

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	November 7, 2022
Action Required:	Review the proposed revisions to the Charlottesville Human Rights Ordinance (Code of the City of Charlottesville, Chapter 2, Article XV) and propose next steps for revision or approval.
Presenter:	Todd Niemeier, Director
Staff Contacts:	Todd Niemeier, Director Allyson Davies, Senior Deputy City Attorney Ashley Marshall, Deputy City Manager
Title:	Amending the Charlottesville Human Rights Ordinance, Code of the City of Charlottesville, Chapter 2, Article XV (1 reading)

Background

On February 1, 2021, City Council approved amendments to the Charlottesville Human Rights Ordinance (Code of the City of Charlottesville, Chapter 2, Article XV), hereinafter referred to as the CHRO. These amendments included revisions to Sec. 2-433 of the CRHO, "Role of the Human Rights Commission." Sec. 2-433 (d) was amended by Council to read as follows:

Seek work share agreements with the Equal Employment Opportunity Commission ("FEPA") and the Department of Housing and Urban Development ("HUD-FHAP") to conduct investigations of employment and housing discrimination on their behalf, and enter into such agreement(s) subject to approval of City Council upon a finding that the agreement(s) would be in the best interest of the City.

The Charlottesville Human Rights Commission (HRC) and Office of Human Rights (OHR) present the work done since January 2021 to fulfill the role described in Sec. 2-433 (d) of the CHRO. This presentation includes proposed amendments to the CHRO to meet the requirements for entering a Fair Housing Assistance Program (FHAP) workshare agreement with the federal Housing and Urban Development (HUD) Fair Housing Office, referenced in the CHRO as "HUD-FHAP."

The City's entry into FEPA and FHAP workshare agreements has been a topic of discussion since 2011 when the Policy Action Team from the Government Work Group of the Charlottesville Dialogue on Race proposed the formation of the HRC. Since the establishment of the HRC and OHR in 2013, the previous two Directors of the HRC periodically explored the readiness of the HRC and OHR to take on the additional responsibilities that come with the FEPA and FHAP work share agreements.

Since the creation of the HRC and OHR in 2014, employment and housing have remained the most often identified protected activities associated with individual complaints and inquiries received by the OHR. The OHR defines complaints as individual contacts that present a jurisdictional allegation of

discrimination and defines inquiries as individual contacts that either present a non-jurisdictional allegation of discrimination or a non-discriminatory concern related to a protected activity. Since 2018, when the OHR refined data collection to capture a more nuanced picture of the types of inquiries and complaints received by the office, housing has been the predominantly identified protected activity. Over the past five years, from 2018 through 2021, the OHR received a total of 222 housing inquiries and 79 employment inquiries and 14 housing complaints, and 11 employment complaints.

While service provision data for CY2022 is still being tallied, the OHR has already surpassed the total number of incoming contacts recorded in CY2021. At the time of this report, service provision data had been counted through September and partially for October 2022. Total CY2022 incoming contacts were already at 2,487, which included 10 new complaints, in addition to those still in process from CY2021 and CY2020. Of the 10 complaints received this year, 5 allege housing discrimination. In CY2022, the average daily incoming contacts have not fallen below eight per day (in February and March) and rose to as high as twenty-one per day in September.

Discussion

In early 2021, the HRC began the work of researching the process of entering FHAP and FEPA workshare agreements by holding meetings with representatives from the HUD Fair Housing Office and the EEOC. During its regular, publicly noticed meeting on January 21, 2021, the HRC hosted a question-and-answer session with Erik Steinecker from the HUD Fair Housing Office about the FHAP workshare program. Mr. Steinecker outlined the details of the program and the prerequisites for a locality's entrance into a workshare agreement with HUD. On February 23, 2021, the HRC Chair and Vice Chair, along with OHR staff, held a work session with Cheryl Mabry (Director) and James Yao (Deputy Director) of State, Local, and Tribal Programs for the U.S. Equal Employment Opportunity Commission (EEOC) to discuss the process of applying and qualifying for a Fair Employment Practices Agency (FEPA) workshare agreement with the EEOC.

