

**BODY – VERSION 1 #25355**

DRAFTER'S ANALYSIS: This ordinance revises the title of the Affirmative Action Division Head and expands the duties of the Affirmative Action Commission to include review of decisions concerning Section 3 Plan compliance. Section 3 Plan refers to a plan required under Section 3 of the Housing and Urban Development Act of 1968, as interpreted by 24 CFR Part 135.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (4) entitled "Affirmative Action Division Head" of Section 39.01 entitled "Director of the Department of Civil Rights" of the Madison General Ordinances is amended to read as follows:

"(4) Affirmative Action Division Head~~Manager~~. There is hereby created a Division of Affirmative Action that shall be managed and directed by a Division ~~Head~~Manager. The Affirmative Action Division ~~Head~~Manager shall report to, be supervised by and perform the duties of his/ her office under the control of the Director of the Department of Civil Rights and shall be responsible for the implementation of Sec. 39.02, MGO, the City's Affirmative Action Ordinance. The Director of the Department of Civil Rights may designate the Affirmative Action Division ~~Head~~Manager to serve as an ex officio non-voting member of the Affirmative Action Commission. The Division ~~Head~~Manager shall have a background of demonstrated commitment to the policies embodied in this ordinance. In performing his/her duties the Division ~~Head~~Manager may delegate his/ her authority to a subordinate employee within the division."

2. Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is amended to read as follows:

**"39.02 AFFIRMATIVE ACTION ORDINANCE.**

(1) Declaration of Policy. It is the official policy of the City of Madison to provide equal employment and promotional opportunities and equal access to public services for all persons from all segments of the Madison community without regard to their race, religion, color, age, marital status, disability, sex or national origin, hereinafter referred to as affected or under-represented groups. The Council finds that the practice of unfair discrimination in access to public services, employment and contracting adversely affects the general welfare of the City. Because such practices have existed throughout Madison's history, the mere passive prohibition of discriminatory practices is not sufficient to effectuate this principle of equal opportunity in contracting, employment and promotional opportunity and equal access to public services. Affirmative and direct action is required to make equal employment, access to public service, and promotional opportunities a reality and correct the effects of past patterns of inequality.

To implement this policy, therefore, the City of Madison hereby adopts this Affirmative Action Ordinance designed to increase the number and representation of affected and/or other under-represented groups, in all departments, job classifications and salary categories throughout the City employment. All City of Madison agencies shall adhere to principles of equal opportunity in service delivery. The City of Madison in developing its Affirmative Action Program shall require similar efforts from vendors, contractors and firms with which it does business. The Council finds that it is not in the public interest for the City to purchase goods and services from vendors and contractors unless they demonstrate that they have taken affirmative action to ensure equal employment and sub-contracting opportunities.

Nothing in this ordinance is intended to alter or impair the City's or contractors' obligation to comply with Section 39.03 of these ordinances.

It is also the official policy of the City of Madison that as an overall goal, ten percent (10%) of the City's public works funds shall be expended with certified small business enterprises. The term "certified small business enterprises" is defined in the City's small business enterprise program, as approved by the Common Council. The Council finds that this policy will stimulate economic growth, promote the establishment of new businesses and provide employment opportunities.

In addition, when the City expends funds provided to it by federal agencies, the City shall require that contractors comply with applicable federal regulations governing the participation of minority business enterprises, women business enterprises and disadvantaged business enterprises.

- (2) Affirmative Action Division. There is hereby created a Division of Affirmative Action within the Department of Civil Rights. The Division of Affirmative Action shall be managed and directed by a an Affirmative Action Division ~~Head~~Manager as that position is established and set forth in Sec. 39.01(~~34~~), MGO, who shall have responsibility and authority for the development and implementation of the City's Affirmative Action Program.
- (3) Affirmative Action Commission.
- (a) Composition. The Mayor, subject to confirmation by the Common Council, shall appoint an Affirmative Action Commission consisting of eleven (11) members, one of whom shall be an alderperson. One member shall be designated chairperson by the members of the Commission. Members shall be appointed from the entire City, and at no time shall the total of women, persons with disabilities, and ethnic minority members constitute less than a majority. All of the members shall be committed to the extension of equal employment opportunities and shall be representative of the affected and/or under-represented groups of the Madison community. They shall receive no compensation for their services. The Director of the Department of Civil Rights may appoint the Affirmative Action Division ~~Head~~Manager to serve as an ex officio nonvoting member of this Commission. The Commission shall make its own rules and regulations for the carrying out of its duties.
- (b) Alternate Members. In addition to the members above-mentioned, the Mayor may appoint upon an annual basis two (2) citizens to be alternate members of the Commission and shall designate which alternate is the first alternate and which alternate is the second alternate. The first alternate shall act with full power when any other member of the Commission is absent or must abstain because of a conflict of interest. The second alternate shall act only when the first alternate abstains or is absent or when more than one (1) member of the Commission abstains or is absent.
- (c) The Commission members shall be appointed for terms of three (3) years and their terms shall run until their successors are confirmed.
- (d) The Affirmative Action Commission shall have the following duties:
1. To annually review, approve and recommend the Citywide Affirmative Action goals and timetables as proposed by the Affirmative Action Division ~~Head~~Manager.
  2. To advise affected and/or other under-represented groups of their rights under the Affirmative Action Program.
  3. To disseminate information and to educate the people of the City of Madison to a greater understanding and practice of Affirmative Action Employment for all affected and/or other under-represented groups.
  4. To render from time to time, but not less than once a year, written reports of its progress, activities and recommendations to the Mayor and Common Council.

