



Legislation Text

File #: 37018, Version: 2

**Fiscal Note**

No appropriation is required.

**Title**

SUBSTITUTE Amending Section 39.03 of the Madison General Ordinances to add homelessness as a protected class

**Body**

DRAFTER'S ANALYSIS: This ordinance amendment adds homelessness as a protected class in the areas of employment, housing, and public accommodations.

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

"(1) Declaration of Policy. The practice of providing equal opportunities in housing, employment, public accommodations and City facilities 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.

The practice of providing equal opportunities in employment to persons without regard to sex, race, religion or atheism, color, national origin or ancestry, citizenship status, age, handicap/disability, marital status, source of income, arrest record, conviction record, credit history, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, familial status, student status, domestic partner status, receipt of rental assistance, the fact that the person declines to disclose their social security number, homelessness or unemployment status is a desirable goal of the City of Madison and a matter of legitimate concern to its government. 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. The practice of providing equal opportunities in housing to persons without regard to sex, race, religion or atheism, color, national origin or ancestry, citizenship status, age, handicap/disability, marital status, source of income, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, familial status, student status, domestic partner status, receipt of rental assistance, the fact that the person declines to disclose their social security number, homelessness, unemployment 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.

Denial of equal opportunity in public accommodations subjects those discriminated against to embarrassment and creates distress and unrest within the community. The practice of providing equal opportunities in public accommodations to persons without regard to sex, race, religion or atheism, 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 partner status, receipt of rental assistance, the fact that the person declines to disclose their social security number, homelessness, or unemployment status is a desirable goal of the City of Madison and a matter of legitimate concern to its government. 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.

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. Subsection (2) entitled “Definitions” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinance is created to read as follows:

“Homelessness means the status of lacking housing (without regard to whether the individual is a member of a family). This includes those individuals whose primary residence during the night is a supervised public or private facility (e.g., shelters) that provides temporary living accommodations, and an individual who is a resident in transitional housing.”

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).

Labor organization includes any collective bargaining unit composed of employees.

Less than honorable discharge means any general, undesirable, clemency, bad conduct or dishonorable discharge from the military service.

Marital status includes being married, separated, divorced, widowed, or single.

Mutual support means that the domestic partners contribute mutually to the maintenance and support of the domestic partnership throughout its existence.

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.

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.

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.

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.

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.

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.

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.

“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.

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.

Source of income includes, but shall not be limited to, moneys received from public assistance, pension, and Supplementary Security Income (SSI). Source of income shall be limited to legally derived income.

Student means a person who is enrolled in a public or private high school, college, university, technical college, accredited trade school, or apprenticeship program.

Transfer does not apply to the transfer of property by will or gift.

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.

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 948.015; or stalking as defined in Wis. Stat. § 940.32 or of a crime prohibited by Wis. Stat. ch. 948.

Unemployment means the status of not having a job or employment. It does not mean, nor is it unlawful discrimination to inquire into or to consider or act upon, the facts and circumstances leading to the status or condition of unemployment.”

3. Subdivisions (a), (c), (d), (g), (h), (i),(j), (k) and Paragraph 2. of subdivision (j) of Subsection (4) entitled “Housing” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinance 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, homelessness 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.”
- (c) To falsely represent that a dwelling is not available for inspection, sale, or rental because of such person's protected class membership, homelessness 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.”
- (d) To discriminate against any person because of such person's protected class membership, homelessness 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.”
- (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, homelessness, 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.”
- (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, homelessness, 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.”
- (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, homelessness, 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.”

(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, homelessness, 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, homelessness, 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.”

(k) In this subsection, prohibited discrimination includes discrimination because of the protected class membership, homelessness, 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.”

4. Subdivisions (a), (b), (c), (d), (e) and Paragraphs 1 and 2. of Subdivision (d) of Subsection (8) entitled “Employment Practices” of Section 39.03 entitled “Equal Opportunities Ordinance” of the Madison General Ordinance is amended to read as follows:

“(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, unemployment, homelessness 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, unemployment, homelessness 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, unemployment, homelessness 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, unemployment, homelessness 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, unemployment, homelessness 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.
- (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, unemployment, homelessness 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."

5. Subsection (5) entitled "Public Place of Accommodation or Amusement" of Section 39.03 entitled "Equal Opportunities Ordinance" of the Madison General Ordinance is amended to read as follows:

- "(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), homelessness 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.
  - (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), homelessness 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.
  - (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."

