

Be it remembered that the Common Council of the City of South Bend, Indiana met in the Council Chambers of the County-City Building on Monday, July 26, 2010 at 7:00 p.m. The meeting was called to order by Council President Dieter and the Invocation and Pledge to the Flag were given.

ROLL CALL

COUNCILMEMBERS:

Present:	Derek D. Dieter	1st District, President
	Henry Davis, Jr.	2nd District
	Thomas LaFountain	3rd District
	Ann Puzzello	4th District, Chairperson Committee of the Whole
	David Varner	5th District
	Oliver Davis	6th District, Vice-President
	Al "Buddy" Kirsits	At-Large
	Timothy Rouse	At-Large
	Karen L. White	At-Large

OTHERS PRESENT:

Kathleen Cekanski-Farrand	Council Attorney
John Voorde	City Clerk
Janice I. Talboom	Deputy City Clerk
Mary Beth Wisniewski	Chief Deputy

REPORT FROM THE SUB-COMMITTEE ON MINUTES

To the Common Council of the City of South Bend: The sub-committee has inspected the minutes of the July 12, 2010 meeting of the Council and found them to be correct.

Therefore, we recommend the same be approved.

s/Derek D. Dieter
s/David Varner

Councilmember Puzzello made a motion that the minutes of the July 12, 2010 meeting of the Council be accepted and placed on file. Councilmember Oliver J. Davis seconded the motion which carried by a voice vote of nine (9) ayes.

SPECIAL BUSINESS

There was no Special Business to come before the Council at this time.

RESOLVE INTO THE COMMITTEE OF THE WHOLE

At 7:10 p.m. Councilmember Henry Davis made a motion to resolve into the Committee of the Whole. Councilmember Varner seconded the motion which carried by a voice vote of nine (9) ayes. Councilmember Puzzello, Chairperson, presiding.

Councilmember Puzzello explained the procedures to be followed for tonight's meeting in accordance with Article 1, Section 2-11 of the South Bend Municipal Code.

Councilmember Puzzello stated that a brochure may be found on the railing in the Council Chambers explaining those procedures.

PUBLIC HEARINGS

BILL NO. 37-10

PUBLIC HEARING ON A BILL TO VACATE THE FOLLOWING DESCRIBED PROPERTY: THE ALLEY TO BE VACATED IS DESCRIBED AS THE WEST HALF OF THE FIRST EAST-WEST ALLEY SOUTH OF NAPOLEON BETWEEN DUEY AND THE FIRST NORTH-SOUTH ALLEY SITUATED IN HARTMAN AND WOODWORTH'S PLAT TO THE CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA

Councilmember Varner, Chairperson, Public Works and Property Vacation Committee, reported that this committee met on this bill this afternoon and voted to send it to the full Council with a favorable recommendation.

Mr. Mike Danch, President, Danch, Harner & Associates, 1643 Commerce Drive, South Bend, Indiana, made the presentation for this bill on behalf of his clients the University of Notre Dame and the City of South Bend.

Mr. Danch advised that they are seeking approval of the vacation of the west half of the first east/west alley south of Napoleon Street between Duey Avenue and the first north/south alley situated in Hartman and Woodworth's Plat in the City of South Bend, St. Joseph County Indiana. He stated that the reason for this request is to allow for the re-configuration of properties for future development of properties located along Duey Avenue.

This being the time heretofore set for the Public Hearing on the above bill, proponents and opponents were given an opportunity to be heard.

Councilmember Henry Davis, Jr. asked Mr. Danch if any other developers were given a chance to develop this property.

Mr. Danch stated that he is on the engineering side of this property and that would be the developer's side.

There being no one present wishing to speak to the Council either in favor of or in opposition to this bill, Councilmember Dieter made a motion for favorable recommendation to full Council concerning this bill. Councilmember Varner seconded the motion which carried by a voice vote of eight (8) ayes and one (1) nay (Councilmember Henry Davis, Jr.)

BILL NO. 30-10

PUBLIC HEARING ON A BILL OF THE COMMON COUNCIL OF THE CITY OF SOUTH BEND, INDIANA, AMENDING VARIOUS SECTIONS OF ARTICLE 9, OF CHAPTER 2 OF THE SOUTH BEND MUNICIPAL CODE ADDRESSING THE HUMAN RIGHTS ORDINANCE BY THE INCLUSIONS OF NEW PROVISIONS ADDRESSING EMPLOYMENT FAIRNESS

Councilmember Dieter made a motion to accept the substitute version of this bill. Councilmember White seconded the motion which carried by a voice vote of nine (9) ayes.

Councilmember LaFountain, Chairperson, Personnel & Finance Committee reported that this committee met this afternoon on this bill and sends it to the full Council with no recommendation.

Councilmember Varner made a motion to limit the public portion to 30 minutes in favor and 30 minutes in opposition. Councilmember Oliver Davis seconded the motion which carried by a voice vote of nine (9) ayes.

Chairperson Puzzello noted a reminder of Council Procedures: The Office of the City Clerk has prepared a sign-in sheet for those wishing to speak in favor or in opposition to Substitute Bill No. 30-10. She stated to complete the sign-in sheet immediately before giving remarks. As a reminder, following the Formal Presentation on the Bill, any member of the public who wishes to speak in favor of the Bill must give his or her name and address and then may speak up to five (5) minutes. In light of the number of persons here this evening, please make sure that your remarks are relevant to the proposed ordinance which focuses on human rights in the area of employment. Please offer new information and no repeat information which has already been given. She also asked that everyone be courteous. Following the close of those speaking in favor, they will note the expiration of the thirty (30) minutes. Any member of the public who wishes to speak in opposition to the Bill must give his or her name and address and then may speak for up to five (5) minutes. At the close of the 30 minutes for those speaking in opposition, the presenters of the Bill will have the opportunity for rebuttal. A maximum of five (5) minutes will be permitted. Following rebuttal, the public portion is closed and the Council Members will have the opportunity to speak. Following the Council discussion, motions for the disposition of the proposed ordinance will then take place.

