

MEMORANDUM

Agenda Item No. 10
CCEC Agenda 6/20/17

TO: Common Council Organizational Committee
Michael P. May, City Attorney
FROM: Heather Allen, Legislative Analyst
DATE: June 20, 2017
RE: Update from the Legislative Analyst

PRESIDENTS WORK GROUP ON POLICE AND COMMUNITY RELATIONS

The Common Council adopted the President's Work Group on Police and Community Relations Report and its recommendations on 5/16/2017 ([Legistar # 46407](#)). The report calls for the following actions to be taken:

- *Action Item 1:* The Common Council hereby issues a lawful order to the Chief of Police to issue a standard operating procedure (SOP) that explicitly details the goals, tactics, policies, and procedures to deal with an Emotionally Disturbed Person (EDP) (including those who are intoxicated).
- *Action Item 2:* The Common Council directs the Ad Hoc Committee to investigate other possible supports for MPD officers interacting with EDPs.
- *Action Item 3:* The Common Council hereby issues a lawful order to the Chief of Police to issue updated MPD Use of Force and the Use of Deadly Force SOPs that explicitly incorporate the duty to intercede and de-escalate which are already included in MPD's Code of Conduct and Core Values and the de-escalation SOP.
- *Action Item 4:* The Common Council hereby issues a lawful order to the Chief of Police to incorporate language to emphasize an officer's duty to preserve life, including the lives of those being placed into police custody, within the MPD Use of Force and the Use of Deadly Force SOPs.
- *Action Item 5:* The Common Council directs the Ad Hoc Committee to evaluate the precautionary principles (necessity, proportionality, totality of conduct, etc.) and determine whether and how they may be addressed in MPD policies, practices and procedures.
- *Action Item 6:* The Common Council hereby issues a lawful order to the Chief of Police to develop programming to build officers' mental health and resilience utilizing evidence based practices, which may include Mindfulness-Based Stress Reduction, and to provide cost estimates and a timeline for this work.

- *Action Item 7.* The Common Council hereby issues a lawful order to the Chief of Police to develop a comprehensive backup policy that addresses the need to protect public safety and officer safety.
- *Action Item 8.* The Common Council hereby issues a lawful order to the Chief of Police to personally provide quarterly written and verbal updates to Common Council.
- ***Action Item 9:*** The Common Council will develop a policy governing the purchase and use of all surveillance equipment employed by all City agencies including MPD.
- *Action Item 10:* The Common Council directs the Ad Hoc Committee to provide a review of the feasibility of external oversight of MPD internal investigations.
- *Action Item 11:* The Common Council directs the Ad Hoc Committee to further explore the IA Pro capabilities for early warning and intervention.
- *Action Item 12:* The Common Council directs the Ad Hoc Committee to provide an implementation plan for a root cause analysis process at MPD.
- ***Action Item 13:*** The Common Council directs the Common Council Executive Committee to undertake a review of the role, membership and charges under ordinance(s) for the Public Safety Review Committee (PSRC).

Action Items 9 and 13 require action from the Common Council. Action item 9 calls upon the Common Council to develop a comprehensive surveillance policy. The policy is intended to address data management and storage as well as consequences for policy violations. The recommendation includes a requirement for an annual inventory of surveillance equipment beginning with the first inventory on December 2017. Action Item 13 asks the CCEC to review the role, membership and charges for the PSRC¹. The President's Work Group discussed the importance of a permanent city committee with the responsibility of regularly examines public safety issues, as well as police and community relations. The Work Group seeks to ensure the PSRC is maximally effective.

¹ The PSRC has the authority to *review and make recommendations concerning departmental budgets; review service priorities and capital budget priorities of the Police and Fire Departments; serve as liaison between the community and the city on public safety issues; and review annually and make recommendations to the Common Council regarding the annual work plans and long-range goals of the departments.* Madison General Ordinance Sec. 33.22.

OPPORTUNITIES TO SUPPORT WOMEN

Alder Amanda Hall requested a review of opportunities for city government to support women. The analysis completed by former law clerk Anjali Patel reviewed a variety of areas related to equal pay, health, maternity leave, sexual assault, immigrant rights and poverty, breastfeeding and more. The memo (attached)² will be discussed at the Women's Issues Committee Thursday June 22.