During the HRC's publicly noticed annual retreat on February 27, 2021, OHR staff presented a comparative overview of the entry requirements, timeframes, potential benefits, and potential challenges of entering into a FEPA workshare, a FHAP workshare, or maintaining the current enforcement authority under the amended CHRO approved by City Council on February 1, 2021. An updated version of this comparative overview can be found as an attachment to this memo. The HRC decided during the retreat that the pursuit of both the FEPA and FHAP workshare agreements should continue.

OHR staff assumed the responsibility of drafting a revised version of the CHRO to meet the requirement of substantial equivalence to federal fair housing, a prerequisite for entering a FHAP workshare. OHR staff also assumed the duty of beginning a draft request letter to the EEOC for the pursuit of a FEPA workshare. As stated above, housing has been the protected activity identified most often by individuals bringing complaints and inquiries to the OHR. Staffing levels in the OHR could likely only accommodate entering into one workshare agreement at a time. The FHAP workshare offered the most potential financial and training support of the two workshares, such that entering the FHAP workshare might permit staffing increases that would facilitate the future pursuit of the FEPA workshare. OHR staff, therefore, prioritized work on the FHAP workshare over the FEPA workshare in 2021 and 2022.

To enter into a FHAP workshare, a locality must have an active ordinance with language that is substantially equivalent to federal fair housing law. Throughout 2021 and 2022, OHR staff worked closely with Erik Steinecker in the HUD Fair Housing Office and Allyson Davies in the Charlottesville City Attorney's Office to draft the attached version of the CHRO which meets this requirement. The proposed amendments also include refinements to the CHRO overall to improve the enforcement process and clarify the scope of the human rights protection it provides. The following is a section-by-section summary and explanation of the major changes to the CHRO, including citations of enabling state and federal legislation from which the changes are derived.

One amendment that appears throughout the proposed revisions is a change from "probable cause", as the standard, in determinations rendered on a complaint, to "reasonable cause." The use of reasonable cause is consistent with the Virginia Human Rights Act, per Va. Code §§ 2.2-3907.D. – F. and the Federal Civil Rights Act, per 42 U.S. Code § 2000e-5.(b). Reasonable cause is also the standard used in federal fair housing law, per 42 U.S. Code §3610.

Section-by-section summary of amendments to the CHRO:

Sec. 2-430.2.

- This is a new section.
- Rather than defining the many terms used throughout the CHRO, this section instead cites the state and federal laws from which the terms used in the ordinance originate.

Sec. 2-431.

- This section has been replaced with a general policy statement based on Va. Code Ann. § 2.2-3900 and § 15.2-965.
- Secs. 2-431.1., 2-431.2., and 2-431.3 address the subjects from Sec. 431. In previous versions of the CHRO, prohibited discrimination within all protected activities was described in a single section. Because there are specific differences in what is protected within the protected activities, employment (Sec. 2-431.1.) and housing (Sec. 2-431.2.) have been separated into distinct sections, while public accommodation, credit, and private education (Sec. 2-431.3.) remain combined in another section.

Sec. 2-431.1.

- This is a new section.
- This section cites the specific state and federal laws that regulate unlawful employment discrimination rather than re-stating the protections verbatim within the CHRO.

Sec. 2-431.2.

- This is a new section.

- The language in this section is substantially equivalent to 42 U.S. Code §§ 3604-3606 and is required for FHAP qualification.
- Note that elderliness, source of funds, sexual orientation, gender identity, and status as a veteran are not protected classes under 42 U.S. Code §§ 3604-3606 but are protected under Va. Code § 36-96.1. and are therefore included here.
- Note that marital status is not a protected class under 42 U.S. Code §§ 3604-3606 or Va. Code § 36-96.1. but is protected within housing under Va. Code § 15.2-965.A.

Sec. 2-431.3.

- This is a new section.
- This section cites the specific state and federal laws that regulate unlawful public accommodation, credit, and private education discrimination rather than re-stating the protections verbatim within the CHRO.

Sec. 2-432.(f)

- Minor changes were made to improve clarity.
- A clause was added to ensure continuity of leadership in the absence of a Director.

Sec. 2-432.(g)

- Minor changes were made to improve clarity.
- This section was amended by City Council on February 1, 2021. It includes reference to policies and procedures (“operating procedures”) that City Council will create for the Commission.

Sec. 2-432.(h)

- This section was changed to ensure that the City Manager is authorized to retain outside counsel and is linked to Secs. 2-437.2.(d), (g), and (h), which involve the City filing a civil action related to a complaint of housing discrimination.

