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Title: AN ORDINANCE AMENDING CHAPTER 29C OF DULUTH CITY CODE UPDATING THE CITY'S HUMAN RIGHTS ORDINANCE BY CLARIFYING THE POWERS AND DUTIES OF THE COMMISSION AND HUMAN RIGHTS OFFICER, DECREASING THE SIZE OF THE HUMAN RIGHTS COMMISSION FROM 15 TO NINE MEMBERS, AND CORRECTING REFERENCES TO STATE STATUTES.

Sponsors: Gary Anderson

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11/21/2016	1	City Council	read for the first time	

AN ORDINANCE AMENDING CHAPTER 29C OF DULUTH CITY CODE UPDATING THE CITY'S HUMAN RIGHTS ORDINANCE BY CLARIFYING THE POWERS AND DUTIES OF THE COMMISSION AND HUMAN RIGHTS OFFICER, DECREASING THE SIZE OF THE HUMAN RIGHTS COMMISSION FROM 15 TO NINE MEMBERS, AND CORRECTING REFERENCES TO STATE STATUTES.

CITY PROPOSAL AND SPONSORED BY COUNCILOR ANDERSON:

The city of Duluth does ordain:

Section 1. That Section 29C-2 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-2. Definitions.

For the purposes of this Chapter, the definitions contained in Minnesota Statutes Section 363A.043 are incorporated by reference into this Section. In addition, the following words and phrases shall have the meanings given them.

Commission. The Duluth human rights commission.

Complainant. The charging party.

Authorized community organization. A community organization selected and trained by the commission which agrees to work cooperatively with the commission and to undertake investigations consistent with the requirements of this Chapter.

Respondent. A person against whom a complaint has been filed or issued.

Rules. Rules to implement the provisions of this Chapter, and adopted by the human rights commission.

Section 2. That Section 29C-3 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-3. Duluth human rights commission--created.

There is hereby created a permanent Duluth human rights commission which shall consist of ~~15~~nine members, who shall be appointed by the mayor and be subject to the approval of the city council.

Section 3. That Section 29C-4 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-4. Same--Terms of office, qualifications, compensation.

The ~~15~~ nine persons first appointed and approved for membership on the commission shall be appointed for the following terms: ~~five~~three persons shall be appointed for a term of three years, ~~one of whom shall be selected as chairperson~~; ~~five~~three persons shall be appointed for a term of two years; and ~~five~~three persons shall be appointed for a term of one year. Thereafter, any person appointed to the commission shall be appointed for a term of three years. Any member or former member may be reappointed for up to two full terms. The commission members should broadly represent the city's diverse population, with consideration of race, religion, ethnicity, heritage, national origin, gender, gender identity, sexual orientation, disability, veteran status, socioeconomic status, geographic location within the city, housing status and age. Members shall serve without compensation.

Section 4. That Section 29C-5 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-5. Same--Powers and duties generally.

The commission shall have the following powers and duties:

(a) To identify and review policies and practices of the city of Duluth and its boards and commissions and other public agencies within the city with the goal of fostering greater mutual understanding and respect;

(b) To collaborate with the public and private sectors to foster awareness, education and guidance on methods to discourage and eliminate discrimination citywide;

(c) To serve as a forum for the ongoing discussion of human rights issues that engages the broad community in an open, honest, and creative dialogue about equity and opportunity;

(ad) To receive any complaint of a violation of this Chapter within one year after the occurrence of the alleged violation;

(1) Complaint. The commission may accept complaints for action consistent with this Chapter. All complaints must be verified and made in writing on forms provided by the commission and signed by a complainant (the complainant). When any complaint is accepted by the commission, the commission shall serve notice to the complainant, as required by Minnesota Statutes Section 363A.416 of Minnesota Statutes, as to the complainant's options and rights relative to the Minnesota Human Rights Act and any time limitations for exercising those rights;

(2) Priority case. The commission shall give priority to investigating and processing those complaints in which there is evidence of irreparable harm if immediate action is not taken. If, at any time after the acceptance of a complaint, the human rights officer has reason to believe that a respondent has engaged in any unfair discriminatory practice, the human rights officer may file a petition in the district court seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this Chapter, including an order or decree restraining the respondent from doing or procuring an act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have the power to grant

temporary relief or a restraining order as it deems just and proper. No relief or order extending beyond the time required to properly investigate the complaint and allow the commission to determine whether there is probable cause to believe a violation occurred shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice;