PEER SUPPORT COACHES TO ADDRESS YOUTH GUN VIOLENCE

On June 12, the Finance Committee recommended Council adopt [resolution #47574](#) Substitute – Authorizing the Mayor and City Clerk to enter into a \$50,000 contract with Nehemiah Community Development Corporation for the short term peer support and crisis response services, who shall subcontract with the Focused Interruption Coalition, with the Boys and Girls Club of Dane County, Inc. as a fiscal agent for the subcontractor and transfer \$25,000 from supplies to purchased services to be used for peer support services. This item is #69 on the June 20 Council Agenda.

Annette Miller is conducting several focus groups to gather input on the RFP for the remainder of the funds for the peer support programming. She will provide CDD with feedback from the groups later this summer. CDD staff will review feedback and make edits to concept paper/RFP. CDD staff will review with mayor and interested Alders. The anticipated timeline is that the finished product will be attached to resolution to be introduced to council July 18, Finance/ Jul 24, CSC 7/26 and CC 8/1.

CIVILIAN OVERSIGHT OF THE POLICE

This report, requested by Alder Carter, has been finalized and [posted to the Council Intranet](#). Alder Carter has requested that the report be presented to CCEC in July.

RACIAL EQUITY AND SOCIAL JUSTICE INITIATIVE (RESJI)

Resolution 46324 ([available here](#)) which seeks to institutionalize the use of the equity analysis tool in the budget process was discussed at the June 6 CCEC meeting. Alders Bidar-Sielaff and DeMarb proposed alternate language to the resolution. The changes are intended to ensure that departments receive adequate training and capacity support to implement the new requirements for the 2019 budget cycle. The RESJI strategy team received a report about the alternate resolution and plan to organize a meeting of staff and alders to discuss the resolution.

² Appendix to Memo is available on Council Intranet webpage.

RESOLUTION 46648 CALLING ON THE US CONGRESS TO CONTINUE FUNDING HUMAN AND ENVIRONMENTAL NEEDS AND NOT INCREASE MILITARY SPENDING

Alder Eskrich requested an analysis of the amount of federal taxes Madison residents contribute to the national budget, and specifically how much money is invested in military expenditures. The portion of the federal budget generally accepted as allocated to military activities is approximately 17% of the total national annual budget. The WI Department of Revenue confirmed that in 2014 City of Madison residents paid \$1,140,309,599 in Net Federal Income Tax. Using those data points, one can calculate that Madison contributed approximately \$193,852,631 to federal military spending in 2014.

Utilizing the \$193 million value, I explored how those funds could be spent on local investments. Among other things \$193 million dollars could be used to fund a bus barn (\$35 million), a public market (\$8.75 million), a biodigester (\$17 million) and send 6,500 middle school students to a 3 week computer coding camp (\$6.5 million). The resolution details other community investments that could have been funded with these funds. The [resolution 46648](#) was adopted by the Common Council on April 18, 2017.

To: Heather Allen
From: Anjali Patel
Re: Women's Rights
Date: February 28, 2017

I. Equal Pay

Under Wis. Stat. § 111.321, the state mandates that persons are not discriminated against based on their sex in any matters related to work and compensation. Wis. Stat. § 111.322 prohibits discrimination by 1) refusing to hire, employ, admit, or license, 2) to bar or terminate, or 3) to discriminate in promotion, compensation, or in terms, conditions, or privileges of employment. Nothing in the statutes precludes the city from enacting its own ordinance regarding discriminatory practices or equal pay. Unlike with employment discrimination because of creed (Wis. Stat. § 111.337(3)), the state has not explicitly prohibited municipalities from adopting provisions concerning employment discrimination based on sex. Some cities, including Racine, have equal pay ordinances.

Existing ordinances related to civil rights can be found in MGO Chapter 39. MGO 39.03(8) a states that the City cannot discriminate based on sex. This ordinance would pertain to pay as well, though it is not an "equal pay" ordinance. In addition MGO 39.03(8)(a) prohibits discrimination in employment including compensation.

