Legislation Details (With Text)

File #:	26158	**Version:** 2	**Name:**	Chapter 39	
Type:	Ordinance		**Status:**	Passed	
File created:	4/24/2012		**In control:**	EQUAL OPPORTUNITIES COMMISSION	
On agenda:	5/1/2012		**Final action:**	9/4/2012	
Enactment date:	9/14/2012		**Enactment #:**	ORD-12-00108	

Title: SUBSTITUTE Amending Sec. 39.03(1), creating Sec. 39.03(2)(ff), renumbering current Secs. 39.03 (2)(ff) through (mm) to (gg) through (nn), amending renumbered Sec. 39.03(2)(jj) and (mm), and amending Sec. 39.03(4)(a), (c), and (d) of the Madison General Ordinances to update the City's Equal Opportunities Ordinance pursuant to Wis. Stats. § 66.0104.

Sponsors: Michael E. Verveer

Indexes:

Code sections:

Attachments: 1. Version 1

Date	Ver.	Action By	Action	Result
9/4/2012	1	COMMON COUNCIL	Adopt Substitute	Pass
8/9/2012	1	EQUAL OPPORTUNITIES COMMISSION	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
7/12/2012	1	EQUAL OPPORTUNITIES COMMISSION		
5/1/2012	1	COMMON COUNCIL	Referred	
4/24/2012	1	Attorney's Office/Approval Group	Referred for Introduction	

Fiscal Note

No fiscal impact is anticipated.

Title

SUBSTITUTE Amending Sec. 39.03(1), creating Sec. 39.03(2)(ff), renumbering current Secs. 39.03(2)(ff) through (mm) to (gg) through (nn), amending renumbered Sec. 39.03(2)(jj) and (mm), and amending Sec. 39.03(4)(a), (c), and (d) of the Madison General Ordinances to update the City's Equal Opportunities Ordinance pursuant to Wis. Stats. § 66.0104.

Body

DRAFTER'S ANALYSIS: These ordinance amendments will bring the City's Equal Opportunities Ordinance in compliance with Wis. Stats. § 66.0104, which was created by 2011 Act 108. This statute prohibits municipalities from enacting ordinances that place limitations on residential landlords which prohibit a landlord from obtaining and using certain information with respect to a tenant or prospective tenant, which includes monthly household income, court records, including arrest and conviction records, and social security number. It also prohibits municipalities from limiting how far back in time a prospective tenant's conviction record may be taken into account by a landlord. The statute also states if any city has any ordinance in effect on the effective date of the statute any ordinance that is inconsistent with the statute, the ordinance does not apply and may not be enforced. The receipt of Section 8 housing vouchers is being removed from the definition of "source of income" because State regulations as well case law make it clear that Section 8 vouchers do not constitute income. A separate protected class will be created for receipt of rental assistance.

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

1. Subsection (1) entitled "Declaration of Policy" of Section 39.03 entitled "Equal Opportunities

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Ordinance" of the Madison General Ordinances is amended to read as follows:

"(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, receipt of rental assistance, 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."

2. Subdivision (g) of Subsection (2) entitled "Definitions" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is herein amended by amending to read as follows:

"(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).~~"

3. Subdivision (ff) of Subsection (2) entitled "Definitions" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is herein amended by creating to read as follows:

"(ff) "Receipt of rental assistance" means receipt of rental assistance under Title 24 Code of Federal Regulations, Subtitle B, Chapter VII (commonly known as the Section 8 program), or any other rental assistance that is not considered household income."

4. Current Subdivisions (ff) through (mm) of Subsection (2) entitled "Definitions" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances are renumbered to Subdivisions (gg) through (nn), respectively.

5. Newly renumbered Subdivision (jj) of Subsection (2) entitled "Definitions" of Section 39.03

entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:

"(~~ii~~jj) 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."

6. Newly renumbered Subdivision (mm) of Subsection (2) entitled "Definitions" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:

"(~~ll~~mm) 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, or receipt of rental assistance."

7. Subdivision (a) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:

"(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~~;~~. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section;"

8. Subdivision (c) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:

"(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. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section."

9. Subdivision (d) of Subsection (4) entitled "Housing" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinances is amended to read as follows:

"(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. Pursuant to Wis. Stat. § 66.0104(2), arrest record and conviction record are not considered protected classes for the purposes of this section.

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,~~

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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.

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.

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

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~~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~~2. 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."