

2005 CITY ATTORNEY'S REVISOR'S ORDINANCE
EDITOR'S NOTES:

1. Section 3.11(2)(j) of the Madison General Ordinances currently reads as follows:

“(j) The construction, operation, development and maintenance of all municipal airports, under the policy direction of the Madison Airport Commission.”

2. Section 3.45 of the Madison General Ordinances currently reads as follows:

“3.45 MINIMUM WAGE.

(1) Declaration of Policy.

(a) Policy. In order to preserve and promote the public welfare, health, safety and prosperity of the City of Madison and its residents, it is vital that all persons employed in our community receive wages that ensure they are able to provide themselves and their families with the basic necessities of life; food, shelter, clothing, healthcare and education. The Common Council has determined that, due to the higher costs associated with living and working in the City, the state and federal minimum wages are inadequate to ensure that workers can supply their family's basic needs. As a consequence, such workers often work long hours and hold multiple jobs. This causes hardship for them and their families, prevents them from pursuing further education and limits their participation in the cultural and civic life of our community. In 1999, these very same concerns led the City to enact its Living Wage Ordinance, Sec. 4.20, M.G.O. This ordinance has ensured that certain workers who receive wages from employers who contract with the City are adequately compensated. To the extent that it is necessary to establish a higher minimum wage for all employees within the City of Madison, the Common Council enacts this ordinance to supplement those provisions of Wis. Admin. Code § DWD pertaining to the establishment of a statewide minimum wage.

(b) Determination of Rates. The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employee within the City of Madison to maintain herself or himself in minimum comfort, decency, physical and moral well-being. The City of Madison has also considered the effect that an increase in the minimum wage might have on the economy of the City, including the effect of a minimum wage increase on job creation, retention and expansion and on the availability of entry-level employment.

(c) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein. No portion of this ordinance is intended to contravene or conflict with any portion or provision of Ch. 104, Wis. Stats., and/or Wis. Admin. Code. Ch.'s. DWD 271, 274, or 275.

(2) Definitions. As used in this chapter:

(a) “Agriculture” will mean the same as “farm premises” as defined in s. 102.04 (3), Wis. Stats., of the worker's compensation act.

(b) “Bona fide school training program” means a program sponsored by an accredited school and authorized and approved by the state department of public instruction or the board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.

(c) A “bona fide vocational training program” is one authorized and approved by the state board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related to industrial information given as a regular part of a student learner's course by an accredited school, college or university.

(d) “Commission” means the Madison Equal Opportunities Commission.

(e) The term “employer” shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another. The term “Employer” does not include the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government, other than the City of Madison, created or authorized to be created by the constitution or any law, including the legislature and the courts.

(f) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.

(g) A "minor" shall mean any person under 18 years of age.

(h) "Month" means 30 days.

(i) "Opportunity employee" means an employee who is not yet 20 years old, during the first 90 consecutive days after the employee is initially employed by the employer.

(j) "Tipped employee" means any employee engaged in an occupation in which they customarily and regularly receive tips or gratuities from patrons or others.

(k) "Employee" means every individual who, in a calendar week performs at least two hours of compensable work in the City of Madison for any employer and who is in receipt of or is entitled to any compensation for labor performed for any employer. Employees include companions in private homes who shall be entitled to the minimum wage set forth in this ordinance. "Employee" does not mean:

1. Any individual engaged in the house to house delivery of newspapers to the consumer or engaged in direct house to house retail sale to the consumer.

2. Any individual engaged in performing services for a person as a real estate agent or as a real estate salesperson, if all of those services are performed for remuneration solely by commission.

3. Any individual engaged in performing services for an employer described in sub. (2) (e) if that individual is not considered under 29 USC 203 (e) (4), as amended to April 15, 1986, to be an employee for the purposes of the fair labor standards act, 29 USC 201 to 219, or if that individual is exempt under 29 USC 213, as amended to April 1, 1990, from being paid at least the federal minimum hourly wage under 29 USC 206 (a) (1).

4. Any individual engaged in performing services for an employer described in sub. (2) (e) if that individual is not subject to the civil service laws of the employer and if that individual is an elective officer; is on the personal staff of an elective officer, other than a member of the legislature; is appointed by an elective officer to serve on a policymaking level; or is an immediate adviser to an elective officer with respect to the constitutional or legal powers of the elective officer's office.

