

CITY OF MADISON, WISCONSIN
COMMON COUNCIL
SOCIAL MEDIA POLICY GUIDE



Adopted by the Common Council Organizational Committee
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Common Council Social Media Policy

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COMMON COUNCIL SOCIAL MEDIA POLICY August 2011

Introduction

Our world is undergoing a fundamental shift in the way we communicate. Traditional communication mediums, such as letters, phone calls, newspapers, television and even email, are all giving way to the use of social media. Facebook currently claims a membership of nearly more than double the population of the United States.¹ Flickr, YouTube, Hulu and Wikipedia are now common household terms. Google is no longer just a noun, it is a recognized verb.² The professional journalist's printed editorial has given way to the layperson's blog. Personal communications devices make it possible for anyone to access his or her favorite social media virtually anywhere at any time.

The Common Council Organizational Committee Subcommittee to Develop Council Social Media Policy comprised of Ald. Lauren Cnare, Ald. Bryon Eagon and Ald. Chris Schmidt met from February 2011 to April 2011 to develop a social media policy and guidelines for members of the Common Council.

The subcommittee recognized that the Madison Common Council seeks to actively inform, serve, and engage citizens and that social media provides an opportunity to reach a large audience directly by allowing for greater personal interaction between elected officials and residents.

When properly used, it can be an effective tool for the Common Council to:

- openly, directly, and publicly communicate with citizens
- develop new and/or improved relationships with constituents and community partners
- seek input from citizens on key issues or services provided
- promote educational information directly to constituents

Purpose

The intent of this policy is to promote the safe, orderly, responsible and consistent use of social media by members of the Common Council.

The City's vision statement reads: "The City of Madison will be a safe and healthy place for all to live, learn, work and play." Social media and alder specific webpages can facilitate that vision by providing useful and real-time information to the public. Social media can enhance and promote the City's image; can share valuable information regarding availability of community services, City operations and activities; and, can facilitate a dialogue between the alder and their constituents.

However, without guidance and oversight, the use of social media may result in the alder sending out inconsistent messages and confusing the public they serve. Furthermore, the inappropriate use of such media can lead to liability, threaten the vitality/safe operation of the City's Information Technology resources and result in the loss of important public records and historical documents. Additionally, the City must ensure full accessibility in all of its website and social media venues.

Alders are asked to comply with the terms of this policy. The City retains the right to edit or remove any content that violates this or any other policy of the City or any applicable law.

¹ Facebook's active membership exceeds 500 million. See <http://www.facebook.com/#!/press/info.php?factsheet>

² Google. Dictionary.com. *Collins English Dictionary - Complete & Unabridged 10th Edition*. HarperCollins Publishers. <http://dictionary.reference.com/browse/google> (accessed: October 18, 2010).

The Role of Council President

The Common Council President, in consultation with the Information Technology Department Director, shall be the final approving authority on any request to employ social media. They will approve any use of social media that is consistent with city objectives, business practices and the policies stated herein.

The Role of the Information Technology Department

The use of social media is not without its risks. Common Council members may not always have a good understanding or appreciation of these risks. Therefore, to protect the integrity of our records and to safeguard the City's substantial investment in IT resources, the Information Technology Department shall be the lead agency in the use of and implementation of social media.

1. The Director of the Information Technology Department shall review all tools and applications for use of social media and shall make a recommendation to the Common Council President and Common Council Organizational Committee on each such application. In making his/her recommendation, the IT Director shall:
 - a. Consider any comments of the City Attorney;
 - b. Give no effective "grandfathering" to any use in place before the adoption of this policy.
2. The IT Director shall:
 - a. Maintain a list of social media tools approved for use by Common Council members.
 - b. For each such approved social media tool the IT Director shall:
 1. Develop operational and use guidelines;
 2. Implement City, departmental and divisional branding standards;
 3. Develop enterprise-wide design standards;
 4. Manage accounts on social media sites;
 5. Act as the Administrator of social media sites;
 6. Create social media applications and RSS feeds; and
 7. Set-up security settings on social media sites.
 - c. Maintain a list of each Common Council member's use of social media tools to include:
 1. The login and password information for each alder;
 2. Define the repositories for all data.
3. Use of social media should generally meet one of the following criteria:
 - a. The communication of time sensitive information in a real time manner (i.e. public meetings; city events; open houses, etc.).
 - b. Marketing/promotional efforts designed to reach a demographic that favors the social media under contemplation.
 - c. To solicit feedback or input from the largest possible audience on a distinct proposal or plan before the City.
4. The City's website and connected web pages will remain the City's primary and predominant presence on the Internet. Therefore:

- a. Any use of social media should be accessible through or linked to the appropriate web pages on the City's website.
 - b. Content posted to a social media website should contain links directing users back to the City's websites where additional in-depth information, forms or other online services are available for the public.
 - c. The City's website should be the repository. Data will be "pushed" to social media tools. The City has a central data repository that receives online submissions and updates from database applications in various City agencies. In turn, these submissions and updates are pushed out near real-time to a variety of other channels including the City of Madison's website, RSS feeds, SMS messaging, Twitter and Facebook.
 - d. RSS feeds should be built or scripted by IT or approved staff to ensure compliance with records retention laws.
5. The IT Director shall respond to complaints/inquiries at the point of contact and may, in consultation with the Common Council President, edit or remove any presence or content that violates any provision of this or any other policy or law;

The IT Director shall maintain a record of the original social media presence as it existed before any action taken by the IT Director.

6. The IT Director shall determine whether a social media tool or site permits the preservation of the City's presence in a manner that comports with the City's duties and obligations under the Wisconsin Public Records Laws. The IT Director shall apply Sec. 3.70(3)(b)9, MGO (see Appendix A), in determining whether to approve any social media for use by City Divisions, Departments or staff.
7. The IT Director shall periodically conduct training on the appropriate use and the mechanics of social media.
8. The IT Director shall promptly report the discovery of any criminal activity or law violation to the Madison Police Department and shall cooperate with any investigation of the same.
9. The IT Director has the authority to grant limited exceptions to this policy. Such exceptions shall take into account the principles of information and infrastructure security and such exceptions shall be granted in writing only.

The Role of the Office of the City Attorney

Use of social media raises several legal issues. First, the City must comply with the Wisconsin Public Records laws and Open Meetings laws. Unfortunately, these laws have not been substantially updated since long before social media and the internet became available. Thus, close consultation with the City Attorney may be required when employing social media so as to appropriately address public records and open meetings considerations.

Second, use of social media may implicate First Amendment freedom of speech considerations. When the City opens up a public forum, that is to say, when the City creates a place to exercise freedom of speech rights, the City can only place viewpoint neutral, time, place and manner restrictions on participant's speech. In other words, the government cannot ban nor otherwise interfere with speech that it does not like or that it simply disagrees with. However, when the City creates a more limited forum the City enjoys far broader authority to restrict the conduct and speech of those people using that forum. In a limited public forum, government may restrict the content of public speech or may ban such speech altogether.

The City employs social media for the express and limited purposes of communicating the City's various messages, its vision of the City and for receiving certain limited communications from the public. The City employs social media in order to promote the City's government speech³ and to allow the public a limited venue in which to communicate with the City. The City thus does not intend to create any open public forums for expressive activity. The City intends to monitor and where appropriate remove or restrict content that is inconsistent with or in violation of this policy.

Therefore, the City Attorney shall:

1. Review each application for the use of social media and provide the applicant and the IT Director with feedback/recommendations concerning the proposed use of social media.
2. Ensure that, consistent with sec. 3.70(3)(b)9, MGO, the City's use of social media complies with applicable public records laws and retention schedules.
3. Ensure that each application reflects consideration of the First Amendment principles at issue in the use of that particular social media and appropriately avoids creating public forums.
4. Conduct appropriate training in the legal issues associated with the usage of social media, such training to be conducted in coordination with the social media training provided by the IT Director.

The Role of Council Members

Common Council members may suggest appropriate social media opportunities that will advance the City's ability to communicate with the public. The goal of this policy is to promote, not to inhibit, the orderly and appropriate use of social media.

1. A Common Council member that identifies a social media opportunity must have approval of the Common Council Organizational Committee to pursue an application for such use with the IT Director.
2. If the Common Council Organizational Committee approves such requests, the Common Council member shall submit an application to the IT Director that sets forth:
 - a. The identity of the social media;
 - b. The name, title and contact information for the staff person(s) responsible for working with IT staff;
 - c. The purpose and benefits of utilizing the social media;
 - d. Any rules the Department/Division has developed regarding the use of the social media.
3. All usage of social media shall comply with the City's Ethics Code and all applicable laws.
4. All social media sites and tools shall contain a clear and conspicuous notice to users that the City is using the medium as a means of communicating with the public on the limited subject matter at hand. Furthermore, this notice shall inform the user that once posted; the City reserves the right to delete, at its discretion, any submission that contains:

³ See Pleasant Grove City, Utah v. Summum, 129 S.Ct.1125, 172 L.Ed.2d 853 (2009).

