

**CITY OF MADISON, WISCONSIN**

AN ORDINANCE \_\_\_\_\_

PRESENTED December 13, 2005  
REFERRED EOC, CPD, AAC, BOE & CCOC

Repealing Section 3.23 entitled "Equal Opportunities Ordinance", Section 3.58 entitled "Affirmative Action Ordinance", Section 3.60 entitled "Reverend Doctor Martin Luther King, Jr. Humanitarian Award ", Section 3.62 entitled "Commission on People with Disabilities", and Section 3.72 entitled "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities" and creating Chapter 39 of the Madison General Ordinances to establish a Department of Civil Rights and relocate the regulations of the repealed sections to that Chapter, and amending various related sections of the Madison General Ordinances to update references to the new Chapter 39.

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RULES SUSPENSION \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_

**EXHIBIT X**

Drafted by: Roger Allen

Date: December 2, 2005

SPONSORS: Mayor Cieslewicz

DRAFTER'S ANALYSIS: These amendments move already existing ordinances into a single chapter under the Department of Civil Rights (DCR). The pre-existing ordinances are amended to reflect that the Equal Opportunities Commission (EOC) and the Affirmative Action Department (AAD) are now divisions within the Department of Civil Rights. Additionally, the amendments include language clarifying that the EOC and the AAD are now directed by Division Heads who report to the Director of the Department of Civil Rights. A new section was created setting forth the office of the Director of Civil Rights. No substantive changes were made to the current language of the amended ordinances. Finally, amendments are offered to ordinances that will remain outside of the proposed Chapter 39. These changes merely reflect the renumbering of those ordinances being incorporated into Chapter 39 and the new organizational structure of the DCR, EOC and the AAD.

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

1. Section 3.23 entitled "Equal Opportunities Ordinance", Section 3.58 entitled "Affirmative Action Ordinance", Section 3.60 entitled "Reverend Doctor Martin Luther King, Jr. Humanitarian Award ", Section 3.62 entitled "Commission on People with Disabilities", and Section 3.72 entitled "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities" of the Madison General Ordinances are hereby repealed.

**Approved as to form:**

2. Chapter 39 entitled "Department of Civil Rights" of the Madison General Ordinances is created to read as follows:

**"CHAPTER 39**

**DEPARTMENT OF CIVIL RIGHTS**

Section

- 39.01 Director of the Department of Civil Rights
- 39.02 Equal Opportunities Ordinance
- 39.03 Affirmative Action Policy
- 39.04 Nondiscrimination Based On Disability In City Facilities And City-Assisted Programs And Activities.
- 39.05 Reverend Doctor Martin Luther King, Jr. Humanitarian Award
- 39.06 Commission on People with Disabilities

**39.01 Director of the Department of Civil Rights**

- (1) Director of the Department of Civil Rights. The position of the Director of the Department of Civil Rights as it becomes vacant shall be filled according to Sec. 3.38(6)(f) of these ordinances. The Mayor shall consider the recommendation of the Commission on People with Disabilities, the Equal Opportunities Commission and the Affirmative Action Commission in the selection of the Director. The Director shall be a person who possesses demonstrated experience in the promotion of civil rights and affirmative action for all persons. The Director shall perform duties and exercise authority in accordance with City Ordinances, State and Federal statutes together with such additional duties as the Commission on People with Disabilities, the Equal Opportunities Commission, the Affirmative Action Commission, the Mayor and/or Common Council may from time to time prescribe.
- (2) Equal Opportunity Commission Division Head. There is hereby created the position of Equal Opportunities Commission Division Head who shall perform the directives of the Equal Opportunities Commission and whom shall report to the Director of the Department of Civil Rights. The Equal Opportunities Commission Division Head shall be an ex officio nonvoting member thereof. The Director of the Department of Civil Rights shall consider the recommendation of the Equal Opportunities Commission on the selection of the Division Head.
- (3) Affirmative Action Division Head Affirmative Action Department. There is hereby created a Division of Affirmative Action which shall be managed and directed by a Division Head. The Division Head shall report to the Director of the Department of Civil Rights and shall be responsible for the development and implementation of the City's Affirmative Action Program. The Division Head shall have a background of demonstrated commitment to the policies embodied in this ordinance. The Director of the Department of Civil Rights shall consider the recommendation of the Equal Opportunities Commission on the selection of the Division Head.
- (4) Mission of the Department of Civil Rights. The Civil Rights Division is responsible for management, development and implementation of Chapter 39 of the Madison General Ordinances. The Department of Civil Rights is responsible for ensuring that the rights of all people are respected and that all persons are given the equal opportunities to succeed based upon their personal merits. To this end, the Department of Civil Rights is created to vigorously pursue the policies and principles embodied in this Chapter both within the City as an employer and within the City as a community of people who respect the rights and the contributions of every community member.

**39.02 Equal Opportunities Ordinance.**

- (1) Declaration of Policy. The practice of providing equal opportunities in housing, employment, public accommodations and City facilities and credit to persons without regard to sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is

a student as defined herein is a desirable goal of the City of Madison and a matter of legitimate concern to its government. Discrimination against any of Madison's citizens or visitors endangers the rights and privileges of all. The denial of equal opportunity intensifies group conflict, undermines the foundations of our democratic society, and adversely affects the general welfare of the community. Denial of equal opportunity in employment deprives the community of the fullest productive capacity of those of its members so discriminated against and denies to them the sufficiency of earnings necessary to maintain the standards of living consistent with their abilities and talents. Therefore, as a proper function of City government the City of Madison has provided in Section 39.03 for affirmative action in City employment to safeguard against discrimination. Denial of equal opportunity in housing compels individuals and families who are discriminated against to live in dwellings below the standards to which they are entitled. Denial of equal opportunity in public accommodations subjects those discriminated against to embarrassment and creates distress and unrest within the community. Denial of equal opportunities in credit to credit worthy customers deprives them of the right to secure desired goods and services. Provision for adequate safeguards against such discrimination is a proper and necessary function of City government. In order that the peace, freedom, safety and general welfare of all inhabitants of the City may be protected and ensured, it is hereby declared to be the public policy of the City of Madison to foster and enforce to the fullest extent the protection by law of the rights of all of its inhabitants to equal opportunity to gainful employment, housing, credit and the use of City facilities and public accommodations without regard to sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is a student as defined herein. To fully effectuate this policy of promoting nondiscrimination, the City shall endeavor to eliminate all discrimination that may occur in its own employment, housing, and public accommodation practices and in the use of City facilities. By adopting Sec. 39.04 of these ordinances, the Common Council has attempted to make sure that City facilities and programs which receive City financial assistance are accessible to all persons, including persons with disabilities. The City will deal positively and constructively with all claims of discrimination filed against it through utilization of the procedures outlined in this ordinance.

(2)

Definitions.

- (a) Age. The prohibition against discrimination because of age shall not apply to any person less than eighteen (18) years of age.
- (b) Application for credit means any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.
- (c) Arrest record includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.
- (d) City facilities includes all property owned and services rendered by the City for the welfare of its inhabitants.
- (e) Commercial facilities means facilities that are intended for nonresidential use and whose operation will affect commerce use. The term "commercial facilities" does not include buildings or parts of buildings not open to and not reasonably expected to be open to the public, railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in 42 U.S.C. 12162 and covered under 42 U.S.C. 12181 et seq, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under Sec. 39.02(4) of the Madison General Ordinances, and types of facilities that are specifically exempted under Sec. 101.13(2) of the Wisconsin Statutes.
- (f) Conviction record includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority. In addition, "conviction record" as used in Sec. 39.02(4)(d), relating to discrimination in

housing, shall also include information indicating that a person has been convicted of a civil ordinance violation (forfeiture).

- (g) Covered multifamily dwellings means
  1. Buildings consisting of three (3) or more units if such buildings have one or more elevators; and
  2. Ground floor portions of units in other buildings consisting of three (3) or more units.
- (h) Credit means the right granted by a creditor to a person to defer payment or debt or to incur debt and defer its payment, or purchase property or services and defer payment therefore, including but not limited to the right to incur and defer debt which is secured by residential real property.
- (i) Credit sale means any transaction with respect to which credit is granted.
- (j) Credit transaction means any invitation to apply for credit, application for credit, extension of credit or credit sale.
- (k) Creditor means any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required whether in connection with loans, sale of property or services or otherwise.
- (l) Dependent means one who lives with a domestic partnership and is:
  1. A biological child of a domestic partner; or
  2. A dependent as defined under IRS regulations; or
  3. A ward of a domestic partner as determined in a guardianship proceeding; or
  4. A person adopted by a domestic partner.
- (m) Disability means, with respect to a person,
  1. A physical or mental impairment which substantially limits one or more of such person's major life activities; or
  2. A record of having such an impairment; or
  3. Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).
  4. The term also includes the term "handicap" as used in local, state and federal statutory, administrative or judicial case law.
- (n) Domestic partner means those adults in a domestic partnership.
- (o) Domestic partnership means two adults and their dependents, if any, which satisfy the following requirements:
  1. They are in a relationship of mutual support, caring and commitment and intend to remain in such a relationship in the immediate future; and
  2. They are not married (unless they are married to each other) or legally separated and, if either party has been a party to an action or proceeding for divorce or annulment, at least six (6) months have elapsed since the date of the judgment terminating the marriage; and
  3. Neither domestic partner is currently registered in a domestic partnership with a different domestic partner and, if either partner has previously been registered as a domestic partner in a domestic partnership, at least six (6) months have elapsed since the effective date of termination of that registration; and
  4. Both are 18 years of age or older; and
  5. Both are competent to contract; and
  6. They are occupying the same dwelling unit as a single, nonprofit housekeeping unit, whose relationship is of permanent and distinct domestic character; and
  7. They are not in a relationship that is merely temporary, social, political, commercial or economic in nature.
- (p) Employees does not include any individual employed by her/his parents, spouse, or child.
- (q) Extension of credit means all acts incident to the evaluation of an application for credit and the granting of credit.