5. To recommend and review such rules and regulations as may be necessary to promulgate the City's Affirmative Action Program.
6. To develop and review the contract compliance requirements of the City of Madison and to develop a policy with respect to vendors and contractors.
7. To make specific recommendations to the Common Council so as to bring all appropriate ordinances into conformity with the policies of this ordinance if necessary.
8. To provide administrative review of decisions of the ~~Contract Compliance Officer~~ Affirmative Action Division Manager to grant, deny or revoke certifications as a Minority Business Enterprise (MBE), Women Business Enterprise (WBE), or Disadvantaged Business Enterprise (DBE) as these are defined in Sec. 39.02(9)(a)9.-11. of these ordinances and in the City of Madison Disadvantaged Business Enterprise/Minority Business Enterprise Program as approved by the Common Council; and a Small Business Enterprise (SBE) as defined in the Small Business Enterprise Program approved by the Common Council. The Commission shall adopt procedural rules for the conduct of such appeals.
9. To approve a City of Madison Civil Rights Compliance Plan, in order to maintain City compliance with Title VI of the Civil Rights Act of 1964, as amended. The Affirmative Action Division ~~Head~~Manager shall coordinate the preparation of the Plan for the Commission's approval. Every City department which receives funds covered by Title VI shall cooperate with and assist the Affirmative Action Division ~~Head~~Manager in the preparation of the Plan.
10. To provide administrative review of decisions of the Affirmative Action Division Manager or CDGB staff regarding compliance with Section 3 Plans, as required by 24 CFR Part 135.

(4) Departmental Affirmative Action Plans.

(a) The Affirmative Action Division ~~Head~~Manager in concert with the head of each department, board, commission or committee shall develop a written Affirmative Action Plan. Each department head in concert with the Affirmative Action Division ~~Head~~Manager, shall ~~within two hundred forty (240) days from the appointment of the Affirmative Action Officer,~~ develop a written Affirmative Action Plan. The plan, to be updated annually, is to be developed pursuant to the federal guidelines found in Part 60-2 of Chapter 60 of Title 41 of the Code of Federal Regulations as amended from time to time, which are hereby incorporated by reference and is to further reflect reasonable goals and timetables for achieving substantially increased employment of affected and/or other under-represented groups. In addition to the above guidelines, the plan should include but not be limited to the following employment and career development information concerning the department.

1. The available job slots.
2. Recruitment policies.
3. Selection and placement procedure.
4. Testing programs.
5. Training programs.
6. Promotion policies and procedures.
7. Transfer policies.
8. Compensation programs.
9. Available facilities.
10. Layoff and recall policies.

