

**AGENDA # \_\_\_\_\_**

**CITY OF MADISON, WISCONSIN**

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**REPORT OF:** City Attorney

**AUTHOR:** Roger A. Allen,  
Assistant City Attorney

**DATED:** October 13, 2005

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**PRESENTED** \_\_\_\_\_

**REFERRED** \_\_\_\_\_

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**REREFERRED** \_\_\_\_\_

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**REPORTED BACK** \_\_\_\_\_

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**ADOPTED** \_\_\_\_\_ **POF** \_\_\_\_\_

**ID NUMBER** 01853

**TO THE MAYOR AND COMMON COUNCIL:**

The "People First" ordinance was submitted to the Common Council on September 6, 2005. The purpose of the proposed amendments to current ordinances is to modernize the Madison General Ordinances so that they reflect the recognition that everyone is created as an equal person and that disabilities are impairments of body functions, not impairments of the person. "People First" legislation has been enacted in numerous states and communities in our nation. "People First" language seeks to recognize that persons are defined by who they are, what they do and not by whatever disability they may have. "People First" legislation recognizes the terms "handicapped" and "disabled" are offensive and prejudicial terms that seek to define a person by their disabilities rather than by their abilities and accomplishments as people. "People First" language does just what its name states, it places the person first before their disability and emphasizes that they are free and equal persons entitled to the same respect and dignity as are all other persons.

The proposed ordinance is actually a series of amendments to currently existing ordinances. The proposal simply replaces the words "handicap," "handicapped" with the words "disability," or "disabled". Other minor language changes are made to ensure that the use of these terms makes grammatical sense in the context of the ordinances where such substitutions occur.

The Common Council referred the proposed ordinance to the Commission on Persons With Disabilities (CPD). The CPD reviewed this ordinance at its September 22, 2005 meeting. Public testimony was taken from private citizen Jesse Kaysen who expressed a number of concerns regarding the proposal. Ms. Kaysen also presented written testimony that the CPD included in its record. The CPD Chair acknowledged that the Madison Equal Opportunities Commission (MEOC) had expressed concerns about the proposal as well. The CPD then took the unusual step of referring the proposal to the MEOC so that the MEOC could report its specific concerns to the CPD and the CPD also referred Ms. Kaysen's written comments (which paralleled her public testimony) to the Office of the City Attorney for comment. It should be noted that Attorney Jodi Hanna of the Wisconsin Coalition for Advocacy, has stated that she shares some of Ms. Kaysen's concerns about this proposal.

This report is submitted to address the concerns of Ms. Kaysen, Attorney Hanna and the MEOC. First and foremost, the proposed revisions do not alter nor affect the substantive rights of any person or persons under the current ordinances. The proposed changes merely modernize the language in a manner that many other communities have done and that has not resulted in any substantive change in the law for

those communities. The limited effect of this ordinance, and this cannot be overemphasized, is to end the practice of referring to people with disabilities as the "handicapped."

The MEOC was concerned that these grammatical changes could undermine their ability to rely upon prior caselaw that referred to the terms that are being modernized. That is, the MEOC feared that it would lose the ability to rely upon the principal of *stare decisis* in deciding case that come before it after these "people First" changes have been adopted. The MEOC has withdrawn its objections to these changes and has determined that its initial concerns were misplaced. The Madison Equal Opportunities Ordinance already defines the term "disability" in such a manner as to explicitly authorize the MEOC to rely on caselaw that was based upon the archaic terms of "handicap," "handicapped," etc. In all fairness to the MEOC, this ordinance revision should have been formally referred to it as part of the review process. The manner in which the MEOC learned about this proposal may have deprived this body of the opportunity to conduct meaningful review of the proposal before it spoke out on the proposal. As it was, the MEOC necessarily informed the OCA and CPD that it had concerns that needed to be reviewed before the ordinance could be enacted.

The OCA appreciates the review of the proposal that was conducted by Ms. Kaysen and of Attorney Hanna. Unfortunately, it appears that Ms. Kaysen and perhaps, Attorney Hanna, do not fully comprehend our ordinance revision process. The format of the proposed ordinance follows the standard procedure of reciting the full text of the sections that are being amended. The actual amendments are then indicated by striking out the text to be deleted and underlining the text that is added. The comments submitted by Ms. Kaysen and concurred in by Attorney Hanna, rarely address these proposed changes, but rather, their comments largely critique the entire text of the cited section. In short, it appears that Ms. Kaysen and Attorney Hanna believe the entire cited section constitutes an ordinance revision, rather than the quite limited strike throughs and underlined text. Furthermore, since these quoted sections are themselves taken from larger ordinances (the full text of which is not germane to the proposed revisions) Ms. Kaysen and Attorney Hanna are often left commenting on these sections out of their proper context. In any event, only a handful of their written criticisms offered exceptions to the proposed substitution of terms that this ordinance attempts to accomplish. In fact, Ms. Kaysen's comments implicitly endorse the goals of this ordinance by pointing out that the revision fails to substitute the term "disability" for the term handicap in its revisions to sections 3.23(10)(b)(1) & (2), M.G.O. The Office of the City Attorney (OCA) concurs that this particular amendment to sections 3.23(10)(b)(1) & (2), M.G.O. should be incorporated into the proposed ordinance revision. Additionally, the OCA concurs with Ms. Kaysen's critique of the proposal to amend sec. 3.35(24)(a)4.b. That proposal would add the phrase "when interacting with the environment" to this ordinance. The phrase is ambiguous, unnecessary and it should be removed from the proposed ordinance revision. Likewise, the OCA does not support the proposed revisions to Section 28.08(3)(c)2, that amend the term "emotionally handicapped persons" to the term "persons with serious mental illness." The change is substantive in nature and not merely a substitution of like meaning words. The OCA recommends that the proposal be amended so that the change is from the phrase "emotionally handicapped persons" to the term "persons with emotional disabilities." A substitute ordinance has been drafted to effect these changes will be drafted upon the CPD's approval of this report.

The debate surrounding this "People First" initiative has identified areas of our ordinances that should be subjected to further scrutiny. However, the fact that some of our ordinances could benefit from such further review and potentially some revisions, does not mean that this "People First" initiative should not go forward. These "People First" initiatives are separate and distinct from the more general concerns expressed so far about our ordinances affecting persons with disabilities. If those other concerns are to be addressed, they should be addressed through separate processes and through separate ordinances.

