

070720-1
NDD

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 8:12 AM
To: 'Donna Williams'
Subject: RE: Public Comment for 7pm Tuesday, July 7

Hi Donna – your comments will be shared with the Commission and appropriate staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Donna Williams <dwilliamshome@charter.net>
Sent: Monday, July 6, 2020 10:15 PM
To: commission <commission@greatfallsmt.net>
Cc: Bob Kelly <bkelly@greatfallsmt.net>; gflgbtq@gmail.com
Subject: Public Comment for 7pm Tuesday, July 7

Public Comment for Tuesday, July 7, 2020

Regarding changes to the Non-Discrimination Ordinance:

Whenever someone suggests we all do the right thing, there are often some who object to it. The usual excuses are: "It's too expensive," or, "It's unnecessary," or, "It's not fair." But is it unfair to be fair to everyone? Some people will even claim it's against their religion to be kind and caring, or to treat everyone with respect. The time for excuses is over.

It's time to admit we have failed to treat all members of our community with full respect. It's time to right that wrong. It's time to make an intentional commitment to do better going forward. It's time to record that intention in writing with the force of law behind it.

Please move forward with the draft proposal for a Non-Discrimination Ordinance which the LGBTQ+ Center and citizens of Great Falls will put in front of you soon.

Thank you,

Donna Williams
dwilliamshome@charter.net

2916 2nd Ave N
Great Falls, MT 59401

PS. Over 417 ppm atmospheric CO₂ for May—the peak month. Never risen this quickly. Expecting a summer decline.

Lisa C. Kunz

070720.1

NDO

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 8:17 AM
To: 'Eamon'
Subject: RE: Non-Discrimination Ordinance

Hi Eamon – your comments will be shared with the Commission and appropriate staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Eamon <eamon.ormseth@gmail.com>
Sent: Monday, July 6, 2020 6:38 PM
To: commission <commission@greatfallsmt.net>
Subject: Non-Discrimination Ordinance

Dear Great Falls City Commission,

I write to ask you to formally consider the proposed Nondiscrimination Ordinance. Everyone has the right to go about their daily lives without the fear of being discriminated against because of their identity. A hallmark of American democracy is our strong protections for minorities. Make Great Falls a welcoming place for people of all backgrounds and pass this ordinance.

Thanks,
Eamon Ormseth

070720-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 11:16 AM
To: 'Allan Tooley'
Subject: RE: Proposed Non-Discrimination Ordinance

Hi Allan – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening’s meeting.

Thank you.

Lisa Kunz
City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

-----Original Message-----

From: Allan Tooley <ajtooley@icloud.com>
Sent: Tuesday, July 7, 2020 10:45 AM
To: commission <commission@greatfallsmt.net>
Subject: Proposed Non-Discrimination Ordinance

Honored Mayor and City Commissioners:

Having read and considered the proposed non-discrimination ordinance that the local LGBTQ alliance will be presenting to you at tonight’s commission meeting, I am writing to ask you to allow it to proceed to the next step of the process. I generally support the idea of the NDO because it seems to adequately fill in the gaps in state and federal laws without seeking to supersede them, and also appears to contain sufficient safety valves to avoid its use as a retaliatory cudgel against local businesses and organizations for imagined or exaggerated slights. Furthermore, seeing and hearing comments already being made about the proposal has convinced me that at the very least it’s time to have a public discussion of this issue; I have absolutely no doubt that some of my fellow citizens would and do discriminate against LGBTQ citizens, and a few would do much worse if they could.

Thank you for listening, and thank you for your service to our city.

Sincerely,

Allan Tooley

070720-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 11:14 AM
To: 'Meghan Wakeley'
Subject: RE: NDO Support

Hi Meghan – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Meghan Wakeley <meghan.wakeley@gmail.com>
Sent: Tuesday, July 7, 2020 10:36 AM
To: commission <commission@greatfallsmt.net>
Subject: NDO Support

Dear Mayor Kelly and Great Falls City Commissioners,

I am writing this email as a show of support for the NDO that is being proposed by the Great Falls LGBTQ+ Center.

It is time for Great Falls to join the other communities in Montana that provide protections for the LGBTQIA Community. We are tax paying citizens, active in our community and proud to work towards a more welcoming Great Falls. Please consider the NDO thoughtfully and carefully.

I have attached a letter from my father, Reverend Jeff Wakeley, which also voices his support of the NDO.

Thank you for your time and consideration,

Meghan Wakeley
612 13th Street South, #3
Great Falls, MT 59405
(406) 868-2933



Virus-free. www.avg.com

070920-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 1:13 PM
To: 'Shawna Applegate'
Subject: RE: Non-Discrimination Ordinance

Hi Shawna – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Shawna Applegate <sapplegate@alluvionhealth.org>
Sent: Tuesday, July 7, 2020 12:15 PM
To: commission <commission@greatfallsmt.net>
Subject: Non-Discrimination Ordinance

To Whom It May Concern,

My name is Shawna Applegate and I am a Family Nurse Practitioner at Alluvion Health at Gateway. I provide hormone therapy for our transgender community members. I am also the secretary of the LGBTQ+ Board of Directors. I just wanted to reach out in response to the non-discrimination ordinance (NDO) that will be presented at tonight's meeting.

With the recent passing of some legislation, we are taking steps forward and backwards in equality for all members of our community. The passing of the Civil Rights Act to include employment was a major step in the right direction. However, protections in healthcare and military have been removed, pushing us back more than a few steps in the wrong direction.