11. Procedure for disciplinary action.
  12. Harassment-free work atmosphere for affected and/or other under-represented groups.
- (b) In preparation of the departmental affirmative action plans, the Division of Affirmative Action shall have the full cooperation of the department head, board, commission or committee and access to all departmental policies and procedures, administrative rules and regulations, personnel files and other documents or information relating to the employment, training, promotion, transfer, termination or discipline of personnel in the City employ. However, no records are to be used in any manner that would divulge the identity of the parties involved. Provided further that if the employee or applicant was assured by the City that any of the aforementioned documents were to be held in strict confidence, the permission of the applicant or employee must be obtained prior to the release of these documents to the Division of Affirmative Action.
- (5) Citywide Affirmative Action Program.
- (a) The Division of Affirmative Action shall incorporate the individual departmental plans into a composite Citywide Affirmative Action Program which shall be submitted to the Affirmative Action Commission. This program shall reflect the reasonable goals and timetables for achieving equal employment opportunities and requirements for affected and/or other under-represented groups at all levels and/or job classifications. (Am. by ORD-06-00058, 06-30-06)
- (b) Upon approval by the Affirmative Action Commission, the program shall be submitted to the Mayor and Common Council for approval. Once adopted, the program shall be distributed to all department heads who shall adhere to the goals, timetables and procedures prescribed therein.
- (6) Implementation. Implementation of the City's Affirmative Action Program shall include but not be limited to the following:
- (a) Recruitment. Every effort shall be made to recruit applicants from under-utilized categories to provide employment lists of qualified candidates that will facilitate the implementation of departmental and Citywide affirmative action goals. The Human Resources Department, with the assistance of the Division of Affirmative Action, shall expand the recruitment programs to include but not be limited to the following:
1. Inform members of affected and/or other under-represented groups of this Affirmative Action Program and seek their support in attracting applicants.
  2. Include information about the Affirmative Action Program on all job and contract announcements.
  3. Prepare a specific brochure summarizing the Affirmative Action Program and disseminate it throughout the community.
  4. Work with appropriate community resources to develop techniques, models and strategies that will maximize the recruitment of affected and/or other under-represented groups.
- (b) Testing, Selection and Placement.
1. The Human Resources Department, in conjunction with the Division of Affirmative Action, shall review all testing, selection and placement policies of the City to determine that they are free of cultural bias, develop other evaluation methods that are task related and that are in accord with the guidelines promulgated by the Federal Equal Employment Opportunity Commission.
  2. The Human Resources Department, in conjunction with the Division of Affirmative Action, shall develop procedures to establish visible career ladders or bridges between entry level, nonmanagement and management positions for all City

employees with specific emphasis on affected and/or other under-represented groups.

- (c) Education and Training. The Division of Affirmative Action shall, with the cooperation of the Organization Development and Training Unit of the Human Resources Department, develop education and training programs designed to develop the knowledge and skills essential to compensate for the past education and opportunity deficiencies. These programs shall be designed to develop each employee's fullest potential and to upgrade the employee's position in the City employ. The Division of Affirmative Action shall work with the Equal Opportunities Division to develop and provide all employees with relevant training to increase their awareness in the areas of cultural perception and human relations.
  - (d) Analysis of Job Turnover. The Division of Affirmative Action shall maintain statistics and institute research to identify the reasons for job turnover among all City employees especially among affected and/or other under-represented groups which may have affirmative action ramifications.
  - (e) Complaints. The Citywide Affirmative Action Plan shall contain an informal complaint procedure. The procedure shall permit applicants and employees to bring complaints of prohibited discrimination to the Division of Affirmative Action for investigation and informal problem-solving and resolution. Department and Division heads shall cooperate with the Affirmative Action Division ~~Head~~ Manager in carrying out the informal complaint procedure, but nothing contained in the informal complaint procedure may relieve an appointing authority of responsibility for selection, discipline and discharge decisions. The Affirmative Action Division ~~Head~~ Manager shall provide every person who makes a complaint with information, in writing and in accessible format, on filing formal complaints with local, state and federal agencies empowered to receive such complaints. Such information shall include applicable time limits.
- (7) Accountability and Reports.
- (a) The Division of Affirmative Action shall be responsible for the successful implementation and coordination of the Citywide Affirmative Action Program. In turn, each department head shall be accountable to the Division of Affirmative Action for the successful implementation of the departmental affirmative action plans.
  - (b) The Division of Affirmative Action shall at least annually file a written progress report with the Affirmative Action Commission, the Mayor and Council indicating the progress toward achieving the affirmative action goals. The report shall include but not be limited to the following:
    1. A summary of departmental and City affirmative action goals as well as any special projects tied to this program.
    2. Totals of all persons hired, promoted, transferred, demoted, suspended, terminated, interviewed and/or rejected, indicating affected and/or under-represented groups. Waivers of hiring priority and reasons therefore shall also be provided.
    3. A description of the recruitment and training programs instituted to achieve the objectives of this affirmative action plan.
    4. A summary of survival counseling and other supportive programs provided to resolve and prevent problems.
    5. A review of contract compliance status.
    6. A summary of informal complaints.
- (8) Civil Rights Compliance Plan.
- (a) In order to maintain City compliance with Title VI of the Civil Rights Act of 1964, as amended, the Division of Affirmative Action shall coordinate the

development and implementation of individual department plans for civil rights compliance. Department plans shall be incorporated into a composite, citywide Civil Rights Compliance Plan which includes policies and procedures governing equal access to public services and the City of Madison informal citizen complaint procedure. The Civil Rights Compliance Plan shall be submitted to the Affirmative Action Commission for approval.

