



# City of Madison

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

## Meeting Minutes - Approved AFFIRMATIVE ACTION COMMISSION

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Tuesday, May 11, 2010

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

**Present:** 7 -

Joseph R. Clausius; Sharyl J. Kato; Theola V. Carter; Donna V. Hurd;  
James J. Chiolino; Bhavani "Shree" Sridharan and Lucia Nunez

**Absent:** 5 -

Bert G. Zipperer; Christian L. Odom; Augustine S. Tatus; Michael M.  
Johnson and Toriana T. Pettaway

### 2. APPROVAL OF MINUTES

A motion was made by Hurd, seconded by Sridharan, to Approve the Minutes.  
The motion passed by voice vote/other.

### 3. PUBLIC COMMENT

None.

Commissioner Johnson arrived at 5:25 p.m.

**Present:** 8 -

Joseph R. Clausius; Sharyl J. Kato; Theola V. Carter; Donna V. Hurd;  
James J. Chiolino; Michael M. Johnson; Bhavani "Shree" Sridharan and  
Lucia Nunez

**Absent:** 4 -

Bert G. Zipperer; Christian L. Odom; Augustine S. Tatus and Toriana T.  
Pettaway

### 4. [16817](#)

Amending Sec. 39.02(9)(a)2.f. of the Madison General Ordinances to exempt  
relocation type contracts from the Affirmative Action requirements.

**Sponsors:** Joseph R. Clausius, Paul E. Skidmore and David J. Cieslewicz

City Attorney Michel May and City Engineer Robert Phillips, P.E. were present  
to respond to questions from the Commission. Davis, May and Phillips agreed  
that it would not be in the City's interest to require filing of an affirmative  
action plan by railroads or public utilities with regard to relocation contracts.

May and Phillips provided background on the proposed ordinance amendment.

Hurd asked if this provision applies to a private homeowner and if eminent  
domain is involved. The City does not have the authority to use eminent  
domain over utilities or railroads. Eminent domain would apply to a private  
home, but that situation is already exempt under the ordinances.

If the City purchases goods and services from the utility or railroad, there

would be a separate purchase order or contract for that and if the affirmative action requirements would apply.

This provision is being added because the City Attorney's office is concerned that the present ordinance language is not clear that these transactions are exempt.

Clausius stated that from his experience, dealing with railroads has been difficult on past City projects. He sees this measure as housekeeping, not a change in policy.

Kato asked if under any circumstances the City would require a railroad or utility to file an affirmative action plan. Davis stated that currently MG&E has a plan on file for other kinds of work they do for the City. Davis explained that the requirement of an affirmative action plan is based on the type of contract, not the type of vendor.

MG&E has not been a problem. The larger utilities like AT&T, American Transmission Company, the companies that are not Madison-based and the railroads have been more difficult.

Sridharan asked if there are any additional expenses to the City if exempted. There would be no additional costs to the City. The non-discrimination language would still be a part of the contract. It was stated that there have been problems achieving compliance in the past. In discussing the problem, it was concluded that these types of contracts were not what the affirmative action provisions in the ordinances were aimed at.

When a relocation is required, the City contacts the utility, tells them they are in the way. They develop a plan to relocate and provide a cost estimate.

Does this set an example that if the bully is tough enough, we give in to them? No. This is a situation where their legal rights and what the City is asking them to do have put them in a position where the City is at risk and they do not believe they are. It is a situation where the nature of the contract does not fit the mold. This will give the City more control over what happens and prevents a log jam in the Affirmative Action Division in terms of trying to gain compliance.

A motion was made by Ald. Clausius, seconded by Kato, to RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER. The motion passed by voice vote/other.

5. [14095](#)

Debriefing on AAC Appeals Subcommittee meetings. Discussion of how the appeals to the AAC Appeals Subcommittee were presented, decided and improvements that can be made in the process for future appeals.

Nuñez provided an overview of what occurred for those that did not attend a hearing. There were originally 17 companies scheduled for hearings. Many complied and the hearings were cancelled.