- Spam, advertising or include links to other sites that would not be permitted under the City's Web Linking Policy [APM 3-13](#).
- Endorsement or opposition of political campaigns (applies to Federal, State, Local and/or personal aldermanic campaigns)
- Irrelevant to or off topic content as compared to the particular purpose the social media is being used to communicate about.
- Content that promotes, fosters, or perpetuates discrimination in violation of the Madison Equal Opportunities Ordinance, sec. 39.03, MGO (see Appendix B).
- Sexual content or links to sexual content or that advocates, encourages or promotes illegal activity of any kind.
- Commercial advertisements or otherwise promotes or solicits commerce, particular services, products, or political candidates, causes and/or organizations.
- Content that infringes upon or violates any copyrights, trademarks or legal ownership interests of any other party.
- Information that may tend to compromise the safety or security of an individual or the public.
- Content that violates any City of Madison policies or any local, state or federal laws.
- Vulgar or profane language, personal attacks of any kind, or offensive comments that target or disparage any ethnic, racial, or religious group.

All social media sites and tools shall also contain a clear and conspicuous notice to users that comments posted to the social media constitute public records subject to disclosure under the Wisconsin Public Records Laws. Such notice, whenever possible, shall appear in such a manner so that a person must view and/or acknowledge the notice prior to posting their comments. These notices may be posted by hyperlink. Anytime content is removed because of a violation of these rules, the person removing such content shall retain a copy of the removed content and where possible, shall include the date time and identity of the poster.

5. Common Council members are responsible for keeping their social media presence fresh and current.
6. Common Council members are responsible for responding completely and accurately to any request for public records related to their social media presence.
7. Common Council members should be aware that social media often contains the capacity for direct communications such as chat, instant messaging and text messaging that are very similar to email. However, such means of communication are not captured in the City's searchable email archive database. Therefore, if the social media contains such features the Council members shall comply with the requirements of sec. 3.70(3)(b)9, MGO or forgo/disable the use of such communication tools.
8. Social media shall not be used to avoid duties and responsibilities imposed by the Wisconsin Public Records Laws and/or Open Meetings Laws.
9. Common Council members should be mindful that for most of the public, these social media venues might be their only contact with the City. Thus, communications on social media should be respectful and professional. Care should be taken to ensure that content is accurate, informative and timely.

10. Avoid disclosing or posting any information that would compromise the health, safety or security of any person, group, organization, building or facility.
11. Whenever posting links to or on a page/site with links to external sources the Common Council member shall include the following disclaimer:

“The City of Madison, Wisconsin is not responsible for the content provided on "related" and "promoted" links that are accessible from this page. All viewers should note that these related links, videos, content and comments expressed on them do not reflect the opinions and position of City of Madison government or its officers and employees.”

Photo Permission & Copyrights

(Memo from Katherine Noonan, Assistant City Attorney dated July 28, 2011)

Using photographs and/or published material on Alderperson pages of the City’s website implicates both the right to privacy and issues of intellectual property, e.g., copyright.

> Right of Privacy

Wisconsin did not have a right of privacy statute until 1979. The current law, Wis. Stat. §995.50, is modeled on Restatement (Second) of Torts and both recognizes a right of privacy and provides relief for one whose privacy is invaded. Wis. Stats. §995.50(2) specifies that “invasion of privacy” means:

- (a) Intrusion upon the privacy of another of a nature highly offensive to a reasonable person, in a place that a reasonable person would consider private or in a manner which is actionable for trespass.
- (b) The use, for advertising purposes or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained the written consent of the person or, if the person is a minor, of his or her parent or guardian.
- (c) Publicity given to a matter concerning the private life of another, of a kind highly offensive to a reasonable person, if the defendant has acted either unreasonably or recklessly as to whether there was a legitimate public interest in the matter involved, or with actual knowledge that none existed. It is not an invasion of privacy to communicate any information available to the public as a matter of public record.
- (d) Conduct that is prohibited under s. 942.09, regardless of whether there has been a criminal action related to the conduct, and regardless of the outcome of the criminal action, if there has been a criminal action related to the conduct. (s. 942.09 is titled, Representations depicting nudity.)

As guidance for determining whether an invasion of privacy has occurred, Wis. Stat. §995.50(3) states that:

“The right of privacy recognized in this section shall be interpreted in accordance with the developing common law of privacy, including defenses of absolute and qualified privilege, with due regard for maintaining freedom of communication, privately and through the public media.”

There is little reported Wisconsin case law applying or interpreting Wis. Stat. §995.50, however, many jurisdictions model their legislation on the same Restatements provision and are similarly guided by common law.

Although (2)(b) above relates specifically to photographs, privacy violations under (2)(a) and (c) also may occur from the use of photographs. General questions to ask when contemplating putting a photograph on a web page are: 1) is the method/context of taking the photograph an invasion of privacy? (Wis. Stat. §995.50(2)(a)); 2) is the photograph used in a way that is an invasion of privacy? (Wis. Stat. §995.50(2)(b)); and 3) is information conveyed to others by a photograph an invasion of privacy? (Wis. Stat. §995.50(2)(c)). I will discuss each issue below.

1. Wis. Stat. §995.50(2)(a) - Method/Context – Intrusion in a Private Place.

As a general rule, taking photographs in a public place, even without consent, is not an invasion of privacy. *Ladd v. Uecker*, 2010 WI App 28 (photographing a problem attendee at Major League baseball parks); *Berg v. Minneapolis Star & Tribune Co.*, 79 F.Supp. 957 (1948, DC Minn) (photographing a party to a divorce during an open court proceeding); *Forster v. Manchester*, 189 A2d 147 (1963) (surveillance on a public street of a claimant on automobile insurance policy); *Munson v. Milwaukee Board of School Directors*, 969 F.2d 266 (7th Cir., 1992) (surveillance from a public street of a school district employee suspected of residency violation).

A photograph taken in a place that a reasonable person would consider private, however, such as a person's home, may be an invasion of privacy if done so "in a nature highly offensive to a reasonable person." Sec. 995.50(1)(a). Surreptitious videotaping of woman in her bedroom by her husband was an invasion of privacy. *In re Marriage of Tigges and Tigges*, 758 NW2d 824 (Iowa 2008). The Iowa Supreme Court held that videotaping his wife in a place where she had an expectation of privacy was "highly offensive to a reasonable person", and that it was irrelevant that no compromising behavior was recorded. *Id.* at 830. Recording voices of neighbors from outside the boundary of the neighbors' property was not an invasion of privacy. *Poston v. Burns*, 2010 WI App 73. The court determined that recording voices on neighboring property with a recorder on a window sill of one's own home was not an intrusion a reasonable person would consider highly offensive. *Id.* at ¶28.

In all cases, consent to being photographed generally is an absolute defense to an allegation of invasion of privacy, even when a photograph is taken in a place a reasonable person would consider to be private.

Before posting a photograph on a web page, it is important to determine that the photograph was taken in an appropriate context and, if necessary, whether or not the subject of the photograph consented to being photographed. In addition to right of privacy concerns, it may be prudent to consider safety, or other issues before using photographs. For example, even though posting a photograph of a child in a public location may not be an invasion of privacy, parents may not want images of their children displayed in such a manner. Obtaining consent to use photographs of this nature may be a wise option.

2. Wis. Stat. §995.50(2)(b) - Use/Misappropriation

Although this subsection relates to the use of photographs, the right of privacy it addresses is more of a property right than an issue of personal identity. Just prior to the effective date of Wis. Stat. §995.50, the Wisconsin Supreme Court decided *Hirsch v. S.C. Johnson, Inc*, 90 Wis.2d 379 (1979). In that case, S.C. Johnson marketed a shaving gel for women called "Crazylegs",

even though it knew that Elroy Hirsch was nicknamed “Crazylegs” and had not obtained Hirsch’s permission. Because the court found that Hirsch had a cause of action under common law, the decision informs the analysis of this subsection of the right of privacy statute. The court found evidence that a jury could conclude that the “Crazylegs” name had commercial value. A Michigan court similarly found commercial exploitation when a company marketed portable toilets called “Here’s Johnny”. *Carson v. Here’s Johnny Portable Toilets, Inc.*, 698 F.2d 831 (6th Circ.).

This type of privacy violation typically occurs in a commercial context because it requires that a photograph is used for advertising or trade purposes. For that reason, it is not likely to be an issue with an alderperson’s web page. It is unclear, however, whether non-commercial promotion could be considered “advertising”, therefore, any use of a photograph or language with a known commercial identification should be considered carefully. If use of photographs were considered to be related to a political campaign to benefit the user, a court might view it similarly to the commercial use in Hirsch. Finally, use of photographs under this section requires the written consent of the person(s) represented in the photograph, or in the case of minors, permission of a parent or guardian.

3. Wis. Stat. §995.50(2)(c) - Publicity and Private Facts

A violation of this provision requires publicity of private facts that would be highly offensive to a reasonable person of ordinary sensibilities, by a person who unreasonably or recklessly fails to consider whether there is legitimate public interest in the publicity. *Zinda v. Louisiana Pacific*, 149 Wis.2d 913 (1989). Determination of this type of privacy violation is very fact-specific.

