

Fayetteville Chamber of Commerce Letter Revisited

By: Protect Fayetteville



*Protect Fayetteville, formerly Repeal 119, compares the issues found in Chapter 119 with the current issues found in the 5781 Ordinance. Though some minor changes and modifications were made by the city council, there are compelling similarities between the two ordinances. The substance and core problems of Chapter 119 are the same or worse in 5781. **The following resolution was made public in 2014 by the Fayetteville Chamber of Commerce and is seen in black print. Protect Fayetteville has done a review of this resolution and compared the Chamber's criticisms of objectionable details of 119 to the same details found in 5781, which is seen in red print.** We, at Protect Fayetteville, believe that Ordinance 5781 is as dangerous to the business community as Chapter 119.*

Fayetteville Chamber of Commerce
Board Resolution
Recommending the repeal of Fayetteville Ordinance 5703, Chapter 119

1. Whereas, the City of Fayetteville adopted Ordinance 5703 Chapter 119 on August 19, 2014, amending the civil rights administration chapter of the city code; and

Chapter 119 was passed on the 3rd city council meeting after the 3rd reading- this is the typical procedure. On June 16, 2015 the City Council suspended the rules and passed the ordinance 5781 in one night. This was worse than the Chapter 119 proceedings.

Conclusion: Ordinance 5781 is worse than Chapter 119!

2. Whereas, the City of Fayetteville was put on notice in writing on May 15, 2014 of the intent to propose these modifications to the civil rights administration chapter including a draft proposal entitled, Anti-Discrimination Ordinance; and

The city was put on notice June 9th at the council's agenda meeting of the intent to propose Ordinance 5781- This was only one week before the June 16th council meeting when it was passed. In comparison, Chapter 119 had over three months.

Conclusion: Ordinance 5781 is worse than Chapter 119!



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3. Whereas, the City of Fayetteville elected not to publish any of the proposed changes for citizen review and did not seek public comment on the proposed amendments for 90 days until the evenings of city council meetings for the second and third readings of the ordinance; and Whereas, the City of Fayetteville limited public comment for some citizens but permitted comment by other citizens for an unlimited period; and

The City of Fayetteville elected not to publish any of the changes for public review and only allowed limited comments during the one night that the council passed the 5781 ordinance. This ordinance was written in secret and the public was intentionally not invited to participate, nor were any of the Repeal 119 leadership invited to comment in any way during this process.

Conclusion: Ordinance 5781 is worse than Chapter 119!

4. Whereas, the City of Fayetteville did not send this proposed ordinance to the ordinance review committee of the City Council to seek additional public comment regarding concerns that were raised; and

The City of Fayetteville did not send the proposed ordinance 5781 to the ordinance review committee of the city council to seek additional public comment regarding obvious concerns that were raised.

Conclusion: Ordinance 5781 is the same as Chapter 119!

5. Whereas, the City of Fayetteville has historically sought extensive public input on significant issues such as paid parking and extension of existing sales taxes but failed to do in this matter of civil rights; and

The City of Fayetteville has historically sought extensive public input on issues such as paid parking and extension of existing sales taxes but failed to do so in this matter of the 5781 Ordinance. There was even less time for public comment in only one city council meeting. Because this was clearly a divisive and controversial issue, there should have been more debate and discussion, not less than during Chapter 119's proceedings.

Conclusion: Ordinance 5781 is worse than Chapter 119!



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6. Whereas, the City of Fayetteville on the evening of final passage voted down an amendment which would have permitted the citizens to have further debate about the ordinance and then vote in referendum as to whether the City should adopt the amendments offered; and

The City of Fayetteville ignored an amendment on June 16th, the night of the passage of Ordinance 5781, which would have referred the vote in a referendum in the general election that would not have cost the city additional funds.

Conclusion: Modified, but similar to Chapter 119 because in both cases the city would not have spent extra money on special elections had they adopted the amendments.

7. Whereas, there is no record that the City of Fayetteville, upon receiving these suggested amendments, made any efforts to review or compare these suggested changes to the actual civil rights ordinances enacted in other similarly sized university communities; and

The City of Fayetteville made no efforts to review or compare or admit this ordinance's potential detrimental effects to the actual civil rights ordinances enacted in other communities.

