



## Legislation Details (With Text)

**File #:** 07373      **Version:** 1      **Name:** Affirmative Action contract requirements  
**Type:** Ordinance      **Status:** Passed  
**File created:** 8/28/2007      **In control:** AFFIRMATIVE ACTION COMMISSION  
**On agenda:** 9/4/2007      **Final action:** 10/16/2007  
**Enactment date:** 11/2/2007      **Enactment #:** RES-07-01056

**Title:** Amending 39.02(9)(a)3. to make the Affirmative Action requirements consistent for subdivision improvement contracts and similar contracts for the construction of public improvements that will be accepted by the city, and creating 39.02(9)(a)2.i. and amending 39.02(9)(b) to clarify the affirmative action and nondiscrimination contract requirements for contracts with state and federal governments, and exempting written employment contracts from the Affirmative Action provisions.

**Sponsors:** Joseph R. Clausius

**Indexes:**

**Code sections:**

**Attachments:**

| Date       | Ver. | Action By                        | Action                                            | Result |
|------------|------|----------------------------------|---------------------------------------------------|--------|
| 10/16/2007 | 1    | COMMON COUNCIL                   | Adopt                                             | Pass   |
| 9/18/2007  |      | AFFIRMATIVE ACTION COMMISSION    | RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER | Pass   |
| 9/4/2007   | 1    | COMMON COUNCIL                   | Refer                                             |        |
| 8/29/2007  | 1    | Finance Dept/Approval Group      | Approved Fiscal Note By The Comptroller's Office  |        |
| 8/29/2007  | 1    | Attorney's Office                | Referred for Introduction                         |        |
| 8/28/2007  | 1    | Attorney's Office/Approval Group | Approved As To Form                               |        |
| 8/28/2007  | 1    | Attorney's Office                | Fiscal Note Required / Approval                   |        |

### Fiscal Note

No expenditure required.

### Title

Amending 39.02(9)(a)3. to make the Affirmative Action requirements consistent for subdivision improvement contracts and similar contracts for the construction of public improvements that will be accepted by the city, and creating 39.02(9)(a)2.i. and amending 39.02(9)(b) to clarify the affirmative action and nondiscrimination contract requirements for contracts with state and federal governments, and exempting written employment contracts from the Affirmative Action provisions.

### Body

DRAFTER'S ANALYSIS: This ordinance clarifies the Affirmative Action contract requirements for two contract forms regularly used by the Engineering division: "subdivision" agreements, which are defined by MGO 16.23, and "developer" agreements, which are not. Both agreements result in the construction of public improvements that will be accepted by the city. Under the existing AA ordinance, only the subdivision agreements are mentioned, leaving it ambiguous as to whether the Articles of Agreement and Model Affirmative Action Plan are required of developers who enter into "developer" type agreements. (The "developer" agreement will be defined in this ordinance as "contracts for the construction of public improvements that will be accepted by the City.") Under this amendment, the AA contractual requirements will be the same for both.

Another difficulty with the existing ordinance is that developers entering into subdivision improvement contracts are never exempt from filing an AA Plan, while the same developer, if entering into a "developer" agreement, is subject to an exemption analysis. There is no policy difference between the 2 types of agreements that would suggest one group be

exempt from the AA provisions, while the other is not.

The result of this amendment is that developers who make both types of agreements will be required to file an AA Plan, and the Articles of Agreement will always be included in their contracts. Neither type of agreement will be exempt. This will make the policy clear to the developers and streamline administration by city staff.

The second thing this ordinance accomplishes is to clarify the Affirmative Action requirements for contracts with other units of government. This ordinance would make it clear that the U.S. Government is not subject to the City of Madison's contractual Affirmative Action requirements, and need not submit an Affirmative Action Plan when the city signs a grant agreement or other contracts with the U.S. government. (The State of Wisconsin is already exempt from filing an AAP. ) This amendment would also make it clear that contracts with the U.S., the State of Wisconsin and other states need not include the otherwise mandatory nondiscrimination clause in 39.02(9)(b). This amendment will reflect the practice of expecting other governments to follow their own AA and nondiscrimination policies in performance of an agreement with the City of Madison.

Finally, this amendment exempts written employment contracts (such as for members of Comp Group 21) from the Affirmative Action contract policies and the standard nondiscrimination language.

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

1. Paragraph 3. of Subdivision (a) of Subsection (9) of Section 39.02 of the Madison General Ordinances is amended by amending therein the following:

"Contractor. Any individual, partnership, corporation, association, or other entity including a contractor, vendor, or supplier, which enters into a contract with the City. This term shall not include local City employee bargaining units which shall be governed by the requirements of the other subsections of this ordinance, nor shall it include City employees with written employment contracts with the City. Notwithstanding the exemptions listed in subparagraphs b.-d. above, all developers (or other parties) who enter into subdivision improvement contracts under sec. 16.23(9)(c), or developer contracts with the City for the construction of public improvements that will be accepted by the City, and their contractors, shall submit an approved Affirmative Action plan and the contract between the City and the developer/party shall contain the Articles of Agreement; all redevelopment contracts and all revenue or loan agreements with an eligible participant or authorized developer under Wis. Stats. Sec. 66.1103, Wis. Stats., shall contain the Articles of Agreement prescribed in Sec. 3.58(9)(e)2. and all such eligible participants or authorized developers, their contractors and subcontractors shall submit an approved Affirmative Action plan; and all contracts authorized by Secs. Wis. Stats. ss. 66.431(5)1333(5) and 66.46(3)(e)1105(3)(e), Wis. Stats., shall contain the Articles of Agreement prescribed in Sec. 3.58(9)(e)2. and all such developers or other entities, their contractors and subcontractors, shall submit an approved Affirmative Action plan. All Affirmative Action plans required by this subsection shall be submitted within thirty (30) days after the effective date of the contract."

2. Subparagraph i. of Paragraph 2. entitled "Contract" of Subdivision (a) entitled "Definitions" of Subsection (9) entitled "Contract Compliance Provisions" of Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is created to read as follows:

"i. Contracts with the United States of America and individual agencies of the U.S. government."

3. Subdivision (b) entitled "Definitions" of Subsection (9) entitled "Contract Compliance Provisions" of Section 39.02 entitled "Affirmative Action Ordinance" of the Madison General Ordinances is amended to read as follows:

"(b) Notwithstanding the provisions of Sec. 39.02(9)(a)2., providing for certain exemptions from the provisions of this ordinance, every contract to which the City of Madison is a party shall contain the following language: , except for contracts with the State of Wisconsin, another state government, the United States of America or individual agencies of the U.S. government, and written employment contracts between the City and City employees:

In the performance of the services under this Agreement the Contractor agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable

discharge, physical appearance, sexual orientation, political beliefs, or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, or national origin."