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Subject: Thoughts about unemployment EO measure, for today's 5pm EDC meeting

Date: Wed, Dec 18, 2013 11:48 am

Hi Peng --

At today's meeting of the EDC: Could you please share a written copy of this letter, or convey highlights of its substance on my behalf, during the discussion of the issue of the recent passage of an amendment to Madison's equal opportunity ordinance that added "unemployment" as a protected class, which is listed as the third item on today's agenda.

Many thanks,
John

To the members of the city of Madison Economic Development Committee:

I'm writing to you from my perspective as a citizen member of the Madison Equal Opportunities Commission, where I currently serve as secretary. I'm unable to join you in person today because of a bad cold (and a temporary case of laryngitis), but would appreciate the opportunity to weigh in on a matter now before you.

Last week, I was made aware by EDC member and Alder John Strasser that you would be discussing concerns he has raised regarding the process surrounding the passage of an amendment to the Madison Equal Opportunities Commission that added "unemployment" as a protected class at the December 3rd meeting of the Common Council. I'll address my own perspective on those process concerns in a moment, but first I want to speak to the merits of this ordinance.

This measure, first discussed a year and half ago, was the response by members of the MEOC to citizens who reported to us that that a current common practice of employers has been to remove job candidates from consideration for the exclusive reason that they are currently unemployed, or that they have been unemployed for a certain period of time, such as six months. In some cases, employers have posted this exclusionary policy in their advertising.

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As if often the case, such policies may be a pretext to justify discrimination covered by another aspect of our ordinances, such as age discrimination.

Those policies might also have a disparate effect on members of certain protected classes who have disproportionately faced barriers to employment, such as people with disabilities, or members of communities of color.

On the night of this measure's consideration, several members of the Common Council raised concerns that this ordinance would tie an employer's hands by requiring that they give preferential treatment to a job candidate who is unemployed, over one who is not. The example was given of a comparison of skills between a surgeon who had been in regular practice, with one who'd stopped doing surgeries ten years ago. With all due respect, this constituted a specious argument, because none of the protected class protections encourage such arbitrarily preferential practices: they do not prevent a decision being made on the basis of a wide range of legitimate criteria. It would be difficult to argue, for example, that protections related to an applicant's race or sexual orientation would offer an applicant undue advantage. The ordinances are designed, instead, to prevent unfair *disadvantage*. The equal opportunities ordinance simply asks that the characteristic of being a member of a protected class category not be used to exclude someone's employment. However, it does not prevent an employer from weighing a long list of appropriate criteria as the basis for selection of the best qualified candidate.

Especially given the current economic times, in which thousands of workers find themselves in the unanticipated position of seeking new employment in mid-life, arbitrarily turning down someone from consideration from a job based only on their status of unemployment would seem to be contrary to the best interests of both prospective employees, and those employers whose practices would prevent them from considering temporarily unemployed, but otherwise highly-qualified and experienced, candidates.

Over a period of more than a year, members of the Equal Opportunities Commission worked closely with the City Attorney's office and MEOC staff to research lessons learned from similar measures, and to zero in on language for the ordinance that captured our narrowly-focused intent. Although New York City is the only other city government we discovered that currently has such an ordinance, and we modeled our ordinance in part on its legislation, numerous state agencies have enacted such protections, or are considering them.

While it was implied by at least one alder that Madison was "way out there alone on this," we're in fact, pleased to the extent that this is the case, just as previous EOC commissioners have been pleased to have been pioneers in

advancing previous landmark ordinance changes over the decades related to areas such as sexual orientation and disability. Unfortunately, the notion that we're one of the few cities to have passed such an ordinance at this point, is directly linked to the fact that only a handful of cities currently have a body like the Equal Opportunities Commission, but instead rely upon state government to perform this function. As we observed during the portion of the Common Council agenda devoted to marking the 50th anniversary of the MEOC, the benefits to our community and to countless individuals in assuring equity and fairness for all citizens have been inestimable. The presence of the MEOC and Madison's equal opportunities ordinances represents a great asset to our community, reflective of our community's values, and should not be seen as a liability.

This is what concerns me about some of the objections being raised to this ordinance, which have been framed as process concerns. In fact, what I think is operating here is the perpetuation of the mistaken notion that the very presence of an active body like the MEOC is somehow a liability to our city that sends all of the wrong messages to prospective and existing businesses.

I understand the significant, but still anecdotal, concerns being raised by businesses on the periphery of the city in a district such as that represented by Ald. Strasser, where businesses have the choice of establishing themselves in either the city of Madison, or in the Town of Madison or the city of Fitchburg.

For better or for worse, these are concerns common to businesses nationwide in most major metropolitan areas related to decisions about whether to locate in the more highly regulated environment of the first class city that at the core of the metro area, or in second class cities, or unincorporated areas on the periphery. However, In my own experience, equal opportunities considerations are relatively minor in such decisions, when weighed alongside issues related to zoning and property taxes, for example.

While I have great respect for Alder Strasser, Alder Clear, and other civic leaders on the EDC who have raised these issues, I want to encourage you to work to build a relationship with the MEOC that supports good communication and common cause. As was alluded to on the floor of the Common Council by various members of the body, there have been recent times when both the MEOC and EDC have felt excluded from the process of passage of recent legislation.