Conclusion: Ordinance 5781 similar to Chapter 119!

8. Whereas, the record demonstrates, that the City of Fayetteville, after the adoption of the new amendments to the civil rights administration chapter, then elected to review and compare the new Fayetteville ordinance to ordinances in place in the cities of Bloomington, IN home to Indiana University; Columbia, MO home to the University of Missouri; Ames, IA home to Iowa State University; and Iowa City, IA home to the University of Iowa to determine the differences in the Fayetteville amendments and those in the other cities; and Whereas, the City staff of Fayetteville reported that the Fayetteville ordinance includes protection against discrimination for "gender expression" which protection is not found in any of the four peer cities evaluated and;

This wording is not in 5781, but the term "gender identity" includes gender expression.

Conclusion: Modified, but similar to Chapter 119!



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9. Whereas, the City staff of Fayetteville reported that the ordinance includes “Socio-economic Background” as a prohibited discriminatory class and that “Socio-economic Background is not defined in Fayetteville’s ordinance nor is there a definition for “physical characteristic; and

Ordinance 5781 does not include “Socio-economic background” or “physical characteristic” as classes. It also dropped veteran, familial and marital status and now is focused only on sexual orientation and gender identity.

Conclusion: Changed.

10. Whereas, the City of Fayetteville convened a 19 member panel of citizens to give suggestions to the City on how to implement the City’s new civil rights ordinance; and

Ordinance 5781 establishes a seven member commission with power to conduct hearings and decide guilt or innocence of citizens charged with illegal discrimination based on sexual orientation and gender identity, yet only gets involved after the City Attorney receives the complaint and attempts mediation or conciliation.

Conclusion: Modified, but similar to Chapter 119!

11. Whereas, the City of Fayetteville neither commented on or responded to questions raised by the citizen panel concerning keeping accurate records of complaints, vagueness and lack of definition of specific critical terms in the ordinance enacting specific timelines for the procedure of handling a complaint, and rights of privacy; and

Although records, definitions, and timelines were addressed in Ordinance 5781, the Rights of privacy are not corrected either in the complaint process or in the privacy rights of women in female designated public facilities. Women were denied the same privacy rights in Chapter 119.

Conclusion: Modified, but similar to Chapter 119!



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12. Whereas, the City of Fayetteville was advised by the City Attorney before the final city council vote that the office of the City Attorney could not participate in the implementation of these amendments to the civil rights administration chapter because of ethical conflicts of interest and thereafter the City appointed the City Attorney to the position of civil rights administrator; and,

The City of Fayetteville was advised by the City Attorney that the office of the City Attorney could not participate in the implementation of these amendments to the civil rights administration chapter because of ethical conflicts of interest. In Ordinance 5781 the city attorney is not given the title of, “Civil Rights Administrator,” but is involved in the implementation of the ordinance and is the one who facilitates the process. He receives complaints, conducts mediation between the complainant and the accused; therefore, the conflict of interest still exists.

Conclusion: Ordinance 5781 is the same as Chapter 119!

13. Whereas, the City of Fayetteville’s newly adopted civil rights amendments criminalize civil conduct without an adequate definition of what prohibited conduct will give rise to criminal prosecution; and

Whereas, the City of Fayetteville’s Ordinance 5781 still criminalizes civil conduct it does define some prohibited conduct, but not others.

Conclusion: Ordinance 5781 is partially modified, but similar- civil behavior is still criminalized!

14. Whereas, the City of Fayetteville has indicated that, if the repeal of the civil rights amendments fails, the City will proceed forward in recommending individuals or businesses for criminal prosecution; and

Concerning Ordinance 5781, the City of Fayetteville has indicated that the city will proceed forward in recommending individuals or businesses for criminal prosecution including forcing businesses to cater to same-sex weddings.

Conclusion: Ordinance 5781 is worse than Chapter 119!