Before I became involved with the LGBTQ+ Center, I was unaware how large our transgender population is in Great Falls, and the significant struggles they have with employment, housing, and even healthcare. Some individuals have been put down or refused so many times they give up hope and do not try. This kind of social isolation is a significant contributor to suicide, substance use, a number of physical and mental health conditions including suicide and violent acts, and early death.

Passing this NDO is a harm reduction strategy. Housing is a top indicator for reducing substance use, crime, suicide, and death. Despite what personal beliefs are related to queer and transgender individuals, all humans deserve to have a roof over their head, equal opportunities for employment, and be able to live their life as stress free as possible. There is a greater need for this NDO than you would think and for the overall good of our community as a whole, please vote YES in reducing the risk of death to our community members.

Thank you for your time. If you have any additional questions or concerns, or would like additional statistical data, please reach out to me on my cell phone at 406-899-5283.



Shawna Applegate, APRN, MSN, FNP-C

Family Nurse Practitioner

Phone: 406-866-0041

sapplegate@alluvionhealth.org

Creating and Inspiring Healthier Lives

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070720.1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 1:12 PM
To: 'Sean McGuire'
Subject: RE: Public Comment for July 7 meeting (Petitions And Communications)

Hi Sean – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Sean McGuire <seanmatthewmcg@gmail.com>
Sent: Tuesday, July 7, 2020 12:24 PM
To: commission <commission@greatfallsmt.net>
Subject: Public Comment for July 7 meeting (Petitions And Communications)

To the Mayor and the City Commission,

I'm writing today because I want to see Great Falls pass a Non-Discrimination Ordinance. I am a resident and taxpayer of Great Falls and I am in complete support of the NDO proposed by the Great Falls LGBTQ+ Center.

Housing discrimination against LGBTQ+ renters is widespread and well-documented in Great Falls. It's a horrible exploitation of the loophole in state law which doesn't currently protect against discrimination based on sexual orientation or gender identity. NDOs designed to address this problem have already been passed in Butte, Bozeman, Helena, Missoula, and Whitefish. The only question left for Great Falls to answer is, "Do we take action about this problem, or do we pretend it doesn't exist?"

It's about time we did our part to provide basic courtesy for a community that we have brushed aside again and again. You don't have to "agree" or "disagree" with anybody's lifestyles. All you have to "agree" or "disagree" with is the proposition that every single human being in this town should be able to find housing without being denied based on something which has absolutely nothing to do with credit, criminality, or citizenship.

Regards,

Sean McGuire

--

Sean McGuire (He/Him)
612 13th Street South (Apt #3)

Great Falls, MT 59405

Cell: (406) 403-9224

070720-1
NDD

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 1:33 PM
To: 'Carol Zimny'
Subject: RE: LGBTQ+ SUPPORT

Hi Carol – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz
City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Carol Zimny <cazimny@gmail.com>
Sent: Tuesday, July 7, 2020 1:20 PM
To: commission <commission@greatfallsmt.net>
Subject: LGBTQ+ SUPPORT

Hello!
This email us to urge you to support the purposed equality for LGBTQ+.
No Montana resident should ever have to fear discrimination or be denied VITAL services like renting or working based on what their sexual preferences may or not be.
Let us look back on the way we conduct ourself in this time and be proud that we stood up and made lasting changes to protect and enrich this amazing states residents.

Thank you for your time.

Carol Zimny

070720-1
NDO

RECEIVED

JUL 07 2020

CITY CLERK

7/2/2020

Dear Mayor Bob Kelly,

I am writing to urge you to support a non-discrimination ordinance for Great Falls. I am a nurse practitioner and nursing educator. My husband and I have called Great Falls home for 40 years. I see value in making it clear to the citizenry that it is not just or healthy to discriminate against any human being. In healthcare we see the outcomes of discrimination and stress resulting from it: mental health and physical health disease, even death by suicide or stress-related chronic health conditions.

As a Great Falls homeowner, I also am committed to a healthy economy in our city. We need to be focused on steady growth. Enacting an NDO would be a message to positive industry that we care about our population. We need more of the type of employers who are committed to a healthy Great Falls citizenry and environment. I was excited when the school levy passed. As a former school health nurse, I drive by the new schools regularly, envisioning the children who will thrive there. Passing an NDO in Great Falls would be the same type of health-promoting measure.

Thank you for your service and for your thoughtful consideration of this issue,

Laurie Glover *Laurie Glover*

1318 16th St. So.

406-788-3420

070720-1
NDO

RECEIVED

Great Falls City Commission
P.O. Box 5021
Great Falls, MT 59403

JUL 07 2020

CITY CLERK

Dear Mayor Kelly and Commissions Moe, Tryon, Houck, and Robinson:

Gay, lesbian and transgender Montanans can be fired from a job, kicked out of housing and denied service at hotels and restaurants simply for who they are. I believe that people should not be discriminated against because of their sexual orientation.

A fair Montana is one where everyone has equal opportunities to housing and employment. Also access to public services should be universal. Several Montana cities have non-discrimination ordinances and it's time that we make sure all citizens of Great Falls are not subject to discrimination.

Communities that accept differences are tolerant communities that thrive. It's good for growth. Companies want to bring their businesses to towns that are inclusive not divisive.

Please take this first step by formally considering an ordinance to make Great Falls a place of acceptance for diversity; a community that is moving forward into inclusiveness. It is vital to the health and safety of Great Falls that we become a non-discriminatory community.