- (r) Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.
- (s) Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with
  1. A parent or another person having sole or joint legal custody or physical placement, as defined in Sec. 767.001, Wis. Stats., of such individual or individuals; or
  2. The designee of such parent or other person having such custody or physical placement, with the written permission of such parent or other person; or
  3. A foster parent or other person with whom a person under the age of 18 years is placed by court order.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing sole or joint legal custody or physical placement of any individual who has not attained the age of 18 years.
- (t) Gender identity is the actual or perceived condition, status or acts of 1) identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex; 2) presenting and/or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth; 3) lawfully displaying physical characteristics and/or behavioral characteristics and/or expressions which are widely perceived as being more appropriate to the biological or legal sex that was not one's biological or legal sex at birth, as when a male is perceived as feminine or a female is perceived as masculine; and/or 4) being physically and/or behaviorally androgynous.
- (u) Housing means any building, structure, or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as a residence, home or place of habitation of one or more human beings, including a mobile home as defined in Section 66.0435 of the Wisconsin Statutes and a trailer as defined in Section 9.23 of the Madison General Ordinances and any land for sale, lease or use as a site for a building, structure or part thereof intended or designed to be used or occupied as a residence, home or place of habitation of one or more human beings, including a mobile home park as defined in Section 66.0435 of the Wisconsin Statutes and a trailer camp as defined in Section 9.23 of the Madison General Ordinances. Such definition of "housing" is qualified by the exceptions contained in Section 39.02(4)(a).
- (v) Invitation to apply for credit means any communication, oral or written, by a creditor which encourages or prompts an application for credit.
- (w) Labor organization includes any collective bargaining unit composed of employees.
- (x) Less than honorable discharge means any general, undesirable, clemency, bad conduct or dishonorable discharge from the military service.
- (y) Marital status includes being married, separated, divorced, widowed, or single.
- (z) Mutual support means that the domestic partners contribute mutually to the maintenance and support of the domestic partnership throughout its existence.
- (aa) Person means one or more individuals, labor unions, partnerships, associations, corporations, cooperatives, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers or other fiduciaries, and shall include the City of Madison, and the agent or agents of any of the foregoing.
- (bb) Physical appearance means the outward appearance of any person, irrespective of sex, with regard to hair style, beards, manner of dress, weight, height, facial features, or other aspects of appearance. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed attire, if and when such requirement is uniformly applied for admittance to a public accommodation or to employees in a business establishment for a reasonable business purpose.

- (cc) Political beliefs means one's opinion, manifested in speech or association, concerning the social, economic and governmental structure of society and its institutions. This ordinance shall cover all political beliefs, the consideration of which is not preempted by state or federal law.
- (dd) Public place of accommodation or amusement includes those accommodations, facilities and services which a person holds out to be open to the common and general use, participation and enjoyment of the public for any purpose. The term "public place of accommodation or amusement" shall be interpreted broadly to include, but not be limited to, places of business or recreation, hotels, motels, resorts, restaurants, taverns, barber or cosmetologist, aesthetician, electrologist or manicuring establishments, nursing homes, clinics, hospitals, cemeteries, and any place where accommodations, amusements, goods or services are available either free or for a consideration, except where such a broad interpretation would deny to any person rights guaranteed by the constitutions of Wisconsin and of the United States.

Public place of accommodation or amusement does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods or services during an event at which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:

  1. Members of the organization or institution.
  2. Guests named by members of the organization or institution.
  3. Guests named by the organization or institution.
- (ee) Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:
  1. The nature and cost of the action needed under this Ordinance;
  2. The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
  3. The overall financial resources of the person who owns or operates the facility; the overall size of the business with respect to the number of its employees; the number, type and location of its facilities; and
  4. The type of operation or operations of the person who owns or operates the facility, including the composition, structure, and functions of the workforce of such person; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question.
- (ff) Religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates inability to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (gg) "Sexual harassment" means unwelcome sexual advances; unwelcome requests for sexual favors; unwelcome physical contact of a sexual nature; or unwelcome verbal or physical conduct of a sexual nature which shall include, but not be limited to, deliberate or repeated unsolicited gestures, verbal or written comments, or display of sexually graphic materials which is not necessary for business purposes. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite gender.
- (hh) Sexual orientation includes homosexuality, heterosexuality, bisexuality and gender identity by preference or practice.
- (ii) Source of income includes, but shall not be limited to, moneys received from public assistance, pension, and Supplementary Security Income (SSI). Source of income shall be limited to legally derived income.
- (jj) Student means a person who is enrolled in a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program.
- (kk) Transfer does not apply to the transfer of property by will or gift.

- (3) Credit. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any creditor to discriminate against any person in any credit transaction because of sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, political beliefs, or the fact that such person is a student as defined herein.
- (4) Housing. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person having the right of ownership or possession or the right of transfer, sale, rental or lease of any housing, or the agent of any such person:
- (a) To refuse to transfer, sell, rent or lease, to refuse to negotiate for the sale, lease, or rental or otherwise to make unavailable, deny or withhold from any person such housing because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, political beliefs, or the fact that such person is a student as defined herein, or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law; or;
  - (b) To make or cause to be made any written or oral inquiry or record concerning the nature of any disability of prospective occupants or tenants of such housing, or persons associated with them, unless such inquiry or record is necessary for compliance with applicable local, state, or federal law or;
  - (c) To falsely represent that a dwelling is not available for inspection, sale, or rental because of discrimination because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, political beliefs, physical appearance, sexual orientation, familial status, or the fact that a person is a student as defined herein; or other tenants in such a manner as to diminish their enjoyment of the premises by adversely affecting their health, safety and welfare. A person who has received written notice from the Madison Police Department that a drug nuisance under Sec. 823.113, Wis. Stats., exists on property for which the person is responsible as owner may take action to eliminate the nuisance, including but not limited to, eviction of residents, provided such action is not a subterfuge to evade the provisions of this ordinance.
  - (d) To discriminate against any person because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, political beliefs, physical appearance, sexual orientation, familial status, or the fact that such person is a student as defined herein in the terms, conditions or privileges pertaining to the transfer, sale, rental or lease of any housing, or in the furnishing of facilities or services in connection therewith, or in any other manner.
    - 1. Exclusions for Certain Convictions. This ordinance does not prohibit eviction or refusal to rent or lease residential property because of the conviction record of the tenant or applicant or a member of the tenant's or applicant's household, if the circumstances of the offense bear a substantial relationship to tenancy. The phrase "circumstances of any offense(s) bear a substantial relationship to tenancy" means the offense is such that, given the nature of the housing, a reasonable person would have a justifiable fear for the safety of landlord or tenant property or for the safety of other residents or employees. Provided that the circumstances of the offense bear a substantial relationship to tenancy, such offenses may include but are not limited to the following:
      - a. disorderly conduct involving disturbance of neighbors,
      - b. disorderly conduct involving destruction of property,
      - c. at least two or more misdemeanor drug-related convictions related to the manufacture, delivery or sale of a controlled substance or any drug-related felonious criminal activity,

- d. criminal activity involving violence to persons such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon;
- e. criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling;
- f. at least two or more civil ordinance violation (forfeiture) convictions within a twelve (12) month period for violations relating to disturbance of neighbors or injury to persons or property.

A person who has received written notice from the Madison Police Department that a drug nuisance under Sec. 823.113, Wis. Stats., exists on property for which the person is responsible as owner may take action to eliminate the nuisance, including but not limited to, eviction of residents, provided such action is not a subterfuge to evade the provisions of this ordinance.

- 2. Time Limits on Exclusions. The exclusion for certain convictions shall not apply if more than two (2) years have elapsed since the applicant or member of the tenant's or applicant's household was placed on probation, paroled, released from incarceration or paid a fine for offenses set forth in Paragraph 1. unless the offense is one which must be reported under the Sex Offender Reporting Requirement of Sec. 973.048, Wis. Stats.
- 3. Discrimination Against Victims of Domestic Abuse Prohibited. Notwithstanding the provisions contained in Paragraph 1., a person may not evict a tenant or refuse to rent or lease residential property based on the fact that a tenant or prospective tenant or a member of the tenant's or prospective tenant's household has been or may be the victim of domestic abuse, as defined in Sec. 813.12(1)(a), Wis. Stats., or has been a victim of a crime prohibited by Chapter 948, Wis. Stats.
- 4. Mandatory Recordkeeping Procedures. Notwithstanding the provisions contained in Paragraph 1. above, a person may not refuse to rent or lease residential property because of the conviction record of the applicant or a member of the applicant's household unless the person complies with all of the following:
  - a. uses a written, uniform inquiry process established for legitimate non-discriminatory business reasons,
  - b. applies such process uniformly
  - c. advises applicants in writing at the time of application that the screening process may include a conviction record check,
  - d. advises an applicant in writing at the time of denial, if refusal to rent is based in whole or in part on the conviction record of the applicant or a member of the applicant's household,
  - e. keeps all applications, whether accepted or rejected, for at least two (2) years, along with a record of reasons for rejection, recorded in a uniform manner.

In order to be considered uniform, a written inquiry process must be applied by a person to all properties under her/his ownership or control; except that where a person controls several properties on behalf of two or more different owners that person shall use the same written inquiry process for all such properties unless an individual owner has established a separate uniform process for her/his own properties and requires its use.