Publicity means to disclose a matter to the public at large or to a limited number if such disclosure would likely become public knowledge. Examples of publicity include disclosure of prisoner’s HIV status to jail employees and inmates (*Hillman v. Columbia County*, 164 Wis.2d 379 (Ct. App. 1991)); disclosure in a company’s newsletter of employee’s termination for falsifying employment forms (*Zinda v. Louisiana Pacific*, 149 Wis.2d 913 (1989)); EMT’s disclosure of the basis for an emergency call to only one person, when that person was known to have “loose lips” (*Pachowitz v. LeDoux*, 265

Wis.2d 631 (Ct. App. 2003). A violation does not require that the publicity result in any specific mental or emotional distress. *Marino v. Arandell Corporation*, 1F.Supp.2d 947 (E. D. Wisc. 1998). There is little doubt that posting a photograph or other personal information on a web page could be publicity.

Private facts are those personal facts that individuals wish to keep to themselves or share with limited persons in their lives, however, the privacy law does not shield the hypersensitive from a typical level of public exposure. *Zinda v. Louisiana Pacific Corporation*, 149 Wis.2d at 929-930. Private facts may include health care status and treatment, basis for employment termination, financial account information, and sexual relationships. *Hillman v. Columbia County*, 164 Wis.2d 379 (Ct. App. 1991); *Zinda v. Louisiana Pacific*, 149 Wis.2d 913 (1989); *Pontbriand v. Sundlun*, 669 A.2d 856 (R.I. 1977); and *Ozer v. Borquez*, 940 P.2d 371 (Colo. 1997). This type of privacy violation typically involves written or spoken communication, however, it is possible that a private fact could be communicated by a photograph. It is important to note that a private fact that is accessible as a public record is not protected by this law.

A privacy violation under this subsection also requires that the publicity and private fact be “highly offensive to a reasonable person”. Generally, if the associated publicity of a private fact

made public would make a person feel seriously aggrieved, this element of the violation is met. *Zinda v. Louisiana Pacific Corporation*, 149 Wis.2d at 930.

> Copyright and Web Pages

As a general rule, use of another's intellectual property implicates copyright law, whether it involves use of a photograph or other image, or a written, audio, or visual product. The intellectual property of another need not have formal copyright registration to be protected, and material on the internet is considered "published" intellectual property.

Some use of copyrighted work without permission is allowed under the Fair Use doctrine. 17 USCA §107. Determination of fair use is based on four considerations.

- a. The purpose and character of the use. Commercial use is less favored than personal, nonprofit, and educational use are more favored.
- b. The nature of the use. Creative work is favored over more fact-based work.
- c. The amount of work used. Although there is no absolute limit, the less work used, the more likely it will fall under the fair use exception.
- d. The effect on the market for or value of the work. The more a use negatively impacts the market and value, the less likely it is to be considered fair use.

One way in which internet use has dealt with the issue of copyright infringement is through the use of linking. Linking, however, is not without risk. Always make sure that the identity of the owner is clear, and remove information if and when an owner requests. Also, links should go directly to the site of the work. Don't make a link open into a frame showing your own identity or site name as it may confuse a reader as to the ownership of the work. If you link to a page other than the home page of another site, try to include a link to the home page.

If use of copyrighted work does not fall under the fair use exception or is not done through linking, it is important to obtain permission for use. For example, a variety of art exists on the internet, some of which is free, other is free as long the user has purchased the software containing the art and uses it in the manner allowed by the software owner (e.g., Claris Home Page, Microsoft Front page, Adobe PageMill). In addition, there are sites that contain licensed art and require permission for use. These site often have an agreement online. Such agreements should be avoided because they typically require the user to indemnify the site against copyright infringement and such indemnification requires Common Council approval.

In conclusion, if you want to include on your page on the City website photographs or other intellectual property that does not belong to you, consider carefully the source of the work, how it was obtained, how you intend to use it, and whether permission is required for its use. Finally, the City's [APM No. 3-13](#), which is titled, **Web Linking Policy, should be followed.**

Review & Appeal Procedure

The IT Director shall respond to complaints/inquiries at the point of contact and may, in consultation with the Common Council President, edit or remove any presence or content that violates any provision of this or any other policy or law.

If the Common Council member disagrees with the determination made by the IT Director and Common Council President, the Common Council member may appeal to the Common Council Organizational Committee for review. The Common Council Organization Committee's decision shall be final. Any action taken by the Common Council Organizational Committee may be used as a guideline to be incorporated into the Common Council Social Media Policy.

APPENDIX A

Sec. 3.70(3)(b)9 MGO

9. Emerging Technologies and Records Retention – As new information technologies emerge the Director of Information Technologies shall evaluate these technologies and their benefit to City operations. The Director shall consider whether any of these technologies provide the capacity to archive public records created by these technologies. Whenever it is economically and practically feasible to archive records created by such technologies that archiving shall be incorporated into any deployment of said technologies. Whenever the technologies do not provide for such archiving capabilities the Director of Information Technology shall consider whether the benefits of employing such technologies outweigh the risks that some public records may not be retained by deployment of such technologies. Where such benefits outweigh these risks City employees shall refrain from using such technologies for official communications purposes or for matters that would result in a public record if another format such as email or written communications were employed. In the event that such technologies are used for such communications purposes the employee shall preserve a copy of such communications by either copying them to their email account, downloading the communications to their city computer, making a computer file of the communications or by printing and retaining a copy of such communications. The Director shall also ensure that, as soon as practical and economically feasible, archiving systems are obtained for any information technology that is deployed without an archiving system.

39.03 EQUAL OPPORTUNITIES ORDINANCE.

- (1) Declaration of Policy. The practice of providing equal opportunities in housing, employment, public accommodations and City facilities to persons without regard to sex, race, religion, color, national origin or ancestry, citizenship status, age, handicap/disability, marital status, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, or status as a victim of domestic abuse, sexual assault, or stalking is a desirable goal of the City of Madison and a matter of legitimate concern to its government. Discrimination against any of Madison's residents or visitors endangers the rights and privileges of all. The denial of equal opportunity intensifies group conflict, undermines the foundations of our democratic society, and adversely affects the general welfare of the community. Denial of equal opportunity in employment deprives the community of the fullest productive capacity of those of its members so discriminated against and denies to them the sufficiency of earnings necessary to maintain the standards of living consistent with their abilities and talents. Therefore, as a proper function of City government the City of Madison has provided in Sec. 39.02 for affirmative action in City employment to safeguard against discrimination. Denial of equal opportunity in housing compels individuals and families who are discriminated against to live in dwellings below the standards to which they are entitled. Denial of equal opportunity in public accommodations subjects those discriminated against to embarrassment and creates distress and unrest within the community. Provision for adequate safeguards against such discrimination is a proper and necessary function of City government. In order that the peace, freedom, safety and general welfare of all inhabitants of the City may be protected and ensured, it is hereby declared to be the public policy of the City of Madison to foster and enforce to the fullest extent the protection by law of the rights of all of its inhabitants to equal opportunity to gainful employment, housing, and the use of City facilities and public accommodations without regard to sex, race, religion, color, national origin or ancestry, citizenship status, age, handicap/disability, marital status, source of income, arrest record, conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student status, domestic partnership status, or status as a victim of domestic abuse, sexual assault, or stalking. To fully effectuate this policy of promoting nondiscrimination, the City shall endeavor to eliminate all discrimination that may occur in its own employment, housing, and public accommodation practices and in the use of City facilities. By adopting Sec. 39.05 of these ordinances, the Common Council has attempted to make sure that City facilities and programs that receive City financial assistance are accessible to all persons, including persons with disabilities. The City will deal positively and constructively with all claims of discrimination filed against it through utilization of the procedures outlined in this ordinance. (Am. by Ord. 10,556, Adopted 12-15-92; ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (2) Definitions.
 - (a) Age. The prohibition against discrimination because of age shall not apply to any person less than eighteen (18) years of age.
 - (b) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
 - (c) Arrest record includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.
 - (d) Citizenship Status means the immigration status and/or citizenship of any person.
 - (e) City facilities includes all property owned and services rendered by the City for the welfare of its inhabitants.

- (f) Commercial facilities means facilities that are intended for nonresidential use and whose operation will affect commerce use. The term “commercial facilities” does not include buildings or parts of buildings not open to and not reasonably expected to be open to the public, railroad locomotives, railroad freight cars, railroad cabooses, railroad cars described in 42 U.S.C. 12162 and covered under 42 U.S.C. 12181 et seq, railroad rights-of-way, or facilities that are covered or expressly exempted from coverage under Sec. 39.03(4) of the Madison General Ordinances, and types of facilities that are specifically exempted under Sec. 101.13(2) of the Wisconsin Statutes.
- (g) Conviction record includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority. In addition, “conviction record” as used in Sec. 39.03(4)(d), relating to discrimination in housing, shall also include information indicating that a person has been convicted of a civil ordinance violation (forfeiture). (Am. by Ord. 12,501, 11-19-99; Reconsidered & Adopted by Ord. 12,561, 4-7-00)
- (h) Covered multifamily dwellings means
1. Buildings consisting of three (3) or more units if such buildings have one or more elevators; and
 2. Ground floor portions of units in other buildings consisting of three (3) or more units.
- (i) Credit history information provided in a consumer report as defined in 15 USC 1681a(d).
- (j) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
- (k) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
- (l) Dependent means one who lives with a domestic partnership and is:
1. A biological child of a domestic partner; or
 2. A dependent as defined under IRS regulations; or
 3. A ward of a domestic partner as determined in a guardianship proceeding; or
 4. A person adopted by a domestic partner.
- (m) Disability means, with respect to a person,
1. A physical or mental impairment which substantially limits one or more of such person’s major life activities; or
 2. A record of having such an impairment; or
 3. Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)).
 4. The term also includes the term “handicap” as used in local, state and federal statutory, administrative or judicial case law.
- (n) Domestic partner means those adults in a domestic partnership.
- (o) Domestic partnership means two adults and their dependents, if any, which satisfy the following requirements:
1. They are in a relationship of mutual support, caring and commitment and intend to remain in such a relationship in the immediate future; and
 2. They are not married (unless they are married to each other) or legally separated and, if either party has been a party to an action or proceeding for divorce or annulment, at least six (6) months have elapsed since the date of the judgment terminating the marriage; and
 3. Neither domestic partner is currently registered in a domestic partnership with a different domestic partner and, if either partner has previously been registered as a domestic partner in a domestic partnership, at least six (6) months have elapsed since the effective date of termination of that registration; and