Al "Buddy" Kirsits, At-Large Councilmember, 722 Marquette Avenue, South Bend, Indiana, made the presentation for this bill. He stated that former Councilmember Charlotte Pfeifer and the late former Councilmember Roland Kelly sponsored an amendment to the Human Rights Ordinance a few years ago and that bill was defeated by a vote of 5-4. He noted that this bill only addresses fair employment. He questioned why do we need a bill like this? He stated that if South Bend wants and claims to be a 21st Century City it needs a bill like this. He stated that people have left because they feel discriminated against. Councilmember Kirsits stated that this bill is not about condoning a lifestyle this bill is just about being fair in employment practices.

Aladean DeRose, Chief Assistant City Attorney, 14th Floor County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana, stated that she has been the attorney for the South Bend Human Rights Commission for the past 20 years. She stated that Governor Mitch Daniels' Policy statement reads that the State of Indiana is committed to recruit, select, develop, and promote employees based on individual ability and job performance. Sexual orientation and gender identity shall not be a consideration in decisions concerning hiring, development, advancement and termination of civilian employees. With that spirit of promoting equality and opportunity based solely on performance and merit the South Bend Human Rights Commission adopted a resolution on June 16, 2010 by a vote of eight (8) to zero (0) with one member not present and not voting a resolution vigorously supporting Bill No. 30-10. The Commission members indicated that this will make it clear that South Bend is a welcoming place that promotes fairness in employment practices. She noted that in most cases of employment discrimination result in no probable cause findings. Those that result in probable cause findings they usually are conciliated. She stated that is the service that they provide to work with employer and employee to work toward the goal of bringing them to an agreement or reconciliation. Ms. DeRose stated that this bill will have little cost to investigate or conciliate and would be financially feasible for the City's budget. She stated that this bill would allow the Human Rights Commission to investigate, conciliate and promote fairness in employment practices.

Lonnie Douglas, Executive Director, South Bend Human Rights Commission, stated that as Executive Director of the Human Rights Commission, he takes pride in directing an organization which commits itself to insuring the rights of all South Bend citizens to equal opportunity in employment, education, housing, and public accommodations. The Human Rights Commission of South Bend reflects the moral, religious, and democratic sentiments of citizens of South Bend to completely abolish discrimination and segregation. The City of South Bend has a long history of opposing discrimination, and has enacted ordinances with the specific goal of eliminating discrimination in

employment since 1956. He stated that on June 16th 2010, the Human Rights Commission passed a resolution requesting that the Common Council pass Bill 30-10, which would amend the Human Rights Ordinance to include prohibitions against employment discrimination on the basis of sexual orientation and gender identity. The vote was all in favor with one member of the Commission absent. He stated that he wanted to be clear that, in this resolution, the Commission has his full support for several reasons. First, as the resolution noted, the Commission receives complaints alleging employment discrimination based on sexual orientation or gender identity, but is not empowered to investigate these complaints. The Commission can assist GLBT citizens who face discrimination on the basis of their sex, their religion, their race, or their color, but if discrimination is focused on sexual orientation or gender identity, the Commission cannot investigate on behalf of any citizen, gay or straight. Bill No. 30-10 would allow the Commission to treat GLBT persons the same as any other citizen of our City. Right now they are not receiving equal and just treatment. Second, because the mission of the Commission is to initiate investigations into discriminatory practices, the proposed amendment is necessary for the Commission to carry out its mission. In addition to receiving reports and carrying out investigations, the Commission acts as conciliator between employer and employee. The Commission is not able to serve these functions with regards to sexual orientation or gender identity discrimination without enabling legislation. Discrimination is discrimination, and is of great concern to the Commission. Third, one of the duties of the Commission is to recommend to the Mayor and the Common Council legislation that can further the purposes of the Human Rights Ordinance. Because the Human Rights Ordinance is intended to promote equal opportunity in employment for all of South Bend's citizens, the Commission is compelled to act when a specific type of discrimination is repeatedly reported. He stated that for these reasons, he supports the Human Rights Commission's resolution, and encourages the Common Council to pass Bill No. 30-10. Amending the Human Rights Ordinance will give the Commission the ability to respond to allegations of employment discrimination, investigate such reports, and assist individuals when evidence of discrimination is found. He stated that he realizes that the impact of this legislation may be a concern on the Commission's budget. On the basis of statistics from other cities that have adopted similar amendments, the adoption of this legislation is not expected to have a significant impact on the Commission's budget. Any additional expenses are likely to be due to updating forms and educating the staff and community about this change. I have initiated discussions to enlist the cooperation of individuals in the community who would assist in the educational process on a pro-bono basis, should the amendment pass. He thanked the Council for their careful attention to this matter. He appreciates the effort in helping to ensure equal employment opportunity for all individuals in South Bend. He urged the Council to continue to make the City of South Bend a proactive City.

