formal administrative hearing trial. The hearing officer presides over the case and the seven members of the Commission discuss and debate the facts and render a written decision.

Another significant piece of the proposed ordinance includes an Administrative Enforcement section, which provides the Commission with the power to enforce fines (not to exceed \$500), issue a cease and desist order, calculate damages, and reinstatement employment. Mr. Lareau noted the highly technical definitions that are also included in the new proposed ordinance and indicated that was the end of his overview and presentation. He asked if Council members had any questions.

Aldersperson Gilbert asked if all 13 members of the Human Rights Commission all meet together. Mr. Lareau responded affirmatively and noted they only all meet if there are matters to be taken up and discussed other than a human rights complaint. Aldersperson Gilbert noted the objectives in the new proposed ordinance are exactly the same as they were in the old ordinance.

In response to why the proposed new ordinance was 35 pages, City Attorney Dave Morrison remarked that in order to have the subpoena power, due process has to be clearly defined as well as the penalties the Commission can impose and how the appeal process works.

Aldersperson Gilbert referenced section 2-303 in the proposed ordinance regarding an arrest record and asked if that means if an applicant for a job who has an arrest record cannot be disqualified from employment. Mr. Morrison responded there are state and federal laws that dictate what an employer can consider and cannot consider as a disqualification from employment whether it be a conviction or an arrest record. There are exceptions for certain types of employment that are also listed in the ordinance.

In response to further questions regarding arrest records and convictions with regards to employment, Mr. Morrison noted there has been a big push recently regarding expungement of records and making it easier for individuals to obtain employment. The new proposed Human Rights Ordinance is structured to address those situations for both arrest records and convictions.

Aldersperson Gilbert noted some of the small businesses might not be aware of the recently passed state law that addresses arrest records and convictions.

Aldersperson Healy asked what is different in the new proposed Human Rights ordinance compared to state law and whether it was pulled directly from state law. Mr. Lareau remarked it

was not pulled directly from state law. He noted one of the biggest differences is that this ordinance is it does not assign concurrent jurisdiction to the Illinois Department of Human Rights (IDHR) or the federal Equal Employment Opportunity Commission (EEOC). If someone receives a probable cause letter from the City of Rock Island Human Rights Commission, they neither have the right to pursue it in court immediately, nor do they have the right to pursue it with IDHR or EEOC immediately as the City assumes jurisdiction over the complaint as there is no work sharing involved in the City's ordinance.

Aldersperson Healy provided an example of a possible scenario of a business found in violation and is fined \$500 and refuses to pay the fine and hires an attorney. He asked if the City would be liable in this situation. Mr. Lareau responded if the fine is not paid, the City Attorney can file a complaint in circuit court asking for the judge to sign an order requiring the business to pay the fine. He noted this a fundamentally discretionary action by the City from start to finish, which immunizes the City under the state Tort Act.

Aldersperson Healy noted this is already state mandated and asked if the City is reinventing the wheel with having its own Human Rights Commission and ordinance. Mr. Lareau responded it is duplicative of IDHR and EEOC, however the City has an active Commission who is more interested in exercising local jurisdiction. In response to another question from Aldersperson Healy, Mr. Lareau clarified that any Civil Rights complaint, regardless of jurisdiction (state or federal), does not have a judge presiding over the case until all other administrative processes have been exhausted. Mr. Morrison added that the process is very similar to MUNICES.

Aldersperson Gilbert referenced section 2-409 in the proposed ordinance with regards to exemptions and asked for clarification on what (A)(1)(a) means as to "the owner does not own or have a beneficial interest in more than three single family homes at the time of the sale". Mr. Morrison responded this is applicable to corporate owners and provided an example of someone who may have 20 or so single family homes for sale and if that is part of their business they are not exempt.

Aldersperson Gilbert asked for clarification regarding the definition of the child sex offender refusal under section 2-409(J). Mr. Lareau explained this means they can refuse to rent to someone who is a registered sex offender.

Aldersperson Gilbert noted section 2-701(A) of the proposed ordinance regarding Powers and Duties and asked for clarification on what it means. Mr. Morrison indicated that this pertains to adoption of bylaws by the Commission that are not in conflict with the ordinance itself.

Aldersperson Gilbert asked if Commissioners can file their own complaints. Mr. Lareau responded affirmatively and noted that Commissioners cannot file complaints on behalf of others.

In response to another question from Aldersperson Gilbert regarding the proposed ordinance reference to training for employees and what employees the Commission may have, Mr. Lareau responded it means members of the Commission assigned to investigate. He indicated the definition of employees includes those that are volunteers and do not receive compensation such as Commissioners.

