

**ADMINISTRATION AND FINANCE COMMITTEE
CITY COUNCIL CHAMBERS
140 WEST PINE STREET
MISSOULA MONTANA
March 24, 2010 1:05 – 2:15 pm**

Members present: Stacy Rye, Chair; Ed Childers; Renee Mitchell; Pam Walzer; Dick Haines; Lyn Hellegaard; Roy Houseman; Dave Strohmaier; Jon Wilkins; Bob Jaffe; Jason Wiener

Members absent:

Others present: Jim Nugent, George Curtis Davey, Bruce Speer, Jill Speer, Niki Zupanic, Jamee Greer, Katherine Beckley, Leigh Griffing, Peter Shober, Steve Oreskivich, Amy Carter, Lloyd Phillips, Gary Bakke, John Hendrickson, Ruth Link, Caitlen Lopple, Kelly Elam

I. Administrative Business:

A. Approve committee minutes dated [March 17, 2010](#)
Minutes will be approved at a later date.

B. Public Comment on items not listed on the agenda:
None

II. Regular Agenda:

A. Approve claims (accounts payable) - Consent Agenda (Brentt Ramharter)
Motion: The committee recommends the City Council approve [claims](#) totaling \$269,591.88 ([Detailed Claims](#))

1. Recommended refunding of the 2001 General Obligation Bond Issues in order to save future interest costs ([memo](#)).—Regular Agenda (Brentt Ramharter) **Held in Committee Informational Item.**

Leigh Griffing, Finance Department, stated she is providing this informational item to the council on behalf of Brentt Ramharter, Finance Director. The Finance department is working with the bond council to refund the 2001 General Fund Bonds. The savings estimated from these bonds totals \$75,000 over a 10 year period. She said Mr. Ramharter will provide additional information at a later date.

2. Missoula Civic Television Advisory Commission Annual Report ([memo](#)).—Regular Agenda (Joel Baird and Ginny Merriam) **Held in Committee**

Stacy Rye stated this item will be discussed at a later date.

3. Consider an ordinance amending Missoula Municipal Code Title 9 to add Chapter 9.64 entitled "Illegal Discrimination" generally prohibiting discriminatory practices in the areas of employment, public accommodations and housing on the basis of race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity or gender expression, and amending section 2.94.030 entitled "Percent for Art Programs established"; Section 5.82.080 entitled "Non-discrimination", Section 9.12.010 entitled "Housing Discrimination declared unlawful" and Section 12.58.100 entitled "Exceptions." ([memo](#))—Regular Agenda (Stacy Rye and Dave Strohmaier) (Referred to committee: 02/22/10) **(Remove from agenda)**

Stacy Rye stated this is a pre-public hearing and there will not be any motions to vote on.

Jon Wilkins asked which city department will receive and investigate the discrimination complaints.

Jim Nugent, City Attorney, stated the city does not have a method in place to investigate and mediate a resolution. If a person is cited three times in a 12 month time period, the fourth offense will cause more involvement with city staff and the police detectives. He noted municipal court will decide the case.

Mr. Wilkins asked Ms. Zupanic if ACLU will be involved with the investigations.

Niki Zupanic American Civil Liberties Union (ACLU) said the ACLU will not be involved. She said the city will determine if the incident is under state law or the city ordinance, but the state will investigate majority of the claims. The claims that are related to Lesbian Gay Bisexual Transgender (LGBT) under the ordinance will become a city municipal court issue and the judge will determine the outcome.

Mr. Wilkins asked if the word "perceived" can have different interpretations.

Ms. Zupanic stated the term "perceived" is used to describe the physical characteristics of a person, and it does not affect the act of discrimination. A person will not be found liable of discrimination because another person who perceived that there was discrimination. She noted the words "actual" and "perceived" are used to describe a list of classes.

Dave Strohmaier asked Dick Haines if the "military veterans" language proposed will be included in the ordinance.

Mr. Haines said he visited with a few veterans who both support and oppose the ordinance. He said there are other veteran related issues that need to be researched and considered. He said creating an ordinance primarily for military veterans may be an option.

Mr. Wilkins said he spoke with a few military veterans also, and since then, he has not decided if he would like military veterans added to the ordinance.