Penny Hughes, Chairperson, South Bend Human Rights Commission, residing at 1918 Southernview Drive, South Bend, Indiana, stated that she has spoken before on this topic. She stated that the Commission's view is that they want everyone to be able to go to work and not be discriminated against regarding their sexual orientation or gender identity. She stated that the Council is going to hear tonight that GOD wants them to change. Ms. Hughes stated that she believes that GOD doesn't make mistakes and loves diversity and recognizes that everyone deserves the right to go to work and not be discriminated against. She urges the Council to vote in favor of Bill No. 30-10

The following individuals spoke in favor of this bill:

Mr. Kent Hull, 238 S. Hawthorne Drive, South Bend, Indiana, stated that he is an Attorney and an adjunct faculty member of the Notre Dame Law School. He stated that he strongly supports Bill No. 30-10 because it has merit and is worthy of passage by the Council. He stated that he attended the committee meeting this afternoon and there was good dialogue that took place, however, some Councilmember's questioned for more discussion and clarity on some points that were vague to them. Mr. Hull stated that the bill is sufficiently clear and not just invented; it was drawn from other cities and drafted from experience of other cities. He stated that he accepts the fact if the Council still has questions and would like to delay this bill until all those questions have been answered. He stated that this bill is needed and works to help contribute to the health of the

community. He stated that all the Council needs is rational basis for their actions is sufficient enough to pass this bill. Mr. Hull noted that Councilmember Rouse questioned about ex-offender's being included in the language of this bill. He stated that he is currently representing an ex-offender. Mr. Hull noted that maybe a separate amendment to this ordinance would be needed to address that issue and he would be more than happy to give his thoughts and expertise on that amendment. He reiterated that this bill is based on experience from other cities in Indiana and around the country and urged the Council to pass this bill.

Dr. Stacy Davis, 304 Runaway Bay 3B, Mishawaka, Indiana, stated that employment matters. She stated that the first thing asked upon meeting a stranger is what do you do for a living. She stated that there is nothing more destructive to a person self worth that being unemployed, underemployed or being in a hostile work environment. Tonight the Common Council has the ability to vote and pass Bill 30-10 that would allow straight, gay, lesbian bi-sexual and transgendered community members the ability to go to the South Bend Human Rights Commission as a means to conciliate employment if they believed that they have been discriminated against due to their sexual orientation or gender identity. She stated straight because for far too long sexual orientation has only been associated with the GLBT community. She stated that no one is free from discriminatory practices in employment regarding sexual orientation or gender identity. She stated that this bill does not give special privileges but allow the same rights to approach the Human Rights Commission regarding discriminatory practices in employment. She stated that Bill 30-10 shows that the City of South Bend is open to anyone with the skills and talent to improve it whether they are gay or straight. She urged the Council to consider that when making their decision on this bill. She urged the Council to pass Bill 30-10.

Eric Siroka, 15714 Cedar Cove Drive, Granger, Indiana, stated that he is a Rabbi here in South Bend and is here tonight as a concerned individual on the passage of Bill 30-10. It has already been said that this bill is a modest and reasonable proposal regarding employment fairness and is vital to the social and economic future of this community. It is an issue of human dignity as well. It is an obligation to do what is right and just for if we do not protect the rights and uphold the law for all individuals of the community then we have done nothing to defend the rights of anyone in this community. He urged the Council to pass this bill.

Abbee D. Smith, 108 N. Main Street, South Bend, Indiana, stated that she owns a business called Intrigue Counseling. Ms. Smith stated that she grew up in this area and her family has operated businesses in this area for over 75 years. She stated that she knows what it means to serve a diverse community in South Bend. She stated that there is strength in diversity. She stated that it has been said that small business owners such as her will struggle with the legislation and feel it is burdensome. She stated that those that fear making this bill in to legislation are not making good business decisions. This amendment is simply about treating employees fairly which should not be burdensome to any good business owner. In order for her business to thrive she needs to treat her employees fairly and equally. She stated that South Bend claims to be a 21st Century City and is correct in wanting to treat employees fairly and be evaluated by their job performance not on irrelevant characteristics. She stated that her business is successful because her staff is respectful, timely, responsible, caring, professional and competent. Those are the factors that make a business successful. And those are the factors that as a business owner should focus on when evaluating their employees. Many business across the country have seen that expecting outstanding performance and treating all employees equally without regard to their orientation or gender identity is advantageous it simply makes good business sense and urged the Council to support Bill No. 30-10.

Gladys Muhammad, 808 N. Ironwood Drive, South Bend, Indiana, stated that she supports Bill No. 30-10 simply on the basis of freedom, justice and equality and not to discriminate because of race color creed or sexual preference. She believes that everyone has the right to work especially in this economy; everyone needs to work and keep their job.

Bill Eagen, 3206 S. Ironwood Drive, South Bend, Indiana, stated that this issue is not unique to South Bend. It is an issue all over the country. He referred to the military's don't ask, don't tell policy. Mr. Eagen stated that it hurts either way and people should not be treated or discriminated against no matter what their sexual orientation or gender identity is. He urged the Council to pass this bill.

George Lane, 2405 Division, Mishawaka, Indiana, suggested to the Council to read the article by Mr. Randy Kelly on Human Rights in the July 4th edition of the South Bend Tribune on human rights. Also the article in Monday's July 5th edition, and agrees with the writer of Voice of the People, Mary Porter of South Bend. There is a problem of civil rights, not only in the city but also the county, state and the entire nation with our legal citizens on human rights. He stated that as a member of Citizens for the Accountability of Government, Inc., he wishes to express their concerns on Human Rights. That is that we all, as citizens expect the respect and dignity we all enjoy. Civil and Human Rights should and must be given to all women and men that are citizens of this great nation. He stated that when he served in the military (Air Force), and needed a transfusion of blood, he didn't ask where the blood came from white, black, yellow or other. He needed the life saving transfusion or die. He stated that he served his country as millions of citizens did for the freedom of this country. He stated that many gave some, but some gave it all not for some but for all of us. He stated that this hatred must stop and join hands with our brothers and sisters. Let's start here and now in this great city of South Bend, St. Joseph County, State of Indiana and the entire nation. He stated that he has had the privilege and honor to know each and everyone on the Council. He commended them as honorable public servants and has the highest respect for all. He stated that at "Justice for All" now ask before the vote on Bill No. 30-10 that the Council look at each other and ask how would you like to lose your civil rights? Perhaps some wouldn't like your lifestyle or the way you comb your hair or the color of your skin. He urged the Council to give the same civil rights nothing more or nothing less. He stated that if anyone would choose to vote no, then please explain your vote not to give the same human rights that you and I enjoy.