5. Any individual engaged in performing services for the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government, other than the City of Madison, created or authorized to be created by the constitution or any law, including the legislature and the courts.

(l) The term "minimum wage" shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.

(m) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of habilitation/rehabilitation for workers with disabilities and of providing workers with disabilities with remunerative employment or other occupational habilitating/rehabilitating activity of an educational or therapeutic nature.

(n) "Student learner" means a student who is receiving instruction in an accredited school and who is employed on a part-time basis, pursuant to a bona fide school training program. A "bona fide school training program" means a program authorized and approved by the department of public instruction or the technical college system board, or other recognized educational body, and provided for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with, a definitely organized plan of instruction and where proper scholastic credit is given by the accredited school.

(o) The term "wage" and the term "wages" shall each mean any compensation for labor measured by time, piece or otherwise.

(p) The term "welfare" shall mean and include reasonable comfort, reasonable physical well-being, decency, and moral well-being.

(q) "Worker with a disability" means a worker whose earning capacity is impaired by age or physical or mental deficiency or injury and who is being served in accordance with the recognized habilitation/rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of the worker.

(r) Other Terms. Any other terms not specifically defined herein shall have the same definitions as set forth under Ch. 104, Wis. Stats. and/or Wis. Admin. Code. § DWD 270-279.

(3) Minimum Wage Prescribed. Every wage paid or agreed to be paid by any employer to any employee, except as otherwise provided herein shall be not less than the minimum wage established herein."

(4) Unlawful Wages. Any employer paying, offering to pay, or agreeing to pay any employee a wage lower or less in value than the minimum wage is guilty of a violation of this ordinance.

(5) Adjustment of Minimum Wage Rate and Authority to Administer Minimum Wage Provisions.

(a) To prevent inflation from eroding their value, beginning on October 1, 2007 and on each following October 1, the Commission shall calculate and publish an adjusted Minimum Wage and an adjusted Minimum Wage for Tipped Employees by increasing the current Minimum Wage and the current Minimum Wage for Tipped Employees by the rate of inflation during the twelve months prior to September 1 of that year using the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage and adjusted Minimum Wage for Tipped Employees calculated shall take effect on the following January 1. In calculating such a minimum wage rate for calendar year 2008 the Commission shall use the minimum wage rate of \$7.75 per hour for non-tipped employees, the minimum wage rate of \$6.80 per hour for opportunity employees, and the minimum wage rate of \$3.50 per hour for tipped employees as the base wage rates to which CPI-W adjustment shall be applied in establishing the minimum wage rate for that year.

(b) The Commission shall have the authority to investigate, adjudicate and dispose of any complaint filed alleging a violation of this ordinance. If the Commission finds that the Respondent has violated this ordinance, it shall make written findings and order such action by the Respondent as will redress the injury done to the Complainant, bring the Respondent into compliance with the ordinance and generally effectuate the purpose of this ordinance. Any person may file with the Commission a complaint that the wages paid to employees for whom a minimum wage has been established are less than that rate, and the Commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the minimum wage.

However, the Commission shall not accept any complaint filed more than two years after the date of the alleged violation of this ordinance. Where it is determined that an employer has violated the provisions of this Minimum Wage Ordinance, the Commission shall have the authority to enter such an order for all employees who, in the Commission's determination, were not appropriately compensated under this ordinance, irrespective of whether said employees were the complainants before the Commission.

(c) The Commission may adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this ordinance.

(6) Applicability of Minimum Wage. The rates prescribed in this ordinance shall apply to all employees, including indentured apprentices, employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis for each hour of work performed within the City of Madison.

(7) Ability of Employer's To Pay More Than the Minimum Wage. Nothing contained in this ordinance prohibits an employer from paying more than the minimum rates listed in this ordinance or from treating an employee as a probationary employee for less than the number of days specified in this ordinance.

(8) Minimum Wage Rates.

(a) Rates.

1. Effective January 1, 2005 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:

a. All employees, \$5.70 per hour¹

b. Opportunity employees, \$5.18 per hour.

2. Effective January 1, 2006 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry a lesser hourly rate than is indicated below:

a. All employees, \$6.50 per hour

b. Opportunity employees of, \$5.81 per hour.

3. Effective January 1, 2007 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry a lesser hourly rate than is indicated below:

a. All employees, \$7.25 per hour

b. Opportunity employees, \$6.41 per hour.