Ed Childers asked if the military veterans could be included in the ordinance at a later date.

Mr. Haines answered yes.

Renee Mitchell said Missoula is a very open town and through the years, different issues have raised, but they have always been overcome. She stated she hasn't heard or seen any discrimination issues and asked what has taken place to make this a council issue.

Ms. Rye said the Human Rights Network contacted her and said they are interested in legal and anti-discrimination ordinances throughout the Montana cities. She would like different groups to know she is interested in full rights for all citizens.

Mr. Strohmaier added the Human Rights Network also helped create the ordinance language. He has visited with several different groups and received responses that this is a concern to them, and he noted there have been several instances in Missoula where discrimination has been actual and perceived regarding sexual orientation and gender identity expression.

Ms. Mitchell thanked Mr. Strohmaier for his response.

Ms. Mitchell asked if Ms. Rye, Mr. Strohmaier or the ACLU created this ordinance, so she can answer her constituents when they contact her regarding the ordinance.

Ms. Rye stated Mr. Strohmaier, Mr. Nugent, the ACLU and herself created the language for this ordinance. She said if a certain group of people are being discriminated against, then they need to be protected.

Mr. Wilkins stated he has experienced discrimination. He said he has a family member that was gay and grew up in Great Falls where he experienced discriminated. Mr. Wilkins said he

encouraged his brother-in-law to move to Missoula and live a better life, and he believes his brother-in-law did live a better life up until he passed away.

Mr. Wilkins said he attends the University Congregation Church because it is open and accepts everyone. He does not believe in discrimination for people for any reason.

Mr. Wilkins is concerned for businesses and frivolous lawsuits that can occur. He said businesses need to defend themselves right or wrong and it will cost them money either way. He has seen this happen before and that is why he is concerned with the word "perceived."

He gave an example regarding a racial discrimination case where the person who filed the complaint lost the case, and it cost the business owner \$3,000 to defend himself. He does not want to see frivolous lawsuits and suggested clarifying the language to make it more concrete.

Mr. Wilkins does not believe anything he is hearing from emails and phone calls. He supports an ordinance to protect this group.

Mr. Wilkins commented he is disappointed that the state does not step in and create an anti-discrimination law regarding this issue. He knows the state was approached with this issue and asked for the details on why the state rejected the ordinance.

Mr. Childers asked how the ordinance would improve problems if it was passed and asked for previous examples that led to frivolous lawsuits.

Ms. Rye said she will provide the information.

Pam Walzer said one example of discrimination was when the two young men were walking on Higgins Ave. and a group of attackers perceived them as being gay. The two men were beaten by the attackers.

She said our society allows frivolous lawsuits whether they are valid or not. The definition section refers to the word "perceived" as to the one who is doing the discrimination and not to the person to whom the action is being done. She mentioned she was discriminated against in Utah as being a non-Mormon, and she knows what discrimination feels like.

Mr. Wiener said the details make the discussion confusing. He clarified the focus is on people's sexual orientation and the way they choose to express their gender and that it should not be a factor when one is looking for housing or employment.

Marilyn Marler said the ordinance should not be based on creating lawsuits for the city. The city can be sued for anything. She said she does not think this ordinance would create a floodgate of new lawsuits, because the people who file lawsuits need to have evidence.

Lyn Hellegaard referred to Title 9.64 section 9.64.010, Purpose and Intent "C". She asked what the ordinance has to offer above what the state and federal laws allow. She agrees with Mr. Wilkins that the frivolous lawsuits can create huge amounts of staff time and be costly for everyone involved and asked the council to keep this in mind.

Ms. Zupanic said the state and federal law does not protect LGBT people. The human rights act does prohibit discrimination for employment, housing and public accommodations. This ordinance prohibits the same, but it includes someone's sexual orientation.

Roy Houseman said the discussion keeps referring back to frivolous lawsuits or other items. He said what would happen if we try and remove African American people from a protected class. Imagine what the implications would be for that. A gay, lesbian or transgender person who experiences this type of discrimination should have rights and he supports that. He said we are trying to make sure there is humanity and that is a very important thing to address.