- f. In the event a formal complaint of discrimination is made to the EOC, the landlord shall make available for inspection and permit the Division head of the Equal Opportunities Commission or designee to inspect during normal business hours all documents identified in Subparagraphs a. through e. above. The EOC Division head or designee shall promptly conduct such inspection for the sole purpose of determining compliance with this subsection on conviction records. Any person who fails or refuses to allow such



inspection(s) or who fails to maintain or retain required records shall be in violation of this ordinance and, upon conviction, shall be subject to a forfeiture as provided in Section 39.02(15) of the Madison General Ordinances.

- g. This paragraph is not intended to prohibit or restrict a current or new owner of property from instituting a conviction record screening policy at any time during his/her ownership of a property so long as it is applied uniformly to all similarly situated individuals and otherwise complies with this subsection.
  - h. This paragraph is not intended to impose liability on a new owner of a property for actions or omissions of the former owner related to this paragraph, except to the extent the new owner continues the practice under his/her ownership.
5. No private cause of action. Except for claims by or on behalf of individuals protected from prohibited discrimination hereunder, the Common Council does not intend this Subdivision, 39.02(4)(d), to create a private right of action based upon a claim of personal injury or property damage arising from a landlord's good faith compliance with this Subdivision. This provision is not intended either to expand or to limit rights provided by local, state or federal equal opportunities laws.
5. Notwithstanding the provisions contained in paragraph 1., a person may not evict a tenant or refuse to rent or lease residential property based on the fact that a tenant or prospective tenant or a member of the tenant's or prospective tenant's household has been or may be the victim of domestic abuse, as defined in Sec. 813.12(1)(a), Wis. Stats., or has been a victim of a crime prohibited by Chapter 948, Wis. Stats.)
- (e) Nothing in this ordinance shall affect any person's decision to share occupancy of a lodging room, apartment or dwelling unit with another person or persons. For purposes of this subdivision, the terms lodging room, apartment, and dwelling unit have the meaning contained in Sec. 27.03 of these ordinances.
- (f) For any bank, credit union, finance company, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in lending or purchasing of loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing, or maintaining any housing, to discriminate against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, or to refuse to purchase or to discriminate in the purchase of such loan,
- 1. Because of the sex, race, religion, color, national origin or ancestry, disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, or political beliefs of such person or of any person associated with him or her in connection with such loan or other financial assistance, or because of the fact that such person is a student as defined herein; or
  - 2. Because of the sex, race, religion, color, national origin or ancestry, age, disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, familial status, or political beliefs of the present or prospective owners, lessees, tenants, or occupants of the housing for which such loan or other financial assistance is to be made or given, or because such present or prospective owner, lessee, tenant or occupant is a student as defined herein.
  - 3. Notwithstanding the provisions of Subdivision (4)(b) and the above provisions, inquiries concerning source of income may be made if they are reasonably directed toward determining solvency, reliability, credit record, or ability to pay, and are not a subterfuge to evade the purposes of this section.

- (g) For any person to post, print, broadcast or publish or cause to be posted, printed, broadcast or published, any notice or advertisement relating to the transfer, sale, rental or lease of any housing which expresses preference, limitation, specifications or discrimination as to sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status or the fact that a person is a student as defined herein.
- (h) For any person, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or status as students.  
In establishing a discriminatory housing practice under this section it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.
- (i) For any person to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service organization or facility relating to the business of selling or renting dwellings, or to discriminate against any person in the terms or conditions of such access, membership or participation on account of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is a student as defined herein.
- (j) For any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that such person is a student as defined herein. As used in this subdivision the term "residential real estate related transaction" means any of the following:
  - 1. The making or purchasing of loans or providing other financial assistance
    - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
    - b. Secured by residential real estate.
  - 2. The selling, brokering, or appraising of residential real property.  
Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or the fact that a person is a student as defined herein.
- (k) In this subsection, prohibited discrimination includes discrimination because of the sex, race, religion, color, national origin or ancestry, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, familial status, or student status of:
  - 1. The buyer, renter, or applicant; or
  - 2. A person residing in or intending to reside in a dwelling after it is sold, rented, or made available.
- (l) For purposes of this subsection, discrimination includes:
  - 1. A refusal to permit, at the expense of the person with a handicap/disability, reasonable modifications of existing premises occupied or to be occupied by

such person if such modifications may be necessary to afford such person full enjoyment of the premises; provided:

- a. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the conditions that existed before the modification, reasonable wear and tear excepted; but only if the modifications limit usability of the premises by future tenants. The landlord may not increase, for persons with a handicap/disability, any customarily required security deposit.
  - b. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained; or
  - c. Landlords may require escrow accounts where it is necessary in order to insure, with reasonable certainty, that funds will be available to pay for the restorations at the end of the tenancy. The landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account over a reasonable period (not to exceed the length of the lease), a reasonable amount of money, not to exceed the cost of restorations. The interest in any such account shall accrue to the benefit of the tenant. Failure by the landlord to utilize escrow funds for restoration of the premises within ninety days of the termination of the tenancy constitutes a forfeiture of the escrow fund, which shall revert to the tenant.
  - d. A landlord may not require further restoration if the modifications satisfy either Uniform Federal Accessibility Standards or ILHR 52.04, Wis. Admin. Code.
  - e. No landlord may require the restoration of modifications made to public and common use portions of the premises if the modification was necessary to make those portions readily accessible to and usable by persons with handicaps/disabilities.
2. A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with a handicap/disability equal opportunity to use and enjoy a dwelling; or
  3. In connection with the design and construction of covered multifamily dwellings as defined in 24 C.F.R. Sec. 100.201 for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:
    - a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;
    - b. With respect to dwellings with a building entrance on an accessible route:
      - i. The public use and common use portions of such dwellings are readily accessible to and usable by handicapped/disabled persons;
      - ii. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped/disabled persons in wheelchairs; and
      - iii. All premises within such dwellings contain the following features of adaptive design:
        - A. An accessible route into and through the dwelling;

- B. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
  - C. Reinforcements in bathroom walls to allow later installation of grab bars; and
  - D. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
4. Paragraph 3. applies to covered multi-family dwellings, as defined in Subsec. (2)(g) of this ordinance, designed and constructed for first occupancy after thirty (30) months after the date of enactment of this ordinance.
5. Compliance with either the Uniform Federal Accessibility Standards, or ILHR 52.04, Wis. Admin. Code, whichever standard provides the greater degree of accessibility, shall constitute compliance with paragraph 3.
- (m) The prohibition in this section against discrimination based on age and familial status does not apply to housing for older persons.
1. As used in this subdivision, housing for older persons means housing
- a. Provided under any state or federal program that is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or
  - b. Intended for, and solely occupied by, persons 62 years of age or older; or
  - c. Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing for older persons under this paragraph shall contain at least the following factors:
    - i. Significant facilities and services specifically designed to meet the physical or social needs of older persons, as those are defined in Sec. 101.22(1m)(u) Wis. Stats. (1991-92).
    - ii. All of the units are occupied by at least one person 55 years of age or older; provided that, if the qualifying tenant ceases to reside in the unit, the remaining occupants may not be required to vacate the unit, as long as at least 80% of all the units are occupied by at least one person 55 years of age or older.
    - iii. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
2. Housing shall not fail to meet the requirements for housing for older persons by reasons of:
- a. Persons residing in such housing as of September 13, 1988, who did not meet the age requirements of Paragraph 1.b. or c. above, provided that new occupants of such housing meet the age requirements of Paragraph 1.b. or c.; or
  - b. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of Paragraph 1.b. or c. above.
- (n) It is not a violation of this ordinance to restrict occupancy in a dwelling to persons with handicaps/disabilities or to provide housing for older persons as such housing is defined above.
- (o) It is the intention of the Common Council that this subsection be interpreted consistently with Title VIII of the Civil Rights Act of 1968 (42 USC Sec. 3601-3619) as amended, and with regulations applicable thereto (24 CFR Parts 100, 103, 109, 110, 115, and 121) except where the language of this subsection clearly requires a different interpretation.
- (5) Public Place of Accommodation or Amusement. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and

accommodations of any place of public accommodation or amusement, as defined in this ordinance, without discrimination or segregation on the ground of sex, race, religion, color, national origin or ancestry, age, disability, marital status, domestic partnership status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that a person is a student as defined herein, or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law. It shall be an unfair discrimination practice and unlawful and hereby prohibited:

- (a) For any person to deny to another, or charge another a different price from the rate charged others for the full and equal enjoyment of any public place of accommodation or amusement because of the sex, race, religion, color, national origin or ancestry, age, handicap, marital status, domestic partnership status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or the fact that such person is a student as defined herein, or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law. Organizations which operate public accommodations and which sell memberships based on family status shall provide the same benefits to domestic partnerships as are provided to other families.
  - (b) For any person to directly or indirectly publish, circulate, display, mail or otherwise disseminate any written communication which s/he knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of her/his sex, race, religion, color, national origin or ancestry, age, handicap, marital status, domestic partnership status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or the fact that such person is a student as defined herein, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, or that the patronage of a person is unwelcome, objectionable or unacceptable for any of these reasons.
  - (c) Subsection (5) does not prohibit special services, rates or benefits provided to any person because she or he is fifty (50) years old or older.
- (6) Access by Persons with Disabilities to Public Accommodations and Commercial Facilities.
- (a) No individual shall be discriminated against on the basis of disability, or because of the known disability of an individual with whom the individual or entity is known to have a relationship or association, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to another), or operates a place of public accommodation.
    - 1. Denial of Participation. It shall be prohibited discrimination to subject an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.
    - 2. Participation in Unequal Benefit. It shall be prohibited discrimination to afford an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.
    - 3. Separate Benefit. It shall be prohibited discrimination to provide an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

- (b) Integrated Settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.
- (c) Opportunity to Participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.
- (d) Administrative Methods. A person shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration:
  - 1. that have the effect of discriminating on the basis of disability; or
  - 2. that perpetuate the discrimination of others who are subject to common administrative control.
- (e) Specific Prohibitions. For purposes of Subdivision (a) above, prohibited discrimination includes:
  - 1. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;
  - 2. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantage, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;
  - 3. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;
  - 4. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities where such removal is readily achievable; and
  - 5. Where an entity can demonstrate that the removal of a barrier under Paragraph 4. is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.
- (f) New Construction and Alterations in Public Accommodations and Commercial Facilities. Except as provided in Subdivision (h), as applied to public accommodations and commercial facilities, discrimination for purposes of Subsection (6)(a) of this ordinance includes:
  - 1. A failure to design and construct facilities for first occupancy later than ninety (90) days after the date of enactment of this ordinance that are readily accessible to and usable by individuals with disabilities, except where a respondent can demonstrate that it is structurally impracticable to meet the requirements of such Subsection.
  - 2. With respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path

of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.