Tony Flora, 202 E. Angela, South Bend, Indiana, stated that he is the Secretary of the North Central Indiana AFL-CIO Council. Mr. Flora advised that the North Central Indiana AFL-CIO Labor Council supports the ordinance introduced by Common Council members Oliver Davis, Ann Puzzello and Buddy Kirsits allowing the South Bend Human Rights Commission to investigate claims of employment discrimination on the basis of sexual orientation or gender identity. The AFL-CIO Central Labor Council voted at its June 2010 meeting to take this position. The AFL-CIO has a long history of dedication to workplace fairness and is a strong advocate for an end to discrimination against all employees. In 2005, the AFL-CIO stated, "Discrimination based on sexual orientation is inconsistent with the fundamental value of equality; simply put, it is wrong." This statement is part of the AFL-CIO's declaration of "The Values that Unite Us as a People and A Movement." The North Central Indiana AFL-CIO, the federation of Unions in the six north central counties of Indiana, asks that the South Bend Common Council support the amendments proposed to the South Bend Human Rights Ordinance. He stated that their support of this amendment is consistent with the AFL-CIO's commitment to improve the lives of workers and their families, and the goal of bringing economic justice to the workplace and social justice to the community. Mr. Flora stated that everybody either has worked or knows of someone who is gay or has someone in their family who is gay and it is about time that we embraced that family instead of running away from that family.

Randy Kelly, 1325 E. Wayne, South Bend, Indiana, quoted from someone he respects "he still hears people say that he should not be talking about the rights of lesbian and gay people and stick to the issue of racial justice, but hastens to remind them that Martin Luther King Jr., said that injustice anywhere is a threat to justice everywhere." He appeals to everyone that believes in Martin Luther King Jr.'s dream to make room at the table of brotherhood and sisterhood for lesbian and gay people. We have a lot of work to do in the common struggle against bigotry and discrimination is equally wrong and should be opposed by right thinking Americans everywhere. Freedom from discrimination based on sexual orientation is surely a fundamental Human Right of any great democracy. He urged the Council to cast their vote for tolerance tonight.

Joe Kernan, 114 E. Pokagon, South Bend, Indiana, stated that in the interest of full disclosure that his mother's brother Tom a naval aviator in WWII, and an idol of his as it turned out later in life ended up with a life partner who happened to be an African American Cal Ashford. Mr. Kernan stated that there were 9 kids in his family all who loved Uncle Tom and Cal very much. They made each other happy and had a relationship that was very special in his family. He stated that he had just come from the Cove and this is the first time that he has been back in this room in over 14 years. He stated that the attendance tonight at the ballpark is 5,000. He stated that he employs over 100 people at the stadium and not once were they ever asked during their interview what their ancestors came from, racial make-up, age, who or what they worship, if they had any disabilities, nor were they asked what there gender identity or sexual orientation is. Mr. Kernan stated that frankly it is none of his business nor anyone else's in the community unless and until someone has discriminated against in their ability to get a job. Those reasons have been around for centuries, it is now time to step up and protect every individual who is interested in getting employed. The failure to pass Bill No. 30-10 sends the message that we as a community are intolerant. We are better that that, this is one of those time that comes around not very often when we get a chance to stand up and talk about what we believe in and believe is the right direction the right course of action to protect everyone who call this community home. He urged the Council to pass Bill No. 30-10 and recognize that this is an opportunity to do something that will have a tremendous impact going forward.

Mayor Stephen Luecke, 14th Floor County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana, stated that he rises in support of Bill No. 30-10. On June 24, 2009 he issued an executive order that prohibited discrimination based on sexual orientation or gender identity for the City of South Bend because he believed in his mind and heart that it is the right thing to do. He encouraged the Council to vote in favor of this bill. He stated that he has heard people debate whether this is pro-business or anti-business, and there will be many different opinions on that. Mayor Luecke stated that he believes that the more important issue is how the City of South Bend stands for employment fairness. This ordinance will not solve all of the problems on this issue in our community, but it does give an opportunity for those who have been discriminated against the ability to have conciliation through the Human Rights Commission. He urged the Council to vote in favor of this bill.

Catherine Pittman, 2628 Summit Ridge, South Bend, Indiana, stated that the Council is going to hear negative comments tonight on this legislation. She stated that this legislation is not going to take an employers right to enforce a dress code or to object to behaviors that are of misconduct. But if an employer finds out that a female employee was born a boy should they have the right to fire that person. Or if an employers finds out that an employee loves someone of the same gender should they have right to fire that person. She stated that opponents to this bill will tell frightening stories about the transgendered community using the same bathrooms as everyone else. Yes, they use the same bathrooms as everyone else however, this bill has nothing to do with regulating bathrooms. She stated that opponents to this legislation will argue that this legislation is giving special rights and allowing members of the GLBT community to have certain jobs. She stated that they already have those jobs, they teach and coach the children of the community, they care for the elderly, they cut hair, they design homes, volunteer in the South Bend community and enjoy recreation in parks. She stated that they don't want to destroy South Bend, they want to be a part of it, they want to work along side and be treated equally. Right now they don't have that same right, because no one has said that they have that same right. She stated that the Council is the governing body to allow that same right. She urged the Council to give that same right of being allowed to be treated equally in the workplace.

