

**CITY OF MADISON
INTER-DEPARTMENTAL
CORRESPONDENCE**

DATE: April 27, 2007

TO: Mayor Cieslewicz, All Department and Division Heads

FROM: Lucia Nufiez, Department of Civil Rights Director

SUBJECT: **MANDATORY CONTRACT & APPLICATION LANGUAGE TO ENFORCE MGO
39.05, NONDISCRIMINATION BASED ON DISABILITY
~~DRAFT UPDATE - JUNE 22, 2007 - to reflect numbering change from 3.72 to 39.05~~**

Section 39.05(7) requires applicants and recipients of City Financial Assistance to make a written "assurance" that they will follow sec. 39.05 and not discriminate based on disability. The ordinance requires "assurances" to be incorporated into application forms, contracts, and requires the recipient to provide those assurances *before* any financial assistance is granted. Section 39.05(7) authorizes the Director of Department of Civil Rights to specify the *form* that these assurances should take.

Pursuant to the authority granted in 39.05(7), and after consultation with the City Attorney, I am announcing the form and procedure to assure compliance with sec. 39.05 in all applicable city contracts. This will include mandatory contract language and a statement on application forms.

1. Applicable Contracts.

Section 39.05 applies to the following contracts:

- CDBG funding, HOME loans, TIF agreements, Capital Revolving Fund loans, Rental Rehabilitation loans, Façade Improvement Grants
- Sales, Leases, and agreements for permission to use city property
- Leases of City property for less than fair market value or for reduced consideration, proceeds from a subsequent transfer or lease if the City's share of its fair market value is not returned to the City; other sale, leases or permission to use city property
- Parks Division agreements for the use of city park facilities, or purchase of services for the benefit of the public (swimming lessons, equipment rental, etc.) Identified contracts include MMSD/MSCR program and "use agreements," especially through Warner Park and Goodman Pool, agreements for the use of Olbricht Park; certain golf course contracts, whenever 39.05(4)(b) applies.
- Community Services "Purchase of Service" agreements, Health Department Community Service Providers, Neighborhood Grants administered by Planning (CEP, NPG, NLC), Emerging Neighborhood Funds, Arts Commission Grants
- Any other contract where the contractor receives **financial assistance** from the city, as defined in sec. 39.05(3)(b).

In consultation with the City Attorney's office, we have determined that sec. 39.05 does not apply to day-to-day procurement of goods and services (including professional, architectural, or design services) for

running the City. Nor does it apply to public works contracts, contracts for insurance or guaranty, or collective bargaining agreements. Some determinations of applicability will have to be made on a case-by-case basis.

2. Procedure - Effective Immediately:

- A. **CONTRACT LANGUAGE:** Please include the following language in all applicable contracts for city financial assistance. Under to APM 1-1, the City Attorney must approve all changes to form contracts. The City Attorney has approved the following clause for use in applicable form contracts:

Nondiscrimination Based on Disability. Contractor shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance.

Contractor hereby makes the following assurances: Contractor assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities," and agrees to ensure that any subcontractor who performs any part of this agreement complies with sec. 39.05, where applicable. This includes but is not limited to assuring compliance by the Contractor and any subcontractor, with section 39.05(4) of the Madison General Ordinances, "Discriminatory Actions Prohibited."

Contractor may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited: Contractor assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

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Contractor shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).”

- B. APPLICATION FORMS:** 39.05 also requires all *applicants* for financial assistance to assure compliance with this ordinance. If your department uses application forms for recipients of financial assistance, please include the language below on all of your application forms, effective immediately:

Nondiscrimination Based on Disability. Applicant shall comply with Section 39.05, Madison General Ordinances, Nondiscrimination Based on Disability in City-Assisted Programs and Activities. Under section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance.

Applicant hereby makes the following assurances: Applicant assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, entitled “Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities,” and agrees to ensure that any subcontractor who performs any part of this agreement complies with sec. 39.05, where applicable, including all actions prohibited under section 39.05(4), MGO.”

Thank you for your cooperation with this process. If you have any questions, please feel free to contact Angela Bennett, Disability Rights Coordinator at 267-8635.