(3) Notice to respondent and answer. When a complaint is accepted, the commission shall within ten days serve a copy of the complaint on the party alleged to be making the discriminatory practice (the respondent) personally or by mail and shall include a statement of the respondent's procedural rights and obligations under this Chapter and a form for the filing of an answer to the complaint. An answer shall be filed by the respondent within 20 days of service of the complaint on the respondent. Failure to file an answer by a respondent may be considered an admission of the allegations in the complaint;

(4) Transfer to state. The commission may transfer any complaint to the state commissioner of human rights for further proceedings. Unless or until such complaint is so transferred, the commission may investigate such complaint and may determine whether there is probable cause to believe that a violation has occurred. The filing of a complaint with the commission shall preclude the option of filing the same charge with the state and the filing of a charge with the state shall preclude the option of filing the same complaint with the commission;

(5) Delegation to authorized community organization. The commission may delegate to an authorized community organization the authority to investigate a complaint consistent with the requirements of this Chapter;

(6) Investigation. The human rights officer, or any agency or person designated by the commission, shall utilize the office of the city attorney to subpoena persons and documents in its investigation. The human rights officer, or any agency or person designated by the commission, shall commence its investigation upon accepting the complaint and shall complete its investigation within 60 days following the acceptance of the complaint;

(7) Mediation. At any time, including prior to the acceptance of a complaint, either party may request that mediation be undertaken or the human rights officer or commission may direct the parties to undertake mediation. Mediation may be conducted by any appropriate neutral third party and may include any form of alternative dispute resolution, including binding or non-binding arbitration. The commission may establish rules for the conduct of mediation and the formation of conciliation agreements;

(8) Probable cause. Within 30 days following completion of the investigation, the commission or such members of the commission as may be designated, but not fewer than five four commissioners, shall meet and determine whether there is probable cause to believe a violation has occurred. The human rights officer shall present the evidence obtained during the investigation. The commission shall adopt rules to govern the conduct of hearings held to review evidence and make a finding of probable cause. Any determination that there is probable cause to believe that a violation of this Chapter has occurred can be achieved only by a concurrence of not less than a majority of the members of the commission as have been designated to make such determination;

If the probable cause determination is not made within 100 days following the acceptance of the complaint, the complainant shall be informed in writing of the reasons why the determination has not been made;

(9) Conciliation agreement. If probable cause is found, the commission shall attempt to obtain voluntary compliance with the applicable provisions of this Chapter. Any conciliation agreement shall be signed by both parties and approved by the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this

Chapter;

(10) Action by commission. Any determination that there is probable cause to believe that a violation of this Chapter has occurred may be prosecuted by the commission. If the commission determines that it cannot obtain voluntary compliance or if the respondent refuses to participate in alternative dispute resolution procedures within 30 days after a finding of probable cause, the human rights officer may prosecute the complaint and seek civil remedies pursuant to this Chapter. The city attorney or a qualified attorney-at-law designated by the commission shall serve as legal counsel to assist the human rights officer in fulfilling the duties of this Chapter. Any final action taken by the commission under this Chapter is subject to judicial review upon application of an aggrieved party;

(11) Staff. The city shall provide administrative and investigative personnel, through the city's general budgetary process, to undertake the requirements of this Chapter;

~~(b) To promote cooperation among all persons and groups for the purpose of effectuating the purposes and policies of this Chapter;~~

~~(ee) To confer with and advise the city's equal opportunity representative;~~

~~(df) To recommend legislation to the mayor and the city council which will further equal opportunity in the city;~~

~~(eg) To make an annual written report and presentation of its activities to the city council, and the mayor, and the public that outlines its efforts during the preceding year to identify and address discrimination in our community, to facilitate a community dialogue regarding issues related to human rights, and to process individual complaints of unlawful discrimination. The report will also outline the commission's work plan for the coming year; —which report shall also be released directly to the community and local news media;~~

~~(fh) To adopt establish rules and procedures bylaws for the conduct of its business and to elect a commission chair and vice chair;~~

~~(gi) The Duluth human rights commission shall have any of the powers and duties of a local commission, as defined in Chapter 363 of Minnesota Statutes Section 363A.03, Subd. 23.~~

Section 5. That Section 29C-6 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-6. Human rights officer.