- (g) Elevator. Subdivision (f) above shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider.
- (h) Exemptions for Private Clubs and Religious Organizations. The provisions of this Subsection (6) of this ordinance shall not apply to private clubs or organizations exempted from coverage under Sec. 39.02(2)(cc) above or to religious organizations or entities controlled by religious organizations, including places of worship, to the extent that requiring compliance would violate state or federal law.
- (7) City Facilities. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person, public official, employee, agent, agency, authority, board, commission or committee of the City of Madison to deny any person, the use of City facilities or otherwise discriminate against any person in the use of City facilities because of sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.
- (8) Employment Practices. It shall be an unfair discrimination practice and unlawful and hereby prohibited:
  - (a) For any person or employer individually or in concert with others to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to her/his compensation, terms, conditions, or privileges of employment, because of such individual's sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein. Provided, that an employer who is discriminating with respect to compensation in violation of this subsection, shall not, in order to comply with this subsection, reduce the wage rate of any employee.
  - (b) For any person or employer individually or in concert with others to limit, segregate, or classify his or her employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.
  - (c) For any employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual on the basis of his or her sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.
  - (d) For any labor organization:
    - 1. To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his or her sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or the fact that such person is a student as defined herein.
    - 2. To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise

adversely affect his or her status as an employee or as an applicant for employment, because of such individual's sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.

3. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (e) For any person or employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or the fact that such person is a student as defined herein, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, age, handicap, arrest or conviction record or national origin when religion, sex, age, handicap, or national origin is a bona fide occupational qualification for employment or when an employer may lawfully consider or rely upon such arrest or conviction record pursuant to Sections 39.02(8)(i)3. through 39.02(8)(i)6., M.G.O.
- (f) For any person or employer, employment agency or labor organization to request an applicant, employee, member or any other person, on an application form or otherwise, to supply information regarding any arrest record, except a record of a pending charge, of the applicant, employee or member; except that it shall not be discrimination to request such information of applicants for employment as law enforcement officers, or when an employer may lawfully consider or rely upon such arrest or conviction record pursuant to Sections 39.02 (8)(i)3. through 39.02(8)(i)6., M.G.O.
- (g) For any person or employer, employment agency or labor organization to refuse to reasonably accommodate an employee's or prospective employee's handicap unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.
- (h) Religion; Exceptions and Special Cases.
1. Employment discrimination because of religion includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.
  2. It is not employment discrimination because of religion for a religious association not organized for private profit or an organization or corporation which is primarily owned or controlled by such religious association to give preference to an applicant or employee who is a member of the same or a similar religious denomination, in hiring or promotion to an instructional or policy-making position, including but not limited to the position of chaplain or counselor.
  3. It is not employment discrimination because of religion for a fraternal as defined in Sec. 614.01(1) Wisconsin Statutes, to give preference to an employee or applicant who is a member or is eligible for membership in the fraternal, with respect to hiring or promotion to the position of officer, administrator or salesperson.
- (i) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer or a labor organization to admit or employ any



individual in those certain instances where sex, age, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.

1. It shall not be unlawful age discrimination to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any person.
  2. Discrimination because of handicap is not prohibited if the employer, labor organization, or employment agency can show that the handicap is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment. It is prohibited discrimination for an employer to contribute a lesser amount to the fringe benefits, including life or disability insurance coverage, of an employee because of his/her handicap.
  3. Discrimination because of arrest record or conviction record is not prohibited if the employer, labor organization, or employment agency can show that the employee or applicant:
    - a. Is subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job;
    - b. Has been within the past three (3) years placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity;
    - c. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state, federal or local law, administrative regulation or previously established business practice of the employer.
    - d. Is not eligible for licensing under state, federal or local law or administrative regulation due to a felony conviction for which the employee or applicant has not been pardoned, and where such license is required for the position the employee holds or for which the applicant is applying.
  4. It is not employment discrimination because of conviction record to deny or to refuse to issue a license or permit under the Madison General Ordinances if the person applying for or holding the license or permit has been convicted of a felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity, and has not been pardoned for that felony, misdemeanor, or other offense.
  5. It is not employment discrimination because of conviction record to refuse to employ a person in a business licensed under s. 440.26, Wis. Stats., or as an employee specified in s. 440.26(5)(b), Wis. Stats., if the person has been convicted of a felony and has not been pardoned for that felony.
  6. It is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned.
- (j) Nothing contained in this section shall be interpreted to prohibit any employer from considering an individual's less than honorable discharge in cases where the circumstances of the discharge are substantially related to the circumstances of the particular job. However, in no case may an employer consider a less than honorable discharge that was made administratively and not pursuant to a court martial.
- (k) No employer, labor organization or employment agency shall engage in sexual harassment and employers shall ensure that all of their employees work in an environment free of sexual harassment.
1. An employer, labor organization or employment agency violates this ordinance when (1) an employee's acquiescence in or submission to sexual

harassment is made either explicitly or implicitly a term or condition of his/her employment, (2) an employee's acquiescence in or submission to sexual harassment is used as the basis or any part of the basis for employment decisions affecting the employee other than an employment decision that is disciplinary action against an employee for engaging in sexual harassment in violation of this paragraph, or (3) sexual harassment has the purpose or effect of substantially interfering with an employee's work performance or of creating an intimidating, hostile, or offensive work environment.

2. Substantial interference with an employee's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment.
  3. An employer, employment agency or labor organization is presumed responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized by the employer.
  4. An employer, employment agency or labor organization is responsible for acts of sexual harassment of its employees by persons other than its agents or supervisory employees, including, but not limited to, acts by customers and co-workers, (1) if the act occurs while the complaining employee is performing service growing out of and incidental to his/her employment and (2), if the employer or its agents or supervisory employees knew or should have known of the conduct.
  5. It is the intent of this ordinance that timely filed complaints of sex discrimination in employment based on acts occurring before adoption of these provisions and based on conduct similar or identical to "sexual harassment" as defined above not be barred by the adoption of these provisions.
- (l) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity, or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.
- (m) Nothing contained in this section shall be interpreted to require any employer, employment agency or labor organization to grant preferential treatment to any individual or to any group because of the sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that such person is a student as defined herein.
- (9) It shall be an unfair discrimination practice and unlawful and hereby prohibited:
- (a) For any person to aid, abet, incite, compel or coerce the doing of any act which violates this ordinance or obstructs or prevents any person from complying with the provisions of this ordinance; and for any person or employer, employment agency or labor organization, whether individually or in concert with others, to discharge, harass, intimidate, or otherwise discriminate against any person because he or she has opposed any discriminatory practices under this ordinance or because he or she has made a complaint, testified or assisted in any proceeding under this ordinance.
  - (b) For any person to intimidate, threaten, harass, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed,

- or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this ordinance.
- (c) For any person or entity subject to regulations under this ordinance to engage in any acts prohibited in Sec. 39.02 et seq of the Madison General Ordinances against any individual because of the sex, race, religion, color, national origin or ancestry, age, disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, or political beliefs of any person associated with that individual or the fact that any person associated with that individual is a student as defined herein.
- (10) Equal Opportunities Commission. The Mayor, subject to confirmation by the Common Council, shall appoint an Equal Opportunities Commission, consisting of thirteen (13) members, one of whom shall be designated President by the members of the Commission. At least one, and no more than two, such members shall be an Alderperson, who shall be a member only as long as she/he shall continue to hold office as Alderperson. Members shall be appointed from among the residents of the entire City, shall be representative of both sexes, and of all races, religions, colors, organizations and fields of endeavor, all sexual orientations, handicapped citizens, and shall be committed to the principle of equal opportunities. They shall receive no compensation for their services.
- (a) The Commission members shall be appointed for terms of three (3) years and their terms shall run until their successors are appointed and confirmed. Terms shall expire on the third Tuesday of April.
- (b) The Equal Opportunities Commission shall have the following powers and duties:
1. To study the existence, character, causes and extent of the denial of equal opportunity because of sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or the fact that a person is a student as defined herein, in the City of Madison.
  2. To informally recommend solutions to individual problems that may arise which involve the denial of equal opportunities because of sex, race, religion, color, national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs, or the fact that such person is a student as defined herein.
  3. To disseminate information and provide technical assistance, consultation, training programs and other techniques to educate the people of the City of Madison and to aid both private and public agencies to use their resources to promote equal opportunities for all persons.
  4. To receive and initiate complaints alleging violation of this ordinance and to attempt to eliminate or remedy any violation by means of conciliation, persuasion, education, litigation, or any other means, to make the complainant whole again.
    - a. In case agreement is reached, a conciliation agreement in writing shall be signed by the complainant and respondent and approved by the President of the Equal Opportunities Commission. The signed conciliation agreement shall have the effect of a Commission order.
    - b. Except as provided in Sec. 904.08, Wis. Stats., and in 24 CFR Sec. 103.330, nothing that is said or done in the course of conciliation proceedings may be made public or used as evidence in a subsequent administrative hearing or civil action under this ordinance, under Title VIII of the Civil Rights Act of 1968, or under Sec. 101.22 et seq, Wis. Stats. (1991-92), without the written consent of the parties.
    - c. Any conciliation agreement is a public record and subject to inspection as provided in Sec. 19.35, Wis. Stats., and Sec. 3.42 of these ordinances, unless the parties to the agreement request that