(b) Upon approval by the Affirmative Action Commission, the Civil Rights Compliance Plan shall be submitted to the Mayor and Common Council for approval, and upon approval by the Mayor and Common Council, the Compliance Plan shall be incorporated into the citywide Affirmative Action Plan. Once adopted, the Compliance Plan shall be distributed to all department heads who shall be responsible for effective implementation, to include information dissemination and training for employees and members of commissions, boards and committees. Department heads shall also be responsible for complaint processing consistent with the Civil Rights Compliance Plan policies and procedures.

(9) Contract Compliance Provisions.

(a) Definitions. For the purposes of this subsection, the following definitions shall apply.

1. Affirmative Action Plan. A plan that is designed to insure that the contractor provides equal employment opportunity to all and takes affirmative action in its utilization of applicants and employees who are women, minority or persons with disabilities. Such a plan must be completed by each nonexempt contractor and be approved by the ~~Director of~~ Affirmative Action Division Manager. The ~~Director of~~ Affirmative Action Division Manager shall approve affirmative action plans which meet standards established by the Common Council.
2. Contract. Any lease, contract or agreement required or permitted under the laws of the State of Wisconsin and the City to which the City of Madison is a contracting party and which shall hereafter be entered into or renewed, including, but not limited to, purchase orders; public works contracts; contracts for the lease of real property; contracts for the lease or purchase of goods, supplies, and/or services; redevelopment contracts; revenue or loan agreements with an eligible participant or authorized developer under Wis. Stat. § 66.1103; contracts with developers or other entities authorized by Wis. Stat. § 66.1333(5) and 66.1105(3)(e), unless otherwise exempted; and subdivision improvement contracts under Sec. 16.23(9)(c) of these ordinances. It is the intention of the Common Council to include agreements which may not be reduced to writing, such as agreements for the purchase of public utility services and services provided by the City's depository banks. The following contracts shall be exempt, however, from the requirements of this ordinance.
  - a. Contracts for goods, supplies or services necessitated by or resulting from an emergency situation as duly determined by the Mayor with the advice of the Council where possible.
  - b. Contracts with contractors who employ fewer than fifteen (15) employees.
  - c. Contracts with contractors whose aggregate annual business with the City for the calendar year in which the

- contract takes effect is less than twenty-five thousand dollars (\$25,000).
- d. Contracts under which the City receives net cash, including, but not limited to contracts where the City leases real property, and sells or leases goods or services for cash; except contracts with the City's depository banks, which shall not be exempt.
  - e. Agreements with bond underwriters and agreements with financial institutions where the agreement relates to the City's borrowing.
  - f. Contracts for the sale or purchase of real property and relocation-related contracts. Relocation-related contracts are contracts for city payment of the costs of the relocation or modification of another person's facilities required when the City acquires a real property interest or modifies a railroad crossing, usually arising out of a relocation order, transportation project plat, or order of the Commissioner of Railroads.
  - g. Contracts with other municipalities.
  - h. Contracts with the State of Wisconsin, the University of Wisconsin, and the Area Board of any Vocational, Technical and Adult Education District.
  - i. Contracts with the United States of America and individual agencies of the U.S. government.
3. Contractor. Any individual, partnership, corporation, association, or other entity including a contractor, vendor, or supplier, which enters into a contract with the City. This term shall not include local City employee bargaining units which shall be governed by the requirements of the other subsections of this ordinance, nor shall it include City employees with written employment contracts with the City. Notwithstanding the exemptions listed in subparagraphs b.-d. above, all developers (or other parties) who enter into subdivision improvement contracts under Sec. 16.23(9)(c), or developer contracts for the construction of public improvements that will be accepted by the City, and their contractors, shall submit an approved Affirmative Action plan and the contract between the City and the developer/party shall contain the Articles of Agreement; all redevelopment contracts and all revenue or loan agreements with an eligible participant or authorized developer under Wis. Stat. § 66.1103, shall contain the Articles of Agreement prescribed in Sec. 39.02(9)(e)2. and all such eligible participants or authorized developers, their contractors and subcontractors shall submit an approved Affirmative Action plan; and all contracts authorized by Wis. Stat. § 66.1333(5) and 66. 1105(3)(e), shall contain the Articles of Agreement prescribed in Sec. 39.02(9)(e)2. and all such developers or other entities, their contractors and subcontractors, shall submit an approved Affirmative Action plan. All Affirmative Action plans required by this subsection shall be submitted within thirty (30) days after the effective date of the contract.
4. Contractor Association. Any not-for-profit organization of construction employers who employ members of trade unions, co-sponsor joint apprenticeship committees, and provide for public representation of the construction industry employer for the common and public good.

