

ALTERNATE

AGENDA # _____

CITY OF MADISON, WISCONSIN

AN AMENDED 4TH SUBSTITUTE
ORDINANCE _____

creating Sections 3.23(10)(b)10. and 3.45 of
the Madison General Ordinances to establish a
minimum wage for the City of Madison.

Drafted by: Roger A. Allen
Assistant City Attorney

Date: March 29, 2004

Fiscal Note: See separate report of Comptroller.

SPONSORS: Mayor Cieslewicz and Aids. King,
Benford, Bruer, Golden, Holtzman,
Konkel, Olson, MacCubbin, Markle
Sloan, Verveer, and Webber

PRESENTED October 7, 2003 (TITLE ONLY)
REFERRED Mayor (3/30/04) EOC,
Economic Development

Comm., Board of Estimates
REREFERRED EOC, Economic Development
Comm., Board of Estimates, City Attorney
(11/18/03) EOC, Economic Development
Comm., City Attorney (12/4/03; 3/2/04), Mayor,
EOC, CC Mtg. 3-30 (3/16)

REPORTED BACK 11/18/03; 1/20/04; 3/2/04;
3/16/04; 3/30/04

ADOPTED X POF _____

RULES SUSPENDED _____

PUBLIC HEARING _____

MAYOR SIGNED _____

PUBLISHED _____

APPROVAL OF FISCAL NOTE IS NEEDED
BY THE COMPTROLLER'S OFFICE
Approved By

Comptroller's Office

AMENDED 4TH SUBST. ALT. 13556

ORD. NUMBER _____

ID NUMBER 34840

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

1. Paragraph 10. of Subdivision (b) of Subsection (10) entitled "Equal Opportunities Commission" of Section 3.23 entitled "Equal Opportunities Ordinance " of the Madison General Ordinances is created to read as follows:

"10. The Commission shall administer and enforce the Minimum Wage Ordinance, sec. 3.45, M.G.O."

2. Section 3.45 entitled "Minimum Wage Ordinance" of the Madison General Ordinances is created to read as follows:

"3.45 MINIMUM WAGE.

(1) Declaration of Policy.

(a) Policy. In order to preserve and promote the public welfare, health, safety and prosperity of the City of Madison and its residents, it is vital that all persons employed in our community receive wages that ensure they are able to provide themselves and their families with the basic necessities of life; food, shelter, clothing, healthcare and education. The Common Council has determined that, due to the higher costs associated with living

Approved as to form:

and working in the City, the state and federal minimum wages are inadequate to ensure that workers can supply their family's basic needs. As a consequence, such workers often work long hours and hold multiple jobs. This causes hardship for them and their families, prevents them from pursuing further education and limits their participation in the cultural and civic life of our community. In 1999, these very same concerns led the City to enact its Living Wage Ordinance, sec. 4.20, M.G.O. This ordinance has ensured that certain workers who receive wages from employers who contract with the City are adequately compensated. To the extent that it is necessary to establish a higher minimum wage for all employees within the City of Madison, the Common Council enacts this ordinance to supplement those provisions of Wis. Admin. Code § DWD pertaining to the establishment of a statewide minimum wage.

