



# City of Madison

City of Madison  
Madison, WI 53703  
www.cityofmadison.com

## Meeting Minutes - Approved AFFIRMATIVE ACTION COMMISSION

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Tuesday, October 21, 2008

5:00 PM

215 Martin Luther King, Jr. Blvd.  
Room LL-120, Madison Municipal Building

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### 1. CALL TO ORDER / ROLL CALL

The meeting was called to order at 5:00 p.m. by Vicky Selkove.

Present: 7 -

Christian L. Odom; Joseph R. Clausius; Bert G. Zipperer; Augustine S. Tatus; Nitza A. Pfaff; Victoria S. Selkove and Bhavani "Shree" Sridharan

Excused: 2 -

Sharyl J. Kato and Theola V. Carter

Staff: Norman Davis, Larry Nelson, Ray Harmon, Larry Studesville and Cindy Wick

Guest: Ald. Brenda Konkel

### 2. APPROVAL OF MINUTES

A motion was made by Ald. Clausius, seconded by Tatus, to Approve the Minutes. Odom corrected the attendance to indicate that he was excused. The motion passed by voice vote/other.

### 3. PUBLIC COMMENT

No public comment was received.

### 4. REMARKS BY MAYORAL AIDE RAY HARMON REGARDING AFFIRMATIVE ACTION COMMISSION REPORTS ON WAGES AND MEMBERSHIP ON CITY BOARDS, COMMISSIONS AND COMMITTEES

Harmon stated that the Department of Civil Rights has done a tremendous job of putting together the reports on hiring and membership on boards, commissions and committees.

He stated that the Mayor is committed to increasing diversity at all levels of City government. The recommendations contained in the reports are good ones. Most have already been implemented and the Mayor's office will continue to work with DCR to complete the implementation.

Commissioner Kato arrived at 5:10 p.m.

**Present:** 8 -

Sharyl J. Kato; Christian L. Odom; Joseph R. Clausius; Bert G. Zipperer;  
Augustine S. Tatus; Nitza A. Pfaff; Victoria S. Selkove and Bhavani "Shree"  
Sridharan

**Excused:** 1 -

Theola V. Carter

Harmon believes the Mayor has set the tone internally as demonstrated by his recent hires. Diversity has been discussed at the Management Team and Department/Division Head meetings. Larry Studesville has made a presentation.

Studesville stated that he recently met with Al Schumacher, Streets Division, to assist him in finding ways to increase diversity and educate his management team about diversity.

Harmon welcomes suggestions from the Affirmative Action Commission on ways that they can assist. Zipperer stated that Commission members could make recommendations for appointments to boards, commissions and committees. Harmon stated that efforts to recruit members for the Affirmative Action Commission and Equal Opportunities Commission need to be renewed. When efforts were being made this spring, individuals were unwilling to make a commitment that would require giving up time during the summer. Now may be a better time to recruit.

The Mayor is supportive of utilizing diverse interview panels. This is already occurring and Christie Hill stated that the new Affirmative Action Plan would require it.

The City offers diversity training, but it is not currently mandatory. Harmon agreed that all individuals involved in the hiring process should be required to attend.

Zipperer expressed his concern that the management report contains a lot of numbers. He wonders if the numbers mask the problem. There have been a number of female department heads that have left City employment and are no longer here. The sample is small and even one person makes the percentage look large.

Shree hopes that the reports will be revisited annually to see what changes/progress have occurred.

Harmon wants open lines of communication with the Commission and hopes that he will be able to attend meetings more regularly in the future. It was agreed that an agenda item on Updates from the Mayor's Office should be included on future agendas.

9. [10515](#)

Amending Secs 33.07(7)(m) and 39.02(9)(e)1.a., and creating Sec. 39.02(9)(e)3. of the Madison General Ordinances to clarify procedures relating to

Public Bidding and Affirmative Action Plans.

Attachments: [Version 1t.pdf](#)

The ordinance amendment considered last month was referred back to the Commission by the Common Council.

Concern was expressed that the ordinance as drafted subtly undermines the goal of Affirmative Action. If the bid appears to be the winning bid and the required certification hasn't been granted, will pressure be placed on the Affirmative Action Division to grant the certification? Is this the only exception? If all other requirements must be met for a bid to be opened, does it imply that the presence of an acceptable Affirmative Action Plan is somehow less important? It is an issue of consistency and fairness.

Nelson indicated that there are approximately 280 contractors. 152 are approved. 90 are exempt. 38 (14%) are listed as incomplete. The likelihood is that needing extra time to get the Affirmative Action Plan accepted will not occur frequently. However, when it does occur, the City probably won't get the contractor back to bid again. The City is getting more and more push back from contractors. Nelson does not know why.

If the bidder gets the contract, they will make an effort to do everything possible to meet the requirements before the contract goes to the Board of Public Works, including getting their Affirmative Action Plan approved.

The City isn't contractors' first choice when times are good. The more contractors we get signed up, the better.

Affirmative Action started in 1973. At that time, the City had big arguments with contractors concerned that the City would go for the low bid rather than an acceptable Affirmative Action Plan. This has not happened and it won't.

Contractors may file the plan within 30 days of the award of the contract for goods and services.

If there are issues with the Affirmative Action plan, they can be rectified. If the bid isn't opened, it is unlikely we will get them back again. This bad experience could sour them on the process.

What is the nature of problems? Can they be corrected in the 3 days? It is actually 5 days when you count Saturday and Sunday. Yes, the problems can be corrected within the time frame. The problems are not just typos. Plans are substantially incomplete. Contractors must complete the City's model Affirmative Action Plan. The City does not accept federal plans. Contractors will be notified quickly if they need to resubmit their plan. Construction contractors are very resourceful in getting things done. They can provide an implementation timeline with up to 120 days to complete certain policy initiatives.