Sec. 2-433.

- Minor changes were made to improve clarity.

Sec. 2-433.(a)

- Minor changes were made to improve clarity.

Sec. 2-433.(d)

- This section was added by City Council on February 1, 2021.
- Minor changes were made to improve clarity.

Sec. 2-435.(a)(2)

- Minor changes were made to improve clarity.

Sec. 2-435.(d)

- This is a new clause based on Va. Code § 36-96.8 and 42 U.S. Code § 3610(a)(1)(A)(iii) that creates a mechanism for investigating potential systemic housing discrimination concerns in which there is no named complainant.

Sec. 2-436.

- This section was formerly reserved.
- Previous versions of the CHRO made no mention of the Charlottesville Office of Human Rights. This section is being used to codify the existence and function of the Office of Human Rights.

Sec. 2-437.

- This section has been subdivided into Secs. 2-437.1., 2-437.2., and 2-437.3.
- In previous versions of the CHRO, the investigation of individual complaints of discrimination within all protected activities was described in a single section. Because there are specific differences in the investigation procedures within the protected activities, employment (Sec. 2-437.1.) and housing (Sec. 2-437.2.) have been separated into distinct sections, while public accommodation, credit, and private education (Sec. 2-437.3.) remain combined in another section.

Sec. 2-437.1.

- This is a new section, based upon revisions to the former Sec. 2-437., dedicated exclusively to the investigation of employment discrimination complaints.

Sec. 2-437.1.(a)(1)

- Minor changes were made to improve clarity.

Sec. 2-437.1.(a)(2)

- This is a new clause.
- In accordance with Va. Code § 2.2-3907.A this clause establishes a statute of limitations and basic requirements for the filing of employment discrimination complaints.

Sec. 2-437.1.(a)(3)

- Minor changes were made to improve clarity.

Sec. 2-437.1.(a)(3)(A)

- Minor changes were made to improve clarity.

Sec. 2-437.1.(a)(3)(B)

- This is a new clause that addresses what the Office of Human Rights will do when presented with a complaint of employment discrimination in which the City of Charlottesville is the named respondent.

Secs. 2-437.1.(a)(4) – 2-437.(a)(4)

- Content was reorganized and minor changes were made to improve clarity.

Sec. 2-437.1.(a)(4)(B)

- Minor changes were made to improve clarity.

Sec. 2-437.1.(b)(2)

- This is a new clause that mirrors the language used in Sec. 2-437.2.(b)(1) to ensure a consistent process for all protected activities.

Secs. 2-437.1.(b)(2)(A)(i) – (v)

- Minor changes were made to improve clarity.
- “Informal dialogue” was added as a means of complaint resolution.

- The term “conciliation” was removed for clarity throughout, as “conciliation” has a specific meaning in Sec. 2-437.2., which should not be confused with “informal dialogue” and “mediation” as alternate means of complaint resolution.

Sec. 2-437.1.(b)(2)(B)

- Additional language added to clarify the process of opening a formal investigation.
- “Probable” was replaced with “Reasonable” cause, per Va. Code §§ 2.2-3907.D. – F. and 42 U.S. Code § 2000e-5.(b).

Sec. 2-437.1.(b)(2)(B)(i)

- A timeframe for completing an investigation of employment discrimination was added in accordance with Va. Code § 2.2-3907.H.
- While not expressly defined, all timeframes presented in state and federal law are presumed by default to refer to calendar days rather than business days. In the CHRO “calendar days” is used expressly to improve clarity.

Secs. 2-437.1.(b)(2)(B)(i)(I) – (III)

- These clauses were added to define the actions the OHR will take when an investigation takes longer than 180 calendar days to complete, or when a complainant or respondent is non-responsive to the Investigator.

Sec. 2-437.1.(b)(2)(B)(ii)

- This clause was added to clarify that statements received as part of an investigation should be under oath.
- While state law does not stipulate this requirement, this is consistent with 42 U.S. Code § 3610 and ensures consistent process is applied to investigations within all protected activities.

Sec. 2-437.1.(b)(2)(B)(iii)

- This clause affirms that an investigative report will be submitted to the Director at the conclusion of the investigation and is consistent with Va. Code § 2.2-3907.D.

Sec. 2-437.1.(b)(2)(C)

- Minor changes were made to improve clarity.