There is hereby established the position of human rights officer, which position shall have the following powers and duties:

(a) Assist the commission in performing its duties;

(b) Design orientation and ongoing training for city staff, councilors, and city boards and commissions on matters related to human rights, discrimination, equity, and opportunity;

(c) Serve as the liaison to the city council on matters being addressed under this Chapter;

(da) Directing, coordinating and overseeing the process used for receiving complaints of discrimination under this ordinance;

(eb) Investigating discrimination complaints;

(fe) Presenting evidence obtained during an investigation to the commission in order to enable the commission to determine if there is probable cause to believe that a violation of this Chapter has occurred which relates to discrimination;

(gd) At any time after a complaint is filed, facilitating mediation or other alternative dispute resolution procedures between the complainant and the respondent;

(he) Taking any actions necessary to secure compliance with this Chapter, including litigation;

(if) Supervising staff; administering programs related to discrimination and

affirmative action; providing resources to public and private organizations about discrimination and remedies; preparing budgets and grant proposals and administering grants.

~~The human rights officer shall possess the following minimum employment qualifications:~~

~~A combination of education/experience which demonstrates proficiency in the following knowledge, skills and abilities:~~

- ~~(a) Knowledge of regulations related to equal employment opportunity, affirmative action, discrimination and harassment;~~
- ~~(b) Ability to read and interpret government documents;~~
- ~~(c) Ability to communicate effectively in writing and speaking, including the ability to speak before large audiences;~~
- ~~(d) Ability to maintain confidentiality;~~
- ~~(e) Ability to work cooperatively with community groups;~~
- ~~(f) Ability to collect, assemble and interpret data, and to make recommendations based on findings;~~
- ~~(g) Ability to maintain effective working relationships with other staff members, the public and elected officials;~~
- ~~(h) Ability to work with diverse groups and communities of color.~~

~~The human rights officer shall be appointed by the mayor with the approval of the city council and may only be removed by the mayor with the approval of the city council. The human rights officer may only be removed by the mayor with the approval of the city council or upon the end of the mayor's term of office. The mayor shall consult with ~~representatives~~ the chair of the human rights commission in the appointment process. ~~The human rights officer shall be appointed solely on basis of the ability to perform the duties and functions of the office, as set forth in this Chapter.~~~~

Section 6. That Section 29C-7 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-7. Unfair discriminatory practices.

~~Section 363.03 of Minnesota Statutes, Section 363A.08 through 363A.26 is hereby incorporated by reference into this Section.~~

Section 7. That Section 29C-9 of the Duluth city code is hereby amended to read as follows:

Sec. 29C-9. Civil remedies.

(a) After a finding of probable cause, and in addition to criminal penalties, the commission may refer the matter to the city attorney or any other qualified attorney to maintain a civil action on behalf of the complainant;

(b) Any violation of this Chapter may be redressed in a civil action in district court. Any such action shall be heard by a judge without a jury. The court may grant any of the following relief:

(1) Temporary or preliminary relief pending final disposition if such relief is necessary to carry out the purposes of this Chapter;

(2) Order the defendant to pay compensatory damages to the person who was discriminated against, including damages for mental anguish or mental suffering, in an amount of up to three times the amount for all such damages sustained;

(3) Order the defendant to pay punitive damages, in the amount not to exceed \$8,500, to the person who was discriminated against;

(4) Order the defendant to refrain from violating the provisions of this Chapter which it finds the defendant to have violated;

- of this Chapter;
- (5) Order the defendant to act affirmatively so as to effectuate the purposes of this Chapter;
 - (6) Allow a prevailing complainant reasonable attorney's fees and costs;
 - (c) After a finding of probable cause, the commission may so certify to a licensing or regulatory agency and, if the respondent does not cease to engage in such discriminatory practice, the licensing or regulatory agency may take appropriate administrative action including suspension or revocation of the respondent's license;
 - (d) As provided in ~~Section 363.117 of Minnesota Statutes~~ Section 363A.33 and notwithstanding the provisions of any law or ordinance to the contrary, a person who has filed a complaint with the commission may bring a civil action at the following times:
 - (1) Within 45 days after receipt of notice that the commission has determined that there is no probable cause to credit the allegations contained in the complaint; receipt of notice is presumed to be five days from the date of service by mail of the written notice; or
 - (2) After 45 days from the filing of the complaint if a hearing has not been held or if the commission has not entered into a conciliation agreement to which the complainant is a signatory. The complainant shall notify the commission of an intention to bring a civil action, which shall be commenced within 90 days of giving the notice.
- The commission shall terminate all proceedings relating to the complaint upon receipt of a copy of a civil action brought by a complainant. A complainant shall provide to the commission a copy of the summons and complaint in the civil action by registered or certified mail

Section 8. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is to amend Chapter 29C, the city's human rights ordinance, to make the commission more effective and responsive by reducing the number of member from 15 to nine. In addition, the ordinance clarifies the role and duties of the commission and the human rights officer.