



March 2, 2016

The Honorable Pat McCrory  
Governor, State of North Carolina  
20301 Mail Service Center  
Raleigh, NC 27699-0301

The Honorable Phil Berger  
President Pro Tempore, North Carolina Senate  
16 W. Jones Street, Room 2007  
Raleigh, NC 27601-2808

The Honorable Tim Moore  
Speaker of the North Carolina House of Representatives  
16 W. Jones Street, Room 2304  
Raleigh, NC 27601-1096

**By Electronic and Hand Delivery**

Dear Governor McCrory, Senator Berger, and Speaker Moore:

As you are aware, on February 22, 2016, the Charlotte City Council approved a set of highly controversial and hazardous ordinance changes that added "sexual orientation," "gender identity," and "gender expression" as protected classifications in the city's commercial non-discrimination, public accommodation, and passenger vehicles for hire ordinances. The ordinance changes also deleted Section 12-59 of the Charlotte City Code, which had ensured that "[r]estrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private" would remain separated based on the "sex" of the user.

The action of the Charlotte City Council to adopt these ordinance changes violates:

- The privacy and safety of residents and visitors of the City of Charlotte;
- The religious liberties of many small business owners and other citizens; and
- The proper role of the Charlotte City Council, which has far exceeded its legal authority in adopting these ordinance changes.

For these reasons, which are detailed further below, **the North Carolina Family Policy Council urges you to call the North Carolina General Assembly into a special session, prior to the effective date of the Charlotte ordinance changes of April 1, 2016, for the purpose of enacting legislation that will prevent the Charlotte ordinance changes from going into effect and that will preempt any other municipality or county in the state from enacting a similar ordinance.**

Thank you for your consideration of this critically important request!

Sincerely,

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President

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Enclosure: "Why a Special Session to Repeal Charlotte's Ordinance Changes is Necessary"



## WHY A SPECIAL SESSION TO REPEAL CHARLOTTE'S ORDINANCE CHANGES IS NECESSARY

**(1) The Charlotte Ordinance Changes Violate the Privacy and Safety of Residents and Visitors of the City of Charlotte.** The Charlotte ordinance changes deleted a section of the Charlotte City Code (§ 12-59), which had ensured that “[r]estrooms, shower rooms, bathhouses and similar facilities which are in their nature distinctly private” would remain separated based on the “sex” of the user. The ordinance changes also added “sex,” “sexual orientation,” “gender identity,” and “gender expression” to the list of protected classifications in the City’s “public accommodation” ordinance.

According to the City’s extremely broad definition of “Place of Public Accommodation,” (Code § 12-57) this new ordinance provision would apply to any “business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available to the public.” Presumably, this would include all of the following: hotels; motels; restaurants; bars; elementary, secondary, undergraduate, or postgraduate public or private schools; day care centers; senior citizen centers; homeless shelters; museums; libraries; galleries; parks; zoos; amusement parks; nurseries; gyms, health spas, and other places of exercise or recreation; theaters and concert halls; stadiums; auditoriums; convention centers; grocery and other retail stores; shopping centers; banks; gas stations; office complexes; hospitals; public transportation facilities, and other establishments. *Because there is no exception for places of worship, the ordinance changes would also likely apply to churches, church schools, and related church ministries.*

While it was initially thought that the “bathroom provision” applied primarily to individuals who identify as transgendered, which was troubling in and of itself, it has become apparent that the application is much broader. Because the term “sex” was added to the list of protected classifications in the public accommodation ordinance, the ordinance essentially prohibits the establishment of “sex” specific bathrooms in the City of Charlotte.

*These changes mean that men can enter women’s restrooms, shower rooms, bathhouses, and similar facilities in any “public accommodation” in the City of Charlotte. This would place the privacy, safety, and dignity of women, children, the elderly, and others at great risk of physical, emotional and/or mental harms inherent with unexpectedly encountering an individual of the opposite sex in a facility that is deemed to be private.*

**(2) The Charlotte Ordinance Changes Violate the Religious Liberties of Many Small Business Owners and Other Citizens.** In essence, the Charlotte City Council has chosen to violate the religious liberties of many citizens—especially business people and others operating “public accommodations”—and force them to accept and embrace the Council’s extremely liberal view of marriage and human sexuality.

The First Amendment to the U.S. Constitution guarantees that, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....” Likewise, Article 1, Section 13 of the North Carolina Constitution, declares, “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience [emphasis added].”

Clearly, many citizens have sincere religious beliefs that marriage is a God-ordained institution comprised only of the union of one man and one woman. Many also believe that it is only within the context of this marital union that sexual activity is appropriate and intended.



March 2, 2016  
Page 3

In direct contrast, the Charlotte City Council has determined to impose its own view of human sexuality on the citizens of the city by enshrining “sexual orientation,” “gender identity,” and “gender expression,” as legally protected classifications in its local ordinances. ***These terms are undefined and can be interpreted to mean practically any form of sexual expression, preference or behavior. In addition, because “sexual orientation,” “gender identity,” and “gender expression” are self-determined identifying characteristics that can be declared and/or changed at any time, the modified ordinance is subject to inconsistent application, misinterpretation, and considerable abuse.***

As we have seen in localities and states across the nation, similar ordinances have been used to force small business owners such as florists, bakers, photographers, bed and breakfast owners, and others who have sincerely held religious beliefs about marriage and human sexuality to either conform to a government dictated viewpoint in violation of those sincerely held beliefs, or to face legal charges, fines and other penalties that have ultimately caused some to go out of business. Likewise, the Charlotte ordinance changes directly violate this constitutionally protected right to religious liberty, which our Founders considered to be our first and most cherished right.

***Neither the City of Charlotte, nor any other municipality or county government in the state, should be authorized to impose such an unconstitutional mandate as a condition of doing business. If the ordinance changes approved by the Charlotte City Council are not repealed IN FULL, the Governor and North Carolina General Assembly—at the very least—will be giving their tacit approval to this unconstitutional policy.***

**(3) The Charlotte Ordinance Changes Violate the Proper Role of the Charlotte City Council, Which Has Far Exceeded Its Legal Authority in Adopting These Ordinance Changes.** On its website, under a section entitled, “How NC Municipalities Work,” the North Carolina League of Municipalities clearly states, “North Carolina municipalities - cities, towns and villages - operate under charters granted by the General Assembly and have powers and authorities granted to them by state statutes and the state constitution. *In this state, municipalities do not have home rule, which means that the state legislature must grant the powers and authority to municipalities and authorize them to perform certain functions [emphasis added].*” (See: <https://www.nclm.org/resource-center/Pages/How-Municipalities-Work.aspx>)

In other words, as a “Dillon’s Rule” state, North Carolina recognizes that cities and counties derive the full extent of their authority only from the North Carolina Constitution and acts passed by the State Legislature. The North Carolina General Assembly has granted neither the City of Charlotte nor any other city in the state the authority to create the protected classifications of “sexual orientation,” “gender identity,” and “gender expression.” Furthermore, these terms do not currently exist in the State Constitution or state statutes as special classifications, protected classes, suspect categories or legally protected preferences.

***If the ordinance changes adopted by the Charlotte City Council are allowed to stand, they will serve as a precedent for other city and county governments to follow. This will lead to a further undermining of proper governmental authority in North Carolina and a growing patchwork of disparate ordinances across the state in these and other policy areas.***