- “Probable” was replaced with “reasonable” cause per Va. Code §§ 2.2-3907.D. – F. and 42 U.S. Code § 2000e-5.(b).

Sec. 2-437.1.(b)(2)(C)(i)

- This is a new clause that specifies the action to be taken following a finding of reasonable cause in an employment discrimination complaint and is consistent with Va. Code § 2.2-3907.F.

Secs. 2-437.1.(b)(2)(C)(I)(i) – (ii)

- This is a new clause that specifies the actions to be taken following a finding of reasonable cause in which the complaint cannot be resolved through informal dialogue or mediation and the complaint is passed to the HRC for a vote on whether to hold a public hearing.

Sec. 2-437.1.(b)(2)(C)(ii)

- This is a new clause that specifies the actions to be taken following a finding of insufficient reasonable cause.

Sec. 2-437.1.(c)

- Minor changes were made to improve clarity.
- “Conciliation” was removed to avoid confusion with the use of this term in Sec. 2-437.2.

Sec. 2-437.2

- This is a new section that contains language that is substantially equivalent to 42 U.S. Code §§ 3610 and 3612, which is required for FHAP qualification.
- This section will have a significant impact on the function of the OHR and City Attorney’s Office.

Sec. 2-437.3

- This is a new section, based on the former Sec. 2-437., that consolidates the procedures for addressing complaints of public accommodation, credit, or private education discrimination.
- The intent of this consolidation was to separate these procedures from those for employment and housing discrimination complaints.
- The procedural changes in this section mirror those in Section 2-437.1, which addresses employment discrimination, except for the provisions specific to employment discrimination.

Sec. 2-438.

- This is a new section, which was formerly “Reserved.”
- This anti-retaliation clause mirrors federal law.
- The language in this section is substantially equivalent to 42 U.S. Code § 3617 and is required for FHAP qualification.

Sec. 2-439.1.

- Revised to clarify that this section only applies to the protected activities of employment, public accommodation, credit, and private education discrimination.
- “Probable” cause is changed to “reasonable” cause throughout this section.

Sec. 2-439.1.(c)

- Minor revision made for clarity.

Sec. 2-439.1.(e)(2)

- Gendered language replaced with “their.”

Sec. 2-439.1.(e)(5)

- Minor punctuation correction.

Sec. 2-439.1.(f)

- Minor grammar and punctuation corrections.

Sec. 2-439.2.

- Revised to clarify that this section only applies to the protected activities of employment, public accommodation, credit, and private education discrimination.

Sec. 2-440

- Reference to the Office of Human Rights added.

In addition to the amendments listed above, the following sections contain revisions created and approved by City Council on February 1, 2021, which were not reviewed by the Commission prior to their creation and approval by Council, and may merit further review and revision:

Sec. 2-432.(a)

- This section was amended by City Council on February 1, 2021. These amendments limit both the size and composition of the Commission.
 - Some Commissioners expressed concern about limiting the appointed membership of the Commission to nine (9) members.
 - Some Commissioners expressed concern about requiring two members to have professional expertise in employment or housing discrimination, personal experience with employment or housing discrimination, or membership within a group that experiences discrimination.

Sec. 2-432.(i)

- This section was amended by City Council on February 1, 2021. These amendments require quarterly reports to City Council and mention that the schedule for such reports would be included within the Commission's operating procedures.
 - To date, the Commission has not received a copy of the operating procedures or a schedule or format for quarterly reports.

Sec. 2-433.(f)

- This section was added by City Council on February 1, 2021, and references "operating procedures" approved by City Council.
 - To date, the Commission has not received a copy of the operating procedures.

Sec. 2-435.(c)

- This section was amended by City Council on February 1, 2021. The amendment requires that the Commission conduct a research project or review every two years. It also mentions the requirement for quarterly reports to City Council.