4. Both are 18 years of age or older; and
 5. Both are competent to contract; and
 6. They are occupying the same dwelling unit as a single, nonprofit housekeeping unit, whose relationship is of permanent and distinct domestic character; and
 7. They are not in a relationship that is merely temporary, social, political, commercial or economic in nature.
- (p) Employees does not include any individual employed by her/his parents, spouse, or child.
- (q) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
- (r) Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.
- (s) Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with
1. A parent or another person having sole or joint legal custody or physical placement, as defined in Wis. Stat. § 767.001, of such individual(s); or
 2. The designee of such parent or other person having such custody or physical placement, with the written permission of such parent or other person; or
 3. A foster parent or other person with whom a person under the age of 18 years is placed by court order.
- The protections afforded against discrimination based on familial status shall apply to any person who is pregnant or is in the process of securing sole or joint legal custody or physical placement of any individual who has not attained the age of 18 years.
4. The domestic partner of a parent or another person having sole or joint legal custody or physical placement, as defined in Wis. Stat. § 767.001 of such individual(s).
- (t) Gender identity is the actual or perceived condition, status or acts of 1) identifying emotionally or psychologically with the sex other than one's biological or legal sex at birth, whether or not there has been a physical change of the organs of sex; 2) presenting and/or holding oneself out to the public as a member of the biological sex that was not one's biological or legal sex at birth; 3) lawfully displaying physical characteristics and/or behavioral characteristics and/or expressions which are widely perceived as being more appropriate to the biological or legal sex that was not one's biological or legal sex at birth, as when a male is perceived as feminine or a female is perceived as masculine; and/or 4) being physically and/or behaviorally androgynous. (Cr. by Ord. 12,686, 10-9-00)
- (tt) Genetic identity means the genetic information unique to the individual, including information regarding:
1. such individual's genetic tests,
 2. the genetic tests of family members of such individual,
 3. the manifestation of a disease or disorder in family members of such individual, and
 4. any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual.
 5. The term 'genetic identity' shall not include information about the sex or age of any individual.

- (TT) The term `genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes. The term `genetic test' does not mean:
1. an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or
 2. an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved; or
 3. any genetic testing, to include DNA testing, conducted specifically for law enforcement agencies investigative purposes or for the purpose of determining paternity.
- (u) Housing means any building, structure, or part thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as a residence, home or place of habitation of one or more human beings, including a mobile home as defined in Section 66.0435 of the Wisconsin Statutes and a trailer as defined in Section 9.23 of the Madison General Ordinances and any land for sale, lease or use as a site for a building, structure or part thereof intended or designed to be used or occupied as a residence, home or place of habitation of one or more human beings, including a mobile home park as defined in Section 66.0435 of the Wisconsin Statutes and a trailer camp as defined in Section 9.23 of the Madison General Ordinances. Such definition of “housing” is qualified by the exceptions contained in Section 39.03(4)(a).
- (v) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
- (w) Labor organization includes any collective bargaining unit composed of employees.
- (x) Less than honorable discharge means any general, undesirable, clemency, bad conduct or dishonorable discharge from the military service.
- (y) Marital status includes being married, separated, divorced, widowed, or single.
- (z) Mutual support means that the domestic partners contribute mutually to the maintenance and support of the domestic partnership throughout its existence.
- (aa) Person means one or more individuals, labor unions, partnerships, associations, corporations, cooperatives, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers or other fiduciaries, and shall include the City of Madison, and the agent or agents of any of the foregoing.
- (bb) Physical appearance means the outward appearance of any person, irrespective of sex, with regard to hairstyle, beards, manner of dress, weight, height, facial features, or other aspects of appearance. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed attire, if and when such requirement is uniformly applied for admittance to a public accommodation or to employees in a business establishment for a reasonable business purpose.
- (cc) Political beliefs means one’s opinion, manifested in speech or association, concerning the social, economic and governmental structure of society and its institutions. This ordinance shall cover all political beliefs, the consideration of which is not preempted by state or federal law.

- (dd) Public place of accommodation or amusement includes those accommodations, facilities and services that a person holds out to be open to the common and general use, participation and enjoyment of the public for any purpose. The term “public place of accommodation or amusement” shall be interpreted broadly to include, but not be limited to, places of business or recreation, hotels, motels, resorts, restaurants, taverns, barber or cosmetologist, aesthetician, electrologist or manicuring establishments, nursing homes, clinics, hospitals, cemeteries, and any place where accommodations, amusements, goods or services are available either free or for a consideration, except where such a broad interpretation would deny to any person rights guaranteed by the constitutions of Wisconsin and of the United States.
- Public place of accommodation or amusement does not include a place where a bona fide private, nonprofit organization or institution provides accommodations, amusement, goods or services during an event at which the organization or institution provides the accommodations, amusement, goods or services to the following individuals only:
1. Members of the organization or institution.
 2. Guests named by members of the organization or institution.
 3. Guests named by the organization or institution.
- (ee) Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:
1. The nature and cost of the action needed under this Ordinance;
 2. The overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
 3. The overall financial resources of the person who owns or operates the facility; the overall size of the business with respect to the number of its employees; the number, type and location of its facilities; and
 4. The type of operation or operations of the person who owns or operates the facility, including the composition, structure, and functions of the workforce of such person; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question.
- (ff) Religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates inability to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.
- (gg) “Sexual harassment” means unwelcome sexual advances; unwelcome requests for sexual favors; unwelcome physical contact of a sexual nature; or unwelcome verbal or physical conduct of a sexual nature which shall include, but not be limited to, deliberate or repeated unsolicited gestures, verbal or written comments, or display of sexually graphic materials which is not necessary for business purposes. “Sexual harassment” includes conduct directed by a person at another person of the same or opposite gender.
- (hh) Sexual orientation is the sexual or loving attraction to another person or the complete absence thereof to any other person. This attraction can span a non-static continuum from same-sex attraction at one end to opposite-sex attraction to an absolute lack of attraction to any gender. (Am. by Ord. 12,686, 10-9-00)
- (ii) Source of income includes, but shall not be limited to, moneys received from public assistance (including rental assistance under Title 24 Code of Federal Regulations Subtitle B, Chapter VII, commonly known as the “Section 8 housing” program), pension, and Supplementary Security Income (SSI). Source of income shall be limited to legally derived income.

- (jj) Student means a person who is enrolled in a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program.
- (kk) Transfer does not apply to the transfer of property by will or gift.
- (ll) Protected class membership means a group of natural persons, or a natural person, who may be categorized because of their ability to satisfy the definition of one or more of the following groups or classes: sex, race, religion, color, national origin or ancestry, citizenship status, age, handicap/disability, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, genetic identity, political beliefs, familial status, student, domestic partner.
- (mm) Victim of domestic abuse, sexual assault or stalking means the status of a person who is seeking to rent or purchase housing or of a member or prospective member of the person's household having been, or being believed by the lessor or seller of housing to be, a victim of domestic abuse, as defined in Wis. Stat. § 813.12(1)(am); sexual assault as defined in Wis. Stat. § 940.225, 948.02, or 9148.015; or stalking as defined in Wis. Stat. § 940.32 or of a crime prohibited by Wis. Stat. ch. 948.

(Am. by Ord. 10,556, Adopted 12-15-92; Ord. 12,039, 2-17-98; ORD-10-00096, 10-14-10)

(3) Reserved For Future Use. (Am. by Ord-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

(4) Housing. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person having the right of ownership or possession or the right of transfer, sale, rental or lease of any housing, or the agent of any such person:

- (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, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or status as a victim of domestic abuse, sexual assault, or stalking; (Am. by Ord. 13,708, 10-12-04; ORD-07-00016, 2-22-07; ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (b) To make or cause to be made any written or oral inquiry or record concerning the nature of any disability of prospective occupants or tenants of such housing, or persons associated with them, unless such inquiry or record is necessary for compliance with applicable local, state, or federal law or; (Am. by Ord. 10,605, 3-19-93)
- (c) To falsely represent that a dwelling is not available for inspection, sale, or rental because of such person's protected class membership 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. (Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

(d) To discriminate against any person because of such person's protected class membership the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law 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. (Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

1. Exclusions for Certain Convictions. This ordinance does not prohibit eviction or refusal to rent or lease residential property because of the conviction record of the tenant or applicant or a member of the tenant's or applicant's household, if the circumstances of the offense bear a substantial relationship to tenancy. The phrase "circumstances of any offense(s) bear a substantial relationship to tenancy" means the offense is such that, given the nature of the housing, a reasonable person would have a justifiable fear for the safety of landlord or tenant property or for the safety of other residents or employees. Provided that the circumstances of the offense bear a substantial relationship to tenancy, such offenses may include but are not limited to the following:
 - a. disorderly conduct involving disturbance of neighbors,
 - b. disorderly conduct involving destruction of property,
 - c. at least two or more misdemeanor drug-related convictions related to the manufacture, delivery or sale of a controlled substance or any drug-related felonious criminal activity,
 - d. criminal activity involving violence to persons such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon;
 - e. criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling;
 - f. at least two or more civil ordinance violation (forfeiture) convictions within a twelve (12) month period for violations relating to disturbance of neighbors or injury to persons or property.