The following individuals spoke in opposition to the bill:

Patrick Mangan, P. O. Box 552, Notre Dame, Indiana, spoke in opposition to Bill 30-10. He stated that the Council has crucial decision to make that will impact and affect the entire community. Despite all the eloquent discussion from people speaking on behalf of the bill and from the former Governor which he has know for over 25 years he would like to bring the discussion back to true reality. He stated that he has been ministering and bringing people out of homosexuality for over 30 years. He stated that the Council has heard emotionally based pleas to embrace homosexuality as legitimate. While this tiny micro-minority has the right to promote their views they are still wrong. The fact that they can so readily promote their views is a glaring demonstration that in fact they have not been treated with intolerance but in fact have been tolerated in spite of the fact the majority of society rejects their lifestyle as unhealthy and unholy. Not in public opinion polls but thirty times across this country when special rights in the form of gay marriage has appeared on the ballot it has been soundly rejected. He stated that he has been ministering to those struggling with same sex attraction for over thirty years this lifestyle is truly harmful and dark. It is not loving as some have asserted to affirm those in this behavior as it often takes a deadly toll on those who stay in this lifestyle, while it may be painful to be loving opposed in an unhealthy behavior for those that seek help change is not only possible but very real and often a life saving experience. To be lovingly opposed and offer the promise of freedom and restoration from the terrible pains of consequences of living out a same sex attracted lifestyle. A dear friend who died just before his 40 birthday from complications from HIV/AIDS opposed this bill the last time it was introduced. He told him that it was key to unseat the lie that this behavior is an identity. He is no longer alive or here to loving oppose this bill. Mr. Mangan stated that is why he is here in part to let his story be heard. He was free from same sex attraction for nearly 20 years following his encounter with Jesus after living a life of homosexual promiscuity as a teenager, he was one of the kindest men he ever new and was an elder in his church. However, he was not free from the disease for the rest of his unnaturally short life and it eventually ended his life. His heart was for those who were being told a lie that this is their true identity and that they cannot change to hear the truth that they cannot only change but be transformed through the love of Jesus and the power of Holy Spirit. There is a false proposition here that what we do is who we are, and that if we reject a persons bad behavior we are rejecting them as a person. This is absolutely untrue and as a society we don't apply this standard anywhere else. As it would be unfair and unmanageable, this false proposition has been the basis of the many false claims that it is unchristian to oppose this behavior and to loving oppose any attempt to legitimize it. Indeed it is unchristian to call a behavior that the scripture condemns as good. Thank you for listening and but love them as you would your children and reject the bad behavior.

Fred Everett, 114 W. Wayne Street, South Bend, Indiana, stated that he is reading a statement on behalf of Bishop Kevin C. Rhodes. As the new Bishop of Fort Wayne-South Bend since January, I have had the privilege of getting to know the communities of Fort Wayne and South Bend as well as many other sin the diocese. I have come to feel very much at home here in northeast Indiana and to appreciate the strongly-held values evident among the people of our area. Recently, in fact, a number of concerned citizens made me aware of an attempt in the South Bend Common Council to establish special rights on the basis of sexual orientation and gender identity. This proposed ordinance which is being promoted by groups of "Gays, Lesbians, Bi-sexual and Transgendered Persons" would add sexual orientation and gender identity to the standard list of characteristics protected from discrimination, namely those based on race, religion, color, sex disability, nationality or ancestry, and familial status. In 2006, the South Bend Common Council attempted to do this as well but the measure failed to pass. At that time, my predecessor, Bishop John M. D'Arcy, issued a statement of opposition to any effort which would establish special rights on the basis of sexual orientation and gender identity. Today, I do so as well. While I do not question the good intentions of those involved in this effort, this ordinance seems more about validating in law homosexual lifestyles and behaviors than it is about addressing unjust discrimination. Without questions, everyone deserves to be treated fairly and with dignity. Everyone should enjoy the same basic human rights. The Church deplores and type of violent action or hateful speech aimed at homosexual persons. We should not, however, create special rights to validate lifestyles and behaviors to which many of our citizens strongly object for reasons of moral principle, not prejudice or "homophobia." The main reason for this

assessment is based on the fact that the way in which sexual orientation and gender identity are defined in the proposed ordinance goes beyond simply and individual's "self-identity" or "self-image" to also include "appearance, expression or behavior." In other words, homosexual activities as well as homosexual orientation are being given special status and special protection. While the proposed ordinance specifically excludes religious organizations from having to comply with these special rights, what about the right of conscientious citizens who have principled objections to these types of lifestyles and behaviors? For example, why should a family in a duplex that is renting the other side of their home be legally forced to lease to an openly homosexual couple? Why, as well should an employer be legally forced to accept the cross-dressing habits of an employee? What, in fact, if this employee is a grade school teacher of young children in one of our public schools? In addition, as Bishop D'Arcy stated in 2006, there is no reason to believe that the matter will stop here: "Efforts such as these have been followed in other communities by efforts to have public school children indoctrinated even as early as second grade to accept homosexual lifestyles and behaviors as normal. Often, those who have principled objections to this are labeled as prejudiced or "homophobic." Instead of building greater tolerance, this ordinance may actually be helping to build greater intolerance of those who, on the one hand, believe every person should be treated with dignity, but also are deeply opposed to homosexual activity and to the gay lifestyle." While some members of the South Bend Common Council have stated that this measure is necessary in order to attract innovative technological companies to the South Bend area, I question whether this is really true and whether it is not very short-sighted. A stable and flourishing community is certainly one with jobs, but it is also one where children flourish in families based upon the stable marriages of father and mother. Any attempt to build community that distorts and weakens the links among sexuality; marriage and family life are bound to produce more confusion and family disintegration in the end. We want to be a welcoming community but not at the expense of the strong moral principles upon which any stable flourishing community are founded.

