

CITY OF MADISON, WISCONSIN

A SUBSTITUTE
ORDINANCE

PRESENTED
REFERRED

July 19, 2022

Equal Opportunities Commission
(9/8/22); Landlord and Tenant Issues
Committee (8/18/22); Common Council
(9/20/22)

SUBSTITUTE: Amending 39.03(2),
39.03(4)(a), (c), (d), (g), (h), (i), (j) and (k)
and creating 39.03 (p) to add protections
for building code complainants.

72638

Drafted by: Adriana Peguero

Date: October 25, 2022

SPONSOR: Mayor Rhodes-Conway, Alders
Benford, Bennett, Carter, Evers, Figueroa-Cole,
Foster, Furman, Heck, Verveer, Vidaver,
Wehelie

DRAFTER'S ANALYSIS: This ordinance adds building code complainants as a protected status in the area of Housing in the Equal Opportunities Ordinance. This would protect tenants who are victims of retaliation from their landlords when they make complaints of building code violations. This provision offers tenants the benefits of a process that is currently used and is staffed by experienced investigators. Violations of the Ordinance can result in awards of monetary and other damages that would directly redress the damage done to the tenant.

The substitute includes recommended changes made by the Equal Opportunities Commission.

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

1. Subsection (2) entitled "Definitions" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended as follows:

"Building code complainant means any person who complains to the landlord, or to the Building Inspection Division of the Department of Planning and Community and Economic Development or Public Health Madison and Dane County or to any state or local investigatory or enforcement agency of potential violations of Chapters 7, 18, 19, 27, 28, 29, 30 or 32 of the Madison General Ordinances or their statutory or administrative code equivalents, or for complying with those sections."

2. Subdivision (a) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended as follows:

"(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 such person's protected class membership, homelessness, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or

Approved as to form:

stalking. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section;”

3. Subdivision (c) of Subsection (4) entitled “Housing” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinances is amended as follows:

“(c) To falsely represent that a dwelling is not available for inspection, sale, or rental because of such person's protected class membership, homelessness, status as a building code complainant or status as a victim of domestic abuse, sexual assault, or stalking; 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 Wis. Stat. § 823.113, 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. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section.”

4. Subdivision (d) of Subsection (4) entitled “Housing” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinances is amended as follows:

“(d) To discriminate against any person because of such person's protected class membership, homelessness, status as a building code complainant or status as a victim of domestic abuse, sexual assault, or stalking; 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. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section.”

5. Subdivision (g) of Subsection (4) entitled “Housing” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinances is amended as follows:

“(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 any protected class membership, homelessness, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or stalking.”

6. Subdivision (h) of Subsection (4) entitled “Housing” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinances is amended as follows:

“(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 protected class membership, homelessness, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or stalking. 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.”

7. Subdivision (i) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended as follows:

"(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 the person's protected class membership, homelessness, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or stalking."

8. Subdivision (j) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended as follows:

"(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 a person's protected class membership, homelessness, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or stalking. As used in this subdivision the term "residential real estate related transaction" means any of the following:"

9. Subdivision (k) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended as follows:

"(k) In this subsection, prohibited discrimination includes discrimination because of the protected class membership, homelessness, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, status as a building code complainant, or status as a victim of domestic abuse, sexual assault, or stalking ~~of~~."

10. Subdivision (p) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is created as follows:

"(p) Any acts under which a building code complainant is covered under this subsection shall be presumed to be retaliatory if committed within six months after the tenant has complained to the landlord or to the Building Inspection Division of the Department of Planning and Community and Economic Development or Public Health Madison and Dane County or to any state or local investigatory or enforcement agency of violations of Chapters 7, 18, 19, 27, 28, 29, 30 or 32 of the Madison General Ordinances or their statutory or administrative code equivalents. Conduct that is presumed to be retaliatory includes, but is not limited to: termination of a building code complainant's tenancy, commencement of an action for eviction, failure or refusal to renew a lease or, provide a building code complainant a false housing reference or any reference intended reasonably likely to prevent the building code complainant from obtaining housing. In order to overcome the presumption that such acts are retaliatory, the landlord must show by the greater weight of the credible evidence that such acts were based upon good cause."