4. Effective January 1, 2008 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry a lesser hourly rate than \$6.80 to any opportunity employee or \$7.75 per hour to any other employee, plus any adjustments to those hourly wages as determined by the Madison Equal Opportunities Commission pursuant to its authority under subsection (5)(a) herein.

(b) (Repealed by ORD-05-00007, 02-08-05)

(c) Tips. Where tips or gratuities are received by the employee from patrons or others, the employer may pay the minimum wage rate established by this subsection, providing the employer can establish by its payroll records that for each week where credit is taken, when adding the tips received to the wages paid, no less than the minimum rate prescribed in sub. (8)(a), was received by the employee. The minimum rate shall be the rate established in par. (1).

1. Minimum Rates For Tipped Employees.

a. Effective January 1, 2005 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:

1. All employees, \$2.57 per hour.

b. Effective January 1, 2006 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:

1. All employees, \$2.94 per hour.

c. Effective January 1, 2007 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:

1. All employees, \$3.28 per hour.

d. Effective January 1, 2008 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than \$3.50 plus any adjustment to that hourly minimum wage rate as determined by the Madison Equal Opportunities Commission pursuant to its authority under subsection (5)(a) herein.

2. Burden of proof.

a. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employee each pay period and show on the payroll records that any required social security or taxes have been withheld each pay period to show that when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employee. When the employer's time and payroll records do not contain these requirements, no tip credit shall be allowed.

b. The Commission may refuse to take action to collect minimum wage deficiencies for a tipped employee who has refused or failed to file an accurate signed tip declaration for the employer each pay period.

3. General Characteristics Of "Tips".

a. Tip means a sum presented by a customer as a gift or gratuity in recognition of some service performed for them. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally they have the right to determine who shall be the recipient of their gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to them which they may use as they choose free of any control by the employer, may be counted in determining whether they are a "tipped employee."

b. In addition to cash sums presented by customers which an employee keeps as their own, tips received by an employee include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee.

4. Tip Pooling. Where employees practice tip splitting, as where waiters or waitresses give a portion of their tips to the bus persons, both the amounts retained by the waiters or waitresses and those given the bus persons are considered tips of the individuals who retain them.

5. Service Charge.

a. A compulsory charge for service, such as 15% of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip unless distributed by the employer to their employees.

b. Similarly, where negotiations between a hotel or restaurant and a customer for banquet facilities include amounts for distribution to employees of the hotel or restaurant, the amounts must be so distributed to the employees at the end of the pay period in which it is earned.

c. If the employer in their payroll records can establish a breakdown of the service charge, such as how much is for tips, room charge, decorations, and other chargeable services, only the amount for tips must be paid to the employee at the end of the pay period in which it is earned.

d. Similarly, where an accounting is made to an employer for their information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as their own are counted as their tips.

6. Receiving The Minimum Amount "Customarily And Regularly". The employee must receive tips "customarily and regularly" in the occupation in which they are engaged in order to qualify as a tipped employee. If it is known that they always receive more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, waitresses, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of sub. (8)(c) herein may be applied. On the other hand, an employee who only occasionally or sporadically receives tips such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which they normally and recurrently receive tips, they will be considered a tipped employee even though occasionally, because of sickness, vacation, seasonal fluctuations or the like, they fail to receive tips in a particular month.

7. The Tip Wage Credit.

a. In determining compliance with the wage payment requirements the amount paid to a tipped employee as allowable under sub. (8)(c) by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under sub. (8)(a) to such employee in the pay period for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under sub. (8)(d) & (e). The credit allowed on account of tips may be less than the difference between the applicable minimum wage and the rate for a tipped employee; it cannot be more.

b. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: "If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips.

c. Under employment agreements requiring tips to be turned over or credited to the employer to be treated by them as part of their gross receipts, it is clear that the employer must pay the employee the full minimum hourly wage, since for all practical purposes the employee is not receiving tip income.

8. Overtime Payments. When overtime is worked by a tipped employee who is subject to the overtime pay of Wis. Admin. Code § DWD 274, their regular rate of pay is determined by dividing their total remuneration for employment in any workweek by the total number of hours actually worked by them in that workweek for which such compensation was paid. A tipped employee's regular rate of pay includes the amount of tip credit taken by the employer, and the cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employee as remuneration for employment within the meaning of Wis. Admin. Code § DWD 274.