Melissa Smith



Resident
Great Falls, MT

070720-1
NDD

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 2:22 PM
To: 'Barbara Bessette'
Subject: RE: Non-Discrimination Ordinance

Hi Barbara – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa
City Clerk/Records Manager
406.455.8451

From: Barbara Bessette <bessette4montana@gmail.com>
Sent: Tuesday, July 7, 2020 1:54 PM
To: commission <commission@greatfallsmt.net>
Subject: Non-Discrimination Ordinance

Dear Great Falls City Elected Officials-

I am writing you in support of the Great Falls NonDiscrimination Ordinance. We are one of the only major cities in Montana to not have an ordinance that protects our citizens from being discriminated against on the basis of sexual orientation or gender identity.

I urge the Great Falls City Commission to pass this ordinance and make sure that Great Falls is fair for ALL citizens.

Thank you for your time and for your service.

--
Barbara A. Bessette
Representative House District 24
PO Box 1263
Great Falls, MT 59403
406.403.5656

Legislators are publicly elected officials. Legislator emails sent or received involving legislative business may be subject to the Right to Know provisions of the Montana Constitution and may be considered a "public record" pursuant to Montana law.

From: [Shyla patera](#)
To: [Krista Artis](#)
Subject: LGBTQ Center NDO request public comments
Date: Tuesday, July 7, 2020 3:59:02 PM

My name is Shyla Patera. Community must include all ! Discrimination and bias have no place for anyone in Great Falls. Thanks.

Shyla Patera

1013 7th Avenue Northwest

Great Falls ,Montana 59404

shycpat3148@gmail.com

070720-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 4:06 PM
To: 'Maxwell Mauch'
Subject: RE: Great Falls non discrimination ordinance

Hi Maxwell – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz

City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Maxwell Mauch <maxwellmauch1@gmail.com>
Sent: Tuesday, July 7, 2020 3:45 PM
To: commission <commission@greatfallsmt.net>
Subject: Great Falls non discrimination ordinance

City Commissioners,

Please allow the citizens of our city basic protection on the basis of their sexual orientation or gender identity. Gay, lesbian and transgender Montanans can be fired from a job, kicked out of housing and denied service at hotels and restaurants simply for who they are. Passing the NDO is simply the right thing to do. Vote for yourselves and for Great Falls to be on the right side of history.

Max Mauch
732 34th ave NE
Great Falls, MT

070720.1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 4:41 PM
To: 'Hannah Pate'
Subject: RE: Public Comment on NDO | 07/07/2020

Hi Hannah – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening’s meeting.

Thank you.

Lisa Kunz
City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Hannah Pate <hannahpate@forwardmontana.org>
Sent: Tuesday, July 7, 2020 4:24 PM
To: commission <commission@greatfallsmt.net>
Subject: Public Comment on NDO | 07/07/2020

Hello Commissioners and Mayor Kelly,
My name is Hannah Pate, and I reside at 1620 17th Avenue South in Great Falls, Montana. I am submitting this public comment not only representing Forward Montana, the largest youth civic engagement organization in the state but as someone who was born and raised in Great Falls -- and most importantly-- someone who made the decision to come back to Great Falls to pursue a professional career after moving away.

Forward Montana believes that all young people in the city of Great Falls should be treated fairly and equally by the laws of our city. This proposed ordinance would strengthen currently existing laws that already protect folks with disabilities, religion, age, race, and ethnicity to ensure the dignity, safety, and respect of all our friends and neighbors.

When I think of Great Falls, I think of opportunity. I think of the adversities and challenges that I faced growing up, and the community of people who not only kept my head above the water but taught me how to swim gracefully through the calmest currents and the most perilous storms. This remains true, as I am navigating through young adulthood, and embracing my many identities as a Queer Indigenous woman.

I know my experiences as a part of the LGBTQ+ community are not unique. We know that LGBTQ+ Americans experience poverty, unemployment, and homelessness at higher rates than their neighbors because of discrimination, harassment, and violence, including right here in the Electric City.

As I meet more and more young professionals here in Great Falls, I realize that we all value equity. One-fifth of LGBTQ Americans and 80% of Transgender Americans report experiencing some type of discrimination in the workplace. If we intend to draw more young talent to the area in order to increase economic development, we must ensure that this policy is in place.

I would urge you to vote 'YES' to put a Non-Discrimination Ordinance on the agenda and taking a critically important step to ensure that all people in Great Falls feel secure, safe, and welcomed into our community. Thank you for your time.

Best,
Hannah






hannah pate

rural outreach coordinator | (she/her/hers)
[forward montana](#) | [forward montana foundation](#)

 406-542-8683 | 406-788-5567
 hannahpate@forwardmontana.org



<p>This March, watch for your official Census invitation to participate.</p>	<p>MONTANA census 2020 Make it count CENSUS.MT.GOV</p>	<p>Proud Supporter United States* Census 2020</p>
<p>   Online By Phone By Mail</p>		

070720-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 4:52 PM
To: 'beth cooper'
Subject: RE: NO NDO!

Hi Beth – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz
City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: beth cooper <cooperb38@hotmail.com>
Sent: Tuesday, July 7, 2020 4:50 PM
To: commission <commission@greatfallsmt.net>
Subject: NO NDO!

Commissioners: I understand you will be hearing comments about the proposed NDO for Great Falls, tonight at your meeting. I am here to say that we do not want or need an NDO for our city! It is a disaster in the making! It is prejudiced against those who are not of like mind with the LGBTQ community. Please, do not pander to this ideology. The Civil Rights Act protects all classes of people, anyway, and would open pandora's box on all types of lawsuits going forward. I know Justice Roberts of the Supreme Court did a great injustice when he sided with the pandering crowd on this issue. This decision was very grievous to most people, who know what this will do. If nothing else, if this awful thing passes at some point, it will have to have exemptions for faith-based people, businesses and organizations...churches, included. Please, please, do not pass this NDO!