II. Health

Maternity leave:

The City of Madison does not provide paid maternity or family leave at this time. Rather employees often accrue sick leave and vacation to utilize in lieu of maternity leave. Additionally, roughly 1/6 of employees make use of disability insurance or unpaid leave authorized under the Family Medical Leave Act annually. In 2016 the City of Madison won a research grant from the Department of Labor in partnership with the University of Wisconsin to study the feasibility of providing paid family leave to employees. The university researchers and City staff are working on matching payroll records to survey participants and have designed the survey questions. The next step in the process is to administer the survey to City employees.

Wis. Stat. § 111.322 prohibits discrimination by 1) refusing to hire, employ, admit, or license, 2) to bar or terminate, or 3) to discriminate in promotion, compensation, or in terms, conditions, or privileges of employment. Wis. Stat. § 111.36(1)(c) prohibits discrimination as listed in § 111.322 based on pregnancy, childbirth, maternity leave or related medical conditions. Wisconsin courts have held that the Wisconsin Fair Employment Act prohibits provision in employer-sponsored insurance plans from treating pregnancy-related leave differently from other short-term disability leave. *See Wisconsin Telephone Co. v. ILHR Dept.*, 68 Wis. 2d 345, 228 N.W.2d 649 (1975), *Ray-O-Vac v. ILHR Dept.*, 70 Wis. 2d 919, 236 N.W.2d 209 (1975), and *Goodyear Tire v. ILHR Dept.*, 87 Wis. 2d 56, 273 N.W.2d 786 (Ct. App. 1978). Additionally, they have held that it is irrelevant whether the employer intended to discriminate or not, only whether the effect of the program provides for disparate treatment. The City requires equal treatment for employees and members of the public seeking public services by the City. (MGO 39.02(1)). Additionally, the City prohibits discrimination against certain protected class,

including sex. While there is no explicit provision defining ‘sex,’ there may be an opportunity to expand the definition of discrimination based on sex to enable maternity provisions.

Contraceptives: The United States Equal Employment Opportunity Commission has held that denying prescription drug coverage for contraceptives constitutes sex discriminate under Title IV. The exclusion amounts to sex-based discrimination because prescriptive contraceptives are available only to women and only women can become pregnant. It is irrelevant whether the contraceptives are used for birth control or other medical purposes. In a letter, dated August 16, 2004, from Peggy A. Lautenschlager, Attorney General, to Helene Nelson, Secretary, Wisconsin Dep’t of Health and Family Services: The AG advised that excluding contraceptives from an employer or college or university sponsored benefits program that otherwise provides prescription drug coverage violates Wisconsin law, specifically the Wisconsin Fair Employment Act, Wis. Stat. §§ 111.31-111.395. The City requires equal treatment for employees and members of the public seeking public services by the City. (MGO 39.02(1)). Additionally, the City prohibits discrimination against certain protected class, including sex. While there is no explicit provision defining ‘sex,’ there may be an opportunity to expand the definition of discrimination based on sex to enable contraception provisions.

The City of Madison does require pharmacies to post a notice explaining that emergency contraception is available. Please see the Appendix for MGO 7.09 related to access to emergency contraception.

Abortion or abortion-inducing drug options:

Doctors: No hospital or physician is required to admit a patient or allow the use of the hospital facility for the purpose of sterilization or abortion if the refusal is based on moral or religious grounds. Such a refusal must be stated in writing. Wis. Stat. § 253.09(1). Additionally, employers cannot discriminate based on an employee’s refusal to “recommend, aid or perform” sterilization or abortions if the refusal is based on religious or moral precepts. Wis. Stat. § 253.09(2). Unless in the case of medical necessity, physicians are prohibited from performing abortions if the probable number of weeks that have elapsed from fertilization is 20 or more weeks. Wis. Stat. § 253.107(2)-(3).