- the record be exempt from disclosure and the Division head finds that disclosure is not required to further the purposes of this section.
5. Notwithstanding the provisions of Sec. 39.02(10)(c)1. to the contrary, to test and investigate for the purpose of establishing violations of Section 39.02 of these ordinances and, if appropriate, to make, sign, and file complaints alleging violations thereof.
  6. To render from time to time, but not less than once a year, written report of its activities and recommendations to the Mayor and the Common Council.
  7. To adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this ordinance.
  8. To issue subpoenas pursuant to Wisconsin Statutes Sec. 885.01 to assist in the execution of its duties.
  9. The Commission may, from time to time, designate Commissioners and/or Commission staff to carry out its duties.
  10. The Commission shall administer and enforce the Minimum Wage Ordinance, Sec. 3.45, M.G.O.
- (c) Except as provided in Sec. 39.02(10)(d), the Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination:
1. The Commission shall not accept any complaint filed more than three hundred (300) days after the alleged discrimination occurred, except that complaints of housing discrimination may be filed up to one (1) year after the alleged discrimination occurred. The Commission shall not investigate any complaint unless it is in writing and verified by the complainant, and a copy of the complaint is sent to the person or persons complained of, hereinafter referred to as respondent.

In addition, upon receipt of a verified complaint, both the complainant and the respondent shall be advised that copies of the Commission rules governing hearing procedures and the processing of complaints are available at the office of the Division head of the EOC.
  2.
    - a. If the Commission finds probable cause to believe that any discrimination has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure so to eliminate the discrimination, the Commission shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the respondent to answer the complaint in writing within ten (10) days after receipt of the notice of hearing and to appear at the hearing on the appointed date. The notice shall specify a time of hearing not less than thirty (30) days after service of the notice of hearing. The testimony at the hearing shall be recorded.
    - b. If, after hearing, the Commission finds that the respondent has engaged in discrimination, it shall make written findings and order such action by the respondent as will redress the injury done to complainant in violation of this ordinance, bring respondent into compliance with its provisions and generally effectuate the purpose of this ordinance. Such remedies may include, but are not limited to, out of pocket expenses, economic and noneconomic damages including damages for emotional injuries and, in regard to discrimination in employment, both front and back pay. In regard to discrimination in public accommodations by the holder of an alcohol beverage license issued pursuant to Chapter 38 of these ordinances, the Commission shall relay its findings to the City Attorney who shall commence a proceeding pursuant to Sec. 38.10 of these ordinances.

Back pay liability shall not accrue from a date more than two (2) years prior to the filing of a complaint with the Commission. Interim earnings or amounts earnable with reasonable diligence by

the person discriminated against, shall operate to reduce back pay otherwise allowable. Amounts received by the person as unemployment benefits or welfare payments shall not reduce the back pay allowable, but shall be withheld from the person discriminated against and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making such payment.

The amendments to this subparagraph b. shall apply to all proceedings pending on or commenced after the effective date of this ordinance, ID No. 22735 in furtherance of the remedial purposes of the Equal Opportunities Ordinance, 39.02 et seq. of the Madison General Ordinances.

- c. The Commission shall serve a copy of its findings and order on the respondent.
  - d. If the Commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a copy of its findings on the complainant together with an order dismissing the complaint.
  - e. The Commission shall monitor, in such manner as it shall determine appropriate, compliance with its conciliation agreements and orders.
3. a. Whenever in the judgment of the Commission, the judicial enforcement of the ordinance is necessary, the Commission shall in writing request the City Attorney to enforce the ordinance in the name of the City of Madison.
- b. Upon receipt of such request, the City Attorney shall have the power and duty to seek enforcement of the ordinance in a court of competent jurisdiction.
4. All orders of the Equal Opportunities Commission shall be final administrative determinations and shall be subject to review in court as by law may be provided. Any party to the proceeding may seek judicial review thereof within thirty (30) days of service by mail of the final determination. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding, with said notice to be sent by first class mail to each party's last known address.
5. The following special procedures shall apply to complaints of housing discrimination:
- a. If the Commission finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under Section 39.02(4) of these ordinances, the Commission shall make written findings and shall promptly issue an order for such relief as may be appropriate, which may include economic and noneconomic damages suffered by the complainant, and injunctive or other equitable relief. The Commission may not order punitive damages.
  - b. In addition to any damages ordered under this Subparagraph, the Commission may assess a monetary penalty against a respondent who is not a natural person in an amount not exceeding \$10,000 unless the respondent who is not a natural person has been adjudged to have committed any prior discriminatory act under Sec. 39.02(4), Madison General Ordinances, under Sec. 101.22, Wis. Stats., or under Title VIII of the Civil Rights Act of 1968. If a respondent who is not a natural person has been adjudged to have committed one other discriminatory act under Sec. 39.02 (4), Madison General Ordinances, under Sec. 101.22, Wis. Stats., or under Title VIII of the Civil Rights Act of 1968 during the preceding five-year period, based on the offense date of the prior discriminatory act, the Commission may assess a monetary penalty in an amount not exceeding \$25,000. If a respondent who is not a natural person has been adjudged to have committed two (2) or

more prior discriminatory acts under Sec. 39.02(4), Madison General Ordinances, under Sec. 101.22, Wis. Stats., or under Title VIII of the Civil Rights Act of 1968 during the preceding seven-year period, based on the offense date of the prior discriminatory act, the Commission may assess a forfeiture in an amount not exceeding \$50,000.

- c. The Commission may, instead of or in addition to, ordering relief as provided above, institute an action in Circuit Court, requesting such damages and forfeitures and such other relief as may be appropriate. The Commission may also seek punitive damages in appropriate cases.
  - d. All of the other procedural provisions of this ordinance, and the Commission's rules of procedure, if not contrary to the provisions of this Paragraph shall apply to complaints of housing discrimination.
- (d) The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination filed against the City of Madison and the Community Development Authority.
- 1. Upon the receipt of a written, verified complaint naming the City of Madison or the Community Development Authority as a respondent, a copy of such complaint shall be served on the City Attorney, the Mayor, and the City Clerk.
  - 2. If the Equal Rights Division of the Wisconsin Department of Workforce Development or the U.S. Department of Housing and Urban Development (HUD) has jurisdiction over the complaint, the Equal Opportunities Commission shall take no action, but shall refer the complaint to the Equal Rights Division or HUD for appropriate action as provided by law. If the U.S. Equal Employment Opportunity Commission or HUD has jurisdiction, a copy of the complaint shall be forwarded to that agency. The complainant shall be informed of all such referrals.
  - 3. If state and federal agencies are without jurisdiction, the Equal Opportunities Commission shall follow the procedure provided in Sec.39.02(10)(c) of this ordinance.
- (11) Clerk to Register Domestic Partnerships.
- (a) The City Clerk shall register as domestic partnerships all those persons who state, in an application, which shall be verified, that they meet the requirements contained in Sec. 39.02(2)(o) of this ordinance, and pay a registration fee of twenty-five dollars (\$25) to cover record keeping and other costs related to such registration.
  - (b) The application shall include the applicants' agreement to notify the City Clerk of any change in the status of their domestic partner relationship.
  - (c) The Clerk shall provide each domestic partnership with a registration certificate, but no registration shall be made nor certificate issued, before the third working day after the date of the application.
  - (d) Registration as a domestic partnership is terminated on the 30th day after the Clerk receives and files written notice of termination from one or both domestic partners.
- (12) Title. This ordinance shall be known as the Equal Opportunities Ordinance.
- (13) At any time after a complaint is filed, the Division head may request the City Attorney to file a civil action in the circuit court for Dane County, seeking appropriate temporary relief against the respondent, pending final action by the Commission under this section. Such relief may include an order or decree restraining the respondent from performing an act tending to render ineffectual an order the Commission may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper.
- (14) 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, 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 provisions, if any, not been included herein.
- (15) Penalty.

- (a) Any person violating any of the provisions of this section shall upon conviction be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (b) Any person who shall fail or neglect to comply with any lawful order of the Equal Opportunities Commission issued pursuant to the provisions of this section shall be deemed guilty of a violation of this section, and every day or fraction thereof on which such person shall fail or neglect to comply with such order, shall be deemed a separate offense. If the order is based upon a finding of public accommodation discrimination under Sec. 39.02(10)(c)2.b., Madison General Ordinances, by the holder of an alcohol beverage license issued pursuant to Chapter 38, Madison General Ordinances, the Division head of the Commission shall also relay its findings of failure or neglect to comply with the order to the City Attorney who shall commence a proceeding pursuant to Sec. 38.10 of these ordinances.

**39.03 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 39.02 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 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 Division Head of Affirmative Action shall be 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 two (2) years and their terms shall run until their successors are confirmed. The full Commission shall be appointed forthwith but the terms shall expire on the third Tuesday of April, 1974, at which time four (4) members shall be appointed for a three-year term and five (5) members for a two-year term. Thereafter, appointment shall be made for two-year terms.
- (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 Division head of Affirmative Action.
  - 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 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. 39.03(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. The Chairperson of the Affirmative Action Commission shall appoint a certification appeals committee consisting of seven (7) persons, including one member of the Common Council, one member of the Board of Public Works, two (2) members of the Affirmative Action Commission, and three (3) citizens, to serve two (2) year terms.
  - 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 Division head of Affirmative Action 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 Division head of Affirmative Action in the preparation of the Plan.