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.

2. Time Limits on Exclusions. The exclusion for certain convictions shall not apply if more than two (2) years have elapsed since the applicant or member of the tenant's or applicant's household was placed on probation, paroled, released from incarceration or paid a fine for offenses set forth in Paragraph 1. unless the offense is one which must be reported under the Sex Offender Reporting Requirement of Wis. Stat. § 973.048.
3. Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)

4. Mandatory Recordkeeping Procedures. Notwithstanding the provisions contained in Paragraph 1. above, a person may not refuse to rent or lease residential property because of the conviction record of the applicant or a member of the applicant's household unless the person complies with all of the following:
- a. uses a written, uniform inquiry process established for legitimate non-discriminatory business reasons,
 - b. applies such process uniformly
 - c. advises applicants in writing at the time of application that the screening process may include a conviction record check,
 - d. advises an applicant in writing at the time of denial, if refusal to rent is based in whole or in part on the conviction record of the applicant or a member of the applicant's household,
 - e. keeps all applications, whether accepted or rejected, for at least two (2) years, along with a record of reasons for rejection, recorded in a uniform manner.

In order to be considered uniform, a written inquiry process must be applied by a person to all properties under her/his ownership or control; except that where a person controls several properties on behalf of two or more different owners that person shall use the same written inquiry process for all such properties unless an individual owner has established a separate uniform process for her/his own properties and requires its use.

- f. In the event a formal complaint of discrimination is made to the EOC, the landlord shall make available for inspection and permit the Equal Opportunities Division Head or his/her designee to inspect during normal business hours all documents identified in Subparagraphs a. through e. above. The Equal Opportunities Division Head or his/her designee shall promptly conduct such inspection for the sole purpose of determining compliance with this subsection on conviction records. Any person who fails or refuses to allow such inspection(s) or who fails to maintain or retain required records shall be in violation of this ordinance and, upon conviction, shall be subject to a forfeiture as provided in Section 39.03(15) of the Madison General Ordinances. (Am. by ORD-06-00078, 6-30-06)
- g. This paragraph is not intended to prohibit or restrict a current or new owner of property from instituting a conviction record screening policy at any time during his/her ownership of a property so long as it is applied uniformly to all similarly situated individuals and otherwise complies with this subsection.
- h. This paragraph is not intended to impose liability on a new owner of a property for actions or omissions of the former owner related to this paragraph, except to the extent the new owner continues the practice under his/her ownership.

5. No private cause of action. Except for claims by or on behalf of individuals protected from prohibited discrimination hereunder, the Common Council does not intend this Subdivision, 39.03(4)(d), to create a private right of action based upon a claim of personal injury or property damage arising from a landlord's good faith compliance with this Subdivision. This provision is not intended either to expand or to limit rights provided by local, state or federal equal opportunities laws. (Am. by Ord. 12,637, 7-7-00)

(Sec. 3.23(4)(d) Am. by Ord. 11,224, 4-13-95; Ord. 12,501, 11-19-99; Reconsidered & Adopted by Ord. 12,561, 4-7-00)

- (e) Nothing in this ordinance shall affect any person's decision to share occupancy of a lodging room, apartment or dwelling unit with another person or persons. For purposes of this subdivision, the terms lodging room, apartment, and dwelling unit have the meaning contained in Sec. 27.03 of these ordinances.
- (f) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)
- (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, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or status as a victim of domestic abuse, sexual assault, or stalking. (Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (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, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law 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. (Sec. 3.23(4)(h) R. and (i) Renumbered to (h) by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

- (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, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or status as a victim of domestic abuse, sexual assault, or stalking. (Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (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, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law 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:
1. The making or purchasing of loans or providing other financial assistance
 - a. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - b. Secured by residential real estate.
 2. The selling, brokering, or appraising of residential real property.

Nothing in this section prohibits a person engaged in the business of making or furnishing appraisals of residential real property from taking into consideration factors other than protected class membership, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or status as a victim of domestic abuse, sexual assault or stalking.
- (Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (k) In this subsection, prohibited discrimination includes discrimination because of the protected class membership, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or status as a victim of domestic abuse, sexual assault, or stalking of:
1. The buyer, renter, or applicant; or
 2. A person residing in or intending to reside in a dwelling after it is sold, rented, or made available.
- (Am. and Renumbered by Ord. 12,039, Adopted 2-17-98; ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)
- (l) For purposes of this subsection, discrimination includes:
1. A refusal to permit, at the expense of the person with a handicap/disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; provided:
 - a. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the conditions that existed before the modification, reasonable wear and tear excepted; but only if the modifications limit usability of the premises by future tenants. The landlord may not increase, for persons with a handicap/disability, any customarily required security deposit.

- b. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained; or
 - c. Landlords may require escrow accounts where it is necessary in order to insure, with reasonable certainty, that funds will be available to pay for the restorations at the end of the tenancy. The landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account over a reasonable period (not to exceed the length of the lease), a reasonable amount of money, not to exceed the cost of restorations. The interest in any such account shall accrue to the benefit of the tenant. Failure by the landlord to utilize escrow funds for restoration of the premises within ninety days of the termination of the tenancy constitutes a forfeiture of the escrow fund, which shall revert to the tenant.
 - d. A landlord may not require further restoration if the modifications satisfy either Uniform Federal Accessibility Standards or ILHR 52.04, Wis. Admin. Code.
 - e. No landlord may require the restoration of modifications made to public and common use portions of the premises if the modification was necessary to make those portions readily accessible to and usable by persons with handicaps/disabilities.
2. A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with a handicap/disability equal opportunity to use and enjoy a dwelling; or
3. In connection with the design and construction of covered multifamily dwellings as defined in 24 C.F.R. Sec. 100.201 for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:
- a. The dwellings have at least one building entrance on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site;
 - b. With respect to dwellings with a building entrance on an accessible route:
 - i. The public use and common use portions of such dwellings are readily accessible to and usable by handicapped/disabled persons with disabilities;
 - ii. All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons in wheelchairs; and
 - iii. All premises within such dwellings contain the following features of adaptive design:
 - A. An accessible route into and through the dwelling;
 - B. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - C. Reinforcements in bathroom walls to allow later installation of grab bars; and
 - D. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(Am. by ORD-06-00099, 8-2-06)

4. Paragraph 3. applies to covered multi-family dwellings, as defined in Subsec. (2)(g) of this ordinance, designed and constructed for first occupancy after thirty (30) months after the date of enactment of this ordinance.
5. Compliance with either the Uniform Federal Accessibility Standards, or ILHR 52.04, Wis. Admin. Code, whichever standard provides the greater degree of accessibility, shall constitute compliance with paragraph 3.

(Renumbered by Ord. 12,039, Adopted 2-17-98)

- (m) The prohibition in this section against protected class membership discrimination based on age and familial status does not apply to housing for older persons.
 1. As used in this subdivision, housing for older persons means housing
 - a. Provided under any state or federal program that is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or
 - b. Intended for, and solely occupied by, persons 62 years of age or older; or
 - c. Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing for older persons under this paragraph shall contain at least the following factors:
 - i. Significant facilities and services specifically designed to meet the physical or social needs of older persons, as those are defined in Sec. 101.22(1m)(u) Wis. Stats. (1991-92).
 - ii. All of the units are occupied by at least one person 55 years of age or older; provided that, if the qualifying tenant ceases to reside in the unit, the remaining occupants may not be required to vacate the unit, as long as at least 80% of all the units are occupied by at least one person 55 years of age or older.
 - iii. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
 2. Housing shall not fail to meet the requirements for housing for older persons by reasons of:
 - a. Persons residing in such housing as of September 13, 1988, who did not meet the age requirements of Paragraph 1.b. or c. above, provided that new occupants of such housing meet the age requirements of Paragraph 1.b. or c.; or
 - b. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of Paragraph 1.b. or c. above.

(Renumbered by Ord. 12,039, Adopted 2-17-98; ORD-10-00096, 10-14-10)

- (n) It is not a violation of this ordinance to restrict occupancy in a dwelling to persons with handicaps/disabilities or to provide housing for older persons as such housing is defined above.

