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The Honorable Patti Martinson
433 East Fairlane #28
Rapid City, SD 57701

March 4, 2009

Councilwoman Martinson:

This letter is in response to your questions of Equality South Dakota regarding our findings from other cities that have adopted non-discrimination policies that include sexual orientation and gender identity, similar to your proposed resolution to amend the Rapid City human rights ordinance. To provide you with some background on who we are, Equality South Dakota is the only statewide organization advocating for the rights and well-being of lesbian, gay, bisexual, and transgender (LGBT) South Dakotans and their families. We have over 3,000 members across the state—almost 1,000 of which are in Rapid City—and are the voice for LGBT people across the state.

As the Rapid City Council considers this resolution, it is important to keep several things in mind. First, it is absolutely in Rapid City's best interest to specify that it does not discriminate based on sexual orientation and gender identity. Smart employers have seen that when they adopt policies like this, it becomes a zero-cost way to attract and retain the most talented employees. After all, if an employee knows he or she will not be discriminated against based on his or her sexual orientation, they spend more time focused on the job, and less time worrying about being fired or feeling pressured to resign. A more productive workforce is obviously more cost-effective for Rapid City, and becomes a boost to city-wide economic development.

It is also important to note that Rapid is not the first city to pass such a policy. In South Dakota, the City of Vermillion has opted to include sexual orientation in their non-discrimination policy. In a January 23 phone call, assistant to the Vermillion city manager Andy Colvin indicated that expanding their policy did not increase their liability insurance, nor have there been any claims of discrimination on the basis of sexual orientation made against the city. Additionally, Mr. Colvin also indicated that the City of Vermillion has not experienced any negative consequences as a result of including sexual orientation in their policy.

The City of Brookings has also voluntarily added sexual orientation to their city's non-discrimination policy. Brookings city attorney Steve Britzman has also indicated that since they opted to expand their policy, they have not seen an increase in their liability insurance, nor have they had any claims of discrimination based on sexual orientation. Additionally, the City of Lead also has a similar policy. Equality South Dakota has spoken with Mayor Nelson and former city attorney Tim Johns, both of whom indicated that Lead has not seen any negative consequences because of their non-discrimination policy.

Cities in neighboring states have also amended their policies to cover sexual orientation and gender identity, including Fargo, ND and Boise, ID. Neither Idaho nor North Dakota has a statewide law that requires them to have this policy, but these cities felt they had compelling reasons to change their policies, and that doing so just made good business sense.

This is excellent news for Rapid City. In all of the other South Dakota cities that have adopted such policies, negative consequences have not been an issue. Not only have they not seen negative consequences result from expanding their policies, we know that employers who

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include sexual orientation and gender identity in their policy see important positive results, as outlined earlier. Rapid City now has a chance to do the right thing, with strong evidence to show that there is minimal risk involved in doing so.

It is also important to note that the private sector has been utilizing similar policies for years. In fact, under no legal obligation, 491 of Fortune 500 companies have voluntarily included sexual orientation and gender identity in their non-discrimination policies. Even private companies located in Rapid City, including Sanmina-Sci Corp., have taken initiative and decided to use a policy like this. Private companies likely would not opt to include sexual orientation and gender identity in their policy if it did not help their bottom line—clearly, however, it makes good business sense.

There are those who say that passing this policy would create a flood of lawsuits against the city. However, three General Accounting Office (GAO) studies show that discrimination claims by lesbian, gay, bisexual and transgender people are a very small percentage of overall discrimination claims. According to a GAO report dated July 9, 2002, relatively few formal complaints of employment discrimination on the basis of sexual orientation were filed, either in absolute numbers or as a percentage of all employment discrimination complaints in the states. The GAO reported the percentage of overall claims which alleged discrimination based on sexual orientation or gender identity varied from state to state, ranging from 1.3 percent to 3.9 percent of all claims. State discrimination laws have not led to a flood of litigation, but have provided appropriate remedies for the modest number of cases of discrimination.

Additionally, a 2008 study conducted by the Williams Institute found that in states with laws against discrimination based on sexual orientation and gender identity, the rate of claims of discrimination on that basis was almost identical to the rate of claims alleging sex discrimination. This indicates two things: first, that there *is* enough discrimination to warrant granting the protections, and second, that it does not lead to a flood in lawsuits.

One could make a reasonable assumption that Rapid City does not *intend* to discriminate against current or prospective LGBT employees. Good intentions, however, do not replace written policies. By including sexual orientation and gender identity in the existing non-discrimination language, Rapid City could ensure that anyone making employment decisions knows that sexual orientation and gender identity cannot be a basis for the decision. Essentially, putting a written policy into place ensures that everyone carries out the city's already good intentions.

Additionally, we know that there is widespread public support for a policy like this, especially here in South Dakota. In 2008, Equality South Dakota conducted an informal poll of voters and found that 78% of those who responded said they would support their congressperson voting for a federal non-discrimination policy that includes sexual orientation and gender identity. With such overwhelming public support, the Rapid City Council can feel good about supporting the resolution to amend the policy.

Clearly, amending the existing policy to include sexual orientation and gender identity is a smart move for Rapid City. It makes good economic sense, it has widespread public support, and it is the right thing to do. That can be a rare combination in government, and Rapid City should seize this opportunity by supporting the proposed resolution.

Sincerely,

Don Frankenfeld
Rapid City
Board member, Equality South Dakota

Karen Mudd
Sioux Falls
Board chair, Equality South Dakota