(d) Allowance for Board and Lodging. Where board or lodging or both are furnished by the employer in accordance with Wis. Admin. Code § DWD 272.04, and accepted and received by a particular employee, an allowance may be made not to exceed the following amounts:

1. Lodging.

Room allowances shall be computed on the basis of 20% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.

2. Meals.

Meal allowance shall be computed on the basis of 30% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.

(e) Board and Lodging, Value. Where board, lodging or other necessities of life, are furnished by the employer, in accordance with sub. (11) and accepted and received by the employee or their spouse or both, minor children or other dependents, an allowance may be made, not to exceed the "fair value" of such necessities on the basis of average cost to the employer, or to groups of employers similarly situated, or average values to groups of employees or other appropriate measures of fair value.

(f) Payment Of Wages On Other Than Time Basis. Where payment of wages is made upon a basis or system other than time rate, the actual wage paid per payroll period shall not be less than provided for in this ordinance.

(g) Homework. Wages paid to homeworkers shall be not less than the rates prescribed in this ordinance.

(9) Determination of Compliance. The payroll period shall be taken as the unit of determining compliance with the minimum rates prescribed in this ordinance.

(10) Proof Of Previous Employment. An employee is responsible for providing the proof of previous employment necessary to determine whether the person is a probationary employee. An employer shall not be liable for a violation of this section if the violation is caused by the employer's good faith reliance on the proof presented by an employee under this subsection.

(11) Deductions For Meals And Lodging.

(a) A meal means an adequate well-balanced serving of a variety of wholesome and nutritious foods.

1. Deductions may be made only for bona fide meals consistent with employee's work shift. No deductions shall be made or credit given for meals not eaten except in employments where weekly room and board is provided and accepted.

2. An employer shall not require that meals be accepted as part payment of wages.

3. Employer must pay all employees for "on duty" meal periods. Such periods are to be counted as work time. An "on duty" meal period is one where the employer does not provide at least 30 minutes free from work. Any meal period where the employee is not free to leave the premises of the employer will also be considered an "on duty" meal period.

4. Authorized rest periods or breaks of less than 30 consecutive minutes per shift shall be counted as work time for which there shall be no deduction from wages.

5. Whenever a collective bargaining agreement exists, the Commission may consider the written application of labor and management for a waiver or modification to the requirements of par. (3) or (4), based upon practical difficulties or unnecessary hardship in compliance. If the Commission determines that compliance with par. (3) or (4) is unjust or unreasonable and that granting a waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employees, the department may grant a waiver or modification.

(b) Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employees shall not be required to share a bed.

(c) Room and board deductions may not be made from the wages of a seasonal non-resident agricultural employee that would result in the employee receiving less than the prescribed minimum rate.

(12) Exceptions To Minimum Wage. Unless otherwise specifically set forth within this ordinance, the provisions of this ordinance shall not be applicable under any circumstance or with regard to an employment where, in the absence of this ordinance, any of the provisions of Wisconsin Administrative Codes would make the State Minimum Wage provisions inapplicable.

(13) Deductions And Record Keeping. The City of Madison does hereby adopt and incorporate into this ordinance, as though fully set forth herein, the provisions of Wis. Admin. Code § DWD 272.10 and DWD § 272.11. Such listings of deductions and such records shall be made available for inspection and copying by any authorized employee of the Madison Equal Opportunity Commission during the regular business hours of the employer.

(14) Interpretation Of Hours Worked.

(a) The City of Madison does hereby adopt and incorporate into this ordinance, as though fully set forth herein, the provisions of Wis. Admin Code § DWD 272.12.

(b) To the extent that there are any conflicts between those provisions of the Wis. Admin. Code and this ordinance, the provisions of this ordinance shall govern.

(c) Any hours of work which constitute sleeping time under the provisions of Wis. Admin. Code § DWD 272.12(2)(d), shall be exempt from the hourly minimum wage rates of Subsection (8) herein. Such hours shall be subject to the appropriate state and federal wage rates in force and effect at the time such wages are earned.

(15) Prohibition Of Displacement. An employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage.

(16) Domestic Service Employment, Casual Employment.

(a) Domestic Service Employment.

1. "Domestic service employment" means all services related to the care of persons or maintenance of a private household or its premises, on a regular basis, by an employee of a private householder. Such occupations shall include, but not be limited to, the following: butlers, chauffeurs, cooks, day workers, gardeners, graduate nurses, grooms, handy persons, house cleaners, housekeepers, laundry persons, practical nurses, tutors, valets and other similar occupations.