(4) Departmental Affirmative Action Plans.



- (a) The Division head of Affirmative Action 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 Division head of Affirmative Action, 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 Department 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 Department of Affirmative Action.
- (5) Citywide Affirmative Action Program.
- (a) The Department 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.
  - (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 Department 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 Department 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 Department 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 Department 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 Department of Affirmative Action shall work with the Equal Opportunities Commission 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 Department 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 Affirmative Action Department for investigation and informal problem-solving and resolution. Department and Division heads shall cooperate with the Division head of Affirmative Action 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 Division head of Affirmative Action 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 Department 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 Department of Affirmative Action for the successful implementation of the departmental affirmative action plans.
  - (b) The Division head 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 Department 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 Division head of Affirmative Action. The Division head of Affirmative Action 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 Sec. 66.1103, Wis. Stats.; contracts with developers or other entities authorized by Secs. 66.1333(5) and 66.1105(3)(e), Wis. Stats., 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.
  - 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.
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. Notwithstanding the exemptions listed in subparagraphs b.-d. above, all developers who enter into subdivision improvement contracts with the City, and their contractors shall submit an approved Affirmative Action plan; all redevelopment contracts and all revenue or loan agreements with an eligible participant or authorized developer under Sec. 66.1103, Wis. Stats., shall contain the Articles of Agreement prescribed in Sec.39.03(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 Secs. 66.431(5) and 66.46(3)(e), Wis. Stats., shall contain the Articles of Agreement prescribed in Sec. 39.03(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. 39.03(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:

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. 39.03(9)(a)2.a., b., d., e., f., g., h. 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 Department 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 Department 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 Department 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 Department 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 Department 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. 39.03(9)(a)2.a., shall be subject to and contingent upon the lowest responsible bidder submitting in writing to the Department of Affirmative Action, an Affirmative Action Plan for Public Works Contractors. 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. 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 Division head of Public Works for work advertised after April 1, 1991, unless the contractor submits an Affirmative Action Plan approved by the Department of Affirmative Action.

- 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 Division head of Affirmative Action 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 Division head of Affirmative Action.

ARTICLE VI

The contractor will maintain records as required by Section 39.03 (9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.03 (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 39.02 and 39.03 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.)

(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. Stats. Sec. 66.0903(10)(a) and Sections DWD 290.13 and DWD 290.14 of the Wisconsin Administrative Code 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. 39.03 (9)(a)1. of this ordinance. Contractors requesting exempt status under this ordinance shall furnish all information requested by the Department of Affirmative Action in order to determine exempt status.
2. Production of Records. Contractors shall provide such records at the office of the Department of Affirmative Action within ten (10) days of the date requested in writing and shall permit the Division head of Affirmative Action 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 Department of Affirmative Action or with a local, state or federal agency.
- c. At any time when the Division head 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 Division head of Affirmative Action deems it necessary to examine documented good-faith efforts.

The Division head'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 Department of Affirmative Action shall be open for public inspection and copying, as provided in Sec. 3.42 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 Division head of Affirmative Action 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. 39.03(9)(f).
- 2. The Divisionhead of Affirmative Action or designee may schedule an on-site review, as provided in Sec. 39.03(9)(f)2., by notifying the contractor in writing no less than ten (10) days in advance.
- 3. After a compliance review, the Division head of Affirmative Action 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 Department 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 Division head of Affirmative Action 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 Division head of Affirmative Action, 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 Division head of Affirmative Action approves the proposed amended affirmative action plan, the contractor's default is cured. If the proposed amended affirmative action plan is not approved, the Division head of Affirmative Action 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 fifteen (15) working days after the request is filed with the Division head of Affirmative Action.

7. At the hearing, the Division head of Affirmative Action 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 Sec. 227.45, Wis. Stats. 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) 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 Division head of Affirmative Action 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 Division head of Affirmative Action may request the Affirmative Action Commission to order additional remedies. Such a hearing shall be held according to the procedures in Section 39.03(9)(g)7.-12. above.

(h) Complaints. The Department 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 Department 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 Department 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 Department 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 Department 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 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.

#### **39.04 NONDISCRIMINATION BASED ON DISABILITY IN CITY FACILITIES AND CITY-ASSISTED PROGRAMS AND ACTIVITIES**

- (1) Nondiscrimination. No qualified person with a disability shall, by reason of such disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by City facilities, or under any program or activity which receives or benefits from City financial assistance.
- (2) Declaration of Policy. It is the intention of the Mayor and Common Council to impose upon City facilities and upon recipients of City financial assistance, nondiscrimination requirements which are the same as, and consistent with, the nondiscrimination requirements which are imposed upon recipients of federal funding by the Rehabilitation Act of 1973, as amended, and applicable federal regulations.

The Council intends that the complaint procedure provided in Subsections (10) to (13) of this ordinance shall constitute the grievance procedure required by applicable federal regulations, and further intends that any time limits required by applicable federal regulations for complaints to federal agencies be tolled when a complainant pursues the complaint procedure provided in this ordinance, provided the complaint is timely under Subsection (10). Subsections (11) to (17) shall not apply to complaints filed with federal agencies. Subsections (14) to (17) shall not apply to complaints filed with the Department of Affirmative Action against federally funded City facilities.

- (3) Disability Rights Coordinator. There is hereby created the position of Disability Rights Coordinator, who shall work under the supervision of the Division head of Affirmative Action. The Disability Rights Coordinator shall assist the Division head of Affirmative Action in carrying out her/his responsibilities under this ordinance, and shall perform such other duties as the Division head of Affirmative Action may direct, including the provision of staff support to the Commission on People with Disabilities.

(4) Definitions.

- (a) "City facilities" includes all property owned or leased by the City, all operations of City departments and divisions, and all services rendered by the City for the welfare of its inhabitants, except that it does not include City employment.
- (b) "City financial assistance" means any grant, cooperative agreement, loan, contract (other than a public works contract, a supply procurement contract, a contract of insurance or guaranty or a collective bargaining agreement) or any other arrangement by which the City provides or otherwise makes available assistance, in the form of
  - 1. Funds
  - 2. Services of City personnel
  - 3. Real and personal property or any interest in or use of such property, including:
    - a. Transfers or leases of such property for less than the fair market value, or for reduced consideration; and
    - b. Proceeds from a subsequent transfer or lease of such property if the City's share of its fair market value is not returned to the City.
  - 4. The sale and lease of, and the permission to use (on other than a casual or transient basis) City property or any interest in such property, the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by the sale, lease or furnishing of services to the recipient, and
  - 5. Any City agreement, arrangement or other contract which has as one of its purposes the provision of financial assistance, including purchase of service agreements.
- (c) "Program or activity" includes any program, project, or activity for the provision of facilities or services, financial aid, or other benefits to individuals (including education or training, health, welfare, cultural activities, rehabilitation, housing, or other services), whether provided through an employee of the grantee or provided by others through contracts or other arrangements with the grantee, and including

the provision of facilities, for furnishing services, financial aid, or other benefits to individuals, but not including employment.

- (d) "A Person with a Disability" is a person who either:
  1. Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
  2. Has a record of such an impairment; or
  3. Is regarded as having such an impairment.

- (e) "Qualified Person with a Disability" means a person with a disability who, with or without reasonable modifications to rules, policies, and practices, the removal of architectural, communication, and transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities or facilities provided by the City, or by a recipient of City financial assistance.

- (f) "Recipient" means any public or private agency, institution, organization, or other entity, or any person to which City financial assistance is extended for any program or activity, directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

5) Discriminatory Actions Prohibited.

- (a) The City, in its facilities, and recipients in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

- (b) For purposes of this ordinance, City facilities, aids, benefits, and services, to be equally effective, are not required to produce the identical result for disabled and nondisabled persons, but must afford persons with a disability an equal opportunity to obtain the same result, or to gain the same benefit. In choosing among available methods for meeting the requirements of this ordinance, the City facility or recipient of City financial assistance shall give priority to those methods that offer programs and activities to qualified persons with disabilities in the most integrated setting appropriate to the person's needs.

- (c) Despite the existence of separate or different programs or activities provided in accordance with this ordinance, recipients and City facilities may not deny a qualified person with a disability the opportunity to participate in such programs or activities that are not separate or different.