(Renumbered by Ord. 12,039, Adopted 2-17-98)

- (o) It is the intention of the Common Council that this subsection be interpreted consistently with Title VIII of the Civil Rights Act of 1968 (42 USC Sec. 3601-3619) as amended, and with regulations applicable thereto (24 CFR Parts 100, 103, 109, 110, 115, and 121) except where the language of this subsection clearly requires a different interpretation.

(Renumbered by Ord. 12,039, Adopted 2-17-98)

(Sec. 3.23(4) Am. by Ord. 10,556, Adopted 12-15-92; Ord. 12,039, Adopted 2-17-98)

(5) Public Place of Accommodation or Amusement. All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any place of public accommodation or amusement, as defined in this ordinance, without discrimination or segregation as to the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law or upon the basis of a person's protected class membership (other than a person's genetic identity). It shall be an unfair discrimination practice and unlawful and hereby prohibited:

- (a) For any person to deny to another, or charge another a different price from the rate charged others for the full and equal enjoyment of any public place of accommodation or amusement because of the person's protected class membership (other than a person's genetic identity) or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law. Organizations which operate public accommodations and which sell memberships based on family status shall provide the same benefits to domestic partnerships as are provided to other families. (Am. by Ord, 10,039, 6-14-90)
- (b) For any person to directly or indirectly publish, circulate, display, mail or otherwise disseminate any written communication which s/he knows is to the effect that any of the facilities of any public place of accommodation or amusement will be denied to any person by reason of her/his protected class membership (other than a person's genetic identity) or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, or that the patronage of a person is unwelcome, objectionable or unacceptable for any of these reasons. (Am. by Ord. 10,039, 6-14-90)
- (c) Subsection (5) does not prohibit special services, rates or benefits provided to any person because she or he is fifty (50) years old or older. (Sec. 3.23(c) R. and (d) Renumbered to (c) by Ord. 12,039, Adopted 2-17-98)

(Sec. 3.23(5) Am. by Ord. 12,039, Adopted 2-17-98; Ord. 13,708, 10-12-04; ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

(6) Access by Persons with Disabilities to Public Accommodations and Commercial Facilities.

- (a) No individual shall be discriminated against on the basis of disability, or because of the known disability of an individual with whom the individual or entity is known to have a relationship or association, in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to another), or operates a place of public accommodation.

1. Denial of Participation. It shall be prohibited discrimination to subject an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity.
 2. Participation in Unequal Benefit. It shall be prohibited discrimination to afford an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals.
 3. Separate Benefit. It shall be prohibited discrimination to provide an individual, on the basis of a disability or disabilities of such individual, directly, or through contractual, licensing, or other arrangements with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.
- (b) Integrated Settings. Goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.
- (c) Opportunity to Participate. Notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.
- (d) Administrative Methods. A person shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration:
1. that have the effect of discriminating on the basis of disability; or
 2. that perpetuate the discrimination of others who are subject to common administrative control.
- (e) Specific Prohibitions. For purposes of Subdivision (a) above, prohibited discrimination includes:
1. The imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;
 2. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantage, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;
 3. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

4. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities where such removal is readily achievable; and
 5. Where an entity can demonstrate that the removal of a barrier under Paragraph 4. is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.
- (f) New Construction and Alterations in Public Accommodations and Commercial Facilities. Except as provided in Subdivision (h), as applied to public accommodations and commercial facilities, discrimination for purposes of Subsection (6)(a) of this ordinance includes:
1. A failure to design and construct facilities for first occupancy later than ninety (90) days after the date of enactment of this ordinance that are readily accessible to and usable by individuals with disabilities, except where a respondent can demonstrate that it is structurally impracticable to meet the requirements of such Subsection.
 2. With respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Where the entity is undertaking an alteration that affects or could affect usability of or access to an area of the facility containing a primary function, the entity shall also make the alterations in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path of travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope.
- (g) Elevator. Subdivision (f) above shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider.
- (h) Exemptions for Private Clubs and Religious Organizations. The provisions of this Subsection (6) of this ordinance shall not apply to private clubs or organizations exempted from coverage under Sec. 39.03(2)(cc) above or to religious organizations or entities controlled by religious organizations, including places of worship, to the extent that requiring compliance would violate state or federal law.

(Cr. by Ord. 12,039, Adopted 2-17-98)

- (7) City Facilities. It shall be an unfair discrimination practice and unlawful and hereby prohibited for any person, public official, employee, agent, agency, authority, board, commission or committee of the City of Madison to deny any person, the use of City facilities or otherwise discriminate against any person in the use of City facilities because of such person's protected class membership or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.

(Renumbered by Ord. 12,039, Adopted 2-17-98; ORD-07-00029, 3-15-07; ORD-10-00096, 10-14-10)

- (8) Employment Practices. It shall be an unfair discrimination practice and unlawful and hereby prohibited:
- (a) For any person or employer individually or in concert with others to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to her/his compensation, terms, conditions, or privileges of employment, because of such individual's protected class membership or credit history or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law. Provided, that an employer who is discriminating with respect to compensation in violation of this subsection, shall not, in order to comply with this subsection, reduce the wage rate of any employee.
 - (b) For any person or employer individually or in concert with others to limit, segregate, or classify his or her employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's protected class membership or credit history; or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.
 - (c) For any employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual on the basis of his or her protected class membership or credit history; or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.
 - (d) For any labor organization:
 - 1. To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his or her protected class membership or credit history or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.
 - 2. To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment, because of such individual's protected class membership or credit history or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.
 - 3. To cause or attempt to cause an employer to discriminate against an individual in violation of this section.
 - (e) For any person or employer, labor organization or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on any protected class membership or credit history or the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law, except that such a notice or advertisement may indicate a preference, limitation, specification or discrimination based on religion, sex, age, handicap, arrest or conviction record or national origin when religion, sex, age, handicap, or national origin is a bona fide occupational qualification for employment or when an employer may lawfully consider or rely upon such arrest or conviction record pursuant to Sections 39.03(8)(i)3. through 39.03(8)(i)6., MGO. (Sec. 3.23(7)(e) R. and (f) Renumbered to (e) by Ord. 8297, 4-5-84; Am. by Ord. 13,339, 6-7-03)

- (f) 1. For any person or employer, employment agency or labor organization to request an applicant, employee, member or any other person, on an application form or otherwise, to supply information regarding any credit history; or arrest record, except a record of a pending charge, of the applicant, employee or member; except that it shall not be discrimination to request such information of applicants for employment as law enforcement officers, or when an employer may lawfully consider or rely upon such arrest or conviction record pursuant to Secs. 39.03(8)(i)3. through 39.03(8)(i)6., MGO.
2. For any person or employer, or employment agency or labor organization to request an applicant, employee, member or any other person, on an application form or otherwise, to supply any information regarding the applicant, employee or person's Social Security Number, when such disclosure is not compelled by state or federal law. (Renumbered by Ord. 8297, 4-5-84; Am. by Ord. 13,339, 6-7-03)
- (g) For any person or employer, employment agency or labor organization to refuse to reasonably accommodate an employee's or prospective employee's handicap unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business. (Cr. by Ord. 8297, 4-5-84)
- (h) Religion; Exceptions and Special Cases.
1. Employment discrimination because of religion includes, but is not limited to, refusing to reasonably accommodate an employee's or prospective employee's religious observance or practice unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise or business.
2. It is not employment discrimination because of religion for a religious association not organized for private profit or an organization or corporation which is primarily owned or controlled by such religious association to give preference to an applicant or employee who is a member of the same or a similar religious denomination, in hiring or promotion to an instructional or policy-making position, including but not limited to the position of chaplain or counselor.
3. It is not employment discrimination because of religion for a fraternal as defined in Sec. 614.01(1) Wisconsin Statutes, to give preference to an employee or applicant who is a member or is eligible for membership in the fraternal, with respect to hiring to or promotion to the position of officer, administrator or salesperson.
- (Cr. by Ord. 8297, 4-5-84)
- (i) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer or a labor organization to admit or employ any individual in those certain instances where sex, age, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. (Am. by Ord. 8297, 4-5-84)
1. It shall not be unlawful age discrimination to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee benefit plan shall excuse the failure to hire any person.
2. Discrimination because of an individual's disability is not prohibited if the employer, labor organization, or employment agency can show that the