Patients: Women who voluntarily elect abortions must give informed written consent. Wis. Stat. § 253.10(3)(a). The physician makes the final decision on whether the consent is given voluntarily. An abortion may not be performed within 24 hours of the physician speaking to a woman about the physical and psychological effects of an abortion. Wis. Stat. § 253.10(3)(c)1. This 24 period is waived only if the doctor believes an immediate abortion is necessary to prevent death or to prevent a serious risk of substantial and irreversible impairment on one or more of the woman’s major bodily functions. Wis. Stat. § 253.10(3)(f). The 24 period may only be waived in a sexual assault or incest case if the woman has reported the assault or incest to law enforcement and the doctor can verify that it has been reported. Wis. Stat. § 253.10(3m).

Women are required to have an ultrasound before an abortion may be performed. The doctor must display the images, provide a description of what is visible in the image, and provide the means to hear a heartbeat, if detectable. The woman is not required to listen

to the doctor describe the image or listen to the heartbeat. Wis. Stat. § 253.10(3g)(a)-(b). Only a person performing an abortion can be penalized for violating Wis. Stat. § 253.10. A woman who has an abortion performed cannot be penalized under this statute.

Local Government: Any county, city, village, town, or long-term care district are prohibited from subsidizing persons or entities that perform abortions except in cases where abortion is a medical necessity or in the case of a sexual assault or incest. Wis. Stat. § 20.927. The department of health services distributes women's health funds to public entities except such entities which 1) provide abortion services, 2) make referrals for abortion services, or 3) have an affiliate that provides abortion services or makes referrals for abortions services. Wis. Stat. § 253.07(5).

It is not clear that there are any areas of municipal law that may facilitate supporting women on this issue.

Tampon tax: Feminine hygiene needs, including sanitary napkins and tampons are not exempt from being taxed by grocers. Wis. Adm. Code Tax § 11.51 (2)(a). They are categorized as 'luxury items' rather than 'medical necessities.' Assembly Bill 949 was introduced on Feb. 24, 2016 to create a tax exemption under Wis. Stat. § 77.54 for feminine hygiene products but it failed to pass on April 14, 2016. In 2015, Rep. Melissa Sargent, D-Madison, proposed a bill to require the state to offer free feminine hygiene products in all State-run buildings. The bill failed. However, local governments can propose similar measures; in fact, Dane County has a pilot program right now. The pilot program offers free tampons in eight county-run buildings. The City of Madison may explore a similar pilot program offering free tampons in public buildings.

Second opinions: The State of Wisconsin requires second opinions in certain cases, including when a hysterectomy is recommended. Wis. Adm. Code DHS 107.06(4)(e).

III. Sexual Assault/Violence Against Women/Domestic Violence

Confidentiality: Sexual assault victims are given the opportunity, under Wis. Stat. § 6.47(2), to keep their names and addresses confidential on poll lists or registration lists if they are able to provide proof that they have reported the crime and are able to provide a statement signed by an authorized representative of a domestic abuse victim service provider or a sexual assault victim service provider. Victims of sexual assault, stalking, and domestic violence may request that their information be kept confidential, and the City ensures any data it releases is not personally identifiable in that case (barring other issues). The City's current practices is to avoid releasing any personally identifiable data related to police records of sexual assault or related crimes.

More broadly, the City does not have a blanket policy with respect to personal information, rather the City applies the public records balancing test based on State Statute. When the City releases data in response to an open records request, the City considers the benefits to the public and the risks to the individual for each request. Each case is unique.

Notably, most women don't report these crimes, which means they don't meet one of the requirements of this statute. Even fewer victims approach the City with a request to keep their data private, despite having reported the crimes. And victims may not know all of the types of data and different data sets that contain some of their information. The City of Madison does manage several data sets with personal data. It may be worth exploring this issue more fully to examine the policies in each department for managing such data. Perhaps the City could explore a modified local version of § 6.47 that doesn't require that the crime be reported. This may be particularly important to women who have left abusive relationships, which they are not always willing to report, for a variety of reasons. The City may want to examine whether a failure to report such crimes to the police should prevent a victim from being able to keep their address hidden from an abusive spouse.