- (d) A recipient or City facility may not, directly or through contractual or other arrangements, utilize criteria or methods of administration

1. That have the effect of subjecting qualified persons with a disability to discrimination because of such disability.

2. That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the City facility or the recipient's program with respect to persons with a disability, or
  3. That perpetuate the discrimination of another recipient if both recipients are subject to common administrative control.
- (e) In determining the site or location of a facility, the City, or an applicant for City financial assistance or a recipient may not make selections
1. That have the effect of excluding persons with a disability from, denying them the benefits of, or otherwise subjecting them to discrimination under any City facility or any program or activity that receives or benefits from City financial assistance or
  2. That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the City facility or of the program or activity with respect to persons with a disability.
- (f) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from City financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with City financial assistance for the period during which the facility is used for a purpose for which the City financial assistance is extended, or for another purpose involving the provision of similar services or benefits.
- (g) Nothing in this ordinance is to be construed as affecting any landmark, as that term is defined in Section 33.01(2) of these ordinances or as affecting wilderness areas.
- (h) Programs limited to persons with a disability. The exclusion of persons without disabilities from the benefits of a program limited to persons with disabilities, or the exclusion of a specific class of persons with a disability from a program limited to a different class of persons with a disability is not prohibited by this ordinance.
- (i) Recipients and City facilities shall post notices in an accessible format to applicants, beneficiaries and other persons, describing the applicable provisions of this ordinance, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA sec. 2000e-10).
- (6) Program Accessibility and Existing Facilities.
- (a) City facilities and recipients of City financial assistance shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This paragraph does not:
1. Necessarily require the City facility or recipient of City financial assistance to make each of its existing facilities accessible to and usable by persons with disabilities;
  2. Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where a City department head or the Board of Division heads of a recipient of City financial assistance believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Department head or recipient has the burden of proving that compliance with this ordinance would result in such alterations or burdens.
- (b) The City facility or recipient of City financial assistance may comply with the requirement of this ordinance through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to clients, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by persons with disabilities. The City facility or recipient of City financial assistance is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this ordinance.
- (7) Standards. A building or structure is readily accessible to and usable by persons with disabilities if it fulfills the applicable standards, guidelines and requirements issued by the

- federal Architectural and Transportation Barriers Compliance Board, including such amendments as the Board may issue from time to time.
- (8) Assurances Required. Applicants for City financial assistance shall submit a written assurance of compliance with this subsection on a form specified by the Division head of Affirmative Action or her/his designee. The assurance shall be incorporated into any contract between the recipient and the City. No City financial assistance shall be granted unless such an assurance is provided by the applicant or recipient prior to the granting of the City financial assistance. The foregoing requirement does not apply to City financial assistance provided without a written contract, but all of the other provisions of this ordinance do apply to such financial assistance.
  - (9) Compliance Reviews. The City's Division head of Affirmative Action or designee may periodically review the practices of recipients to determine whether they are complying with this ordinance, and may require recipients to provide relevant information.
  - (10) Complaints. Any person who believes this section has been violated by a City facility or a recipient of City financial assistance may bring the alleged violation to the attention of the Department of Affirmative Action. Such complaints shall be filed within three hundred (300) days of the alleged violation. The Division head of Affirmative Action shall post notices in accessible format of the complaint procedure. Any complaint shall be a public record available to any person for inspection and copying.
  - (11) Investigation. The Division head of Affirmative Action shall promptly investigate whenever a compliance review or complaint indicates a possible violation of this section. **The Commission on** shall establish rules governing complaint processing and compliance review procedures, and such rules shall be approved by the Common Council.
  - (12) Determination. After investigating, the Division head of Affirmative Action shall issue a written determination of compliance or noncompliance and shall provide copies of the determination to the Commission on People with Disabilities, to the recipient or City Department or Division head responsible for the City facility and to the complainant, if any. Any determination of noncompliance shall contain a proposal for a reasonable remedy, and a reasonable deadline for compliance with the remedy. The written determination shall be a public record available to any person for inspection and copying.
  - (13) Voluntary Compliance. If, after investigation, the Division head of Affirmative Action or designee has found the recipient or the City facility not to be in compliance with this Section, the Division head of Affirmative Action and the recipient, or, in the case of a City facility, the responsible Department head, may agree upon an informal resolution of the matter by a voluntary compliance agreement. Informal resolutions shall remedy any violation of the rights of a complainant and shall assure elimination of the violation and the prevention of its recurrence. Such voluntary compliance agreements shall be in writing, and shall be approved by the Commission on People with Disabilities. The agreement shall be signed by the recipient and by the Mayor, or, in the case of a City facility, by the Mayor and the responsible Department head. It shall be available for public inspection and copying.
  - (14) Enforcement Procedure. If a recipient, after receiving a written determination of noncompliance, fails to meet the deadline established for compliance and remedy, and fails to enter into a voluntary compliance agreement, or fails to comply with such an agreement, the Division head of Affirmative Action or designee shall notify the City Attorney. The City Attorney shall proceed to terminate and, if she/he deems it necessary and appropriate, to recoup the recipient's financial assistance. The City Attorney may also seek other remedies. The City Attorney shall inform the recipient of the action proposed to be taken, the matters of fact and law asserted as the basis for the action, and shall inform the applicant that a hearing may be requested by notifying the City Clerk within fifteen (15) days. The City Attorney shall also attempt to negotiate a voluntary compliance agreement. Such an agreement shall remedy any violation of the rights of a complainant and shall assure elimination of the violation and the prevention of its recurrence. Such a voluntary compliance agreement shall be in writing, shall be signed by the Mayor, approved by the Commission on People with Disabilities, and shall be reported to the Common Council.
  - (15) Hearing Committee. If a hearing is requested, the City Clerk shall notify the Mayor and a Hearing Committee shall be constituted. The Hearing Committee shall consist of three (3) members of the Common Council, designated by the Mayor; three (3) persons designated

by the Chair of the Commission on People with Disabilities; and the Chair of the Equal Opportunities Commission, or her/his designee. The Mayor shall establish rules governing hearing procedures.

- (16) Hearing. At the hearing, the Division head of Affirmative Action or designee shall have the burden to persuade the Committee that the recipient has violated this Section, or the provisions of a voluntary compliance agreement. Each party shall have the right to appear in person and by counsel, to call and examine all witnesses, and to introduce exhibits. The Committee shall determine both fact and law, and shall issue a written decision and order, including, in case it finds that the recipient has violated this Section, an appropriate remedy. The Committee's decision shall be a final administrative determination, subject to appeal as by law may be provided. The City Attorney may institute court action to enforce the Committee's order.
- (17) Enforcement Procedure for City Facilities. If a Department head, after receiving a written determination that a City facility for which she/he is responsible is not in compliance with this ordinance, fails to meet the deadline for compliance and remedy, fails to enter into a voluntary compliance agreement, or fails to comply with such an agreement, the Division head of Affirmative Action or designee shall notify the Commission on People with Disabilities, and the Mayor. The Commission on People with Disabilities shall submit to the Board of Estimates a written report on the noncompliance, and such report shall contain a recommendation for action. The Mayor shall convene a special meeting of the Board of Estimates to consider the issue, and shall publish a notice at least twenty-one (21) days prior to the meeting. At the meeting, the Board shall hear the Department head, other City officials and employees, and members of the public. The meeting may be adjourned and reconvened as the Board may deem appropriate.

The meeting shall be considered legislative and not quasi-judicial and shall be conducted in open session. The Board of Estimates shall recommend a resolution of the issue to the Common Council for its approval.

- (18) Enforcement Procedure for Federally Funded City Facilities. If a Department head, after receiving a written determination that a federally funded City facility for which s/he is responsible is not in compliance with this ordinance, fails to meet the deadline for compliance and remedy, fails to enter into a voluntary compliance agreement with the Division head of Affirmative Action or designee, or fails to comply with such an agreement, the Division head of Affirmative Action or designee shall promptly notify the federal agency, from which the funds are provided, of the complaint. The complaint will then be addressed in accordance with the federal agency's Rehabilitation Act of 1973 complaint procedure.

### **39.05 REVEREND DOCTOR MARTIN LUTHER KING, JR. HUMANITARIAN AWARD.**

- (1) There is created the Reverend Doctor Martin Luther King, Jr. Humanitarian Award or Awards to be presented annually to Madison citizens who have made outstanding and significant contributions in the spirit of sisterhood, brotherhood, and harmony toward making our City an ideal place in which to live. The award or awards shall be presented at the annual celebration of the birth of Dr. King.
- (2) The Mayor shall appoint a Committee, which shall consist of the Mayor or her/his designee as an ex officio nonvoting member; the City's Division head of the Department of Civil Rights or his/her designee and one delegate from each of the following commissions/ committees: the Madison Equal Opportunities Commission, the Affirmative Action Commission, the Community Block Grant Development Commission, the Community Service Commission and the Commission on People with Disabilities. his Committee shall annually seek candidates and select the recipient or recipients of this award.
- (3) The Mayor shall convene the Committee on or before August 15 of each year. The Committee shall select a chairperson and may establish rules and procedures.

### **39.06 COMMISSION ON PEOPLE WITH DISABILITIES.**

- (1) Organization. There is hereby created a Commission on People with Disabilities.
- (2) Membership. The Commission shall consist of eleven (11) members. Ten (10) citizen members and one alderperson shall be appointed by the Mayor, subject to confirmation by the Common Council. Citizen members shall be residents of the City of Madison and shall be knowledgeable and sensitive to the service needs, rights, and responsibilities of citizens



with disabilities. First priority for membership shall be given to people with disabilities, family members, and advocates.

- (3) (a) Terms. All members shall serve terms of three (3) years, commencing May 1, and expiring April 30, except that the term of the Alderperson member of the Commission shall expire with the expiration of her/his term as Alderperson. At the first regular Common Council meeting in April of each year, the Mayor shall appoint persons to fill terms which expire the following May 1. The Common Council shall either reject or confirm the appointments. Should the Council reject any appointment, the Mayor shall submit an alternative appointment as soon as possible. All members shall serve until a successor is appointed and qualifies. Vacancies shall be filled in the manner prescribed for original appointments but the vacancies shall be filled for the unexpired term only.
- (b) Alternate Members. In addition to the members above-mentioned, the Mayor may appoint two (2) citizens to be alternate members of such 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 refuses to act because of a conflict of interest. The second alternate shall so act only when the first alternate refuses or is absent or when more than one (1) member of the commission so refuses or is absent.
- (4) Duties. The Commission on People with Disabilities shall have the following responsibilities:
  - (a) Recommend policy to the Mayor, Common Council and Department of Civil Rights in all areas that affect people with disabilities and their families.
  - (b) Study and make recommendations to all City departments, committees, and commissions on proposals to provide better access to facilities and services for people with disabilities and their families.
  - (c) The Commission shall monitor and report violations of city ordinances and state laws pertaining to citizens with disabilities to the appropriate agency.
  - (d) The Commission shall solicit comments and suggestions from citizens and organized groups regarding the concerns of citizens with disabilities.
  - (e) The Commission shall establish close working relationships with other City Boards, Commissions and Committees whose activities may affect people with disabilities.
- (5) Meetings. The Commission shall meet at least once each month and shall conduct its business in accordance with rules which it may establish.
- (6) Executive Committee. Each year the Commission shall meet as soon after May 1 as possible to elect a Chair and Vice-Chair and such other officers as the Commission may determine. The Commission Chair shall appoint a Commission member as Chair of any other committees. The Executive Committee shall consist of all Commission officers, committee Chairs and other commission members as appointed by the Chair. The Executive Committee shall have responsibilities as assigned by the Commission.
- (7) Staff. The Commission shall receive staff services from the Department of Civil Rights.”