- individual's disability is reasonably related to the individual's ability to adequately undertake the job-related responsibilities of that individual's employment. It is prohibited discrimination for an employer to contribute a lesser amount to the fringe benefits, including life or disability insurance coverage, of an employee because of he/she has a disability. (Am. by ORD-06-00099, 8-2-06)
3. Discrimination because of arrest record or conviction record is not prohibited if the employer, licensing authority, labor organization, or employment agency can show that the employee or applicant
 - a. Is subject to a pending criminal charge and the circumstances of the charge substantially relate to the circumstances of the particular job;
 - b. Has been within the past three (3) years placed on probation, paroled, released from incarceration, or paid a fine, for a felony, misdemeanor, or other offense, the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; (Am. by Ord. 13,339, 6-7-03)
 - c. Is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state, federal or local law, administrative regulation or previously established business practice of the employer.
 - d. Is not eligible for licensing or a permit under state, federal or local law or administrative regulation due to a pending criminal charge or conviction for which the employee or applicant has not been pardoned, and where such license or permit is required for the position the employee holds or for which the applicant is applying. (Cr. by Ord. 13,339, 6-7-03)
 4. It is not employment discrimination because of conviction record to deny or to refuse to issue a license or permit under the Madison General Ordinances if the person applying for or holding the license or permit has a pending criminal charge the circumstances of which substantially relate to the circumstances of the licensed activity or permit; or has been convicted of a felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity, and has not been pardoned for that felony, misdemeanor, or other offense. (Cr. by Ord. 13,339, 6-7-03)
 5. It is not employment discrimination because of conviction record to refuse to employ a person in a business licensed under Wis. Stat. § 440.26, or as an employee specified in Wis. Stat. § 440.26(5)(b), if the person has been convicted of a felony and has not been pardoned for that felony. (Cr. by Ord. 13,339, 6-7-03)
 6. It is not employment discrimination because of conviction record to refuse to employ as an installer of burglar alarms a person who has been convicted of a felony and has not been pardoned. (Cr. by Ord. 13,339, 6-7-03)
 7. Discrimination because of credit history is not prohibited if the employer, licensing authority, labor organization, or employment agency can show that:
 - a. The circumstances of an individual's credit history are substantially related to the circumstances of a particular job or licensed activity;
 - b. Employment, membership, or licensing depends on the bondability of the individual under a standard fidelity bond or when an equivalent bond is required by the state or federal law, administrative regulation, or established business practice of the employer and the individual may not be bondable due to his or her credit history;

(Sec. 3.23(7)(h) Renumbered to (i) by Ord. 8297, 4-5-84)

- (j) Nothing contained in this section shall be interpreted to prohibit any employer from considering an individual's less than honorable discharge in cases where the circumstances of the discharge are substantially related to the circumstances of the particular job. However, in no case may an employer consider a less than honorable discharge that was made administratively and not pursuant to a court martial.

(Renumbered by Ord. 8297, 4-5-84)

- (k) No employer, labor organization or employment agency shall engage in sexual harassment and employers shall ensure that all of their employees work in an environment free of sexual harassment.
1. An employer, labor organization or employment agency violates this ordinance when (1) an employee's acquiescence in or submission to sexual harassment is made either explicitly or implicitly a term or condition of his/her employment, (2) an employee's acquiescence in or submission to sexual harassment is used as the basis or any part of the basis for employment decisions affecting the employee other than an employment decision that is disciplinary action against an employee for engaging in sexual harassment in violation of this paragraph, or (3) sexual harassment has the purpose or effect of substantially interfering with an employee's work performance or of creating an intimidating, hostile, or offensive work environment. (Am. by Ord. 12,039, Adopted 2-17-98)
 2. Substantial interference with an employee's work performance or creation of an intimidating, hostile or offensive work environment is established when the conduct is such that a reasonable person under the same circumstances as the employee would consider the conduct sufficiently severe or pervasive to interfere substantially with the person's work performance or to create an intimidating, hostile or offensive work environment. (Cr. by Ord. 12,039, Adopted 2-17-98)
 3. An employer, employment agency or labor organization is presumed responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized by the employer. (Renumbered by Ord. 12,039, 2-17-98)
 4. An employer, employment agency or labor organization is responsible for acts of sexual harassment of its employees by persons other than its agents or supervisory employees, including, but not limited to, acts by customers and co-workers, (1) if the act occurs while the complaining employee is performing service growing out of and incidental to his/her employment and (2), if the employer or its agents or supervisory employees knew or should have known of the conduct. (Renumbered by Ord. 12,039, 2-17-98)
 5. It is the intent of this ordinance that timely filed complaints of sex discrimination in employment based on acts occurring before adoption of these provisions and based on conduct similar or identical to "sexual harassment" as defined above not be barred by the adoption of these provisions. (Renumbered by Ord. 12,039, 2-17-98)

- (l) Notwithstanding any other provision of this section, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity, or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of protected class memberships, the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law.

(Renumbered by Ord. 8297, 4-5-84)

- (m) Nothing contained in this section shall be interpreted to require any employer, employment agency or labor organization to grant preferential treatment to any individual or to any group because of the protected class membership of any person the fact that a person declines to disclose their Social Security Number when such disclosure is not compelled by state or federal law. (Renumbered by Ord. 8297, 4-5-84)

(Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07)

- (n) Equal Opportunities Commission Employment Subcommittee. The EOC Employment Committee shall consist of 15 maximum voting members including one member of the Equal Opportunities Commission. Additional persons may participate as non-voting members. Membership of the Employment Committee is open to a City of Madison company, business or non-profit designee and to individual representatives. Members may be non-residents of the City of Madison. (Cr. by ORD-09-00052, Pub. 4-2-09, Eff. 8-1-09; Am. by ORD-09-00147, 11-6-09)

(Am. by ORD-10-00096, 10-14-10)

- (9) It shall be an unfair discrimination practice and unlawful and hereby prohibited:

- (a) For any person to aid, abet, incite, compel or coerce the doing of any act which violates this ordinance or obstructs or prevents any person from complying with the provisions of this ordinance; and for any person or employer, employment agency or labor organization, whether individually or in concert with others, to discharge, harass, intimidate, or otherwise discriminate against any person because he or she has opposed any discriminatory practices under this ordinance or because he or she has made a complaint, testified or assisted in any proceeding under this ordinance.

(Am. by Ord. 10,556, Adopted 12-15-92)

- (b) For any person to intimidate, threaten, harass, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this ordinance.

- (c) For any person or entity subject to regulations under this ordinance to engage in any acts prohibited in Sec. 39.03 et seq of the Madison General Ordinances against any individual because of the person's association with any member of any protected class membership. (Cr. by Ord. 12,039, Adopted 2-17-98; Am. by ORD-10-00096, 10-14-10)

(Renumbered and Am. by Ord. 12,039, Adopted 2-17-98; Am. by ORD-07-00029, 3-15-07)

(10) Equal Opportunities Commission and Equal Opportunities Division. The Mayor, subject to confirmation by the Common Council, shall appoint an Equal Opportunities Commission, consisting of thirteen (13) members, one of whom shall be designated President by the members of the Commission. At least one, and no more than two, such members shall be an Alderperson, who shall be a member only as long as she/he shall continue to hold office as Alderperson. Members shall be appointed from among the residents of the entire City, shall be representative of the rich diversity of our community and include as many protected class memberships as is possible and shall be persons committed to the principle of equal opportunities. They shall receive no compensation for their services. There shall also be an Equal Opportunities Division established within the Department of Civil Rights, headed by an Equal Opportunity Division Head as that position is established and set forth in Sec. 39.01(2), MGO. (Am. by Ord. 12,244, 11-3-98; Ord. 12,933, 12-11-01; ORD-05-00204, 1-3-06; ORD-06-00078, 6-30-06; ORD-07-00114, 9-22-07)

(a) Reserved For Future Use. (Am. by ORD-10-00096, 10-14-10)

(b) The Equal Opportunities Commission shall have the following powers and duties:

1. To study the existence, character, causes and extent of the denial of equal opportunity because of biases, prejudices, social or institutionalized passive and active forms of discrimination or harassment that occurs either in favor of or to the detriment of any protected class in the greater Madison community.
2. To informally recommend solutions to individual problems that may arise which involve the denial of equal opportunities because of protected class memberships. (Am. by ORD-06-00099, 8-2-06; ORD-07-00029, 3-15-07)
3. To disseminate information and provide technical assistance, consultation, training programs and other techniques to educate the people of the City of Madison and to aid both private and public agencies to use their resources to promote equal opportunities for all persons.
4. To receive and initiate complaints alleging violation of this ordinance and to attempt to eliminate or remedy any violation by means of conciliation, persuasion, education, litigation, or any other means, to make the complainant whole again.
 - a. In case agreement is reached, a conciliation agreement in writing shall be signed by the complainant and respondent and approved by the President of the Equal Opportunities Commission. The signed conciliation agreement shall have the effect of a Commission order.
 - b. Except as provided in Wis. Stat. § 904.08, and in 24 CFR Sec. 103.330, nothing that is said or done in the course of conciliation proceedings may be made public or used as evidence in a subsequent administrative hearing or civil action under this ordinance, under Title VIII of the Civil Rights Act of 1968, or under Wis. Stat. § 101.22 et seq, (1991-92), without the written consent of the parties.
 - c. Any conciliation agreement is a public record and subject to inspection as provided in Wis. Stat. § 19.35, and Sec. 3.42 of these ordinances, unless the parties to the agreement request that the record be exempt from disclosure and the Equal Opportunities Division Head determines in accordance with the Wisconsin Public Records Laws that it would be clearly contrary to the public's interests to disclose such conciliation agreement. (Am. by ORD-06-00078, 6-30-06)

(Sec. 3.23(10)(b)4. Am. by Ord. 10,556, Adopted 12-15-92; Ord. 12,039, Adopted 2-17-98)