Charles Rice, 57800 Tyholland, Mishawaka, Indiana, spoke regarding the constitutional right of this bill. The judgment that he offered back in 2006 is the same and he cannot recall having seen a more defectively drafted bill and the vagueness is a violation of due process of the law. When an enactment is vague it means that people have to guess as to what it means. And there is a right under due process of the law to know precisely what is forbidden and what is allowed under the law. He respectfully suggests that it is the Council's responsibility to make sure that before a vote is taken to understand exactly what means is and he feels that cannot happen.

Barbara M. Curlett, 1333 1/2 N. Chicago Av., Goshen, Indiana, stated that she would like to talk about her experiences tonight. She stated that she used to be a lesbian woman until she met Jesus Christ who has delivered her from that life. He has saved her and redeemed her and gave her many, many blessings. One of those blessing is the freedom she has in him and doesn't have to worry about being discriminated against because he has delivered her from that, she doesn't have to worry about her self image because he has given her a self-image or how other's perceive her because she knows how God perceives her. She thanked the Council for listening tonight and ask God to bless everyone tonight.

Mario Sims, 23778 Grove Street, South Bend, Indiana stated that he has placed his life and freedom on the line to fight for civil rights. He has been on the board of the NAACP, Chairperson of the Urban League and received many awards for Civil Rights issues. He stated that it is very disturbing to him that this issue is perceived as a civil rights issue. This is not a civil rights issue nor is it an economic issue. This is not an issue that should be before this Council tonight. Precious resources are being wasted on an issue that has nothing to do with civil rights.

Micah Clark, Executive Director of the American Family Association of Indiana, P. O. Box 40307 Indianapolis, Indiana, stating that he is here tonight representing Glen Lavy, Senior Vice President of the Alliance Defense Fund (ADF), a legal alliance defending the right to hear and speak the truth. Mr. Clark read excerpts from a letter signed by Mr. Glen Lavy they are as stated that the ADF is a not-for-profit legal alliance of more than

1,800 attorneys and like-minded organizations defending the right of people to freely live out their faith. Their organization exists to educate the public and the government about important constitutional rights, particularly the freedom of religious expression and exercise. They frequently defend these important freedoms in the courts through their offices across the country. The sincerity of religious beliefs about male and female is why crating special protection for gender identity would have an unavoidable negative impact on religious liberty and rights of conscience in the workplace. The ordinance would infringe on religious liberty and rights of conscience of both religious employers and ordinary business owners. This would be true even if the ordinance included meaningful religious exemptions. The useless religious exemption of Section 2-127.1(e) is confusing to say the least. It first exempts employment decisions of religious organizations. Nevertheless, the next phrase seems to limit the exemption to positions where hiring a person who engages in homosexual behavior or presents with a gender other than his or her biological gender would “affect the definition, advancement of the mission(s), practices(s) or belief(s)” of the organization. It then has some convoluted language about someone “charged with the implementation of such decision or decisions.” The grammar is so bad that it is impossible to tell to whom that applies or what it means. There also appears to be an exemption for right of association of private organizations, as in the Boy Scouts of America case. But the extent of that exemption is far from clear. For example, the language is sufficiently vague, that it is uncertain whether the exemption would apply to the Boy Scouts’ hiring practices. The exemption language is either poorly written, or written in a way that is not intended to convey much of an exemption. And regardless, there is no exemption for the rights of conscience of individual persons of faith. How an employer to know what an employee’s actual gender is related self-identity or self-image is without asking. Could an employer ask without eventually being accused of discrimination? How is one to know how an employer perceives and employee’s gender-related self identity or self-image? There is simply no objective criteria an employer can utilize to ascertain an employee’s gender identity. Gender expression is likewise a problematic criterion for employers. How could an employer ever adopt and enforce a dress code if gender expression is a protected category? How is an employer to know whether a person’s attire, posture, vocal inflection, and so on really reflect that individual’s “fundamental sense of themselves as masculine or feminine, and male or female? The proposed gender identity provision could readily result in providing a legal cause of action for employees who are property discharged or passed over for a promotion. Gender Identity laws have not existed long enough to allow a thorough analysis of how they will affect employers. But there have already been lawsuits by transsexuals against employers to demand the right to use restrooms reserved for members of the opposite biological sex. In fact, in an early case the Minnesota Court of Appeals ruled that an employer violated an employee’s rights by designating restrooms and restroom use on the basis of biological sex. The ambiguity of gender identity and the meaningless religious exemption exacerbates the danger to religious liberty posed by Common Council Bill No. 30-10. The Common Council should not deceive themselves into thinking this bill would further the cause of liberty and justice.

Richard B. Urda, Jr., 3104 Springbrook Drive, South Bend, Indiana, stated that he has been practicing tax and business law in South Bend since 1975. He stated that he is not a philosopher or a theologian, but just a simple country lawyer. His reason for opposing this proposed amendment is practical. He stated that the co-sponsors of this bill think in good faith that it will attract new business to South Bend, and create new jobs. He believes it will have just the opposite effect. Most of his clients are small businesses and small business owners who fear that someone will file a claim against them and entangle them in costly and timely legal proceedings. One of the biggest factors in a small business looking to locate or expand their business is their legal risks in that community. If passed, this amendment will make the current small businesses have a new risk of being sued for sexual orientation discrimination. If passed new employers will have to evaluate the risk of being sued for this kind of discrimination and the risk of locating in South Bend. That risk for old and new small businesses does not exist in Mishawaka, Elkhart, St. Joseph County, LaPorte or other towns that are competing for these same businesses and these same jobs. So why should a small business come here or stay here and have to deal with this kind of legal risk. Mr. Urda stated that based upon his legal

experience the practical people who run successful small businesses simply won't. When you look objectively at the benefits that are alleged to come from this legislation but the burdens that are imposed by this amendment are a job killer and urged the Council to vote against this bill.