3. Subsection (2) entitled “Membership” of Section 3.185 entitled “Community Services Commission” of the Madison General Ordinances is amended to read as follows:

“(2) Membership. The Commission shall consist of eleven (11) members, except as provided below. Nine (9) members shall be appointed by the Mayor, subject to the confirmation by the Common Council. Members shall be appointed on the basis of their knowledge and interest in human services. At least one, and no more than two, such members shall be an Alderperson. One (1) citizen member shall be selected by the Mayor from and with the advice of the Early Childhood Care and Education Board. One (1) citizen member shall be selected by the Mayor from a panel of three (3) submitted by the Madison Federation of Labor. One (1) of the citizen members shall be a present or former client or recipient of a private nonprofit program. At least one (1) of the citizen members shall be a member of a minority as defined in Sec. ~~3.58(8)(a)7.~~ 39.03(9)(a)7. of these ordinances. The Senior Citizens Advisory Committee shall elect one of its members to serve as a member of the Community Services Commission subject to confirmation by the Common Council. The remaining members shall be broadly representative of the community. The Supervisor of the Office of Community Services or his/her designee shall be an ex-officio member of the Commission without vote and shall serve as secretary.”

4. Subdivision (c) entitled "Handicapped Employees" of Subsection (18) entitled "Efficient and Effective Performance" of Section 3.35 entitled "Civil Service System" of the Madison General Ordinances is amended to read as follows:

"(c) Handicapped Employees. For the purpose of this subsection the term "handicap" has the same meaning as "handicap" in Section ~~3.58~~ 39.03 of these ordinances. The Mayor shall establish procedures for the provision of reasonable accommodations for qualified applicants and employees with handicaps. Such reasonable accommodation shall, at minimum, provide for feasible adjustments in testing, and in equipment, schedule, accessibility of work areas and facilities, and for feasible task modifications. For employees who acquire a handicap after their employment with the City, these procedures shall include the options of transfer to other City jobs which the employee is able and qualified to perform, in accordance with Section 3.35(15) of these ordinances, and of demotion, in accordance with Sections 3.35(15) and (16) of these ordinances."

5. Paragraph 7. of Subdivision (a) entitled "Definitions" of Subsection (24) entitled "Layoff" of Section 3.35 entitled "Civil Service System" of the Madison General Ordinances is amended to read as follows:

"7. "Minority" shall be defined in accordance with Sec. ~~3.58(8)~~ 39.03(8) of the Madison General Ordinances."

6. Subparagraph i. of Paragraph 2. of Subdivision (a) entitled "Death in Immediate Family" of Subsection (13) entitled "Death in Employee's Family or Otherwise" of Section 3.36 entitled "Absence of Employees from Duty" of the Madison General Ordinances is amended to read as follows:

"i. A Domestic Partner registered with the City Clerk as provided in Section ~~3.23(10)~~ 39.02(11) of these ordinances."

7. Subsection (26) entitled "Health Insurance" of Section 3.38 entitled "Compensation Plan" of the Madison General Ordinances is amended to read as follows:

"(26) Health Insurance. Employees registered in domestic partnerships under Section ~~3.23(10)~~ 39.02(11), Madison General Ordinances, will be eligible for family health insurance coverage when such coverage is permitted under the terms of the Wisconsin Public Employers' Group Health Insurance Plan."

8. Subsection (10) entitled "Disability Rights (Internal) Unit" of Section 3.48 entitled "Human Resources Department" of the Madison General Ordinances is amended to read as follows:

"(10) Disability Rights (Internal) Unit.

Under the supervision of the Director, this unit is responsible for the coordination of City efforts to prevent discrimination in employment on the basis of handicap and the delivery of programs and services according to the requirements of federal, state and local legislation as they relate to City employment and employees. The Director may from time to time consult with the Commission on People with Disabilities concerning the work to be performed pursuant to this function. Nothing contained in this section shall alter the responsibilities of the Commission on People with Disabilities as provided in Section ~~3.62~~ 39.06 of these ordinances."

9. Paragraph 1 of Subdivision (h) entitled "Health Insurance and Benefits" of Subsection (1) of Section 3.52 entitled "Nonrepresented Transit Division Employees" of the Madison General Ordinances is amended to read as follows:

"1. Employees registered in domestic partnerships under Section ~~3.23(10)~~ 39.02(11), Madison General Ordinances, will be eligible for family health insurance coverage when such coverage is permitted under the terms of the Wisconsin Area Health Fund."

10. Subdivision (a) entitled "Membership" of Subsection (2) of Section 3.70 entitled "Community Development Block Grant (CDBG) Commission" of the Madison General Ordinances is amended to read as follows:

“(a) Membership. The Commission shall consist of nine (9) members and two (2) alternate members, appointed by the Mayor, subject to the approval of the Common Council. Two (2) members shall be alderpersons. The other members shall be citizen members. At least three citizen members shall be persons of low or moderate income, as low or moderate income is defined by the CDBG regulations, and at least one citizen member shall be a member of a minority as defined in Sec. ~~3.58(9)(a)7-~~ 39.03(9)(a)7. of these ordinances. One position may be filled by either an alderperson or a citizen member.”

11. Subsection (1) of Section 9.13 entitled “License for Selling on Public Streets” of the Madison General Ordinances is amended to read as follows:

(1) It shall be unlawful for any person to sell or offer for sale or procure the sale of any services, goods, wares, tokens, or foodstuffs, or any other article of any kind by putting up a booth or stopping a vehicle or person on foot or in any other manner attempting to publicly sell or offer for sale any such articles or services upon any street, alley, sidewalk, or public square, unless such person shall have first applied for and obtained a street vending license or a special event vending license. Such license shall enable holders to conduct their business in all enumerated areas subject to the limitations of this section and Section 10.056 of these ordinances.

No vending license or special event vending license shall be denied for reasons prohibited under Sec. ~~3.23(5)~~ 39.02(5) of the Madison General Ordinances.”

12. Subparagraph i. of Paragraph 1. of Subdivision (a) of Subsection (2) entitled “Tenant Rights and Responsibilities” of Section 32.06 entitled “Rental Agreements and Receipts” of the Madison General Ordinances is amended to read as follows:

“i. summary of Section ~~3.23-39.02~~, relative to housing discrimination”

13. Subsection (1) entitled “Affirmative Action Program” of Section 36.31 entitled “Preferential or Discriminatory Practices Prohibited” of the Madison General Ordinances is amended to read as follows:

“(1) Affirmative Action Program. The Grantee shall establish an Affirmative Action Program which shall be a positive program designed to ensure that a good faith effort will be made to employ applicants from all segments of the community regardless of race, color, marital status, religion, age, handicap or national origin. The Affirmative Action Program shall be prepared pursuant to the guidelines established by the Affirmative Action Ordinance, Section ~~3.58~~ 39.03 of the Madison General Ordinances. The Grantee shall establish and maintain a nondiscriminatory policy program providing that no individual shall be discriminated against with respect to compensation, terms, conditions, or other privileges of employment because of race, color, marital status, religion, sex, national origin, handicap or age. The Grantee shall establish an Affirmative Action Program to be placed on file with the City prior to the commencement of construction.”

14. Subparagraph a. entitled “Formal Expression of Concern” of Paragraph 1. of Subsection (d) entitled “Suspension or Revocation of License” of Subsection (4) entitled “Point Values for Alcohol Beverage Violations and Revocations and Suspensions” of Section 38.10 entitled “Revocation, Suspension or Nonrenewal of License” of the Madison General Ordinances is amended to read as follows:

“a. Formal Expression of Concern. In those instances in which a licensee has accumulated less than 100 demerit points as determined by the City Attorney, and additional violations on one date would result in the accumulation of at least 100 points but not more than 200 points, the ALRC shall call before it the licensee for purposes of a formal expression of concern. Formal expression of concern shall not apply to cases of failure to comply with an order pursuant to Sec. ~~3.23(14)(b)~~ 39.02(15)(b) of these ordinances. If the licensee appears, no discussion of the alleged facts underlying the assessment of demerit points shall be permitted unless the licensee requests such discussion but only if the licensee is advised that any statements made by the licensee and/or her/his representatives regarding the alleged facts may be considered by the ALRC in any subsequent suspension/revocation hearing which may result from the alleged violations which are the subject of the formal expression of concern. If the licensee appears, no points shall be assessed for the alleged violations which triggered the formal expression of concern. If the licensee fails to appear after service of the notice to appear, the matter shall be scheduled for a suspension/revocation hearing. Service of the notice to appear shall be by first class mail sent to the agent, if

the licensee is a corporation or a limited liability company, to the licensee if an individual, or to any partner if the licensee is a partnership. If the notice is returned by the Post Office as undeliverable, the notice may be left with any employee found on the licensed establishment at least 24 hours before the date and time of the scheduled appearance before the ALRC. A formal expression of concern in lieu of the assessment of demerit points may only occur once within a one-year period.

This ordinance amendment shall apply only to violations that would trigger a formal expression of concern which occur after this ordinance is adopted."