Mr. Nugent said in section 9.64.090 Violation – Penalty and Civil Remedy, "B" states" the defendant shall not collect attorney fees unless the claim is clearly frivolous, unreasonable, or factually groundless, or the claimant continued to litigate after the claim clearly became so." He said it does address frivolous lawsuits and suggested modifying the language in the ordinance to make it stronger.

Mr. Wilkins mentioned the biggest discriminating organizations in America is the federal government through the promotion of the "don't ask and don't tell" military policy.

Ms. Rye asked for public comment.

Bruce Speer stated there are several things that concern him about the ordinance. He heard the council say that discrimination creates strife and unrest, and he believes this ordinance would create tremendous strife and unrest in various areas of the city. He said the council is not clear on the word "perceived and not perceived." The ordinance is broad and discriminates against groups that are not listed and there is no mention about the homeless or other various groups that could claim they have been discriminated against. Churches are not listed either, and they fall under public accommodations.

Mr. Speer said any man who wants' to express his feminine side could use any women's public restroom or locker room in the city, and simple say "I'm feeling feminine today" and enter a place where woman are undressing, and he would be allowed to do so. He said he has discussed this issue with several women he knows and none of them are comfortable with that thought. He said by passing this ordinance there will be all kinds of complaints. He asked how the city will create law and order if high school boys enter the girl's locker room knowing they can.

Mr. Speer said if this ordinance passes and his wife or granddaughter is in a public restroom and is accosted or assaulted; he will file a lawsuit towards the business owner, the city, and all of the members on city council. He stated this ordinance will create lawsuits that will cost the city a lot of money. He said from a financial and common sense stand point, why would the city want to give Missoula a reputation that if you visit here and use public restrooms, your woman could be assaulted, and things can happen that they will not be able to control? Men can enter the YMCA woman's locker room, and nobody can do a thing about it. There are several other things to be considered but due to the lack of time, he could not comment further. He recommended the council; table the ordinance forever.

Ruth Link, Missoula Organization of Realtors (MOR) stated she is speaking on the behalf of MOR. MOR has concerns with the "perceived" language. She said their attorney pointed out section 9.12.050 Housing discrimination prohibited; the language is different than the definition of "perceived" in chapter 9.64. The attorney suggested the easiest method to correct this would be to incorporate by reference the definition of "perceived" from chapter 9.64, section 9.12.010, and that would correct MOR's concerns. She said she will send this information to council in written form upon request.

Lloyd Phillips stated the ordinance concerns him, and he doesn't believe it will make Missoula a safer city as it will cause strife and other issues. There are unintended consequences with anything the government does. He said this ordinance would create vulnerability to children and opportunities for predators.

Mr. Phillips expressed his concern about the council's comments pertaining to Ms. Walzer's comment about the two men attacked on Higgins Ave. because they were perceived as gay men. He noted the crime is that they were violently attacked, and that is a history of crime and not discrimination. To make a crime of perception is to make a crime out of thoughts that people have. He said if there are discrimination issues, maybe we should address it with the community. There are laws that already address some types of discrimination. Mr. Phillips is concerned about the businesses that will be affected by the ordinance, if it is perceived women are not safe in restrooms and showers. He noted health clubs are at risk when a man has a different perception of their gender and enters the woman's locker room. The ordinance will give them

access, and the business does not have any recourse. This ordinance creates all kinds of potential and unsafe conditions.

Mr. Phillips agrees with Ms. Rye for full rights for all citizens, but this is Montana. He said he would like to see fire arm owners not being discriminated against.

Mr. Phillips continued saying the ordinance will open the door for lawsuits; he researched other ordinances from cities with a similar ordinance, but he found they are not as broad as this one. He read about a case where a man entered a public restroom where there was a little girl in there, and the girl ended up strangled to death. Another situation in a western state, a man entered the bathroom and undressed in front of girls, because that person decided to do that based on how he felt that day. He concluded that gender expression is not defined in the ordinance and leaves a big open door.

Katherine Beckley, a Missoula resident, said she addressed Mr. Strohmaier about this ordinance. She mentioned she read an article that Salt Lake City, Utah passed a non-discrimination ordinance for people based on sexual orientation, and it was supported by the LDS church. Ms. Beckley stated she doesn't think the ordinance will allow anyone more access than they already have to go and take off their clothes in a bathroom. If there is a problem, she trusts the courts will protect the victims. If a biologically male identifies his self as a female and lives his entire life living as a woman and uses a woman's rest room, the ordinance protects him from being kicked out.

