



**Human Rights Commission  
Meeting Minutes  
Regular Meeting  
November 19, 2020  
Virtual/Electronic Meeting  
6:30 pm**

Link to rebroadcast: <https://boxcast.tv/channel/vabajtzezyv3iclkx1a>

**1. WELCOME**

- a. CALL TO ORDER
  - i. Chair, Shantell Bingham, called the meeting to order at 6:31 pm
- b. ROLL CALL
  - i. Shantell Bingham
  - ii. Sue Lewis
  - iii. Jeanette Abi-Nader
  - iv. Mary Bauer
  - v. Ernest Chambers
  - vi. Jessica Harris
  - vii. Laura Keppley
  - viii. Kathryn Laughon
  - ix. Tobiah Mundt
  - x. Andy Orban
  - xi. Alex Oxford
  - xii. Lyndelee von Schill
- c. MISSION (recited by all): *Act as a strong advocate to justice and equal opportunity by providing citywide leadership and guidance in the area of civil rights.*

**2. MATTERS BY THE PUBLIC**

- a. PUBLIC COMMENT
  - i. None.
- b. COMMISSION RESPONSE TO MATTERS BY THE PUBLIC
  - i. None.

**3. MINUTES**

- a. Review of minutes from October 15, 2020 Regular Meeting\*
  - i. Motion to approve as written: Jeanette
  - ii. Second: Laura
  - iii. Discussion: None
  - iv. Vote
    1. In favor: 9
    2. Opposed: 0
    3. Abstained: 3 (including Chair)

**4. BUSINESS MATTERS**

- a. OFFICER NOMINATIONS
  - i. Ad hoc nomination committee met on 11/18/20
  - ii. Laura contacted all nominees to verify interest in pursuing nomination

- iii. Current slate of nominees
  - 1. Chair
    - a. Jessica
    - b. Mary
  - 2. Vice Chair
    - a. Kathryn
    - b. Sue
- iv. Commissioners can still nominate
  - 1. Contact Laura
- v. Nominees should prepare a statement to present at the next meeting
- vi. Six Commissioners submitted nominations via an electronic form
  - 1. Three nominees have not yet responded as to whether they would like to be on the slate
- vii. Procedural notes
  - 1. Commissioners can nominate the same person for both positions
  - 2. Commissioners can nominate up until the vote, including nominations from the floor
  - 3. HRC Director will control the election process
    - a. Requests a report from the nominating committee
    - b. Requests nominations from the floor
    - c. Holds the vote
- viii. Shantell offers to speak with any nominees for Chair if they have questions
- ix. Elected officers will take office at the January 2021 regular meeting
- b. ENFORCEMENT PROCESS REVIEW
  - i. OHR Staff presents an overview of the process for addressing individual complaints of discrimination
  - ii. Commissioner questions
    - 1. In what step does the Director offer recommendations following a determination?
      - a. OHR staff responds
        - i. Following an investigation and a determination of probable cause, as per 2-439.1 (b) of the Ordinance.
    - 2. Who authorizes the application for a *duces tecum*?
      - a. Deputy City Attorney responds
        - i. The City Manager has the ultimate authority over actions taken by any City department.
    - 3. There are no timeframes associated with the enforcement process, so determinations could be delayed. Can timeframes be added and enforced?
      - a. OHR Staff responds
        - i. There are no timeframes specified in the Ordinance
        - ii. OHR Staff must consider statutes of limitations, especially with employment cases, as they can affect the Complainants ability to file with the EEOC.
        - iii. May also affect other protected activities and ability