Underage Drinking: If an underage person comes in contact with a police officer as a result of reporting a crime or being a bystander (someone present with the crime victim at the time of or immediately following the alleged crime), the underage person cannot be issued a citation for, or convicted of, a violation of procuring alcohol, possessing or consuming alcohol, entering a licensed premises, or falsely representing their age in order to receive alcohol. The underage person is required, however, to remain on the scene until emergency assistance arrives and cooperate with emergency assistance. Wis. Stat. § 125.07(5). The City Attorney's Office rarely sees officers issue tickets in these situations because the MPD does not want to discourage people from helping others when they need it.

Domestic Abuse: A law enforcement officer must arrest a person if there is reasonable grounds to believe the person is committing or has committed domestic abuse and the action's constitute the commission of a crime and the abuse is likely to continue or there's evidence of physical injury or the person is the predominant aggressor. Wis. Stat. § 968.075(2)(a). If the reasonable grounds for belief are based on a report of alleged domestic abuse, the officer is only required to make an arrest if the report is received within 28 days after the alleged incident occurred. Wis. Stat. § 968.075(2)(b). Each law enforcement agency is mandated to develop, adopt, and implement written policies regarding procedures for domestic abuse incidents. Wis. Stat. § 968.075(3).

Rape Kits: According to a 2014 statewide audit report, Wisconsin had over 6,000 untested rape kits. At that time, Madison PD had approximately 400 untested kits. The State does not require testing of all the backlogged rape kits or testing of all rape kits submitted in the future. There are multiple reasons past kits have not been tested, including 1) the case resolved without the need to test for physical evidence, 2) statute of limitations have expired, or 3) criminal justice professionals did not see a need for testing. In cases where no suspect has been identified and law enforcement recovers DNA evidence, the law enforcement agency is required to submit that evidence to a crime laboratory. Wis. Stat. 175.405(2).

Anonymous Reporting: Any person may call the 911 or local non-emergency number to anonymously report a crime. Milwaukee PD also has an online service which allows for non-emergency investigative information to be submitted anonymously.¹ Eau Claire PD and

¹ Submit An Anonymous Tip Online, *Milwaukee Police Department*, <http://city.milwaukee.gov/mpdtipanon#.WErwZ9iV99A>.

Watertown PD maintain a cell phone texting service which allows people to anonymously send in non-emergency tips. A scrambler is used to ensure that the tip remains anonymous and is not linked to the cell phone number that texts the tip in.² Nothing precludes local law enforcement agencies from utilizing these systems.

IV. Education Equity

School programs or organization are not within the city's authority – they are managed, in different ways, by the department of public instruction, the school district and superintendant, and the school board. On certain issues, such as who can make up the advisory council when a human growth and development program is elected by the school board, the city may not have a part in the decision. Under Wis. Stat. § 115.915, every school board is required to make program modifications and services available to school age parents who reside in the school district (more below).

Dress Code/Conduct: The school board of a common or union high school district has the authority to makes school rules regarding organization, gradation, and government of the schools, including rules pertaining to conduct (resulting in suspension and expulsion) and dress of pupils. Wis. Stat. § 120.13(1).

Sex Education: School boards have the authority to elect to provide an instructional program in human growth and development. Wis. Stat. § 118.019(2). If elected, the school board is responsible for establishing the curriculum and deciding whether there are any subjects for which the students should be separated by gender. The statute recommends topics to be covered but does not mandate them. If a school board elects to provide instruction on the recommended topic areas, then there are specific subjects which are required to be taught, including presenting abstinence as the preferred choice. Wis. Stat. § 118.019(2m). A school board is permitted to approve an instructional program that includes instruction on abstinence from sexual activity or that is abstinence-centered. Wis. Stat. § 118.019(2d). Students may be exempted from participation in instruction on human growth and development with a written request from the student's parent. Wis. Stat. § 118.019(4).

V. Women & Children in Poverty

Childcare: Child care centers that provide care and supervision for 4 or more children under the age of 7 for less than 24 hours a day and receives compensation for said care must be licensed to operate a childcare center from the Department of Child's and Families. Wis. Stat. § 48.65(1). There does not appear to be any such requirements for care of children over the age of 7.

