



Legislation Text

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Fiscal Note

This proposed ordinance establishes a City policy of avoiding purchases from vendors and contractors who obtain goods that originate in "sweatshops." The adoption of such a policy statement has no direct budgetary impact.

The ordinance also expressly creates the responsibility to disseminate information regarding ordinance requirements in all contracts and agreements involving requests for City financial assistance, to administer pre-bid disclosure documentation required from potential bidders, and to investigate the merits of any complaint received from any person regarding potential ordinance violations. The ordinance also creates a City Committee on Sweatfree Purchases. There are no staff or other resources budgeted or available for the implementation, monitoring, enforcement, or committee staffing provisions of this proposed ordinance.

Title

Creating Section 4.25 of the Madison General Ordinances relating to city procurement of items of apparel (sweat-free procurement policies).

Body

DRAFTER'S ANALYSIS: This ordinance creates a procedure to ensure that city procurements of apparel of \$5,000 or more are not made from a "sweatshop," in furtherance of the policy declared in Resolution # 05-00361, adopted April 19, 2005. The ordinance lists several minimum workplace standards which, if not followed, would mean that the contractor (or its subcontractors) are operating a sweatshop. This would apply to the city's contractor and also requires the contractor to hold their subcontractors or third-party suppliers to the same standards. The standards are intended primarily for suppliers located outside the U.S. where the applicable law or practices do not already provide the minimum protections necessary. This is accomplished by making compliance with these standards a condition of doing business with the city. The ordinance would apply prospectively, with enforcement hinged upon compliance with the ordinance and mandatory contract terms after a contract is signed.

The ordinance is applicable to apparel only. Apparel includes woven textile items of clothing and all shoes. Procurement includes the purchase, rental, lease, laundering or dry cleaning, whether by contract, purchase order, or other means; and allowance and voucher programs for city employees to make their own purchases. The ordinance would also apply to recipients of city financial assistance if they are going to spend more than \$5,000 on apparel with the grant money.

Bidders on applicable apparel contracts would be required to sign disclosures stating that they meet the minimum standards of the ordinance, or be disqualified or not awarded the contract. References to the ordinance and mandatory language must be included in all applicable apparel contracts. Consequences for failure to comply with the terms of the contract or the ordinance include nonrenewal, termination, monetary penalty, prosecution, and disqualification from future contracts. The ordinance allows for the possibility of the city hiring an outside monitoring agency to monitor and investigate compliance during ongoing contracts. Finally, the ordinance creates a Committee on Sweat-free Procurement which would be advisory to the Common Council.

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

Section 4.25 entitled "Procurement of Items of Apparel" of the Madison General Ordinances is created to read as follows:

"4.25 PROCUREMENT OF ITEMS OF APPAREL

(1) Purpose. The City of Madison recognizes a public interest in avoiding purchasing from vendors and contractors who obtain goods that originate in sweatshops - places of work where the labor practices are inconsistent with international standards of human rights - and declares the City's intent to avoid such purchases and allocate its funds in a manner that enhances the rights and well-being of workers world-wide, while acquiring the best quality goods at

reasonable cost.

The Common Council finds that contractors can have influence throughout their entire supply chain, and therefore have an obligation to workers in subcontractor and subsidiary factories in addition to their direct obligations to their own employees. The Common Council further finds that the apparel industry is one area where the City can have an impact on the rights and well-being of workers world-wide.

The purpose of this ordinance is to ensure that City procurement of apparel is made from responsible contractors and vendors who agree to adhere to the minimum employment standards required herein and to require their subcontractors and third-party suppliers to do the same, so that all employees involved in the City's procurement may be afforded the opportunity to a fair, humane work environment as described herein.

The Common Council finds the following labor practices inconsistent with international standards of human rights:

- a. below-subsistence wages;
- b. excessively long working hours;
- c. unhealthy and unsafe working environments;
- d. child, indentured, and forced labor;
- e. disregard for local and international labor laws and workplace regulations;
- f. disregard for fundamental women's rights;
- g. repression of workers' rights to assemble and bargain collectively.