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15. Whereas, the City of Fayetteville enacted these civil rights amendments defining the legal standard for action to be initiated by the civil rights administrator as “a perception” by the aggrieved party that discrimination has occurred without the requirement of proof of intent; and

There is no proof of intent requirement in 5781, nor evidence requirement mentioned in written complaint procedure.

Conclusion: Ordinance 5781 is modified, but similar and still just as bad as Chapter 119!

16. Whereas, the City of Fayetteville enacted these civil rights amendments without regard for or including any of the standard defenses permitted by Arkansas state law or federal law in response to allegations of discrimination; and

The City of Fayetteville enacted Ordinance 5781 without including ALL of the standard defenses permitted by Arkansas state law or federal law in response to allegations of discrimination. Ordinance 5781 includes some, but not all. The complaint, the mediation with city attorney, and the hearing before the commission are outside due process of law and known legal precedents.

Conclusion: Ordinance 5781 is modified, but similar and still just as bad as Chapter 119!

17. Whereas, the City of Fayetteville in enacting these civil rights amendments did not enact any mandated procedures as to timelines to act, requirements for hearings, right to confront accusers, procedures for investigation and/or discovery, or an appeal of a civil rights administrators actions; and

Ordinance 5781 enacted mandated procedures as to timelines and requirements for hearings, but did not address the right to confront accusers, procedures for investigation and/or discovery, or an appeal of a civil rights administrator’s or commissioner’s actions.

Conclusion: Ordinance 5781 is modified, but similar and still just as bad as Chapter 119!



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NOW THEREFORE, the Fayetteville Chamber of Commerce resolves that;

1. That city Ordinance 5703 Chapter 119 of the City of Fayetteville is deficient as a legal standard to define proscribed and outlawed conduct in the City of Fayetteville and thus appear to be subject to constitutional challenge; and

Protect Fayetteville believes city Ordinance 5781 of the City of Fayetteville is deficient as a legal standard to define proscribed and outlawed conduct in the City of Fayetteville and thus appears to be subject to constitutional challenge. This ordinance violates Arkansas ACT 137 and contradicts the U.S. and Arkansas Constitutions.

Conclusion: Ordinance 5781 is the same as Chapter 119!

2. That city Ordinance 5703 Chapter 119 of the City of Fayetteville was adopted without a complete and thorough debate, discussion, comparison and review of similar civil rights proposals; and,

City Ordinance 5781 of the City of Fayetteville was adopted without a complete and thorough debate, discussion, comparison and review of similar civil rights proposals. This ordinance was passed without a thorough process involving the citizens of Fayetteville.

Conclusion: Ordinance 5781 is the same as Chapter 119!

3. That because the citizens of Fayetteville gathered 4,250 signatures on petitions indicating that they wanted these amendments referred to a vote; and,

The outcome of the special election that repealed Chapter 119 should have been respected by the city council. This occurred after the citizens of Fayetteville made the extraordinary effort to gather over 4,250 signatures to petition the city for the special election. Because Ordinance 5781 is the same in substance as Chapter 119, the city council ignored the will of the people.

Conclusion: Ordinance 5781 is the same as Chapter 119!



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4. That city Ordinance 5703 Chapter 119 , with its incomplete, deficient and vague definitions and requirements creates confusion, concern and lack of clarity as to what is legal or illegal conduct on behalf all citizens of Fayetteville; and

Protect Fayetteville believes, Ordinance 5781, with its incomplete, deficient, misleading and vague definitions and requirements creates confusion, conflicting provisions, concern and lack of clarity as to what is legal or illegal conduct.

Conclusion: Ordinance 5781 is the same as Chapter 119!

5. That city Ordinance 5703 Chapter 119 should be repealed; and
That citizens and businesses of the City of Fayetteville alike should vote “For Repeal of Ordinance 5703 Chapter 119” at the election to be held on December 9, 2014.

Protect Fayetteville believes Ordinance 5781 should be rejected and that citizens of the City of Fayetteville should vote “AGAINST ORD. 5781” at the election to be held on September 8, 2015

Conclusion: Ordinance 5781 is the same as Chapter 119!