Thank you,

Beth Cooper
3430 Upper River Road
Great Falls MT 59405

"The truth is like a lion. You don't have to defend it. Let it loose. It will defend itself". Augustine of Hippo

**THAT'S WHAT I DO
I READ BOOKS**



**I DRINK COFFEE
AND I KNOW THINGS**

070720-1
NDO

Lisa C. Kunz

From: Lisa C. Kunz
Sent: Tuesday, July 7, 2020 5:04 PM
To: 'Shep Shepherd'
Subject: RE: Tonights interest in the Great Falls Commission taking up a NDO.

Hi Brian – your comments will be shared with the Commission and appropriate City staff for consideration prior to this evening's meeting.

Thank you.

Lisa Kunz
City Clerk/Records Manager
City of Great Falls
P.O. Box 5021
Great Falls, MT 59403
406.455.8451

From: Shep Shepherd <sheppenstein@gmail.com>
Sent: Tuesday, July 7, 2020 5:01 PM
To: commission <commission@greatfallsmt.net>
Subject: Tonights interest in the Great Falls Commission taking up a NDO.

It is my understanding that a group including 2 members of the clergy will ask the GF City Commission to take up the issue of a municipal NDO. In my opinion these are neither necessary or legal. Great Falls is already a welcoming community. Billings and Dillon have both rejected NDO's twice. The latest attempt to pass one in Billings failed before it ever got started. The City Council voted "No" on whether or not to even take up the issue.

Here the 3 letters from attorneys that discuss the fact that municipalities are not allowed to legislate in these areas. These areas of the law are reserved to the state.

Respectfully,

Shep
(Brian Shepherd)
1404 3rd Ave S
Great Falls, MT

Lein Smiley

MEMORANDUM

December 31, 2011

TO: Thomas Jodoin, Acting City Attorney
FROM: David L. Nielsen, retired City Attorney
SUBJECT: LGBT Discrimination

I reviewed the Missoula ordinance on its prohibition against discrimination and I found provisions in it that I would not recommend using in an ordinance for Helena.

Areas of concern:

1. I question whether local government with self government powers can establish a civil remedy in its municipal court for this type of discrimination because section 7-1-111(1), MCA, prohibits exercising power that 'applies to or affects any private or civil relationship.' I think housing and employment are private and civil relationships.
2. Section 7-1-111(13), MCA, prohibits exercising power that tends to regulate landlords for issues covered in Title 70, chapters 24 and 25 (Landlord-Tenant Act). The Missoula ordinance includes in discrimination under housing (Section 5) failure to maintain, improvement or repair. These are expressly covered under Landlord-Tenant Act. I would stay away from these.
3. Section 9 of Missoula's ordinance makes three civil offenses a misdemeanor. I do not think that is legally permissible since the standard of proof for civil litigation is preponderance of evidence, which is lower than beyond reasonable doubt in criminal. I did not research but making a crime out of three civil lawsuits does not seem legally sound.
4. The Missoula ordinance says injunctive relief is a remedy. I think municipal courts only have injunctive powers under the municipal infraction statute. Section 7-1-4151, MCA. That was the only exception to lower courts having injunctive powers. Civil jurisdiction of municipal courts and city courts is same as civil jurisdiction of justices' courts. See 3-10-301, MCA, for civil jurisdiction in justices' court. Section 3-11-102, MCA for city courts and 3-6-103, MCA for municipal courts. There are no injunctive powers under that section.

5. Section 7-1-113, MCA, provides that local government powers cannot be inconsistent with state law in any area affirmatively subjected to state control. Generally discrimination is exclusively under Title 49, Chapters 2 and 3. The Missoula ordinance in Section 9 recognizes this. Though Title 49 does not include LGBT discrimination, it could be argued that all definitions of protected classes for discrimination fall under Title 49. If it is not there, it may be not available for local control. That was argument before the legislature and I do not think it is as big of a problem as the prohibition on setting laws on private relationships.

March 27, 2014

HAND-DELIVERED

Mayor & Commissioners
City of Bozeman
121 North Rouse Ave.
Bozeman, MT 59715

Re: Your Consideration of Proposed Non-Discrimination Ordinance

Dear Mayor, Deputy Mayor & Commissioners:

I am writing at this time to express some very serious legal concerns I have with your potential enactment of the proposed non-discrimination ordinance (NDO). I have thoroughly reviewed applicable state law, relevant case law, and the draft ordinance, itself. Even putting aside the inescapably related issue of its probable infringement on certain closely-held, constitutionally-protected rights and, most notably, the free exercise of religious beliefs, it is my sincere and considered opinion that its passage, in any form, would be ill-advised and essentially unlawful.

My analysis is based on two distinct, but inseparably interrelated, fundamental concepts: (1) that the entire field of anti-discrimination regulation of this nature is clearly a matter of statewide concern preempted by, and exclusively reserved to, state law and the State Legislature, and (2) that a municipality, such as the City of Bozeman, also would be acting well beyond the scope of its recognized legal authority in attempting to create new avenues of legal redress in the process. The fact that other sister cities (Missoula, Helena and Butte) may have acted hastily in their respective passage of similar ordinances would not, of course, warrant or justify Bozeman heading down this same path.