(2) Applicability - Apparel. This ordinance shall apply to all City procurement of apparel totaling \$5,000 or more. For purposes of this ordinance, "procurement" shall include the purchase, rental, lease, laundering or dry cleaning of apparel, whether by contract, purchase order, or other means; and allowance and voucher programs for city employees to make their own purchases, except where a city collective bargaining agreement establishes a clothing allowance or voucher program, in which case the terms of the collective bargaining agreement shall control. This ordinance shall also apply to contracts for the provision of City financial assistance, if \$5,000 or more of will be used for procurement of apparel.

(3) Definitions

- (a) "Apparel" means all garments or items of clothing any part of which is a textile produced by weaving, knitting or felting; and all shoes and other footwear.
- (b) "Contractor" or "vendor" means a person or entity from whom the City has a current procurement relationship as that term is used in sub (2) above, or who is bidding or proposing to provide apparel to the City under a procurement arrangement.
- (c) "Employee" means any individual who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to or work or be at any time in any place of employment. "Employee" includes individuals whose work is permanent or temporary, or on a full-time or part-time basis.
- (d) A "fair wage" is the total 'take home' or 'net' wage, earned during a country's legal maximum work week, but not more than 48 hours. A fair wage provides for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, transportation and savings) of an average family unit of employees in the manufacturing employment sector of the country divided by the average number of adult wage earners in the family unit of employees in the manufacturing employment sector of the country.
- (e) "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with a contractor or vendor for performance of some or all of the City-contracted work. For purposes of this ordinance, "subcontractor" shall include all third-party suppliers or producers from whom the contractor or its contractors obtains or sources goods, parts or supplies for use on the city contract and is intended to include suppliers at all level of the supply chain.

(4) Employment Standards for Contractors and Vendors.

- (a) Domestic Or Foreign Manufacturers, Presumption. It is presumed that all contractors, subcontractors, third-party suppliers and other entities involved in the production of goods under city contracts at locations within the United States are subject to and will follow all applicable federal, state and local laws such as labor, employment, and safety laws. While this ordinance is applicable to procurement of apparel from all sources, the standards in subsection (4) are intended primarily for subcontractors and suppliers located outside the United States where the applicable law or practices does not already provide the protections necessary to accomplish the goals of this Ordinance. Nothing in this Ordinance shall be construed to limit or reduce the responsibility of contractors located within the United States to follow applicable law in their jurisdiction.
- (b) Standards. Contractors shall adhere to or exceed the following minimum employment standards, and shall require all subcontractors, as defined in sub. (3)(e), to do the same. Wherever the word "contractor" is used below, the same requirement shall apply to subcontractors as defined in sub. (3)(e).

These standards shall apply in all phases/aspects of the contractor's or their subcontractor's operations, including but not limited to, manufacture, assembly, finishing, laundering or dry cleaning, (where applicable), warehouse distribution, and delivery:

1. Wages and Benefits Contractors should recognize that wages are essential to meeting employees' basic needs. Contractors shall pay employees, at minimum, wages and benefits which comply with all applicable laws and regulations, and which provide for essential needs and establish a dignified fair wage for workers and their families. This must always meet or exceed any applicable minimum wage, or other "fair wage," "living wage" or other law that requires a wage that exceeds the applicable minimum wage, whichever is higher.
2. Working Hours. Hourly and/or quota-based wage employees shall not be required to work more than 48 hours per week or the limits on regular hours allowed by the law of the country of manufacture, whichever is lower, and be entitled to at least one (1) day off in every seven (7) day period, as well as holidays and vacations off.
3. Overtime Compensation. All overtime hours must be worked voluntarily by employees. In addition to their compensation for regular hours of work, hourly and/or quota-based wage employees shall be compensated for overtime hours at such a premium rate as is legally required in the country of manufacture or, in those locations where such laws do not exist, at a rate at least one and one-half their regular hourly compensation rate.
4. Child Labor. Contractors shall not employ any person at an age younger than 15 (or 14, where, consistent with International Labor Organization practices for developing locations, the law of the country of manufacture allows such exception). Contractors and sub-contractors agree to consult with governmental, human rights, and nongovernmental organizations, and to take reasonable steps as evaluated by the City and any independent monitoring agency acting on behalf of the City, to minimize the negative impact on children released from employment as a result of implementation or enforcement of the Ordinance.
5. Forced Labor. There shall not be any use of prison labor, indentured labor, bonded labor or other forced labor.
6. Health and Safety. Contractors shall provide a safe and healthy working environment to prevent employee accidents and injury to health arising out of or occurring in the course of employment or as a result of the operation of their facilities. In addition, contractors shall ensure that all operations comply with all workplace safety and health regulations established by the national government where the production facility is located, or with Title 29 CFR of the Federal Code of Regulations, enforced by Federal OSHA (Occupational Safety and Health Administration), whichever regulation is more strict.