5. Notwithstanding the provisions of Sec. 39.03(10)(c)1. to the contrary, to test and investigate for the purpose of establishing violations of Section 39.03 of these ordinances and, if appropriate, to make, sign, and file complaints alleging violations thereof. (Cr. by Ord. 12,039, 2-17-98)
 6. To render from time to time, but not less than once a year, written report of its activities and recommendations to the Mayor and the Common Council. (Renumbered by Ord. 12,039, 2-17-98)
 7. To adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this ordinance. (Renumbered by Ord. 12,039, 2-17-98)
 8. To issue subpoenas pursuant to Wis. Stat. § 885.01 to assist in the execution of its duties. (Renumbered by Ord. 12,039, 2-17-98)
 9. The Commission may, from time to time, designate Commissioners and/or Equal Opportunities Division staff to carry out its duties. (Renumbered by Ord. 12,039, 2-17-98; Am. by ORD-06-00078, 6-30-06)
- (c) Except as provided in Sec. 39.03(10)(d), the Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination:
1. Limitations, Copies of Rules and Affirmative Defense.
 - a. The Commission shall not accept any complaint filed more than three hundred (300) days after the alleged discrimination occurred, except that complaints of housing discrimination may be filed up to one (1) year after the alleged discrimination occurred. The Commission shall not investigate any complaint unless it is in writing and verified by the complainant, and a copy of the complaint is sent to the person or persons complained of, hereinafter referred to as respondent.
 - b. Upon receipt of a verified complaint, both the complainant and the respondent shall be advised that copies of the Commission rules governing hearing procedures and the processing of complaints are available at the office of the Director of the Department of Civil Rights.
 - c. It shall be an affirmative defense to any alleged violation of any provision of this ordinance that compliance with any provision herein would constitute a violation of a State or Federal statute, regulation or executive order. Any person asserting such an affirmative defense shall maintain upon their premises a copy of the State or Federal statute, regulation or order they are relying upon to establish this affirmative defense and shall make the same available upon request to the Commission and to any person whom has been affected by such person's reliance upon such State or Federal statute, regulation or executive order. (Am. by Ord. 10,556, Adopted 12-15-92; Ord. 12,039, Adopted 2-17-98; Am. by ORD-06-00078, 6-30-06)

2. Hearings.

- a. If the Commission finds probable cause to believe that any discrimination has been or is being committed, it shall immediately endeavor to eliminate the practice by conference, conciliation or persuasion. In case of failure so to eliminate the discrimination, the Commission shall issue and serve a written notice of hearing, specifying the nature of the discrimination which appears to have been committed, and requiring the respondent to answer the complaint in writing within ten (10) days after receipt of the notice of hearing and to appear at the hearing on the appointed date. The notice shall specify a time of hearing not less than thirty (30) days after service of the notice of hearing. The testimony at the hearing shall be recorded.
- b. If, after hearing, the Commission finds that the respondent has engaged in discrimination, it shall make written findings and order such action by the respondent as will redress the injury done to complainant in violation of this ordinance, bring respondent into compliance with its provisions and generally effectuate the purpose of this ordinance. Such remedies may include, but are not limited to, out of pocket expenses, economic and noneconomic damages including damages for emotional injuries and, in regard to discrimination in employment, both front and back pay. In regard to discrimination in public accommodations by the holder of an alcohol beverage license issued pursuant to Chapter 38 of these ordinances, the Commission shall relay its findings to the City Attorney who shall commence a proceeding pursuant to Sec. 38.10 of these ordinances. The Commission may not order punitive damages.

Back pay liability shall not accrue from a date more than two (2) years prior to the filing of a complaint with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person discriminated against, shall operate to reduce back pay otherwise allowable. Amounts received by the person as unemployment benefits or welfare payments shall not reduce the back pay allowable, but shall be withheld from the person discriminated against and immediately paid to the unemployment reserve fund or, in the case of a welfare payment, to the welfare agency making such payment.

The amendments to this subparagraph b. shall apply to all proceedings pending on or commenced after the effective date of this ordinance, ID No. 22735 in furtherance of the remedial purposes of the Equal Opportunities Ordinance, 39.03 et seq. of the Madison General Ordinances. (Am. by Ord. 12,039, Adopted 2-17-98)

- c. The Commission shall serve a copy of its findings and order on the respondent.
(Am. by Ord. 12,039, Adopted 2-17-98)
- d. If the Commission finds that the respondent has not engaged in discrimination as alleged in the complaint, it shall serve a copy of its findings on the complainant together with an order dismissing the complaint.
- e. The Commission shall monitor, in such manner as it shall determine appropriate, compliance with its conciliation agreements and orders.

(Sec. 3.23(10)(c)(2) Am. By Ord. 12,039, 2-17-98)

3. Judicial Enforcement of Orders.
 - a. Whenever in the judgment of the Commission, the judicial enforcement of the ordinance is necessary, the Commission shall in writing request the City Attorney to enforce the ordinance in the name of the City of Madison.
 - b. Upon receipt of such request, the City Attorney shall have the power and duty to seek enforcement of the ordinance in a court of competent jurisdiction.
4. Judicial Review of Orders. Only those orders that explicitly state therein that they are final orders of the Equal Opportunities Commission shall be final administrative determinations for the purposes of appeal. Such orders shall be subject to certiorari review in court pursuant to the time limits and procedures set forth in Wis. Stat. § 68.13, which procedures are adopted and incorporated by reference. Such decisions are not reviewable under Sec. 9.49, MGO. In addition, written notice of any request for judicial review shall be given by the party seeking review to all parties who appeared at the proceeding, with said notice to be sent by first class mail to each party's last known address. (Am. by Ord. 12,039, Adopted 2-17-98)
5. Housing Discrimination Complaint Procedures. The following special procedures shall apply to complaints of housing discrimination:
 - a. If the Commission finds that a respondent has engaged in or is about to engage in a discriminatory act prohibited under Section 39.03(4) of these ordinances, the Commission shall make written findings and shall promptly issue an order for such relief as may be appropriate, which may include economic and noneconomic damages suffered by the complainant, and injunctive or other equitable relief.

(Sec. 3.23(10)(c)5. Am. by Ord. 12,039, Adopted 2-17-98)

- (d) The Equal Opportunities Commission shall use the following procedures in acting on complaints of discrimination filed against the City of Madison and the Community Development Authority.
1. Upon the receipt of a written, verified complaint naming the City of Madison or the Community Development Authority as a respondent, a copy of such complaint shall be served on the City Attorney, the Mayor, and the City Clerk.
 2. If the Equal Rights Division of the Wisconsin Department of Workforce Development or the U.S. Department of Housing and Urban Development (HUD) has jurisdiction over the complaint, the Equal Opportunities Commission shall take no action, but shall refer the complaint to the Equal Rights Division or HUD for appropriate action as provided by law. If the U.S. Equal Employment Opportunity Commission or HUD has jurisdiction, a copy of the complaint shall be forwarded to that agency. The complainant shall be informed of all such referrals.
 3. If state and federal agencies are without jurisdiction, the Equal Opportunities Commission shall follow the procedure provided in Sec. 39.03(10)(c) of this ordinance.

(Am. by Ord. 10,556, Adopted 12-15-92; Ord. 12,322, 2-2-99)

(Sec. 3.23(10)(e) R. by ORD-06-00078, 6-30-06)

(Sec. 39.03(10) Am. by ORD-10-00096, 10-14-10)

(11) Clerk to Register Domestic Partnerships.

- (a) The City Clerk shall register as domestic partnerships all those persons who state, in an application, which shall be verified, that they meet the requirements contained in Sec. 39.03(2)(o) of this ordinance, and pay a registration fee of twenty-five dollars (\$25) to cover record keeping and other costs related to such registration.
- (b) The application shall include the applicants' agreement to notify the City Clerk of any change in the status of their domestic partner relationship.
- (c) The Clerk shall provide each domestic partnership with a registration certificate, but no registration shall be made nor certificate issued, before the third working day after the date of the application.
- (d) Registration as a domestic partnership is terminated on the 30th day after the Clerk receives and files written notice of termination from one or both domestic partners.

(Renumbered by Ord. 12,039, Adopted 2-17-98)

(12) Title. This ordinance shall be known as the Equal Opportunities Ordinance.

(Renumbered by Ord. 12,039, Adopted 2-17-98)

- (13) At any time after a complaint is filed, the Director of the Department of Civil Rights may request the City Attorney to file an appropriate action before any city or state administrative agency with jurisdiction over offenses or violations set forth in such complaint and /or may request that the City Attorney file a civil action in the circuit court for Dane County, seeking appropriate temporary relief against the respondent, pending final action by the Commission under this section. Such relief may include an order or decree restraining the respondent from performing an act tending to render ineffectual an order the Commission may enter with respect to the complaint. The court may grant such temporary relief or restraining order as it deems just and proper. (Am. by ORD-10-00096, 10-14-10)

(Renumbered by Ord. 12,039, Adopted 2-17-98; Am. by ORD-06-00078, 6-30-06)

(14) Penalty.

- (a) Any person violating any of the provisions of this section shall upon conviction be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (b) Any person who shall fail or neglect to comply with any lawful order of the Equal Opportunities Commission issued pursuant to the provisions of this section shall be deemed guilty of a violation of this section, and every day or fraction thereof on which such person shall fail or neglect to comply with such order, shall be deemed a separate offense. (Am. by Ord. 11,183, Adopted 2-21-95; ORD-06-00078, 6-30-06; Renum. and Am. by ORD-10-00096, 10-14-10)

(Renumbered by Ord. 12,039, Adopted 2-17-98)