5. Labor Union. The term labor union means any organization of any kind, any agency or employee representation committee, group, association or plan so engaged in which employees participate which exists for the purpose in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment and any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization. This shall not include local City employee bargaining units which shall be governed by the requirements of other subsections of this ordinance.
6. Joint Apprenticeship Committee. The jointly administered labor and management advisory committee which selects, qualifies, and trains apprentices through the Wisconsin Department of Workforce Development, Division of Apprenticeship and Training, and the Wisconsin Vocational Technical and Adult Education System.
7. Minority. "Minority" includes:
  - a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
  - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
8. A person with a disability is a person who either:
  - a. Has a physical or mental impairment which substantially limits one or more of such person's major life activities; or
  - b. Has a record of such an impairment; or
  - c. Is regarded as having such an impairment.
9. Minority Business Enterprise (MBE). An independent and valid business concern that is owned and controlled by minority person(s). A minority person or persons must own fifty-one percent (51%) of the business and control the management and daily operations of the business.
10. Disadvantaged Business Enterprise (DBE). A small business concern:
  - a. Which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  - b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

11. Women Business Enterprise (WBE). An independent and valid business concern that is owned and controlled by women. A woman or women must own fifty-one percent (51%) of the business and must control the management and daily operations of the business.

- (b) Notwithstanding the provisions of Sec. 39.02(9)(a)2., providing for certain exemptions from the provisions of this ordinance, every contract to which the City of Madison is a party shall contain the following language, except for contracts with the State of Wisconsin, another state government, the United States of America or individual agencies of the U.S. government, and written employment contracts between the City and City employees:

In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin.

- (c) Every contract to which the City of Madison is a party, except those exempted by Sec. 39.02(9)(a)2.a., b., d., e., f., g., h., i. shall contain the following language:

The contractor agrees that, within thirty (30) days after the effective date of this agreement, the contractor will provide to the City of Madison Division of Affirmative Action certain workforce utilization statistics, using a form to be furnished by the City.

If the contract is still in effect, or if the City enters into a new agreement with the contractor, within one year after the date on which the form was required to be provided, the contractor will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Division of Affirmative Action no later than one year after the date on which the first form was required to be provided.

The contractor further agrees that, for at least twelve (12) months after the effective date of this contract, it will notify the City of Madison Division of Affirmative Action of each of its job openings at facilities in Dane County for which applicants not already employees of the contractor are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. The contractor agrees to interview and consider candidates referred by the Division of Affirmative Action if the candidate meets the minimum qualification standards established by the contractor, and if the referral is timely. A referral is timely if it is received by the contractor on or before the date stated in the notice.

- (d) Small Business Enterprise Program. A detailed small business enterprise program shall be submitted to the Council for its approval. The program shall include procedures for certification of small business enterprises, shall establish a mechanism for setting small business enterprise participation goals for all public works projects with an estimated cost of \$100,000 or more, and shall establish other necessary and appropriate procedures. Applicable requirements of the program shall be incorporated into City contracts. The Division of Affirmative Action shall study the effect of the small business enterprise program on participation by affected and underrepresented groups in city contracting

and shall provide a full report to the Common Council on or before January 1, 1993, and every two years thereafter.

(e) Compliance Requirements.

1. Submission of Affirmative Action Plans.

- a. Public Works Projects. The award of any public works contract, except those exempted by Sec. 39.02(9)(a)2.a., shall be subject to and contingent upon the lowest responsible bidder submitting in writing to the Division of Affirmative Action, an Affirmative Action Plan for Public Works Contractors on a form approved by the Affirmative Action Division ~~Head~~ Manager. Such Affirmative Action Plan shall be submitted with the contractor's bid prequalification documents. Should any contractor fail or refuse to submit an Affirmative Action Plan as required by this section, such contractor shall not be qualified to bid on any City Public Works contracts until said contractor has complied. Any bid submitted by a contractor who has failed to submit an Affirmative Action Plan as required by this section shall be rejected. All such contractors shall require their subcontractors to file an approved Affirmative Action Plan prior to the subcontractor being allowed to start work on any City project.

No public works contractor may be prequalified by the ~~Director of Public Works~~ City Engineer for work advertised after April 1, 1991, unless the contractor submits an Affirmative Action Plan approved by the Division of Affirmative Action. If such a contractor submits an Affirmative Action Plan and the contractor is conditionally prequalified by the City Engineer, the contractor's Affirmative Action Plan must be approved by the Affirmative Action Division ~~Head~~ Manager prior to the bid opening. The Board of Public Works shall not award any contract to a contractor unless the Affirmative Action Division ~~Head~~ Manager has approved the Affirmative Action Plan submitted by the contractor no later than the time of the bid opening.