- to file in General District Court
- iv. The OHR recently received feedback from the HUD Fair Housing Office on aspects of the Ordinance that require changes for substantial equivalence to federal fair housing law
  - 1. The HUD attorney noted the absence of timeframes as something that needed to be amended should the OHR/HRC seek to become a FHAP
- b. Deputy City Attorney responds
  - i. Recent delays in the determination process are due to the absence of an HRC/OHR Director/Manager
  - ii. The responsibility thus falls to the City Manager, which is not the intended process
  - iii. Advocating that the HRC/OHR fill the Director/Manager and Deputy City Manager roles is advised
- 4. Is the statute of limitations tolled during the investigation of Title XII complaints?
  - a. OHR staff responds
    - i. Statute of limitations clock does not stop when Complaints file with the OHR
  - b. Deputy City Attorney responds
    - i. OHR also advises Complainant of option to file with the EEOC, for applicable cases
  - c. OHR staff responds
    - i. Following the passing of the Values Act the OHR's authority to investigate employment cases could expand if Council approves the recent amendments to the Ordinance adopted by the HRC
    - ii. The Values Act repealed a provision in the Virginia Human Rights Act that previously limited the OHR's jurisdiction in employment cases
- 5. What is the process for adding timeframes into the Ordinance?
  - a. OHR staff responds
    - i. The HRC could consider voting to adopt further amendments to the Ordinance after Council has had the opportunity to review and approve the current set of adopted amendments
    - ii. Current adopted amendments are being reviewed by the City Attorney's Office, along with a memo to Council outlining the reasons for the amendments
  - b. Deputy City Attorney responds
    - i. Suggests that Chair and OHR staff should be present at the Council meeting during which the amendments are being considered to advocate for

specific reasons to amend the Ordinance

- ii. Acting City Attorney has reviewed the memo and the adopted amendments
- iii. Deputy City Attorney will do a final review of the memo and ordinance
- iv. Final step is to request a spot on an upcoming Council agenda

c. RESOLUTION HR20-2 REVISIONS

- i. Chair notes that other Commissions are also seeking an internal process for accountability and assurance of equity and inclusion
- ii. OHR staff attempted to include revisions based on the comments during the October HRC regular meeting
- iii. Commissioner comment
  1. Felt changes addressed concerns from the last meeting
    - a. Appreciates that it notes that a process will be developed
    - b. Acknowledges the complexity of creating a list of actions that that may be harmful to the Commission
- iv. Commissioner comment
  1. Correction to final WHEREAS section: "public trust"
    - a. Corrected in the draft on Box
  2. Regarding the list of actions that may be harmful
    - a. Notes the influence that Commissioners have on social media should be explicitly addressed
- v. Commissioner comment
  1. Clarifies the difference between previous draft and the current draft
    - a. Current draft recommends the creation of a procedure
    - b. Previous draft was the procedure
- vi. Commissioner comment
  1. Expresses preference for previous draft from the standpoint of clarity
  2. Feels previous draft served as a better template for other boards and commissions
  3. Feels like the current version buries the process by recommending a separate procedural document
- vii. Commissioner comment
  1. Concurrs that if the procedure is imbedded within the resolution then it seems easier to find
  2. Transparency of the process and procedure should be considered
    - a. OHR staff responds
      - i. OHR documents could be make more publicly accessible through City website
      - ii. Currently public can find documents via Box.com link on HRC agendas
- viii. Commissioner comment
  1. Drafting a resolution that contains the procedures is more

publicly accessible than embedding the procedures in the HRC Rules and Procedures

- ix. Commissioner comment
  - 1. Expresses concern that this is a resolution to craft a resolution
  - 2. Forming an ad hoc committee to write the procedural resolution would be a better use of time
    - a. OHR staff responds
      - i. HRC could move to adopt the existing resolution then appoint an ad hoc committee to develop the procedure
- x. Commissioner comment
  - 1. Previous draft of resolution contained a procedure
  - 2. Feels that the concerns about the previous draft stemmed from how it was created
    - a. No ad hoc committee formed to draft the original version
    - b. Chair, Vice Chair and OHR staff drafted with guidance for Deputy City Attorney for presentation to HRC for consideration
- xi. Motion
  - 1. Move to revert to the original version of this resolution.
    - a. Kathryn
  - 2. Second
    - a. Lyndele
  - 3. Discussion
    - a. Commissioners review the previous draft language
    - b. Include a conditional clause that states that the Commission would recommend removal of the Commissioner only if good cause was determined
    - c. Could include a provision that the Commission will set up an ad hoc committee to investigate
    - d. Procedure could include three options for response: do nothing, reprimand, or remove
  - 4. Move to table the motion.
    - a. Kathryn
  - 5. Second
    - a. Lyndele
  - 6. Vote
    - a. In favor: 11
    - b. Opposed: 0
    - c. Abstained: 1 (Chair)
- xii. Next steps
  - 1. Chair requests a show of hands for an ad hoc committee to work on a new draft on the resolution
    - a. No Commissioner interest in an ad hoc committee
    - b. Chair and OHR staff will start a revised draft and share with the Commission in advance of the December meeting
  - 2. Re-cap of suggested revisions