2. Domestic workers who reside in the employer's household are covered under the rates prescribed by this ordinance. Employers may take credit for board and lodging as prescribed herein.

3. Record keeping requirements provided in Sub. (13) shall apply.

(b) Casual Employment. "Casual employment" means employment which is on an irregular or intermittent basis for not more than 15 hours per week for any one employer. This applies to the following: baby-sitting, mowing lawns, raking leaves, shoveling snow or other similar odd jobs. The minimum rates prescribed by this ordinance shall not apply to casual employment in or around a home in work usual to the home of the employer, and not in connection with or part of the business, trade or profession of the employer.

(17) Recreational Or Educational Camps.

(a) Minimum Rates. The minimum wage of all employees employed in recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in Sub (8).

(b) Allowances for Board and Lodging. Where board or lodging or both are furnished by the employer in accordance with Sub. (11), and accepted and received by the employee, an allowance may be made not to exceed the amounts specified in Sub. (8)(d).

(c) Counselors. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:

1. Adult counselors 18 years of age and over:

PER WEEK

a. If board and lodging are not furnished, the rate shall be not less than \$140.00, effective January 1, 2005.

b. If board only is furnished, the rate shall be not less than \$110.00 effective January 1, 2005.

c. If board and lodging are furnished, rate shall not be less than \$91.00, effective January 1, 2005.

2. Counselors 17 years of age and under:

PER WEEK

a. If board and lodging are not furnished, the rate shall be not less than \$123.00, effective January 1, 2005.

b. If board only is furnished, the rate shall be not less than \$92.00 effective January 1, 2005.

c. If board and lodging are furnished, rate shall not be less than \$74.00, effective January 1, 2005.

(d) Records. Recreational or educational camps and day camps are not required to keep the daily and weekly time records required by s. DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.

(e) Definitions. For the purpose of this section:

1. A "recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical, mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.

2. A "recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritual and social growth of campers who participate in such camping program during daytime periods, but not overnight.

3. A “camp counselor” means a person employed by a “recreational or educational camp” or recreational or educational day camp” who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.

(18) Caddies. Effective January 1, 2005, the minimum wage of employees employed as caddies shall be:

\$5.90 - 9 holes

\$10.50 - 18 holes

(19) Student Worklike Activities And Employment.

(a) Independent Colleges and Universities.

1. Independent colleges and universities may employ full-time students who are 18 years of age and over for 20 hours per week or less at the federal minimum wage rates established under 29 USC 206.

2. Students who work at independent colleges or universities for over 20 hours per week shall be paid at the rates established under Sub. (8).

(b) Elementary and Secondary Schools. Student worklike activities that meet the criteria of Wis. Admin. Code § DWD 270.085 are not covered by the minimum wage provisions of this ordinance.

(20) Subminimum Wage Licenses For Habilitation/Rehabilitation Facilities And For The Employment Of Workers With Disabilities And Student Learners. The provisions of this ordinance do not apply to any facility or employer who holds a license in good standing and issued by the State of Wisconsin pursuant to Wis. Admin. Code § DWD 272.09 allowing said employer or facility to pay subminimum wages.

(21) Penalty For Intimidating Witness. No employer may discharge or threaten to discharge, or in any way discriminate, or threaten to discriminate against any employee because the employee has filed a complaint alleging a violation of this ordinance, has otherwise asserted his or her rights under this ordinance, has informed any other employee of his or her rights under this ordinance, has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this ordinance. Any employer who engages in such prohibited activity is guilty of a violation of this ordinance, and upon conviction thereof shall be subjected to a forfeiture of not less than \$25 nor more than \$2,500 for each offense.

(22) Definition Of Violation. Each day during which any employer shall employ a person for whom a minimum wage has been fixed at a wage less than the minimum wage fixed shall constitute a separate and distinct violation of this ordinance. The penalty for each violation shall be a forfeiture of not less than \$25.00 and not more than \$200 for a first offense within one year, not less than \$200 nor more than \$1,000 for a second violation within one year and not less than \$1,000 nor more than \$2,500 for a third or subsequent violation within one year. These penalty provisions are in addition to any remedies or damages the Commission may award to an aggrieved employee. The Madison Equal Opportunities Commission may, upon determining that a violation of this ordinance has occurred, refer such violation to the City Attorney. The City Attorney, at his/her discretion, may thereafter pursue an action in the Madison Municipal Court to recover a forfeiture for such violation.