Summary

It is my understanding that you are under a considerable amount of pressure from the ACLU to enact the NDO and, as so often happens in these cases, this kind of unrelenting lobbying effort is unsurprising. In any event, I did have an opportunity to review a previous opinion letter from the ACLU's Montana Public Policy Director addressed to the issue of potential state preemption of a similar local ordinance seeking to regulate discrimination based on sexual orientation and gender identity. The essence of the ACLU's contention in this regard is as follows:

City Commissioners

March 27, 2014

Page 2

“The local ordinance is creating a separate scheme, with its own violations, enforcement mechanism, and remedy, thereby not implicating the [Montana Human Rights Act] or state constitution.”

Not only does this contention beg the issue, but the conclusion is patently mistaken. It also bears mentioning that the Montana Supreme Court case upon which the ACLU apparently relies for support of this proposition, *American Cancer Society v. State*, 100 P. 3d 1085 (2004), dealt with the right of a locality to enact an anti-smoking ordinance for buildings open to the general public, and whether the state legislature could thereafter validly enact a bill to exempt and/or surcharge certain local establishments. Consequently, it is easily distinguishable in its facts and analysis. However, to the extent *American Cancer Society* may have any application to the present controversy, it would stand in stark opposition to, rather than in support of, passage of the NDO.

Apart from acknowledging that the Legislature can effect a prohibition of the enactment of a city ordinance through express prohibitory language, the Court’s opinion in *American Cancer Society* further observed:

“Alternatively, a legislative prohibition can arise through a direct inconsistency between a state legislative act and the legislation of a self-governing unit. For example, the City of Billings could not supersede the state statutory requirement that charges against a suspended firefighter must be presented to the city council for a hearing.” *Id.* at 1089, ¶14. (citation omitted)

Additionally, the Court in *American Cancer Society* underscored:

“The Legislature has very clearly delineated fourteen powers that self-governing municipalities are ‘prohibited’ from exercising. Section 7-1-111, MCA. It has also set forth five specific powers that local governments with self-government powers are ‘prohibited’ from exercising ‘unless the power is specifically delegated by law. ...’ Section 7-1-112, MCA. Together, these two statutes constitute prohibition through express statutory language.” *Id.* at ¶16.

In relevant part, §7-1-111, MCA, expressly prohibits a self-governing city, such as Bozemen, from exercising “(1) any power that applies to or affects any private civil relationship, except incident to the exercise of an independent self-government power.” Section 7-1-112, MCA, expressly provides that among those powers requiring a legislative delegation is “(4) the power to exercise any judicial function, except as incident to the exercise of an independent self-government administrative power.” Clearly, either, or both, of these statutes would invalidate the NDO being urged by the ACLU, and currently under consideration by Bozeman – not to mention those similar ordinances already enacted elsewhere.

It seems beyond cavil that the Montana State Legislature has signified its intent to preempt, and control, virtually the entire field of discrimination law on a uniform, statewide basis, and thereby avoid what already has occurred in the cities of Missoula, Helena and Butte – piecemeal, and conflicting, legislation at the local level. This intent to legislate within, and thereby effectively preempt the field of anti-discrimination law, is clearly manifested in the relevant provision of the Montana Human Rights Act (MHRA), §49-2-512(1), MCA, which requires that the pursuit of any discrimination-based claim first comply with, and exhaust, clearly delineated administrative procedures through the Montana Human Rights Bureau, as a prerequisite to filing an appropriate action, if at all, in *district* court. This section expressly provides:

The provisions of this chapter establish the *exclusive remedy* for acts constituting an alleged violation of Chapter 3 or this Chapter, *including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, Section 4, of the Montana Constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this Chapter.* (emphasis added)

In *Harrison v. Chance*, 797 P. 2d 200, 203 (Mont. 1990), the Supreme Court acknowledged that the MHRA provides the exclusive remedy for any acts of alleged discrimination thereunder. Moreover, those few cases in Montana which have urged the consideration of the sexual orientation classification, although arising in different contexts, have maintained that any potential right to protection thereunder would necessarily come, if at all, within the meaning of Article II, Section 4. Therefore, given the plain language of this statute, it is apparent that the Legislature fully intended to reserve to itself the authority to regulate the entire field of discrimination law on a statewide basis, and the potential inclusion of this classification has been considered, but thus far rejected, at the State level. Consequently, because of the prospect of conflicting policies, operational effect and the need for uniformity, the State scheme is so pervasive that it was intended to exclusively occupy the field and thereby precludes the co-existence of municipal regulation. A number of courts in other jurisdictions, which have addressed similar issues, have invalidated municipal incursion into such matters of statewide concern.

For example, in *Lilly v. City of Minneapolis*, 527 N.W. 2d 107 (Minn. App. 1995), rev den. (1995), a concerned resident and taxpayer sought a restraining order to enjoin the city from implementing a local resolution to grant insurance benefits to an expansive list of relatives, and same sex domestic partners, not defined as “dependents” in a corresponding state statute. Following a hearing, the district court determined that the city’s resolutions were *ultra vires* under Minnesota law, and that providing such coverage for same sex domestic partners contravened a countervailing state public policy and, therefore, violated state law. The court thereafter granted the plaintiff’s motion for a declaratory/summary judgment, as well as a

permanent injunction. In upholding the rulings of the district court, the appellate court disregarded the city's claim (which essentially mirrors that of the ACLU) that in "matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld." (527 N.W. 2d at 111) In rejecting this argument, the court in *Lilly* observed in relevant part:

"A municipality has no inherent powers, but only such powers as are expressly conferred by statute or are implied as necessary in aid of those powers which are expressly conferred. ... [I]f a matter presents a statewide problem, the implied necessary powers of a municipality to regulate are narrowly construed unless the legislature has expressly provided otherwise." (citations omitted) Id.