The Common Council Chambers was not the best location.

One company appeared via conference call. That was problematic and probably will not be allowed in the future.

There was some concern over how the Appeal Subcommittee received advice from a City Attorney and the Affirmative Action Division received advice from another City Attorney. It would be helpful to find out how that worked for the Commissioners.

Only one vendor appeared and that was via conference call.

Kato: The officialness of the room may be beneficial. She wondered if there was consistency between the two meetings.

Nunez indicated there was some stumbling the first night. But that was because it was our first experience. The stumbling block the first evening was that the representative of the company that appeared by telephone objected to not having the materials that were being presented. We offered to fax them, but she indicated she was not where she could receive a fax. She was not in the same location as the company and the company had not provided the background information. In the future, the materials could be supplied in advance. The Division also was not sure in this instance which was the main company and which was a subsidiary and which company was responsible for filing the plan. The Division had exhausted all avenues to try to obtain voluntary compliance.

Chiolino suggested that the contract should indicate a contact person. The purchase order contains a contact person, but that is usually a sales representative, not the contact that has knowledge about the affirmative action plan. Davis indicated that the Division meets with the agency that has the contract or purchase order. It is their responsibility to find the contact for the Division. The Demand to Cure Default Letter is sent certified so that there is proof of receipt.

Hurd expressed concern with sending the correspondence to a post office box. In one instance, the receipt was stamped, not signed by an individual. Sridharan recommended that it be directed to an individual. Chiolino indicated that there should be a statement in the contract of the representative of the company responsible for filing the affirmative action plan. Hurd suggested that the City agency should find that out for the Division. Davis indicated that the City Attorney indicated that the company has the responsibility, but every reasonable attempt will be made to contact the correct representative. Unfortunately, the City purchasing system is so decentralized, this can be very difficult. A new accounting system is currently in development and it is hoped that dollars will not be disbursed without compliance with the affirmative action requirements being met. That will put pressure on the company to comply.

Sridharan asked how the penalties in the ordinance were established. No current staff were employed at the time and no one is aware of the background on the ordinance provisions. Sridharan urged that the process has to start sooner. The current process is a highly manual system that is very time consuming. It is the first time it has ever been done. It is the goal to have a more efficient system in the future. The request for proposals should include who will be responsible for filing the plan.

Public works contracts must have an approved plan in order to bid. Purchase

of service contracts require compliance within 30 days or they do not get paid. It is the purchase orders that are the problem. There is currently no system to stop the payment. The Division started out with 200 vendors who were not in compliance. There are 1000's that are in compliance. Davis thanked the Commission for their feedback and indicated that every effort will be made to make improvements in the system.

Zimbrick indicated that they do not wish to do business with government. The company wants to keep its administrative staff small and concentrate on sales and service. Davis explained the steps that were taken to address the problem.

Kato indicated it would be helpful to have some more history relative to compliance and efforts to obtain compliance. She also indicated that community based agencies, from her experience, do not get paid if they are not in compliance.

American Seating and Zimbrick have been disbarred. CTR Systems did comply. Emergency Medical Products and Process Software did not comply. The City Attorney's office has been asked to draft the necessary paperwork to disbar the four companies. The companies will be disbarred for two years or until they come into compliance.

Sridharan commended the Division for its achievements in bringing so many vendors into compliance.

Kato also encouraged that typographical errors in letters be addressed to increase the credibility of the Division.

**6. EXAMINATION OF MEETING ATTENDANCE AND QUORUM FOR THE AFFIRMATIVE ACTION COMMISSION**

A chart showing attendance was distributed and discussed. For purposes of City policy on attendance, absences are no longer excused. Individuals may be asked to resign if they miss too many meetings.

Nuñez consults with the chair before cancelling a meeting due to weather. That is particularly important for the Commission on People with Disabilities because members have more challenging transportation issues.