- a. Add a clause that ad hoc committee would be formed to investigate
    - b. Add a clause that includes three options for a course of action: do nothing, reprimand, or remove
- d. CITY TEMPORARY STAFFING DISCUSSION
  - i. Commissioner presents background as understood
    - 1. City has a practice of hiring temporary positions that in practice become more like permanent positions
    - 2. Result is that long-term employees who are in temporary positions cannot access benefits
    - 3. Lyndele began a draft document with attached recent data from Human Resources pertaining to temporary employees
  - ii. Commissioner discussion
    - 1. Discussion is about the general practice of temporary employment versus the recent actions taken by the City regarding temporary employees
    - 2. Recommendation might be for the City to clarify hiring categories
    - 3. One issue is that people were taking on multiple temporary, seasonal, or part-time positions resulting in the equivalent workload of a full-time City employee
      - a. Some people are working in these positions with the intention of short-term employment
      - b. Some people are routinely combining jobs to create the equivalent of full-time, long-term employment
        - i. City should be aware of this situation and consider converting these positions to something with benefits
    - 4. How many people are working beyond the short term and not receiving benefits?
      - a. Clarify the number of people who are using multiple temporary positions as long-term employment
      - b. Make a distinction between others who may be only seeking short-term employment without benefits
    - 5. Commission's role may only be to recommend that the City look into this more deeply
      - a. Encourage the City to recognize when people are using multiple temporary/seasonal/part-time positions to equate to full-time, long-term employment
  - iii. Deputy City Attorney responds
    - 1. City already has a legal obligation to offer benefits to employees that reach a certain number of hours
    - 2. Parks and Recreation has 492 different positions classified by duration
      - a. Part-time, benefitted
      - b. Full-time, benefitted
        - i. Year-round positions
      - c. Seasonal (part-time and full-time)
        - i. Categorized depending on the duration of the

- program tied to the position
3. Qualification for benefits is a different issue than the type of position
  4. City could move toward having fewer types of positions
    - a. For example, at present Parks and Recreation may have 492 positions available but only 150 people are employed to fill those positions
  5. All employee hours are tracked
    - a. Depending on the hours worked, they may qualify for health insurance, retirement, or other benefits
    - b. Even if an employee works enough hours to qualify for benefits, they may still not be in a permanent position
  6. Commission could do the following
    - a. Form a long-term committee to look at this issue
    - b. Consider how it attaches to the Commission's mission
- iv. Chair notes that classification is a hiring issue that existed prior to the pandemic
1. This issue was raised most recently because employees were let go
    - a. Was this because of the pandemic closing different programs?
    - b. Was this because of shifts in departmental leadership?
- v. Deputy City Attorney responds
1. This issue was raised in City Council because of the following
    - a. During the week of the start of the pandemic closures, of the 492 Parks and Recreation positions, 152 people were scheduled to work
    - b. City closed and 152 people could not work.
    - c. City paid all 152 employees from March through July even though they were not working
    - d. At the turn of the fiscal year
      - i. 30 to 40 people of the 152 were in customer service representative positions, which is a broad title that qualifies them to do a variety of tasks
        1. They were asked to come back to work to do jobs that were not exactly same as the work they regularly did
      - ii. City stopped paying all other employees in temporary positions that were not customer service representatives
        1. Potential financial shortfall if kept paying
        2. No time in the near future when any of these programs would re-open
          - a. Many were summer programs
          - b. Pandemic only getting worse
  2. Separate question
    - a. Should the City move from having many part-time

positions to fewer full-time positions?