Finally, the Office would like to bring to Council's attention the need for proper staffing levels to engage in this work. In 2022 the Council approved one-time funding through an American Rescue Plan Act allocation for the Office of Human Rights to hire two (2) new staff members - an Intake Counselor and an Investigator. The proposed Human Rights Intake Counselor would focus on providing support for incoming contacts, and data entry. Further, upon successful interim certification into the FHAP workshare, this individual would also be responsible for entering service provision data into the HUD Enforcement Management System (HEMS). This individual would also submit the required service provision data to the EEOC, should the City enter a FEPA workshare. The anticipated current salary

and benefits expense for this full-time role is an estimated \$74,116.50 per year. This position will also require one-time funding for a laptop computer and computer software. The proposed Human Rights Investigator will be the person primarily responsible for investigating complaints of discrimination and compiling investigative reports. The anticipated current salary and benefits expense for this full-time role is an estimated \$101,147.98 per year. This position will also require one-time funding for a laptop computer, computer software, and a cell phone.

Alignment with City Council's Vision and Strategic Plan

The pursuit of the FHAP and FEPA workshare agreements aligns with City Council's vision of Charlottesville as a "leader in social and economic justice, and healthy race relations" that is "flexible and progressive in anticipating and responding to the needs of our citizens" and is a "united community that treasures diversity." Adopting the recommendations proposed below helps to ensure that Charlottesville moves toward becoming a "Community of Mutual Respect" with a "Smart, Citizen-Focused Government" that supports and protects "Quality Housing Opportunities for All," as well as "Economic Sustainability."

Community Engagement

The HRC received a draft of this memo and the proposed revisions to the CRHO in the publicly posted agenda packet for its regular meeting on September 15, 2022. During this meeting, the Director requested that Commissioners review both documents and provide feedback on or before October 3, 2022. Members of the public did not provide feedback during the September 15, 2020 meeting. Commissioners recommended no revisions on or before October 3, 2022.

The HRC completed its public review of the proposed revisions to the CRHO at its regular meeting on October 20, 2022. During this meeting, the Commission adopted the amended CRHO for recommendation to City Council at its meeting on November 7, 2022. Members of the public did not provide feedback during the October 20, 2022 meeting.

Budgetary Impact

The approval of the updated ordinance in full will require the continuation of increased staffing levels for the Office to provide appropriate direct service to our community. At this time, provided that the Council approves the updates - through an allocation of American Rescue Plan Act funding by Council vote, the office will be able to immediately hire two positions: a Human Rights Intake Counselor and a Human Rights Investigator. This funding is one-time funding and will need to be incorporated into the Office of Human Rights budget as a continuing staffing expense totaling roughly \$175,264.48. A brief description of the roles and responsibilities is listed above in the discussion section.

The Office also anticipates that there will be an uptick in the number of housing discrimination cases it receives, provided that the Council approves the ordinance updates and that the Office successfully obtains its interim certification into the FHAP workshare. Based on the workload during the three-year FHAP interim certification period, the City should evaluate whether a second Investigator should be hired prior to entry into a FEPA workshare.

Recommendation

Suggested Motion: "I move the ORDINANCE amending and reenacting Chapter 2, Article 15 of the Charlottesville City Code, to expand the duties of the Human Rights Commission in

relation to enforcement of laws that prohibit housing discrimination."

The HRC and OHR request that Council consider the proposed amendments to the CHRO and the potential entry into a FHAP workshare agreement with the HUD Fair Housing Office through the lens of feasibility, given the current staffing and workload of the OHR and the additional requirements of entering into a FHAP workshare agreement. The HRC and OHR are exploring entry into the FHAP workshare first, as it provides more financial support and other incentives than the FEPA workshare. If entry into the FHAP proves successful, the HRC and OHR are prepared to take the necessary steps toward entry into a FEPA workshare. It is the view of the HRC and OHR that entry into either a FHAP or FEPA workshare agreement is only feasible with adequate staffing, both within the OHR and the City Attorney's Office given the specific requirements of the FHAP program.

Alternatives

Should City Council elect not to approve the updates to the ordinance as proposed, the Office of Human Rights will not be able to successfully enter into the FHAP workshare agreement. The consequence of this inability to enter into a workshare agreement is that the OHR will struggle to maintain efficient and effective service to the community given our needs and barriers to affordable housing obtainment.

Attachments

1. ORD to Amend HRO - HRC Adopted - ADA - Council Agenda (PDF) (1)
2. 20221020 FEPA, FHAP, Ordinance Chart - ADA - Council Agenda (PDF)
3. 20221020 HRC & OHR CY2021 Report Memo - HRC Adopted - ADA - Council Agenda (PDF)
4. 20221020 HRC & OHR CY2021 Report - HRC Adopted - ADA - Council Agenda (PDF)