Most importantly, however, the court in *Lilly* further underscored that "the city's actions also concern the statewide problem of discrimination. This court has previously held that discrimination is a statewide concern and therefore, the authority of the city of Minneapolis to combat discrimination must be narrowly construed." Id., citing *City of Minneapolis Comm'n on Civil Rights v. University of Minn.*, 356 N.W. 2d 841, at 843 (Minn. App. 1984). Consequently, the court in *Lilly* concluded:

"A home rule charter city is exactly that – 'home rule' on matters of a purely local nature. A home rule city may not exceed statutory authority by its mere fiat as was done here. ... when the legislature by clear definition has made the subject matter one of statewide concern and has defined who may receive such benefits, [since] discrimination, as well as the definition of family relationships and dependent status, are statewide concerns." (Id. at 113) (emphasis added)¹

Similarly, in *McCrorry Corp. v. Fowler*, 570 A. 2d 834, at 838 (Md. 1990), the court invalidated a county code because it was not, in reality, a "local law" within the meaning of the state constitution since it purported to authorize a circuit court civil action for damages by any person who had "been subjected to any act of discrimination prohibited under this division" The court in *McCrorry* also declared that "the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by [the Supreme Court] under its authority to modify the common law" and that the "creation of new judicial remedies has traditionally been done on a statewide basis." Id. Accordingly, the court in *McCrorry* concluded that "an ordinance attempting to combat employment discrimination by creating a new private judicial cause of action is not a 'local law' under the ... the Maryland constitution, and thus not within the power of Montgomery County to enact." Id. See also, *Sweeney v. Hartz Mountain Corp.*, 573 A. 2d 32, at 34 (Md. 1990), invalidating a similar county ordinance.

¹ Moreover, the court in *Lilly* made this determination despite the fact that its legislature had previously included "sexual orientation" within its suspect classifications.

Conversely, in *City of Atlanta v. McKinney*, 454 S.E. 2d 517, 521 (Ga. 1995), the court upheld an aspect of a city's anti-discrimination ordinance, premised on sexual orientation, but only to the extent that it pertained solely to the city's power to implement policies governing its own employees and property, and because the challenged ordinances did not purport to regulate either private employers or public employers other than those employed by the city of Atlanta. On that basis alone, the court in *McKinney* concluded that the ordinances could be construed as reasonable laws "related to the city's own affairs and local government." *Id.* at 521-22. Importantly, however, a strong, and perhaps better reasoned, concurring and dissenting opinion in *McKinney* noted that Georgia law "recognizes and protects certain classifications of people from discrimination," and concluded in relevant part:

"By these general laws, Georgia has clearly entered the field of anti-discrimination law, yet has not included a person's sexual orientation among the proscribed bases of discrimination. Therefore, sexual orientation ordinances, like the registry ordinance, are preempted by the general law of this state. (citations omitted)

The Fair Employment Practices Act of 1978, ... prohibits employment discrimination by the State because of race, color, religion, national origin, sex, handicap, or age. (citation omitted) I agree a municipality may pass a law on the same subject matter which is not inconsistent with the State's version.... In my opinion, however, *an ordinance which protects more classes than does the Fair Employment Practices Act is inconsistent with the Act.* However, even if the sexual orientation ordinances were consistent with the ... Act, the other provisions of general law enumerated above, which apply to the City and private employers as well as the State, preempt the sexual orientation ordinances." *Id.* at 524-25. (emphasis added)

Also see, *Delaney v. Superior Fast Freight*, 18 Cal. Rptr. 2d 33, at 35-37 (Cal. App. 1993) [holding that a city's attempted ban on sexual orientation discrimination was effectively preempted by a state ban on the very same subject matter]. Similarly, in *Yellow Freight Systems v. Mayor's Comm'n*, 791 S.W. 2d 382 (en banc) (Mo. 1990), the court invalidated a city's attempt to create a new private cause of action as a remedy for discrimination sought to be prohibited by ordinance. Therefore, these courts understandably have resisted the notion that municipalities should be able to create separate substantive law in areas generally reserved to the concept of statewide uniformity. See, e.g., *City of Bloomington v. Chuckney*, 331 N.E. 2d 780, 783 (Ind. App. 1975) ["a city should not be able to enact its own separate law of contracts or domestic relations since these areas are unsuited to less than statewide legislation"].

In *Yellow Freight Systems*, the city of Springfield, a home rule charter city, adopted an ordinance which established a Mayor's Commission on Human Rights (as authorized by state law), but which also purported to create a municipal agency with the power to hear contested

cases of discrimination in employment and housing, and give relief in accordance with its stated purpose. The ordinance further provided that an appeal, or the enforcement of the commission's decision, could be brought in the county circuit court and that the city attorney could bring proceedings in the city's municipal court against anyone allegedly violating the ordinance. An action was initiated by a former employee, after which the commission ordered the defendant-company to reinstate the terminated employee, and awarded her backpay damages. Yellow Freight then sought a judicial declaration that the commission's decision violated provisions of the State Constitution, exceeded statutory authority; exceeded authority granted by the city charter, and requested injunctive relief against the commission. The trial court eventually granted the relief requested by the aggrieved company, after which the City, its Mayor's Commission and the individual plaintiff, appealed. In relevant part, the Missouri Supreme Court observed that "the instant ordinance creates a right and liability which do not exist at common law and prescribes the remedy." (citations omitted) 791 S.W. 2d at 384. The court further observed:

"A well-established general rule illustrates the basic limitation upon the authority of a city to create a cause of action for recovery by an individual: '[A] municipal corporation cannot create by ordinance a right of action between third persons or enlarge the common law or statutory duty or liability of citizens among themselves.'" (citing 6E. McQuillin, Mun. Corporations, Section 22.01 3rd ed. Rev. 1988)