- b. Other City Contracts. Within thirty (30) days from the effective date of a contract with the City or effective date of a purchase order, and prior to release of payment by the City, all nonexempt contractors are required to have on file an affirmative action plan which is a model affirmative action plan approved by the Common Council or which meets the requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established in 43 FR 51400, November 3, 1978, and which includes, in addition, the following appendices:

- i. A work force utilization analysis and goals and timetables for applicants and employees with disabilities. This document shall either meet the criteria found in 41 CFR Parts 60-2.11 and 60-2.12, as established in 43 FR 51400, November 3, 1978, or shall follow the format contained in the model affirmative action plan for vendors as approved by the Madison Common Council.

- ii. The applicable provisions for MBE, DBE, WBE, and SBE utilization which are contained in the model affirmative action plan for vendors as approved by the Madison Common Council.

Should any contractor fail or refuse to comply with this section and the contract with the City, the Affirmative Action Division ~~Head~~Manager shall recommend appropriate action under Article VII of the contract Articles of Agreement and other provisions of this ordinance.

- 2. Contract Conditions.  
Contracts - Contents. All contracts hereafter executed by the City shall contain the following language assuring the contractor's compliance with the intent of this ordinance:

## ARTICLES OF AGREEMENT

### ARTICLE I

The contractor shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the contractor. The contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

### ARTICLE II

The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractors state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

### ARTICLE III

The contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

### ARTICLE IV

(This article applies only to non-public works contracts.)

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. The contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of

- Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council.

#### ARTICLE V

(This article applies only to public works contracts.)

The contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison, including the contract compliance requirements. The contractor agrees to submit the model affirmative action plan for public works contractors in a form approved by the Affirmative Action Division ~~Head~~Manager.

#### ARTICLE VI

The contractor will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Division of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

#### ARTICLE VII

In the event of the contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action Provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

1. Cancel, terminate or suspend this contract in whole or in part.
2. Declare the contractor ineligible for further City contracts until the Affirmative Action requirements are met.
3. Recover on behalf of the City from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

#### ARTICLE VIII

The contractor shall include the above provisions of this contract in every subcontract so that such provisions will be binding upon each subcontractor. The contractor shall take such action with respect to any subcontractor as necessary to enforce such provisions, including sanctions provided for noncompliance. (This article applies to public works contracts only.)

#### ARTICLE IX

The contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract and shall document all good

faith efforts. (In federally funded contracts the terms “DBE, MBE, and WBE” shall be substituted for the term “small business” in this article.)

3. Appeal. Any person aggrieved by a determination not to approve an Affirmative Action Plan shall have a right of appeal to the Affirmative Action Commission. The person shall institute the appeal by delivering a written notice of appeal, requesting a hearing before the Affirmative Action Commission, to the HeadManager of the Affirmative Action Division within five (5) business days of the determination. Upon receipt of such a notice, the HeadManager of the Affirmative Action Division shall follow the procedures for hearing set out in Sec. 32.09(9)(g)6-8, MGO, except that the Affirmative Action Commission shall, in addition to issuing a written decision as provided therein, render a decision orally immediately after the hearing. An appeal by certiorari to Circuit Court must be taken within 30 days of the written decision of the Affirmative Action Commission.

(f) Record-Keeping Requirements.

1. Maintenance of Records. All contractors shall keep full and accurate records of the minority group status and the sex of all employees and whether or not they are persons with disabilities, as well as dates of hire, termination, recall and/or layoff, reasons for termination or layoff, and job duties or job description for each employee. In addition, every contractor subject to Wis. Stat. § 66.0903(10)(a) and Wis. Admin. Code § DWD 290.13 and DWD 290.14 shall keep records of the name and trade or occupation of every employee, and an accurate record of hours worked by each employee as are required to be kept pursuant to those regulations.  
All contractors shall also maintain such records as may be required by the Common Council in the Affirmative Action Plan as defined in Sec. 39.02(9)(a)1. of this ordinance. Contractors requesting exempt status under this ordinance shall furnish all information requested by the Division of Affirmative Action in order to determine exempt status.
2. Production of Records. Contractors shall provide such records at the office of the Division of Affirmative Action within ten (10) days of the date requested in writing and shall permit the Affirmative Action Division HeadManager or designee access during normal business hours to all of the above records, as well as access to persons who may have information relevant and necessary to ascertain compliance with this section within ten (10) days of the date requested in writing. Such request may be made:
  - a. Once every twelve (12) months.
  - b. At any time when an employee, former employee, or applicant for employment of the contractor has filed a formal complaint of discrimination with the Division of Affirmative Action or with a local, state or federal agency.
  - c. At any time when the Division of Affirmative Action finds substantial deficits or questionable or inconsistent information in the affirmative action plan submitted by the contractor.
  - d. At any time when a contractor reports no progress toward achieving a balanced work force and the Affirmative Action Division HeadManager deems it necessary to examine documented good-faith efforts.