University of Wisconsin: University of Wisconsin campuses are permitted to establish child care centers. Wis. Stat. § 36.25(26). The cost of child care, as determined by the board of a higher learning institution, is included in the determination of a student's total cost of attending a postsecondary institution for the purpose of calculating the amount of

² See TIP411, *Eau Claire Wisconsin*, <http://www.ci.eau-claire.wi.us/departments/police-department/citizen-resources/tip411>

a grant. Wis. Stat. § 39.31. The board may award supplemental grants of \$500-\$1000 per child per semester for students for the cost of childcare of preschool children of the students.

Teen mothers: According to DHS’s data query system, there were around 2,500 births in Dane County in 2015 where the birth mother was between the ages of 15 and 19. Every school board is required to make program modifications and services available to school age parents who reside in the school district. Wis. Stat. § 115.915.

MMSD: Madison Metropolitan School District offers learning through SAPAR for pregnant or parenting Middle School and High School students. They teach the core curriculum as well as prenatal care, childbirth, and parenting skills. They also teach students about identifying domestic abuse traits, as they are at a high risk of entering these types of relationships. Students attending SAPAR may have access to the InSPIRE grant, which is designed to promote teen parenting effectiveness, increase graduation rates and enrollment in post-secondary schools, and decrease future pregnancies before the age of 20. Between 30 and 40 students enroll each year.

Funding: SAPAR will run out of grant funding on June 30, 2017. They are currently funded through DPI. They will still receive funding from MMSD but the preliminary budget estimates a decrease of nearly 20% of what they were provided for the past year. The \$60,000 decrease in funding will result in the inability to provide free daycare, college scholarships, and transportation to school for teens who have no other means of getting to class.

VI. Breastfeeding in public

“A mother may breast-feed her child in any public or private location where the mother and child are otherwise authorized to be. In such a location, no person may prohibit a mother from breast-feeding her child, direct a mother to move to a different location to breast-feed her child, direct a mother to cover her child or breast while breast-feeding, or otherwise restrict a mother from breast-feeding her child as provided in this section.” Wis. Stat. § 253.165.

The City of Madison has signs posted in public bathrooms explaining that women have access to lactation rooms and how to access them. However, there have been some concerns that the lactation rooms themselves are inadequate. This may be an issue of policy and budget to ensure that lactation rooms are welcoming environments.

The City has an ordinance prohibiting interference with breastfeeding in public. It largely adopts language from the state statute. Please see Appendix III for MGO 23.37.

VII. Immigration

Criminal convictions: In criminal proceedings, a conviction can result in deportation and separation from their families, however severe or harsh that may seem. *Padilla v. Kentucky*, 559 U.S. 356 (2010). “Noncitizens face deportation as a consequence of certain convictions because of their immigration status...Deportations becomes ‘an integral part...of the penalty that may be

imposed' for any conviction because of the noncitizen status.” *State v. LeMere*, 2016 WI 41, ¶ 67, 368 Wis. 2d 624, 879 N.W.2d 580.

Local government: The state has been attempting different methods of banning local governments from writing ordinances that create sanctuaries, which allow police officers the discretion to not inquire about a person’s immigration status, even if they believe the person is here illegally. The most recent bill failed to pass in early 2016.

Please see attached memo from Assistant City Attorney Amber McReynolds.

Employment and medical/family leave: The Wisconsin Court of Appeals found that undocumented immigrants hired contrary to 8 U.S.C. § 1324a(a)(1) and (2) are still entitled to the benefit of family or medical leave as set forth in Wis. Stat. § 103.10 because the definition of “employee” does not consider immigration status. *Burlington Graphic Sys. V. Dep’t of Workforce Dev.*, 2015 WI App 11, 359 Wis. 2d 647, 859 N.W.2d 446. Employees must comply with all employment laws that promote dignified employment conditions for Wisconsin workers, regardless of immigration status. Chapter 39 includes “citizenship status” as a protected category. The definition of which is “the immigration status and/or citizenship of any person.” The City could strengthen the definition to include examples or language such as this.