Aldersperson Gilbert asked if there was a budget for the Human Rights Commission. Mr. Lareau responded this question would need to be answered by Executive Director Jerry Jones, who oversees the Commission and was unable to attend this meeting. Mr. Morrison remarked that this was a policy the City Attorney's office was asked to put together by the Commission and some members of City Council. Aldersperson Healy reiterated that the City would be on the hook for attorney fees and any other fees associated with a complaint. Mr. Morrison responded

affirmatively.

Aldersperson Swanson expressed concerns about the costs associated with attorney fees, among other things and where the funds would come from.

In response to questions about costs of issuing a subpoena, Mr. Lareau said Commissioners can issue subpoenas through certified mail. However, if the certified mail is refused then they would need to pay a process server which costs approximately \$75 - \$80. Mr. Morrison noted there was only one instance over the last five years where the Human Rights Commission would have needed the subpoena power.

Aldersperson Swanson asked if the IDHR could issue the subpoena. Mr. Morrison responded affirmatively and clarified once a complaint is filed with the City Human Rights Commission, the same case cannot also be filed with IDHR or EEOC. However, the City could decide not to hear the case and refer it to the state. Commissioner Christiana Headley (via remote connection) remarked there are time constraints with regards to filing complaints that could hinder a case.

Mr. Morrison said there were members of the Commission in the audience who wished to speak. Commissioner Greg Hampton addressed Council and said this is a question of whether or not the City wants to be neighbors to its own neighbors. He acknowledged that there are other means for individuals to file complaints through the state or federal governments. However, he opined it is in the best interest of the City to be the ones to solve local problems and to help citizens and businesses to learn to reconcile with each other instead of handing it off to a large government agency who might not try to reconcile the differences.

Commissioner Margie Mejia-Caraballo addressed Council and said that without having subpoena powers, people and businesses are not required to talk to them and they are unable to move forward with a complaint. She opined she believed subpoena powers would not be used most of the time, but would make people aware that if they do not cooperate then they can be subpoenaed. She noted that the City will have to pay costs related to human rights complaints regardless if they are vetted through the Commission or through other means of litigation.

City Manager Todd Thompson remarked most costs would come when the Commission has to enforce actions or hold hearings. He asked if the attorneys had come across any examples for the enforcement process where there was an independent hearing officer assigned, as some might argue it is problematic to have the same body such as the Commission prosecute and determine the outcome of cases. Mr. Lareau remarked he has acted as an independent hearing officer for various school districts and noted this apparatus does exist in many schools and is the most common process and is consistent with other Human Rights Commissions. Mr. Thompson noted that in the previous city he was at, the Commission had the right to issue subpoenas but no enforcement power (i.e. could not issue fines) and they would hear different cases and refer them to another agency.

Aldersperson Gilbert asked Mr. Morrison and Mr. Lareau to provide a summary of their role in a Human Rights case under this new proposed ordinance. Mr. Morrison responded the level of involvement depends on how the participants in the case interact with one another. They would need to be involved if there was a contested case and the City needed someone to move forward with a burden of complaint. The City Attorney would represent the City in the same type of way they do with Municipal Code Enforcement.

In response to a question about whether an attorney or judge sits on the City's Human Rights Commission, Mr. Morrison responded affirmatively.

Mr. Morrison remarked he would review a format similar to the one Mr. Thompson described where there is subpoena power but no enforcement power and will report back to Council whether or not they believe it is viable.

Commissioner Vincent Thomas remarked a few years ago there was an opportunity to receive grant funds for the Commission, however the state denied the grant application and indicated they were not substantially equivalent to the state's ordinance and laws with not having subpoena powers.

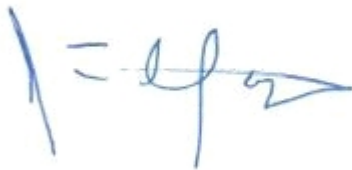
MOTION TO ADJOURN.

MOTION:

Aldersperson Healy moved to adjourn; Aldersperson Poulos seconded.

VOTE:

Motion passed on a 4-0-3 roll call vote. Aye: Gilbert, Swanson, Poulos, and Healy. Nay: None. Absent: Robinson, Hurt, and Parker. The meeting adjourned at 6:40 p.m.

A handwritten signature in blue ink, appearing to be 'S. Gange', written in a cursive style.

Samantha Gange, City Clerk