We could spend substantial time in our work with both the EDC and the MEOC blaming each other for that circumstance, or we could work together moving forward to improve that process to the benefit of both bodies, removing once and for all the mistaken impression that equal opportunity and business

concerns are diametrically opposed. While it's an easy polarization to fall into, I've seen ample evidence in my 35 years as a civically-active Madisonian of cases where that false dichotomy can be challenged and overcome. As a former chair of the MEOC's housing committee in the late 1980s, I worked closely as a housing rights advocate with housing providers to forge a common agenda, with often surprising results. If it could happen in the context of tenant-landlord relationships, surely it can happen in this context as well. I know that our alder-representative on the MEOC, Ald. Anita Weier, also shares our hope that business and employment opportunities advocates can find common ground.

One last brief observation about process. As a witness to all of the thoughtfulness that went into the crafting of this ordinance, I want to offer my testimony that every effort was made to reach out to folks who might have concerns about the ordinance. This ordinance was not rushed through; public notice of our intentions had been out there for many months, and invitations had been extended to many of the organizations and individual who represent business interests to attend our meetings. Our MEOC staff acted with due diligence, and if business reps did not attend, this was in part their failure to pay attention. Importantly: had there been a call to refer this measure to the EDC, no one at MEOC (at either the level of the commission or our staff) would have objected, in fact, we would have welcomed that opportunity. As a non-alder who doesn't completely understand the internal workings of the Common Council, I'm not entirely sure who, if anyone, dropped the ball here. However, in exploring this issue with Ald. Clear following the passage of the measure, I appreciated his candor in expressing that, in retrospect, he and other EDC and Common Council members bear at least a partial responsibility for the lack of a referral. In my opinion, it's less important that we place blame at this point, than it is that we develop better processes as we move forward for future initiatives of interest to both the MEOC and EDC, in both directions.

Since the measure had not been referred to the EDC, the other issue that's been raised here is the question of what kind of a hearing this measure received in the MEOC's Employment Subcommittee. Department of Civil Rights Director Lucia Nunez had explained on the night of the Common Council meeting that significant background about this measure had been sent to this group on at least three occasions. No objections had been raised, and the only discernible reaction was the observation of many of the H.R. managers there that the ordinance had a credible purpose in addressing a phenomenon (arbitrary denial of employment to those currently unemployed) that does, indeed, exist.

On the night of the Council meeting, the Chamber's representative asserted that one of their members had been attending the MEOC subcommittee meetings, and had said that she'd never heard of this measure. While it's possible that the matter escaped that individual's notice, this contradicts the public record, and the memories of MEOC members who have served as liaisons to the employment subcommittee. I have great respect for Ald. Strasser, but I disagree strongly with the conclusions he's drawing based on his discussions with individuals at the body's last meeting last Thursday, during a discussion that was ultimately cut short by the need to end the meeting, because many of those in attendance attend over their lunch hours.

Ald. Strasser has strongly implied that Director Nunez reported erroneous information to the Common Council, and that this should now be called to the Council's attention. I think that the situation is considerably more nuanced, and that no misrepresentation was made or intended. Part of the problem is that the employment subcommittee, by its nature, is an advisory body, and there is no record of a formal vote or accompanying discussion, only of the fact that the matter had been referred there for a briefing and discussion. This subcommittee performs a very valuable function, and the perspectives of its members have often proven invaluable to the workings of the MEO Commission. However, neither its role nor its function are the same as in appointed city bodies like this MEOC or the EDC; it's a different kind of animal. Many months later, it's not surprising that different members would have different recollections about their consideration of this measure. Once again, however, the bottom line is that the opportunity was given to members of the body to weigh in about this; in fact they were actively encouraged to do so. If that didn't happen in someone's mind, that's a function of their own misunderstanding of the process or lack of initiative; not a failing of DCR/MEOC staff.

As a witness to these events--and someone who's also been a witness over many years to the extreme conscientiousness and thoroughness of the work that's been done by Lucia and her staff in countless settings--I strongly disagree with Ald. Strasser's implication that she might have misinformed the Council. Overall, I also feel that the ordinance change received an extremely thorough vetting, with ample opportunities for business representatives to be heard.

Ald. Strasser is also correct, however, in asserting that the process could have been better--but that's an area in which the Common Council leadership, MEOC and EDC, equal opportunity advocates and areas business leaders, all have an investment.

So, please, let's figure out better ways to communicate and collaborate moving forward.

In closing, I want to indicate the great pride and respect that we have as MEOC commissioners for the work of DCR Director Lucia Nunez and the MEOC staff.

Good process works both ways, and we ask that you extend all due courtesy to these dedicated city workers, in the interest of our ongoing opportunities for collaboration. As I'm sure will be apparent to you today, just as they are accessible and responsive to questions that we raise in the context of the MEOC, they will certainly do their best to address your concerns at the EDC, as well.

All of you at the EDC do great work, and share our own group's interest in developing an economic climate where business will thrive and job opportunities can greatly increase and be available to all. The opinions expressed here are my own.

Best wishes, and we look forward to all opportunities for future collaboration.

Sincerely,

John Quinlan
Secretary
Madison Equal Opportunities Commission

cc: DCR Director Lucia Nunez, EOC staffer Eric Kestin, Ald. Mark Clear, Ald. John Strasser, Ald. Anita Weier, EOC Vice Chair Hedi Rudd, EOC Exec. Committee member Bill Fetty,

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