The Division ~~Head's~~Manager's written request for access shall inform the contractor of the basis for the request.

3. Public Inspection of Records. All contract-related records in the custody of the Division of Affirmative Action shall be open for public inspection and copying, as provided in Sec. ~~3.42~~ 3.70 of these ordinances, except the following:
    - a. Records which are exempt from disclosure under the provisions of ~~Sec. 3.42(9)~~ of these ordinances.
    - b. Records provided in connection with compliance investigations and compliance investigation files; except that compliance reports shall be open to inspection and copying, and all minutes, proceedings, evidence, findings and orders of the Affirmative Action Commission shall be open to inspection and copying.
    - c. Names and other information identifying individual complainants.
    - d. Those portions of affirmative action plans which constitute information on staffing patterns and pay scales, if release for public inspection could reasonably be expected to affect the competitive or financial position of the contractor, would constitute a release of confidential or salary information of an employee or would constitute an unwarranted invasion of privacy of an employee.
    - e. Tests used by contractors for selection purposes.
- (g) Enforcement. The Department of Affirmative Action may review contractors' compliance with affirmative action plans, contract provisions and provisions of this ordinance at any time up to one (1) year after the expiration of the contract. A contractor is in compliance with this ordinance when it adheres to the provisions of this ordinance, its contract, and its affirmative action plan.
- The Department of Affirmative Action shall review the compliance status of each contractor at least once every two (2) years and shall use the following compliance review procedure:
1. The Affirmative Action Division ~~Head~~Manager or designee shall give each contractor at least five (5) days written notice of the commencement of a compliance review, and shall examine the contractor's affirmative action plan and supporting documents, as well as other documents and records furnished by the contractor under Sec. 39.02(9)(f).
  2. The Affirmative Action Division ~~Head~~Manager or designee may schedule an on-site review, as provided in Sec. 39.02(9)(f)2., by notifying the contractor in writing no less than ten (10) days in advance.
  3. After a compliance review, the Affirmative Action Division ~~Head~~Manager shall provide the contractor with a written compliance report, which shall either state that the contractor is in compliance, or if the contractor is found not to be in compliance, the report shall list specifically the facts on which such finding is based, and what remedial actions should be taken by the contractor in order to achieve compliance. The Division of Affirmative Action shall provide technical assistance where feasible and appropriate to assist the contractor in achieving compliance.
  4. Within thirty (30) days after receipt of a report of noncompliance, or such longer period as the Affirmative Action Division

HeadManager may permit in writing, the contractor shall submit an amended affirmative action plan, specifying and agreeing to take such remedial actions as will achieve compliance.

5. If the contractor fails or refuses to submit such an amended affirmative action plan, or refuses to comply with the provisions thereof, the Affirmative Action Division HeadManager, after consultation with the City Attorney and the City department or division responsible for the administration of the contract, shall send the contractor by certified mail a Demand to Cure Default. The Demand shall specify the factual basis for the finding of noncompliance and what remedial actions are demanded.

The Demand shall also set a date certain by which the contractor must either offer to comply or request a hearing. An offer to comply shall consist of a proposed amended affirmative action plan, specifying and agreeing to take such remedial actions as will achieve compliance. If the Affirmative Action Division HeadManager approves the proposed amended affirmative action plan, the contractor's default is cured. If the proposed amended affirmative action plan is not approved, the Affirmative Action Division HeadManager shall specify in writing the reasons for disapproval.
6. If the contractor requests a hearing, the Affirmative Action Commission shall schedule a hearing within five (5) working days after receiving the request. The initial date of the hearing shall be not more than forty-five (45) calendar days after the request is filed with the Affirmative Action Division HeadManager.
7. At the hearing, the Affirmative Action Division HeadManager shall have the burden to persuade the Affirmative Action Commission of the facts supporting his/her findings. Each party shall have the right to appear in person and by counsel, to call and examine all witnesses, and to introduce exhibits. The Affirmative Action Commission shall have the power to compel by subpoena the attendance of and examine under oath or affirmation, persons, whether as parties or as witnesses, and to compel by subpoena duces tecum the production before it of books, records, papers or other evidence which may relate to the subject matter of the hearing. In the admission of evidence, the Affirmative Action Commission shall abide by the provisions of Wis. Stat. § 227.45. The Commission shall make written findings of fact and conclusions of law on the following issues:
  - a. Whether the finding of noncompliance should be sustained.
  - b. If the finding of noncompliance is sustained, the Affirmative Action Commission shall decide whether the contract should be cancelled, terminated, or suspended, in whole or in part; whether the contractor should be found ineligible for further City contracts, and if so, what measures taken by the contractor will restore such eligibility; and whether liquidated damages should be sought under the provisions of the contract. The Commission may decide to allow the contractor additional time in which to take the necessary remedial action.
8. The Affirmative Action Commission shall provide written findings and conclusions and a written order within thirty (30) calendar