Gary Bakke, Missoula Chamber of Commerce, distributed a [handout regarding notice postings](#). He had a previous discussion with Mr. Strohmaier regarding the discrimination posting requirement including where information is to be posted and who it is suppose to affect. He asked if a conspicuous location, size and language for a posting could be defined in the ordinance.

Ms. Rye clarified the council is addressing the language for sexual orientation and gender identity expression. Most employee break rooms have a bulletin board where notices are posted for employees and this is the type of posting that is contemplated in the ordinance.

Mr. Bakke suggested a small statement in the ordinance of where the posting should be placed would be helpful.

Ms. Rye said she will discuss it with Mr. Strohmaier.

Pastor Peter Shober, University Congregational Church, supports the ordinance. He said he listens to discrimination stories from lesbian, gay and transgender people who attend his church, and they are the people who need to be protected.

Mr. Shober states this ordinance is protection for all of us, because equality is important in a democracy. Common sense has guided bathroom populations for a long time, and it is not a concern for him. This issue is not about opening a big can of worms, it is about putting hatred back where it belongs.

Pastor Amy Carter, University Congregational Church, supports this ordinance. She said she has heard stories from parishioners who are lesbian, gay, bisexual and transgender and how they face discrimination in Missoula. She said the stories are sad and difficult, and she believes this ordinance is important. She said she is disturbed that there is a perceived notion that all gay, lesbian, bisexual and transgender people may be pedophiles.

Curtis Davey, a 33 year Missoula resident, stated he has a 14 year old son in the city school system and is a concerned citizen. He stated Martin Luther King said injustice anywhere is injustice everywhere, and discrimination and prejudice is not acceptable.

Mr. Davey said the ordinance provides a civil course of action against Missoula citizens who fail to accept ambiguous gender identity. He said the word "perceived" refers to the perception of the

actor. The person who perceives their gender can change. It is not about how the other person perceives, it's how the individual perceives their person and their gender identity which can change, and the ordinance is not well defined.

Mr. Davey said if a person in his presence is engaging this type of life style, he must accommodate them despite his moral objection. This ordinance fails to contain any freedom of consciousness exemption. It acts as a crime bill taking away the freedom of Missoulians to recognize the biology as a fact. There are unintended consequences of this bill with the ambiguous nature of gender identity and the ability of perception to change. He said this ordinance will lead to some very bad consequences due to the ambiguity of this law and the way it is written. He said he opposes the ordinance and requests the council to oppose it also.

It was stated from council members and the public that there are complaints on file and a request for copies of written complaints were requested.

Ms. Rye said she will address the request.

III. **Held in committee**

1. Approve claims. (Ongoing) (Consent Agenda)
2. Approve journal vouchers. (Ongoing) (Consent Agenda)
3. Approve budget transfers. (Ongoing) (Consent Agenda)
4. An ordinance amending the municipal code as it relates to bike licensing. ([A&F](#)) (Returned from council floor: 12/15/08)
5. Implications of establishing maintenance districts. ([memo](#)) – Regular Agenda (Bob Jaffe) (Referred to committee: 05/11/09)
6. Review the FY 2010-14 CIP projects in committee ([memo](#)).—Regular Agenda (Brentt Ramharter) (Referred to committee: 03/23/09)
7. Clarify position of council member who also serves on the board of a non-profit agency that has dealings with the city. ([memo](#)) – Regular Agenda (Ed Childers) (Referred to committee: 07/20/2009)
8. [Resolution](#) of the Missoula City Council establishing a tourism business improvement district consisting of non-contiguous lands within the City of Missoula for the purpose of aiding tourism, promotion and marketing within the district. ([Exhibit A](#)) ([Exhibit B](#)) ([memo](#)) ([A&F](#)) (Returned from Council floor: 10/05/09)
9. Resolution establishing a Carousel Sunday Market and Festival in Missoula ([memo](#)). – Regular Agenda (Dave Strohmaier) (Referred to committee: 03/15/10)

IV. **Adjournment**

Respectfully Submitted

Kelly Elam

Kelly Elam
City Clerk Office