Ryan McCan, Indiana Family Institute, 155 Market Street, Indianapolis stated that the Indiana Family Institute is an affiliate of the Alliance Defense Fund (ADF), a letter was read earlier this evening by Mr. Micah Clark on behalf of the ADF and likewise the Indiana Family Institute strongly opposes this bill.

Timothy Wescott, 59771 Red Bird Ct., Mishawaka, Indiana, stated that he attends church and do business in South Bend and urges the Council to vote against this bill.

Eric Miller, Founder, Executive Director, Advance America, 101 W. Ohio, P.O. Box 44590, Indianapolis, Indiana, stated that all Council Members were supplied with a manual from Citizens for Community Values of Indiana and would like to make that document a part of the record. A copy of that manual is on file with the Office of the City Clerk. Mr. Miller stated that he has worked in the Indiana General Assembly for over 29 years reviewing legislation. He stated that he has reviewed Bill No. 30-10 and agrees that this bill is vague and detrimental to businesses and religious organizations of State of Indiana. He stated that he is here tonight also representing a long time business owner and resident of South Bend, Mr. Bill Gates, who is also a Board Member of Bethel College who could not be here tonight but wishes to voice his opposition to this proposed amendment to the Human Rights Ordinance. For the betterment of South Bend, St. Joseph County and the State of Indiana he urged the Council to defeat this legislation for it is adverse to businesses, children, churches, families and religious organizations. He stated that South Bend should vote down this proposed amendment like their neighboring cities of Goshen and Ft. Wayne who have voted down a similar amendment within the past year.

In Rebuttal,

Mr. Charles Leone stated that he and Mr. Urda put together that language on behalf of the Boy Scouts with respect to that effect. He stated that there was a U.S. Supreme Court case that is cited in that section of the ordinance. He suggested that Professor Rice and others who might not be familiar with that language read that particular court case because the language that is in that particular exemption is derived directly from that U.S. Supreme Court case and grant that it is a little hard to understand but that is where it comes from. It is designed to say that a religious organization has the same level of exemption with respect to these particular characteristics as it does in other types of employment in terms of a religious discrimination. A religious organization may discriminate on the basis of religion when hiring. For example a religious organization may discriminate from hiring a GLBT person if in fact that is part of the religious basis for the decision. So in fact it is designed to create the exemption. The question of interpretation is one that comes to the South Bend Human Rights Commission, but certainly the Commission is not going to be in a position to choose or dole out religious doctrine. If a religious organization says that this is their choice because of our religious belief then that is the way it is going to be.

Aladean DeRose stated that as the Commission does its work it does rely on interpretations of the law as handed down by the Supreme Court and by the Courts of the State and carefully reviews all issues of defense such as this because other issues have come up in the past because there are other exemptions in the employment ordinance for educational institutions. She stated that State funded educational institutions are not subject to the jurisdiction of the Human Rights Commission. She noted that in the past that the school corporation has permitted the South Bend Human Rights Commission to hear its cases even though the ordinance does not permit that because that it is a right specific to that exempt organization but have decided to allow the Commission to hear their case because they feel that the South Bend Human Rights Commission fairly and fully and completely investigates their case with respect to protecting their employers which is a duty of the commission as well as protecting their employees who are victims

discrimination. Ms. DeRose noted that they don't do interpretations in a vacuum. She noted that if they are wrong they are simply an agency who has quasi-judicial jurisdiction and the Circuit Court is the court of appeals for Human Rights Commission issues. It's not an agency acting out a legislative plan; it is an agency making a determination which is then subject to court review.

Councilmember Dieter asked City Clerk John Voorde to read into the record a letter from Philip M. Sutton, PhD, dated July 23, 2010.

Council Member Derek Dieter
South Bend Common Council
227 West Jefferson Blvd. Suite 400 S
South Bend, Indiana 46601

Re: Bill 30-10

Dear Council Member Dieter:

I am writing to ask you not to approve Bill 30-10 which would add "sexual orientation" and gender identity" to the South Bend non discrimination code. While I hoped to read a state at the July 26, 2010 meeting of the South Bend Common Council explaining the reasons for my opposition to the bill, I will be at a family reunion over the weekend in Ohio and am uncertain about when on Monday I will be able to return. Therefore, I have enclosed the text of my remarks which I hop you will find time to read and consider. If I ever may assist you or any member of the South Bend Common Council by providing information of a professional or scientific nature to help explain some of the issues related to this bill, please do not hesitate to contact me.

Sincerely yours,

Philip M. Sutton, Ph.D.
Licensed Psychologist (MI & OH)
Licensed Clinical Social Worker (IN)
Licensed Marriage and Family Therapist (IN)

Councilmember Varner stated that fundamentally a few years ago they tried to pass a similar bill. He stated that he did not support it then and does not support it now for a variety of reasons. He stated that he is a small business owner and feels that this is another law that government is trying to impose. He applauds both side and thanked everyone for their comments this evening. But for those reasons he will be voting against this bill tonight.