Workforce data can be challenging. If there is under representation, the contractor must show good faith effort for positions for which they will be hiring. If they don't show good faith efforts, they are required to take

conciliatory measures to come into compliance or the contract may ultimately be cancelled.

It has been down to the wire, but contractors have met the deadline.

Inexperienced firms are the ones most likely to need the extra time to get their plans approved.

The City ordinances require monitoring at least once every two years. The Affirmative Action Division conducts desk audits, on-site audits and on-site interviews.

Until recently, the Affirmative Action Plan was part of pre-qualification requirements that had to be renewed annually. The requirement is now every two years. Notice is required in December prior to the new pre-qualification period which ends January 31. Contractors have about 2 ½ months to submit their plans. If not preapproved, contractors can submit one week prior to the bid opening.

An instructional sheet accompanies materials sent. Most contractors access information from the agency website. Public Works holds quarterly meetings with contractors and the Affirmative Action Division participates. Staff routinely field questions from potential new contractors.

Affirmative Action Division staff will review and respond by telephone, but a paper trail is needed, so generally responses are faxed. The fax lists explicitly what needs to be corrected.

Doesn't this proposal send the message that Affirmative Action is not a priority? No. Contractors can appeal to the Board of Public Works. Since 1983 there have been two or three appeals of the City Engineer's decision and one or two have been sustained.

Affirmative Action should never be considered subordinate. Contracts involving apprenticeship also have grace periods. There is a high potential for error in public works contracting. The courts have determined which are waiveable and the bid is allowed to be opened. This happens frequently.

Davis stated that it seems to be an issue of practice vs. principle. From a practical standpoint, no contractor will be awarded a bid that does not have an approved plan on file. Staff in the Affirmative Action Division maintain the policy that it is the contractor's responsibility to be sure their plan is approvable. They do their very best in responding to contractors in a timely manner. If the contractor fails to get the plan to an approvable state, the Board of Public Works is notified and the contract is denied.

What does this say about Affirmative Action in the City? Davis stated he couldn't advise the Commission on that. They represent the community. From a practical aspect, no contract will be awarded to a contractor that does not have an approved Affirmative Action Plan. The initial approval by the Board of Public Works would not occur and the contract would not go to the Common Council for approval.

Ray Harmon urged the Commission to reconsider its action on the ordinance taken at the last meeting.

Nelson stated that when bids come in, they are in sealed envelopes. If there are errors, they can be corrected after the bid is opened.

Clausius stated that he was not present when the Commission voted at the last meeting. He has not heard arguments that convince him to support the Commission's proposal. He cannot promise to support the Commission position on the Council floor.

No motion was made to reconsider the Commission's action at the September meeting.

Selkove stated that she would attend the next Council meeting to explain the Commission's position. She stated that Affirmative Action needs to be strongly defended and promoted and needs to be subject to the same deadlines.

Over the last 7 ½ years, about 21 contractors have been denied because they did not meet the small business requirements. Those contractors continue to bid.

5. [12253](#)

LIAISON REPORTS--Presented for information only. No action required.

*Updates on business since the last AAC meeting*  
*- Equal Opportunities Commission - Zipperer*  
*- Commission on People with Disabilities - Studesville*

**Commission on People with Disabilities:** Studesville reported that the Commission is concentrating on visitability of public housing for people with disabilities. They want to be sure people understand what that means. They have had good conversations with Mark Olinger.

**Equal Opportunities Commission:** Zipperer explained that the Commission is revising its appeal procedures to use a panel of Commissioners to review cases on appeal. This new process will require training and amending Commission rules. The new process is to be effective in January, 2009.

Zipperer asked if Liaison Reports should continue to be on the agenda, since there are no longer formal liaisons to the Equal Opportunities Commission or the Commission on People with Disabilities.

Shree left at 6:15 pm

**Present:** 7 -

Sharyl J. Kato; Christian L. Odom; Joseph R. Clausius; Bert G. Zipperer;  
Augustine S. Tatus; Nitza A. Pfaff and Victoria S. Selkove

**Excused:** 2 -

Theola V. Carter and Bhavani "Shree" Sridharan

6. [07972](#)

COMMON COUNCIL UPDATE BY ALD. CLAUSIUS--Presented for

information only. No action required.

**Common Council:** Clausius stated that budget has been the primary item of business. 2009 will be a very austere year going from \$224 million to \$204 million. Clausius has recently been appointed to the Board of Estimates. The DCR budget fared very well with no loss of staff. Purchased Services contracts have been hard hit and will be getting a lot of attention.

8. [11123](#) Update on plans for implementation of recommendations contained in reports to the Common Council on diversity on City boards, commissions and committees and representation and salaries in top management.

**There are no new updates.**

10. [12278](#) Appeal Role of the Affirmative Action Commission

The Commission will finalize the promulgation of rules relative to its appeal role as well as plan training for Commissioners on conducting appeals.

**Attachments:** [DRAFT 081208 AAC Appeals.doc](#)  
[011409 Rules for Appeals.pdf](#)

The City Attorney has drafted rules for the Commission to consider. These will be placed on the next agenda.

## 11. NEW BUSINESS

Zipperer read the declaration of policy from the Affirmative Action Ordinance.

He asked that the next agenda include a discussion of what are the Commission's powers to get ordinances drafted and introduced to the Common Council vs. the gatekeeper role of the aldermanic representative on the Commission.

It was noted that the November meeting of the Commission would need to be rescheduled due to the scheduled Common Council deliberations on the 2009 budget. Wick will poll Commissioners.

## 12. ADJOURNMENT

A motion was made by Pfaff, seconded by Kato, to Adjourn. The motion passed by voice vote/other.