days after the conclusion of the hearing and shall serve copies thereof upon the contractor by certified mail. The Commission's findings and conclusions shall constitute final administrative determinations and shall be subject to review in court as by law may be provided.

9. If the Affirmative Action Commission orders the contract to be cancelled, terminated or suspended, the receipt by the contractor of such order shall constitute a written notice of termination under the termination procedures provided in the contract.
  10. If the Commission orders that a contractor shall be ineligible for further City contracts, no bids or proposals of the contractor may be opened or considered, or contracts entered into, until the Affirmative Action Division ~~Head~~ Manager certifies that the contractor has taken the measures specified by the Commission to restore eligibility, or until the expiration of two (2) years from the date of the order, whichever is sooner.
  11. If the Affirmative Action Commission, after consultation with the City Attorney, determines that liquidated damages should be sought, the City Attorney shall institute court action to recover such damages.
  12. If the contractor fails to comply with the Demand to Cure Default and fails to request a hearing, the contract shall be terminated. In addition, the Affirmative Action Division ~~Head~~ Manager may request the Affirmative Action Commission to order additional remedies. Such a hearing shall be held according to the procedures in Section 39.02(9)(g)7.-12. above.
- (h) Complaints. The Division of Affirmative Action shall investigate complaints filed by employees or applicants for employment with nonexempt contractors, when such complaints allege violation of this ordinance or of the Affirmative Action Articles of Agreement contained in the contract. Such complaints shall not be investigated unless they are in writing and are filed not more than sixty (60) days after the alleged violation occurred, or not more than one (1) year after the expiration of the contract, whichever is sooner. The Division of Affirmative Action shall refer complainants to the Madison Equal Opportunities Commission, the Equal Rights Division of the Wisconsin Department of Workforce Development, the U.S. Equal Employment Opportunities Commission, the U.S. Office of Federal Contract Compliance Programs, and other appropriate agencies.

Within ten (10) working days of the receipt of such a complaint, the Division of Affirmative Action shall either:

1. Initiate a compliance review, following the procedures set forth in Subsection (9)(g) of this ordinance; or
2. Determine that the complaint does not warrant a compliance review. If the Division of Affirmative Action determines that the complaint does not warrant a compliance review, he/she shall inform the complainant in writing, listing the reasons for the determination. A complainant may appeal the determination to the Affirmative Action Commission by filing a written letter of appeal with the Division of Affirmative Action within ten (10) working days after receiving the determination.

The Affirmative Action Commission shall consider the appeal at the next regularly scheduled meeting or within twenty (20) days, whichever is sooner. The contractor involved shall be notified at least ten (10) days in advance of the meeting at which the appeal is to be considered.

In considering the appeal, the Commission shall not be bound by the rules of evidence, but shall consider any evidence which is reasonably probative, and shall allow, but not require the contractor to participate. The Commission shall exercise its discretion to determine whether or not the complaint warrants investigation. The Commission may order the Affirmative Action ~~Officer~~ Division Manager to initiate a compliance review, or it may dismiss the complaint.

- (i) No Private Cause of Action. The Common Council does not intend by this ordinance to create a private right of action by or on behalf of any employee or applicant for employment based upon a claim or complaint that the contractor's agreement with the City or the contractor's affirmative action plan has not been complied with. This provision is not intended either to expand or to limit rights provided by other local, state or federal equal employment laws.
- (10) Severability. The provisions of this ordinance shall be severable and if any of the provisions shall be held in contravention of the Constitution and laws of the State of Wisconsin or of the United States by a court of competent jurisdiction, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provision, if any, not been included herein."

3. The City Attorney is directed to make corresponding changes to other City ordinances to reflect this updated title.