



# City of Grand Island

Tuesday, November 13, 2012

Council Session

## Item I2

**#2012-338 - Consideration of Amending Personnel Rules to Prohibit Discrimination Based on Sexual Orientation in City Employment Practices**

Staff Contact: Robert J. Sivick, City Attorney

# Council Agenda Memo

**From:** Robert J. Sivick, City Attorney

**Meeting:** November 13, 2012

**Subject:** Consideration of Amending City of Grand Island Personnel Rules and Regulations by Prohibiting Discrimination by the City in its Employment Practices against Persons based on their Sexual Orientation

**Item #'s:** I-2

**Presenter(s):** Councilman Larry Carney

## Background

The issue of discrimination against persons based on their sexual orientation has been on the agenda of meetings of the Grand Island City Council (Council) on two prior occasions. The first was a Study Session meeting held on October 2, 2012. The second was a regular meeting held on October 9, 2012 during which Ordinance 9407 failed to win approval by a vote of 2-8.

City of Grand Island Personnel Rules and Regulations (Personnel Rules) §1.03 states,

*The City of Grand Island affirms its commitment to providing a work environment that does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, mental or physical disability, marital status, national origin, or genetic information. The City will operate in full compliance with applicable federal, state, and local laws prohibiting discrimination in employment.*

*This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.*

Personnel Rules §2.02 states in part,

*The City of Grand Island is committed to providing a work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive. Actions, words, jokes, or comments based on an individual's sex, race, color,*

*national origin, age, religion, disability, **sexual orientation**, or any other legally protected characteristic will not be tolerated. All men and women are to be treated equally with dignity and respect.* (Emphasis Added)

## **Discussion**

Previously the Council considered prohibiting City wide discrimination in employment, housing, and public accommodations against persons based on their sexual orientation. The Resolution before the Council this evening would only prohibit the City from discriminating in its employment practices against persons based on their sexual orientation. That prohibition would not apply to any other employers.

Presently there are a number of conflicts within Personnel Rules §§1.03 and 2.02 as individual rules and when compared to each other. Those conflicts are:

1. Personnel Rule 1.03 does not prohibit discrimination against persons based on their sexual orientation regarding City employment practices. However, Personnel Rule 2.02 states the City is “committed to providing a work environment that is free from **all forms of discrimination**”. (Emphasis Added)
2. Personnel Rule 1.03 does not prohibit discrimination against persons based on their sexual orientation regarding City employment practices. However, Personnel Rule 2.02 specifically prohibits harassment of persons based on their sexual orientation.
3. Personnel Rule 2.02 specifically prohibits harassment of persons based on their sexual orientation, **or any other legally protected characteristic**. (Emphasis Added) As previously discussed, sexual orientation is not a protected class under Nebraska or United States law. It is unclear whether the Council’s intent in approving Personnel Rule 2.02 was to make sexual orientation a protected class regarding harassment or simply add it to other protected classes without making sexual orientation a protected class itself.
4. Personnel Rule 2.02 states that “[a]ll men and women are to be treated equally with dignity and respect.” However, Personnel Rule 1.03 does not require persons of differing sexual orientations be treated equally with regard to City employment practices.

The present state of affairs regarding Personnel Rules 1.03 and 2.02 in the City does not prohibit discrimination in its employment practices against persons based on sexual orientation but does prohibit harassment of employees based on sexual orientation.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve.
2. Refer the issue to a Committee.

3. Postpone the issue to future date.
4. Take no action on the issue.

### **Recommendation**

The City Administration has no recommendation on this Resolution.

### **Sample Motion**

Move to approve Resolution 2012-338 amending Personnel Rule 1.03 by adding sexual orientation to the list of protected classes of persons the City does not discriminate against in its employment practices.

RESOLUTION 2012-338

WHEREAS, the Grand Island City Council has decided to amend City of Grand Island Personnel Rules and Regulations Section 1.03,

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that City of Grand Island Personnel Rules and Regulations Section 1.03 be amended to read as follows:

**Sec. 1.03 EQUAL EMPLOYMENT OPPORTUNITY**

The City of Grand Island affirms its commitment to providing a work environment that does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, sexual orientation, mental or physical disability, marital status, national origin, or genetic information. The City will operate in full compliance with applicable federal, state, and local laws prohibiting discrimination in employment. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

Adopted by the City Council of the City of Grand Island, Nebraska, November 13, 2012.

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Jay Vavricek, Mayor

Attest:

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RaNae Edwards, City Clerk

Approved as to Form	☒ _____
November 9, 2012	☒ City Attorney