The contractor shall ensure that its operations comply with all health and safety conventions of the International Labor Organization (ILO) ratified and adopted by the country in which the production facility is located.
7. Nondiscrimination: No person shall be subject to any discrimination in employment; including but not limited to hiring, employment, recruitment or recruitment advertising, salary rates of pay or other forms of compensation, benefits, advancement, transfer, selection for training including apprenticeships, discipline, demotion, termination or retirement; on the basis 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 as those terms are defined in Section 3.23; and any other basis as may be added by amendment to sec. 3.58(9)(b) and/or 3.23.
8. Harassment or Abuse. Every employee shall be treated with dignity and respect. No employee shall be subject to any physical, sexual, psychological, or verbal harassment or abuse. Contractors will not use or tolerate any form of corporal punishment.
9. Freedom of Association and Collective Bargaining. Contractors shall recognize and respect the right of employees to freedom of association and collective bargaining. No employee shall be subject to harassment, intimidation or retaliation as a result of their efforts to freely associate or bargain collectively. Contractors and sub-contractors shall not cooperate utilize corrupt with governmental agencies and other organizations that use the power of the State to prevent workers from organizing a union of their choice. Contractors shall allow union organizers free access to employees and shall recognize the union of the employees' choice. In addition to respecting the right of employees to freedom of association and collective bargaining, contractors must source from factories where the above commitment has been demonstrated as exemplified by the following:
 - a. There exist clear channels through which workers can voice their complaints regarding working conditions and such complaints are addressed in a prompt and effective manner;
 - b. The workers have a representative voice in workplace decisions;
 - c. Management negotiates with the workers in good faith.
11. Women's Rights

Women workers will receive equal remuneration, including benefits; equal treatment; equal evaluation of the quality of their work; and equal opportunity to fill all positions open to male workers.
Pregnancy tests will not be a condition of employment, nor will they be demanded of employees.
Workers who take maternity leave will not face dismissal nor threat of dismissal, loss of seniority or deduction of wages, and will be able to return to their former employment at the same rate of pay and benefits.
Workers will not be forced or pressured to use contraception.
Workers will not be exposed to hazards, including glues and solvents, that may endanger their safety, including their

reproductive health.

Contractors and sub-contractors shall provide appropriate services and accommodation to women workers in connection with pregnancy.

(c) Effect of Applicable Local Law: Contractor (and any subcontractors or third party suppliers) must comply with all applicable laws and regulations of the jurisdiction where it is located. Where there is a conflict between this Ordinance and the local laws or regulations, the more strict restriction shall apply. However, where the law conflicts with this Ordinance to the extent that the local law is less strict than the minimum standards stated herein, or where adherence to this ordinance would result in a violation of the law of the country or jurisdiction in question, contractors will be deemed in compliance on an existing contract if they take effective actions as determined by the City and/or any monitoring entity acting on behalf of the City, to achieve full compliance with this ordinance to the extent reasonable, considering the applicable laws. See sub. (7)(c)5. regarding nonrenewal when compliance is deemed impossible.

(d) Contractors shall refrain from any actions that would diminish the protections afforded by this Ordinance.

(5) Bid Specifications and Pre-Award Procedures.

(a) Contract Bid and Request-for-Proposal Specifications. A copy of this Ordinance or a sufficient summary and link to the entire text shall be included in all specifications for all contracts or requests for financial assistance to which this ordinance may apply.

(b) Bidder Disclosure Statements. The City shall require for each bid or proposal to which this ordinance applies under sub. (2), each bidder, proposer or potential contractor to submit disclosure statements that include the information below, to the city and/or the city's independent monitoring agency, if any, with the knowledge that this information may be disclosed to the public, subject to applicable public records law. If the pre-award disclosure reveals a violation of this ordinance or a statement that the proposed contractor will not or cannot comply with this ordinance, the City reserves the right not to award the contract to that contractor. The disclosures shall include:

1. The names, addresses, and phone numbers of each facility involved in the production of goods covered by this policy.

2. The names, business addresses, and phone numbers of the principal officers of each facility involved in the production of goods covered by this policy.