(23) Remedies for Violations.

(a) Any employee whom the Commission determines was not paid the applicable minimum wage established by this ordinance is entitled to liquidated damages in an amount of twice the difference between the rate of pay that the employee was paid and the applicable minimum wage rate established in this ordinance.

(b) Where the Commission finds that the Respondent has violated any other provisions of this ordinance, the Commission shall redress the injury or injuries done to the Complainant. Remedies may include out-of-pocket expenses, economic damages, and both front and back pay. The Complainant shall also be entitled to his or her costs, including reasonable attorney's fees. Back pay liability may not accrue from a date more than 2 years prior to the filing of a complaint with the Commission.

(c) In addition to the remedies in paragraph (b), where the Commission finds that the Respondent violated sections (15) and/or (21) of this ordinance by displacing, discharging or discriminating against an employee, the Commission shall award either reinstatement or compensation in the amount of 500 times the hourly wage of such person when the violation occurred.

(24) Education and Outreach. The Commission shall develop a plan for community outreach and education and shall, by no later than July 1, 2004, submit such plan to the Common Council for its approval. The goal of this outreach and education program shall be to reasonably inform community employers of the requirements of this ordinance.

(25) Advisory Committee. The Commission shall develop a plan to create a small business advisory committee and shall, by no later than July 1, 2004, submit such plan to the Common Council for its approval. The goal of this advisory committee shall be to involve community employers in implementation, enforcement and evaluation of this ordinance.

3. Section 11.10 of the Madison General Ordinances currently reads as follows:

“11.10 UNDERGROUND TRANSMISSION LINES.

(1) Purpose and Scope. The Common Council of the City of Madison does hereby declare it to be the policy of the City of Madison to favor underground transmission facilities. The purpose of this ordinance is to create the legal framework for a comprehensive and balanced exercise of police power to facilitate greater harmony between people and their environment and to prevent and remedy the exposure of people to the hazards of overhead public utility or cable television transmission lines. This ordinance is adopted to require the underground construction of certain future transmission lines. With this purpose in mind, it is the intent of this ordinance to preserve and protect the following values and benefits the Common Council finds will be harmed in the absence of this ordinance:

- (a) Scenic, aesthetic, and other recreational values;
- (b) The improvement of general civic appearance;
- (c) Harmony between man's surroundings and activities;
- (d) The removal of safety hazards to pedestrians and motorists;
- (e) Protecting the integrity of trees and other vegetation;
- (f) Overcoming the loss of service and the attendant hazard to people and wildlife because of downed lines due to windstorm, ice, accident, or equipment failure;
- (g) Eliminating damage to overhead lines and poles caused by vandalism, wildlife, or accident;
- (h) Eliminating damage to wildlife caused by the presence of poles and overhead lines.

(2) Definitions. All terms are to broadly construed to effectuate the purposes of this ordinance.

(a) “Construct” shall mean the building, erection, or placement of a transmission line, but shall not be construed to mean:

1. Maintenance and repair activity on a transmission line, including the replacement of part of the transmission line for maintenance or repair purposes,

2. The addition of an overhead transmission line to poles which already exist.

(b) “Conventional construction methods” shall mean the use of a machine for trenching, backhoeing or plowing or for tunneling or boring under existing highway pavements or railroad tracks to excavate for the installation of an underground transmission line.

(c) “Economically unfeasible construction” is construction requiring excavation by other than conventional construction methods.

(d) “Overhead” shall mean above ground level.

(e) “Pole” shall mean any tower or other structure of any material designed for the purpose of supporting aloft, overhead transmission lines.

(f) “Public utility” shall have the meaning prescribed in Wis. Stats. Sec. 196.01 (1975) and shall not be construed to include the operations conducted under The Broadband Telecommunications Franchise granted pursuant to Chapter 36 of the Madison General Ordinances (commonly referred to as the “Cable Television System”).

(g) “Reconstruct” means to substitute a new transmission line for an already existing transmission line.

(h) “Reinforce” shall mean to increase the capacity of existing transmission lines attached to existing transmission poles or to attach new transmission lines to existing transmission poles.

(i) “Transmission line” shall mean any wire or coaxial cable used for the transmission of electrical energy, radio or television signals, or telephone or other voice communication and any equipment appurtenant thereto; except a conductor of energy which with associated facilities is designed for operation at a nominal voltage of 138 kilovolts or more, but shall not mean wire, coaxial cable or appurtenant equipment between a distribution transmission line and a customer's premises.

