



Legislation Text

File #: 37898, Version: 1

**Fiscal Note**

No appropriation is required.

**Title**

Creating Section 4.29 of the Madison General Ordinances to require Proprietary Interest Protection Agreements in loan agreements.

**Body**

DRAFTER'S ANALYSIS: The City provides financial assistance to developments through TIF and other forms of loans. In each of these loan agreements, the City requires compliance with certain City ordinances to protect employees such as Living Wage, Affirmative Action, and Equal Benefits. These requirements only apply to the direct recipient of financial assistance. Requiring project users to provide the same benefits to their employees requires private agreements between the recipient of financial assistance and the employees. Under circumstances where the City has a proprietary interest, the City can require the recipient to enter such a private agreement. Several municipalities around the country require similar agreements, and they have been upheld in courts around the country including Hotel Employees & Restaurant Employees Union, Local 57 v. Sage Hospitality Resources, LLC, 390 F.3d 206 (3rd Cir, 2004).

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

Section 4.29 entitled "Proprietary Interest Protection Agreements" of the Madison General Ordinances is created to read as follows:

**"4.29 PROPRIETARY INTEREST PROTECTION AGREEMENTS.**

- (1) Statement of Purpose. The City provides financial assistance to developers for the purpose of promoting economic development and job growth. Acting as a financier for a development puts the City at risk of financial loss where the success of the project impacts the City's ability to recoup is financial assistance. Particularly, the success or failure of the project could be impacted by labor-management conflict, and such risk can be mitigated by requiring agreements between employers and employees that address common labor issues and prevent strikes. The purpose of this ordinance is to protect the City's financial interests by providing for basic terms of employment for workers on City financed projects.
- (2) Scope and Exemptions.
  - (a) Scope. The requirements of this section apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Nothing in this section requires an employer to recognize a particular labor organization. Nor does any provision of this section require that an employer enter into a collective bargaining agreement establishing the substantive terms and conditions of employment.
  - (b) Exemptions. The requirements of this section shall not apply to:
    - 1. Employers employing fewer than the equivalent of fifteen (15) full-time or part-time employees at the site of the development project.
    - 2. Any employer signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that development project, or which has entered into an agreement with a labor organization regarding such employees which agreement provides at least equal protection from the risks of labor/management conflict as provided by the

3. minimum terms provided herein.
  3. Any residential development project.
  4. Any multi-tenanted development project that is built on a speculative basis.
  5. Any development project involving a historically designated building.
- (2) Definitions. In this section:
- (a) "City financial assistance" means any loan or financial incentive of greater than \$100,000.
    1. "City financial assistance" includes, but is not limited to, capital revolving fund loans, redevelopment contracts, economic development agreements, revenue or loan agreements with an eligible participant or authorized developer under Wis. Stat. § 66.521, contracts with developers or other entities authorized by Wis. Stat. §§ 66.1333 (5) and 66.1105(3)(e).
    2. "City financial assistance" does not include public works contracts, supply procurement contracts, professional service contracts, contracts of insurance or guaranty, collective bargaining agreements, or contracts with nonprofit corporations, unless the nonprofit corporation passes City financial assistance in an amount equal to one hundred thousand dollars (\$100,000) or more through to a for-profit entity, in which case the for-profit entity shall be subject to this ordinance.
  - (b) "Development Project" means a development in which the City holds, retains or acquires a proprietary interest;
  - (c) "Proprietary Interest" A proprietary interest exists where the City has an economic interest in a Development Project due to the City's role as a financier of the project, and that interest is likely to be adversely affected in the instance of a labor-management conflict.
  - (d) "Recipient of City financial assistance" means any person, including that person's subcontractors, successors, assignees and transferees.
- (3) Proprietary Interest Protection Agreement Requirement.
- (a) In any Development Project funded by City financial assistance, the City shall require a recipient of City financial assistance to enter into a Proprietary Interest Protection Agreement for the duration of the City's proprietary interest in the Development Project
  - (b) The recipient of financial assistance, its successor or assigns, shall be required to incorporate the terms of the Proprietary Interest Protection Agreement into any contract, subcontract, lease, sublease, management or operating agreement, or other similar agreement, giving a right to any Employer to own, manage, or operate a business on the premises of the Development Project for the duration of the proprietary interest of the City in the Development Project.
  - (c) The terms of a Proprietary Interest Protection Agreement shall be determined on a case by case basis as determined by law and the specific details of the project. However, the Agreement shall contain at least the following:
    1. Employee preference regarding whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization, shall be determined based on signed authorization cards in a card check procedure conducted by a neutral third party in lieu of a formal election.
    2. The employer and the labor organization shall at all times refrain from the use of intimidation, reprisal or threats of reprisal, or other conduct designed to intimidate or coerce employees to influence the decision by employees whether to join or be represented by any labor organization.
    3. Signatory labor organizations shall forbear from taking economic action, such as striking or picketing, against the signatory employer at the worksite of an organizing drive covered by this section, so long as the employer complies with the terms of the agreement.

The employer and labor organization may incorporate additional consistent provisions to protect the city's/agency's proprietary interest if they so agree.

- (4) The City shall be deemed to have a proprietary interest in a Development Project if the City determines, on a case-by-case basis, that any of the following, but without limitation, exist:
- (a) Through a lease of real property that is owned by the City and used for the Development Project, the City receives ongoing revenue, excluding government fees, tax revenue, assessment revenue, or similar revenues, except for tax revenue under the circumstances specified in items (b) and (c) of this subsection.
  - (b) Ongoing revenues from the Development Project, including incremental tax revenues generated by the Development Project, are used, directly or indirectly, to repay loans provided by the City to assist in the development of the Development Project;
  - (c) Ongoing revenues from the Development Project, including incremental tax revenues generated by the Development Project, are used, directly or indirectly, to pay debt service on bonds or loans provided by the City to assist the development of the Development Project;

(5) Enforcement. Any person or organization may file with the City a complaint of noncompliance with this ordinance. Upon any complaint, the City shall investigate and take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.”