Sridharan wondered how this Commission compares to other Commissions, Committees and Boards. Nuñez does not have that information.

Clausius stated that as chair, he brought treats to encourage attendance. The Commission also used alternates to assist in meeting quorum. The Commission does not currently have any members designated as alternates. Nunez will explore that and report back to the Commission.

**7. [15830](#)**

Appointment of Members to the Subcommittee Created to Explore and Recommend Ways for the Affirmative Action Commission (AAC) to Have Meaningful Dialog and Formulate Action on How the AAC Operates, the Type of Information it Receives from the Department of Civil Rights, and Recommendations on New Information the AAC Should Review.

**Deferred until Commissioner Odom is present.**

**8. MEMBERSHIP ON CITY BOARDS, COMMITTEES AND COMMISSIONS**

Johnson plans to work with Alders Eagan and Rhodes-Conway on ways to recruit more students to serve. He will report back to the Commission after he has that discussion.

Nuñez will send information to Commissioners on current vacancies.

**9. [14148](#)**

DIRECTOR'S REPORT- Presented for information only. No action required

Lucía Nuñez, DCR Director, will report on the following:

- Her activities since the last meeting
- Staff activities since the last meeting
- Activities of the Equal Opportunities Commission and Commission on Persons with Disabilities since the last meeting.

**Nuñez has met with Celia Jackson and Isadore Knox. The City resolution supporting implementation of the recommendations in the Task Force report passed unanimously. The County resolution has not been acted on yet. Steps are already being taken to identify the appropriate City staff to address implementation of the recommendations. The Implementation Team will not be created until the County resolution is adopted.**

**10. [14091](#)**

DIVISION MANAGER'S REPORT

Norman Davis, Affirmative Action Division Manager, will report on activities of the Division since the last meeting.

**Discussion of the Edgewater is underway. His Division is preparing to monitor that project and the Truax Project. There will be a job fair on June 14 for the Truax Project. A minimum of 12 individuals will be hired from the Truax/Darbo area.**

**The Community Development Authority Director position has just been announced. The job description will be sent and Commissioners were encouraged to refer interested individuals.**

**A new Contract Compliance Monitor has been hired. Austin Johnson's position is funded by special projects funds. He is working on prevailing wage for the Wisconsin Institute for Discovery Project. He will then move on to the Truax Project. These are all non-public works projects. He will also participate on the Edgewater Project if that comes on line.**

**The library is a large public works project. When the details are worked out, Colier McNair, our other Contract Compliance Monitor will work on that with assistance from Johnson, if needed.**

**Davis will stay close to monitoring the new purchasing system and the high speed rail project. The State will play a significant part in coordinating that project, but the City is interested in local participation. The Division will be hiring an AASPIRE intern and has received authorization to fill the other vacant Contract Compliance Monitor position.**

**Johnson will be invited to a future meeting.**

11.     [07972](#)           COMMON COUNCIL UPDATE BY ALD. CLAUSIUS--Presented for information only.  
No action required.

**Clausius reported that the Common Council will take up the Edgewater Project. He supports the project and believes a majority of the Council supports it. There is concern that the developer may walk away if the project does not proceed soon. This project will create tons of construction jobs. The Board of Estimates tied 3 to 3. The Mayor broke the tie in favor of the project. The Landmarks Commission voted it down the proposal again. The Common Council will take it up again on May 18.**

**With regard to the Library, the partnership with the Fiore Company project fell through. The City will rebuild on the existing site. But this is not a done deal yet. The Downtown Coordinating Committee is going back to the Mayor to support the proposal.**

**The proposal to allow our Commissions to sponsor ordinances and resolutions went to the Common Council Organizational Committee and the Common Council. The measure failed 11 to 9. There was a spirited and thorough debate.**

12.     **INTRODUCTION OF FUTURE TOPICS FROM THE FLOOR**

None.

13.     **ADJOURNMENT**

**It was duly moved and seconded to adjourn. The motion passed by voice vote/other.**