(j) “Underground” shall mean below the surface of the earth in conformity with any other applicable ordinance or statute.

(k) “Unusual soil conditions” shall mean any natural undisturbed soil conditions where underground transmission facilities cannot reasonably be installed by trenching, backhoeing or plowing, or where the

following depths of workable soil does not exist above the water table or above the top of an area previously used for waste disposal:

Kilovolts	Depth
120-240 volts	24"
7.2 kilovolts	36"
12.4 kilovolts	36"
13.8 kilovolts	36"
69 kilovolts	72"

(l) "Utility" shall have the same meaning as "public utility".

(3) Area of Application. All territory within the corporate limits of the City of Madison shall be subject to the provisions of this ordinance.

(4) Underground Construction Required.

(a) All transmission lines hereinafter constructed in the City of Madison shall be constructed underground and it shall be unlawful for any person, firm or corporation to construct any transmission line in the City of Madison above the ground level, or to maintain a transmission line constructed in violation of this ordinance; provided, however, that the Grantee of the franchise described in the Broadband Telecommunications Franchise Enabling Ordinance shall be permitted to construct overhead facilities where such installation is permitted by Section 36.28(6) of said Ordinance; and, agencies of the City of Madison shall be permitted to construct overhead facilities where such construction is installed on an existing pole or poles.

(b) Provided further, the provisions of this subsection shall not apply:

1. Where the construction of a temporary overhead transmission line is necessary to restore service to one or more customers in the event the loss of service was caused by defective plant, but this exception shall not apply for longer than five (5) months;

2. Where an existing transmission line is being reinforced;

3. Where unusual subsoil conditions restrict underground transmission line construction using conventional construction methods and render underground construction economically unfeasible;

4. Where overhead service is needed to provide temporary service to construction sites until an occupancy permit is issued for the premises served or until the construction work performed on the construction site is substantially completed;

5. Where it has been determined by the Common Council or its designee that such underground construction will have an adverse environmental or economic impact upon a part or all of the City of Madison.

(5) Location and Construction of Transmission Lines to be Approved by the Common Council or its Designee.

(a) No person, corporation, association or public utility shall construct any overhead transmission line or its appurtenant poles, pipes or conduits therefor within the City of Madison unless they shall have first submitted to the Board of Public Works of the City of Madison an application therefor showing the precise route of the proposed transmission line or its appurtenant poles, pipes or conduits and stating precisely the proposed area to be occupied; a description of the construction work and the estimated duration thereof and no such transmission line or its appurtenant poles, pipes or conduit therefor shall be constructed or laid until a permit for such construction work shall have been first obtained from the Common Council of the City of Madison or its designee.

(b) The Board of Public Works is hereby designated to act for the Common Council on all such applications filed. The Board of Public Works shall review, approve, conditionally approve or reject all such applications. The administrative determination of the Board of Public Works as provided herein shall be set forth in writing and, if such determination either conditionally approves or denies the application, the reasons therefor shall be set forth in writing upon said conditional approval or denial which shall be delivered in person or mailed by first class mail to the applicant. Any administrative decision of the Board of Public Works as provided for herein shall be reviewable in accordance with the provisions of Section 9.49 of the Madison General Ordinances entitled "Review of Administrative Determinations"; provided, however, that the written decision of the Administrative Review Board derivative from such appeal may be appealed directly to the Common Council on the sole basis of the record made before said Board by filing a notice of such appeal with the City Clerk in writing within thirty (30) days after the date of such

determination and by also filing a written transcript of the Administrative Review Board record together with a copy of all exhibits received by said Board with the City Clerk. Such appellant may file written briefs and/or make oral argument to the Common Council in the course of such appeal, upon the filing of a notice of intent to argue or file briefs with the City Clerk contemporaneously with the filing of the notice of appeal. The Common Council may then take action regarding any such appeal in the due course of conducting the business of the Common Council.

(6) Severability. If any subsection, sentence, clause, or phrase of this section is for any reason held to be invalid or unconstitutional by reason of a court of competent jurisdiction, such decision shall not affect the validity of any other subsection, sentence, clause or phrase hereof.

(7) Penalty. Any person, firm or corporation who shall violate any provision of Subsection (4) or (5)(a) of this ordinance shall be subject to a forfeiture of not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each and every violation thereof. Each day of violation shall constitute a separate offense.”