3. The base hourly wage of non-supervisory production employees, percent of wage level paid as health benefit, other benefits, regular deductions from paychecks, normal working hours per day and week, actual working hours per day and week over the last three months, and overtime policy.

4. The raw number of each type good produced in a given factory for the City.

5. A sworn statement that each of the proposed production facilities, including any sub-contractors, complies with all requirements of this ordinance.

6. Any other information deemed necessary by the City for the administration and enforcement of this Ordinance.

(c) Transparency. Bidders, proposers and contractors shall provide access to the City of Madison and the City's independent monitoring agency, if any, to archived and contemporary inspection and monitoring reports for all facilities producing goods for the contract in question and shall require their subcontractors to allow the same access.

(6) Requirements for Contracts and other Procurement arrangements.

(a) Mandatory Contract Language. No contract to which this Ordinance applies under subsection (2) be entered into by the City unless such contract contains the following language:

"The contractor shall follow labor practices consistent with international standards of human rights, meaning that, at a minimum contractor shall adhere to the minimum employment standards found in Section 4.25 of the Madison General Ordinances and shall require all subcontractors and third-party suppliers to do the same. For purposes of sec. 4.25, "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with the contractor for performance of some or all of the City-contracted work and includes all third-party suppliers or producers from whom the contractor or its contractors obtains or sources goods, parts or supplies for use on the city contract and is intended to include suppliers at all level of the supply chain. The standards in Sec. 4.25 shall apply in all aspects of the contractor's and subcontractor's operations, including but not limited to, manufacture, assembly, finishing, laundering or dry cleaning, (where applicable), warehouse distribution, and delivery. Contractor acknowledges that by entering into this contract, Contractor shall be subject to all of the requirements and sanctions of sec. 4.25 of the Madison General Ordinances.

All applicable contracts must also include the list of sanctions in sub. (7)(c).

(b) Inclusion by reference in all Contracts. For purposes of carrying out the intent of this ordinance, all provisions of this section are made part of all applicable contracts for procurement under this ordinance.

(c) Every contractor and vendor shall bind its contractors and subcontractors, in writing, to the provisions of this Ordinance.

(d) Continuing Disclosure and Transparency. All contractors operating under an existing contract applicable under sub (2), shall submit quarterly sworn disclosure statements containing the information required in sub. (6)(b), to the City

or its independent monitoring agency, if any. Disclosures that reveal a violation of the ordinance or statement that contractor will not or cannot comply with this ordinance may be grounds for sanctions without further investigation, or may be investigated for action under this ordinance and the contract. The City and its independent monitoring organization, if any, shall have complete and unfettered access to all contractor's and subcontractor's facilities utilized under a contract to which this Ordinance applies. The transparency requirements in sub. (6) above shall continue to apply to contractors under an existing contract.

(7) Monitoring and Enforcement.

(a) Complaints. Any person may complain that one or more standards of this ordinance are being violated. The City and/or any independent monitoring agency acting on behalf of the city shall receive complaints and investigate the merits of such complaints.

(b) Independent Monitoring Agency. The City may choose to contract for investigation and monitoring services with a qualified, independent monitoring agency that is not financed by the industry to which this ordinance applies under subsection (2). The purpose of such arrangement would generally be to receive complaints and provide monitoring, inspection, investigation, and remediation services at locations that are too distant or impractical for the City to do itself. Any such services would be subject to the specific terms of any contract the City makes with the agency.

(c) Violation, Remediation and Sanctions. If the City determines there has been a violation of this ordinance, appropriate city staff or the independent monitoring agency, if any, shall inform the contractor of the determination and discuss the violation with the contractor. The purpose of the discussion is to encourage the contractor to change its practices rather than to cease doing business with the contractor. To that end, the City may at its sole option prescribe appropriate measures for the contractor to take in order to comply with the Ordinance, however nothing in this subsection shall be construed to limit the city's remedies under an existing contract or other remedies available at equity or at law. The sanctions for violating the ordinance under an existing contract are as follows and this list of sanctions shall be included in every applicable contract:

1. Withholding of payments under an existing contract.
2. Liquidated damages. The contractor may be charged liquidated damages on an existing contract of two thousand dollars (\$2,000) per violation, or an amount equaling twenty percent (20%) of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the City demonstrates were produced in violation of the contract and/or this ordinance per violation; whichever is greater.
3. Termination, suspension or cancellation of a contract in whole or in part.
4. Nonrenewal when a contract calls for optional renewals.
5. Nonrenewal for lack of progress or impossible compliance. The City reserves the right to refuse to renew a contract that calls for optional renewals, when the contractor cannot comply with the minimum standard under (4)(b) and the noncompliance is taking place in a country where:
 - a. Progress toward implementation of the standards in this Ordinance is no longer being made; and
 - b. Compliance with the employment standards in the Ordinance is deemed impossible by the City and/or any independent monitoring agency acting on behalf of the City. Such determination shall be made in the sole opinion of the City and may be based upon examination of reports from governmental, human rights, labor and business organizations and after consultation with the relevant contractors and sub-contractors and any other evidence the City deems reliable.
6. Disqualification of the contractor from bidding or submitting proposals on future city contracts, or from eligibility for future city procurements as defined in sub. (2), whether or not formal bidding or requests for proposals are used, for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found. The disqualification shall apply to the contractor who committed the violation(s) whether that be under the same corporate name, or as an individual, or under the name of another corporation or business entity of which he or she is a member, partner, officer, or agent.

(d) Submission of False Information. Any person who has been found by the City to have submitted any false, misleading or fraudulent information to the City or its independent monitoring agency (if any), either in their request for bids or proposals or other pre-award submissions; or during the term of the contract, may be subject to any of the above sanctions.

(e) Penalty. In addition to any of the sanctions set forth elsewhere in this ordinance, any contractor or vendor or other person who violates any portion of this ordinance or fails to comply with any of its requirements shall, upon conviction hereof, be subject to a forfeiture of not less than one-hundred dollars (\$100) and not more than five hundred dollars (\$500), plus applicable costs. Each day such violation continues shall be considered a separate offense. Prosecution or imposition of a forfeiture under this paragraph shall not preclude imposition of other sanctions listed above, nor shall the imposition of such sanctions be construed as a limitation on prosecution.

(f) Nothing in this ordinance shall be construed as a limit upon any remedies at law or equity that the city may have to enforce a contractual relationship or otherwise enforce this ordinance.

(8) Severability. The provisions of this ordinance shall be severable and if any of the provisions shall be held in

contravention of the Constitution and laws of the State of Wisconsin or of the United States by a court of competent jurisdiction, the validity of the rest of the ordinance shall not be affected. It is hereby declared to be the intent of this ordinance that the same would have been adopted had such unconstitutional or unlawful provision, if any, not been included herein.

(9) Committee on Sweatfree Purchases.

(a) Purpose, Duties, Responsibilities. There is hereby created a Committee on Sweatfree Purchases, for the purpose of ongoing evaluation and assistance in the application of this ordinance and the furtherance of its purpose. On an annual basis, this committee shall provide the Common Council with a report describing any suggested recommendations regarding the ordinance, including the feasibility of expanding the ordinance beyond its original application to apparel only as described in subsection (2). This committee is also encouraged to communicate with other units of government to encourage similar policies to further increase the effectiveness of this ordinance in achieving its policy goals.

(b) Composition and Appointment of Members. The Ad Hoc Task Force on Sweatfree Purchases shall consist of five (5) voting members and one (1) alternate member. Membership shall include one (1) alderperson who serves concurrently as an appointed member of the Board of Estimates. The remaining four (4) members and one alternate shall be residents of the City of Madison of legal voting age. At least one (1) of the remaining four members shall be a student representative on the University of Wisconsin-Madison's Labor Licensing Committee. Appointments shall be made by the Mayor, subject to the approval of the Common Council.

(c) Term. The alderperson member shall serve for a term of two (2) years. Citizen members shall serve for three (3) years. Any vacancies shall be filled by the Mayor, subject to approval of the Common Council, for a term filling out the remainder of the vacated member's term.

(d) Officers and Staff. The members of the Committee shall annually elect a chairperson from among its membership. The Committee shall be staffed by an employee of the Office of the Comptroller involved in Purchasing Services, who shall also serve as its secretary.

(e) Meeting Schedule. The Task Force shall meet as often as necessary, but at minimum four times per year.

(f) Compensation. Members of the Committee shall serve without compensation."