"The State by granting to [the] City the right to adopt and frame a charter for its own government did not confer upon [the] City the right to assume under its charter all of the powers which the State may exercise within the City, but conferred the right to assume those powers incident to it as a municipality." Id. at 385

Finally, it is unsurprising that the Missouri Supreme Court concluded:

Section 213.030 [of the state statute], in terms similar to §213.020.3, vests the State Commission on Human Rights with the power and duty to "seek to eliminate and prevent discrimination.' Yet, in addition to that phrase, §213.030 expressly grants the State Commission power and authority to hold hearings and pass upon complaints of violation of state law in accordance with [the] procedure prescribed by §213.075. A [local] commission created by virtue of §213.020.3 can seek to eliminate discrimination as an advisory commission. Nothing in subsection 213.020.3 gives every city, town, village or county the power to create a cause of action for the violation of an anti-discrimination ordinance and to create an agency to determine and enforce a violation of that ordinance. The failure of the legislature to include in §213.020.3 an express grant of power to determine violations and make

awards, such as that deemed necessary in §213.030, establishes its intent that such power is not included in §213.020.3. Id. at 387.

Consequently, if the reasoning of the ACLU – which, unfortunately, was adopted by Bozeman’s sister cities – is to be accepted, any political subdivision within this state could, through enactment of ordinances, simply bypass the legislature; effectively influence state jurisprudence regardless of legislative intent, and essentially compel enforcement of its own, albeit conflicting, local procedures. In the process, this clearly and unmistakably would violate the principle of state sovereignty over its political subdivisions – amounting to a patent expansion, and corresponding usurpation, of respective power and authority.

To this end, the district courts in Montana have original jurisdiction in all civil matters at law and in equity, along with criminal and probate jurisdiction under §3-5-302, MCA, as well as appellate jurisdiction from all inferior courts within a given county, under §3-5-303, MCA. Conversely, the jurisdiction of a municipal court is far more limited, including its relative jurisdictional limit (i.e., the amount in controversy cannot exceed \$12,000); §3-10-301, MCA. While it is tritely true that municipal courts are said to have exclusive jurisdiction over civil and/or criminal offenses involving the violation of city ordinances, such jurisdiction is, by its very nature, otherwise limited to specified categories of offenses not remotely related to anti-discrimination legislation of this nature. See §§3-11-103(1),(2), MCA.

Therefore, even putting aside the preemption issue as it pertains to the regulation of discrimination law, a local government with self-government powers, such as Bozeman, nevertheless would be usurping the legislative function by attempting to establish and implement civil remedies in its municipal court for *any* type of alleged discrimination since §7-1-111(1), MCA, expressly prohibits the municipality from exercising any power that “applies to or affects any private or civil relationship.” Suffice it to say that matters involving housing and employment – areas to which the proposed ordinance purports to apply – are just such private and civil relationships and, not coincidentally, already are regulated under the provisions of the MHRA and otherwise. For example, §7-1-111(13), MCA, clearly prohibits the exercise of any power that would tend to regulate landlords for matters already covered under the Montana Landlord-Tenant Act, Title 70, Chapters 24-25. Of course, these very statutory enactments reflect the relevant preemption holding, as discussed in the Montana Supreme Court’s *American Cancer Society* opinion.

Additionally, in seeking to create such a private right of action, and purporting to give any person alleged to have been aggrieved thereunder the right to seek unspecified civil remedies (presumably including damages), Section 1.C. of the proposed ordinance effectively grants the local municipal court broad power to impose “injunctive relief,” ... or “other equitable relief” – powers clearly and unequivocally reserved solely to the state district courts or, in the case of the MHRA, to the Department of Labor – and beyond the scope of those powers granted to the

municipal courts. Any such jurisdiction of a municipal court to potentially impose affirmative relief of this nature is, quite clearly, limited to orders of abatement or correction under the municipal infraction statute, §7-1-451(4)(d), MCA. There is no corresponding authority granted under any of the other sections pertaining to municipal court jurisdiction; §§3-6-103, 3-10-301, MCA, or under §3-11-102, MCA, which conceivably empower a municipal court to award or fashion affirmative or equitable relief of this nature.

Finally, §7-1-113, MCA, expressly provides that local governmental powers cannot be “inconsistent” with state law in any area affirmatively subjected to state control. Obviously, this is a legislative mandate respecting the concept of field preemption. As stated above, Title 49 expressly provides that discrimination is “exclusively” within the province of the Montana Human Rights Bureau; the Department of Labor & Industry and, if necessary, the jurisdiction of the district court. While the proposed Bozeman ordinance essentially recognizes, and acknowledges, this fundamental precept, on the one hand, it nevertheless attempts a legal end-run under the auspices that the ordinance would recognize “violations [premised on the sexual orientation and gender identity classification] ... not specifically addressed by Montana State law.” ... As stated above, it is clear that the determination of those classes to be protected from discrimination falls squarely within the purview of legislative control, rather than being subject to local control and, of course, the legislature has thus far determined *not* to include sexual orientation and/or gender identity within the suspect categories. Consequently, the omission of this classification has, of course, come after repeated deliberations at the State level, and within the Legislature’s exclusive power, thereby obviating the authority of a locality, such as Bozeman (Missoula, Helena, Butte or otherwise), from attempting to regulate or control the same at the local level.

Conclusion

As stated above, this is a very serious matter, warranting the careful evaluation of the City and its Commission.