Councilmember Rouse stated that when this bill was filed it did not follow the normal procedure. He stated that the sponsors of this bill did not interface with the other Councilmembers. He stated that when he found out that this bill was being filed he had a strong proclivity to file another bill. A bill similar that would address the issue of ex-felons. He stated that he knows that the ex-felon is the most discriminated group in this country. He stated that no where on an application does it ask a person if they are GLBT but can ask if he or she is an ex-felon. And if they lie that is cause to fire that person. He stated that he had the desire to file such a bill, but for the very same reasons that were raised here tonight that it would do more harm than good. He believes that everybody has the right to work, but if there is no work and businesses are leaving the city right now or have left the city such as St. Joseph Regional Medical Center and for that reason to debate this would be remiss. Councilmember Rouse stated that he agrees with Bishop Rhoades, Bishop D'Arcy and Professor Rice that this bill is vague. He stated that he has members of his family that are gay just like Governor Kernan stated tonight and he is right they love them greatly. However, that doesn't mean that he is going to pass legislation to condone their lifestyle. He stated that if this bill is going to be voted on tonight he will be voting against it.

Councilmember Henry Davis thanked everyone for coming tonight. He wished that they had a turn out like tonight for every Council meeting. He stated that he is a Christian and confessed to Christ at the age of nine (9); his father is a minister and he played the drums in the church choir. He stated that is the fabric of who he is and he is not going to separate those two. He stated that last year when the Mayor issued his Executive Order he spoke out about it because the Council and the Administration were undergoing Budget Hearings and there were budget crisis' happening. People were being laid off, budgets were being cut, paving projects were being reduced, pot holes were not being fixed. He stated that the timing was wrong, and it did not deserve the time to be discussed. He stated that his comments did not reflect the GLBT community; it reflected that programs were being cut, community centers were going to be closing and a large number of employees were going to be laid off. As an elected official, he felt it was his civic duty to respond to the needs and concerns of the citizens of his district, not to commend an executive order. He questioned whether or not the Human Rights Commission will have the tools in place to enforce this amendment. As it stands he believes right now that they don't have the tools to enforce it. He stated that the city has a hard enough time enforcing lawn parking and now we are going to get into the area of trying to investigate and enforce a law regarding not being able to get a job or keep a job based on their sexual orientation or gender identity. He stated that discrimination cases are very tough to prove. There has to be very hard core evidence. He stated that his parents told him from a very young age that if you are going to interview for a job that you dress respectfully and are clean cut, hair cut, clean shaven. It's a matter of getting back to those basic things. He stated that he is not against the GLBT Community, he is against the behavior and for that he will not be voting in favor of this bill.

Councilmember White stated that she personally believes that no one should be discriminated against. However, she lives a life style that she has been brought up to believe. She stated that she has received hundreds of e-mails regarding this bill. She stated that this is the first time that the Council as a whole has met on this bill. She believes that time is needed to continue discussion. She noted the concern regarding the vagueness of this bill. Councilmember White stated that she would like to be able to have the opportunity to work through some of these issues. She urged the continuance of this bill.

Councilmember Oliver Davis stated that he would like to clear up some of the issues regarding the vagueness of this bill. He stated that when it comes to race and religion it is very clear that you cannot discriminate against. However, when it comes to sexual orientation or gender identity it becomes vague. Since 1976, the Human Rights Commission has been clear that not one case has been heard when it came to religion that the issue has not be clear. They have always been able to determine what the issue was regarding religious discrimination. He noted that in 34 years since the Commission has been established it has not been documented that they had a hard time determining a religious issue. He stated that he has a problem with people saying that the timing wasn't right on this bill. He stated that putting off the vote on this bill will only allow for the continuance of discrimination. He stated that as a licensed social worker he believes in the concept of restoration in many different ways. He stated that he is a Christian, born and raised since he was a kid too. This subject is a separation of church and state. He noted that there are several different religious beliefs on this Council alone, but he stated that he has an obligation to separate his religious beliefs from those decisions that he makes on the Council. He stated that he has received hundreds of e-mails on this issue, some of the most hateful messages he has ever seen. He stated that he has received a lot of e-mails in the past but this issue brought more vile e-mails then when they implemented new taxes. He told his young daughter not to turn the computer on at home for fear she would see some of the hurtful e-mails. He urged his fellow Councilmember's to consider further discussion to clear the issue of vagueness that has been brought up tonight.

Councilmember Oliver Davis made a motion to continue this bill indefinitely at the request of the petitioners. Councilmember Puzzello seconded the motion. The motion carried by a roll call vote of five (5) ayes (Councilmember’s LaFountain, Puzzello, Oliver Davis, Kirsits, White) and four (4) nays (Councilmember’s Henry Davis, Varner, Rouse, Dieter.)

RISE AND REPORT

Councilmember Oliver Davis made a motion to rise and report to the full Council. Councilmember Varner seconded the motion which carried by a voice vote of nine (9) ayes.

ATTEST:

ATTEST:

John Voorde, City Clerk

Ann Puzzello, Chairperson
Committee of the Whole

REGULAR MEETING RECONVENED

Be it remembered that the Common Council of the City of South Bend reconvened in the Council Chambers on the fourth floor of the County-City Building at 9:14 p.m. President Derek Dieter presided with nine (9) members present.

Councilmember Varner motioned for a ten (10) minute recess. Councilmember Henry Davis Jr., seconded the motion which carried by a voice vote of nine (9) ayes.

The meeting resumed at 9:26 p.m.

Councilmember Henry Davis, Jr. not present at this time.

BILLS – THIRD READING

ORDINANCE NO. 10025-10

AN ORDINANCE TO VACATE THE FOLLOWING DESCRIBED PROPERTY: THE ALLEY TO BE VACATED IS DESCRIBED AS THE WEST HALF OF THE FIRST EAST-WEST ALLEY SOUTH OF NAPOLEON BETWEEN DUEY AND THE FIRST NORTH-SOUTH ALLEY SITUATED IN HARTMAN AND WOODWORTH’S PLAT TO THE CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA

This bill had third reading. Councilmember Varner made a motion to pass this bill. Councilmember LaFountain seconded the motion which carried. The bill passed by a roll call vote of eight (8) ayes.