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Home rule or bigotry? Boca opts out of expanded anti-discrimination policy

By Anne Geggis, Sun Sentinel

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Boca Raton

It took the Boca Raton City Council members exactly 1 minute and 38 seconds to unanimously pass an ordinance that one Palm Beach County official said makes them look like the most bigoted public officials in the county, if not the state.

The ordinance passed in January 2011 was described by Boca City Attorney Diana Frieser as "almost a housekeeping item." And it opted Boca out of Palm Beach County's equal employment provisions, which include sexual preference, gender identity and gender expression.

City officials say Boca Raton has its own anti-discrimination policy that conforms with state and federal requirements. But Rand Hoch, president of the Palm Beach County Human Rights Council, said the opt-out ordinance effectively denies some people their rights.

"What they did was take away civil rights of lesbians, gays and people who don't conform to someone else's idea of gender identity," Hoch said. "Those people had legal rights in the beginning of January 2011 and Boca Raton took away those rights."

But Boca Mayor Susan Whelchel said she doesn't see it as a civil rights issue — it's about the city's right to home rule.

"We follow state and federal laws — cities have the right to opt in or opt out as long as we follow the law," Whelchel said.

The discrepancy between Boca's equal opportunity policy and the county's didn't surface until last month when Boca Raton refused to join an agreement that would pay the city about $235,000 to handle emergency responses to hazardous materials — provided the city agreed to the county's anti-discrimination terms. Late Friday, an item was added to the city agenda for Tuesday's meeting showing that Boca will join the county's agreement, however, with some provisions made to deal with the discrepancy between the equal opportunity provisions.

But Hoch questioned the timing of the larger opt-out ordinance, considering Palm Beach County's ordinance has put gays and lesbians in a protected class since 2002 and had never hindered previous inter-local agreements with Boca and the county.
Mike Woika, Boca's assistant city manager, said the ordinance came as Boca Raton started looking into an inter-local agreement with the county and the Florida Inland Navigation District that would restore Lake Wyman. That agreement was able to go forward because the navigation district's equal opportunity policy doesn't go beyond state and federal requirements, he said.

He said that the city has adopted a more practical approach to defining protected classes.

"There are other groups of individuals who may come forward with a request or a suggestion to be made a protected class as well," he said. "I would say that it would be difficult to exclude them once you stray outside the guidelines that have been defined by state and federal statute."

Hoch, however, contends that explicit action taking away rights is unprecedented. And Gregory Nevins, a supervising attorney at Lambda Legal, a national organization working for the gay and lesbian civil rights, agrees.

"Usually when cities pass ordinances that deal with discrimination, it's because they feel the protection at the state level is not sufficient," he said.

Kevin Wagner, a professor of political science at Florida Atlantic University, said that the U.S. Supreme Court has declined to define gays and lesbians as a class officially protected from discrimination.

"Gay and lesbian rights generally have a tougher history of getting recognition than things related to race or gender," he said. "But what's been interesting is that over the last 10 years, there's been a popular movement toward ... at least recognizing gay civil unions and because of that, offers some protection.

"But it hasn't been constant or consistent," he said.

Vice Mayor Susan Haynie sees the opt-out ordinance as part of Boca's right to define itself.

"We feel very strong that ... it's not necessary to impose the county's rules on us," she said.

Boca's Woika said that it doesn't necessarily mean that in the absence of the guideline, Boca would discriminate against classes that the county's rules protect.

"We will stand on our record," he said. "Just because it's absent doesn't mean we would, or anyone should, discriminate against those classes."

But Russell Spadaccini, who owns the Internet domain bocaraton.com that markets city events and services, said he's been disappointed to read Woika's comments on the topic, which have equated pet ownership with being gay. Pet ownership is a choice, not an inherent characteristic, he said.
"All the cities that are north and south of here have it included" in their antidiscrimination policies, said Spadaccini, who grew up in Boca, graduated from FAU and has hosted gay meet-up events. "So why does Boca feel like they are any different?"

Woika said he did not mean to equate pet ownership with being gay, but wanted to make a point that it's difficult to say which groups should have protected rights under statutes beyond those defined in state and federal law.