If called upon to review the potential invalidity of this kind of ordinance, I firmly believe that the Montana District and Supreme Courts would unhesitatingly adopt and follow the reasoning and analysis of the above-referenced body of case law from those other jurisdictions which have dealt with, and squarely addressed, these preemption issues.

Based on all of the above, it is respectfully requested that the Commission resist any urge to overstep its bounds and wade into this area of regulation which, as matter of law, is reserved to our State Legislature. Another factor you may want to consider is the large contingent of local residents who diametrically oppose this measure on other grounds, as well.

City Commissioners

March 27, 2014

Page 9

Thank you for your time and consideration in this matter and, if you or the City Attorney (to whom a courtesy copy of this correspondence is being provided) would care to discuss these issues, please feel free to contact me at your earliest convenience.

Very Truly Yours,

MICHAEL J. SAN SOUCI

MJSS:mw

cc: Greg Sullivan, Esq.

Chris Kukulski

KENNETH D. PETERSON

ATTORNEY AT LAW

424 48th Street West • BILLINGS, MONTANA 59106 • PHONE: (406) 534-2376 • (406) 591-2608 (Cell) • Email kenneth59@bresnan.net

24 April 2014

Honorable Mayor and City Council, City Administrator and City Attorney
City of Billings Montana
210 N. 27th St.
P.O. Box 1178
Billings, MT 59101

In re: Proposed NDO

Dear Mayor, City Council, City Administrator and City Attorney:

I understand that the City is considering adopting a Nondiscrimination Ordinance patterned after those adopted by Missoula, Helena and Butte. As I will explain below it is my opinion that all of the foregoing Cities [self-government cities] have acted in a manner that exceeds their legal authority.

Since most of you do not know me, I need to tell you that I was the first City attorney for the City of Billings when it commenced as a self-government city under its charter. I served for about 7 years as the City attorney and I continued to represent the City in litigation matters for about another 12 years. During that time I had extensive education on self government powers through study and litigation. I can tell you based on experience that the City has not fared well in the Courts when it has attempted to exceed those powers. In one case the City and the taxpayers paid about \$500,000.00 because it exceeded its authority. Not only did the Federal Court hold the City liable but it held each individual Council person liable. In another case where the City Council wanted to exceed its authority they were told by the then City attorney that the City would get sued and they would lose.

I have also served 4 terms as a Montana legislator and have served as vice chair and chair of the house judicial committee. I served as chair my last term. During that time these same issues came before my committee every term I was there. As

you probably know nothing is adopted by the legislature until it has extensive committee hearings in both the House and Senate, is lobbied extensively by all sides , debated on the floor of both houses, passed and signed by the Governor.

These issues came before the legislature every session I was there and came up again in 2013. What the advocates are trying to do is backdoor these issues to try to circumvent the legislative process. They have asked the legislature to change the law but the legislature has refused. They are putting the Cities in a position to be sued for exceeding their authority and the Cities are unwittingly going along.

The Montana Constitution is the basic law that governs all laws , persons and entities in the State of Montana. Adopting a NDO will cause and allow some of the rights granted to everyone to be infringed. See Article I Sections 3, 4, 5 and 10.

No City in the State of Montana self governing or not has any authority, nor can any authority be found to allow it to infringe on the rights guaranteed in the Constitution. That basic law is supreme in the State of Montana.

The Constitution of the State of Montana Article XI section 6 describes the extent of the self government powers as follows:

Self-government powers. a local government unit adopting a self-government charter may exercise any power **not prohibited** by this constitution, law or charter. . . . (emphasis provide by writer)

The legislature has passed laws that prohibit self-governments from exercising powers:

MCA § 7-1-111(1) any power that applies to or affects any private or civil relationship

MCA § 7-1-113 (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control. (2) * * *. (3) An area is affirmatively subjected to state control if

a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

The whole area of illegal discrimination has been affirmatively subjected by law to state regulation and control **MCA title 49 part 2**. The Montana Human Rights Commission is directed by the State legislature to establish administrative and procedural rules in implement the act, **MCA § 49-2-204**. Therefore a self-government city is prohibited from passing any ordinance dealing with discrimination.

In further support of the position stated above I attach for your further reading a letter memorandum prepared by Michael J San Souci, that I find very well analyzed and well reasoned and with which I totally agree.

Although I recognize that this is a lot of reading I urge you to take the time because of the importance of the issue to also read the cases that have been compiled by the Alliance Defending Freedom to see that those cases clearly violate many of the rights of citizens of Montana as guaranteed by our Constitution. I attach a copy of that also.

I am not hired by anyone and am just sharing my knowledge and understanding to help put this issue in proper perspective and to shed light and sunshine on the issues.

Thank you for the opportunity to address these issues.

Very truly yours,

KENNETH D. PETERSON
Attorney at law

Kenneth D. Peterson

KDP/nc

From: [Lisa C. Kunz](#)
To: [Greg Doyon](#); [Krista Artis](#); [Sara Sexe](#); [Bob Kelly](#); [Mary Sheehy Moe](#); [Owen Robinson](#); [Rick Tryon](#); [Tracy Houck](#)
Subject: FW: Non-discrimination
Date: Tuesday, July 7, 2020 5:11:00 PM

One more in support of consideration of a NDO.

Thank you.

Lisa

-----Original Message-----

From: Alex Rosenleaf <arosenleaf@gmail.com>
Sent: Tuesday, July 7, 2020 4:58 PM
To: commission <commission@greatfallsmt.net>
Subject: Non-discrimination

Dear commissioners,

As a citizen of Great Falls I urge you to join with most of Montana's other major cities in passing a non-discrimination ordinance.

Sincerely,
Alex Rosenleaf

Sent from my iPhone