- vi. Commissioner responds
  - 1. City could also be mindful of what it means to be temporary and part-time
  - 2. City should consider equity of treatment during a pandemic, as it relates to part-time and temporary vs. full-time and permanent
    - a. For example: If City continues to pay full-time salaried employee who cannot fully do their job, then City could consider paying temporary/seasonal part-time employees
    - b. Looking into this might reveal whether City is treating people as expendable because of classification
    - c. Another example: Instead of laying people off during the pandemic, offer other work
- vii. Deputy City Attorney responds
  - 1. Not aware of any situation in which full-time, salaried employees were being paid while not working
    - a. Either continued to work on-site or remotely
  - 2. All temporary employee were offered the opportunity to enter into a customer service representative position, even if they were in a different position previously
    - a. For example: customer service representatives were employed to tasked with temperature checks
- viii. Commissioner discussion
  - 1. Commission could make a general request to Council to continue looking into this
    - a. This is not an issue that can be resolved by the Commission
    - b. Individual Commissioners can go to Council meetings as City residents and encourage Council to pursue this
  - 2. This is a complex Human Resources issue but does not present a clear issue of discrimination
  - 3. Commission could request that the City examine the demographics of people who are employed in temporary vs. permanent positions
    - a. Could look for disparate impact on specific populations
    - b. Draft memo requests this information
  - 4. Commission does not have the capacity to evaluate the data
  - 5. Commission cannot make a call regarding why temporary employees chose not to accept offer of customer service positions
  - 6. Regarding the offer of customer service work
    - a. When was the opportunity offered?
    - b. How was the information passed to employees?
    - c. Were employees well informed about the resources attached to the opportunity?
- ix. Next steps
  - 1. **Re-write memo to share Commission concerns and recommend that Council look into this further**



a. Lyndele and Kathryn will collaborate

e. OHR STAFF REPORT

- i. Notes that written report is included in agenda packet
- ii. All protected classes included in the Ordinance amendments adopted by the Commission are now included in the service provision data
- iii. Case 2019-1
  1. May lead to a public hearing
  2. Suggests that Commission consider forming a committee to both serve as the hearing panel and to develop a set of procedures
  3. Prince William County HRC procedures are included in the agenda packet for reference
- iv. Case 2020-1
  1. Resolved with informal dialogue

f. CHAIR UPDATE

- i. Commission retreat
  1. Find a date
  2. Consider a facilitator for specific topic
  3. OHR staff will send a Doodle poll for a date and time
  4. OHR staff will set up a document on Box.com for Commissioners to submit retreat ideas
  5. Director previously held the planning of the retreat and did not engage the Commission in planning
    - a. Commission can explore how it handles retreat planning in the future
    - b. Incoming Chair will ultimately approve the retreat agenda
  6. General intent of the retreat
    - a. Build comradery
      - i. Group norms
      - ii. How to work as a group
    - b. Strategic planning
      - i. Goals for the coming year

**5. WORK SESSION**

- a. AD HOC COMMITTEE UPDATES
  - i. None

**6. MATTERS BY THE PUBLIC**

- a. PUBLIC COMMENT
  - i. None
- b. COMMISSION RESPONSE TO MATTERS BY THE PUBLIC
  - i. None

**7. COMMISSIONER UPDATES**

- a. Virginia Association for Human Rights
  - i. Still working on bylaws revisions
  - ii. Will forward draft to all member HRC's when complete

**8. NEXT STEPS**

- a. Shantell and OHR staff will update HR20-2.
- b. Nominations committee is still accepting nominees for Chair and Vice Chair

- c. Lyndele and Kathryn will take the lead on drafting a memo regarding temporary employees
- d. OHR staff will begin 2021 HRC Retreat planning
  - i. Create a Box.com document for accepting retreat ideas
  - ii. Send a Doodle poll with dates for the retreat
- e. Ad hoc committee for developing public hearing procedures and panel
  - i. Volunteers
    - 1. Laura
    - 2. Alex
    - 3. Mary
  - ii. OHR staff will coordinate meeting with ad hoc Committee and Communications staff to set a date and time
    - 1. Brian Wheeler notes that Commissions have up to 6 hours or 2 occasions of meeting time per month
  - iii. Laura will start an online document to start the discussion

**9. ADJOURN**

- a. Meeting adjourned at 8:30 pm.