- (b) Determination of Rates. The rates adopted in this chapter reflect compensation that has been determined to be adequate to permit any employee within the City of Madison to maintain herself or himself in minimum comfort, decency, physical and moral well-being. The City of Madison has also considered the effect that an increase in the minimum wage might have on the economy of the City, including the effect of a minimum wage increase on job creation, retention and expansion and on the availability of entry-level employment.
 - (c) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein. No portion of this ordinance is intended to contravene or conflict with any portion or provision of Ch. 104, Wis. Stats., and/or Wis. Admin. Code Ch.'s. DWD 271, 274, or 275.
- (2) Definitions. As used in this chapter:
- (a) "Agriculture" will mean the same as "farm premises" as defined in s. 102.04 (3), Wis. Stats., of the worker's compensation act.
 - (b) "Bona fide school training program" means a program sponsored by an accredited school and authorized and approved by the state department of public instruction or the board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with a definitely organized plan of instruction and where proper scholastic credit is given by the school.
 - (c) A "bona fide vocational training program" is one authorized and approved by the state board of vocational, technical and adult education or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related to industrial information given as a regular part of a student learner's course by an accredited school, college or university.
 - (d) "Commission" means the Madison Equal Opportunities Commission.
 - (e) The term "employer" shall mean and include every person, firm or corporation, agent, manager, representative, contractor, subcontractor or principal, or other person having control or direction of any person employed at any labor or responsible directly or indirectly for the wages of another. The term "Employer" does not include the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government, other than the City of Madison, created or authorized to be created by the constitution or any law, including the legislature and the courts.
 - (f) "Industry" means a trade, business, industry, or branch thereof, or group of industries in which individuals are gainfully employed.
 - (g) A "minor" shall mean any person under 18 years of age.
 - (h) "Month" means 30 days.
 - (i) "Opportunity employee" means an employee who is not yet 20 years old, during the first 90 consecutive days after the employee is initially employed by the employer.
 - (j) "Tipped employee" means any employee engaged in an occupation in which they customarily and regularly receive tips or gratuities from patrons or others.
 - (k) "Employee" means every individual who, in a calendar week performs at least two hours of compensable work in the City of Madison for any employer and who is in receipt of or is

entitled to any compensation for labor performed for any employer. Employees include companions in private homes who shall be entitled to the minimum wage set forth in this ordinance. "Employee" does not mean:

1. Any individual engaged in the house to house delivery of newspapers to the consumer or engaged in direct house to house retail sale to the consumer.
 2. Any individual engaged in performing services for a person as a real estate agent or as a real estate salesperson, if all of those services are performed for remuneration solely by commission.
 3. Any individual engaged in performing services for an employer described in sub. (2) (e) if that individual is not considered under 29 USC 203 (e) (4), as amended to April 15, 1986, to be an employee for the purposes of the fair labor standards act, 29 USC 201 to 219, or if that individual is exempt under 29 USC 213, as amended to April 1, 1990, from being paid at least the federal minimum hourly wage under 29 USC 206 (a) (1).
 4. Any individual engaged in performing services for an employer described in sub. (2) (e) if that individual is not subject to the civil service laws of the employer and if that individual is an elective officer; is on the personal staff of an elective officer, other than a member of the legislature; is appointed by an elective officer to serve on a policymaking level; or is an immediate adviser to an elective officer with respect to the constitutional or legal powers of the elective officer's office.
 5. Any individual engaged in performing services for the state, its political subdivisions and any office, department, independent agency, authority, institution, association, society or other body in state or local government, other than the City of Madison, created or authorized to be created by the constitution or any law, including the legislature and the courts.
- (l) The term "minimum wage" shall mean compensation for labor paid, whether by time, piecework or otherwise, sufficient to enable the employee receiving it to maintain himself or herself under conditions consistent with his or her welfare.
- (m) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of habilitation/rehabilitation for workers with disabilities and of providing workers with disabilities with remunerative employment or other occupational habilitating/rehabilitating activity of an educational or therapeutic nature.
- (n) "Student learner" means a student who is receiving instruction in an accredited school and who is employed on a part-time basis, pursuant to a bona fide school training program. A "bona fide school training program" means a program authorized and approved by the department of public instruction or the technical college system board, or other recognized educational body, and provided for part-time employment training which may be scheduled for a part of the workday or workweek, supplemented by and integrated with, a definitely organized plan of instruction and where proper scholastic credit is given by the accredited school.
- (o) The term "wage" and the term "wages" shall each mean any compensation for labor measured by time, piece or otherwise.
- (p) The term "welfare" shall mean and include reasonable comfort, reasonable physical well-being, decency, and moral well-being.
- (q) "Worker with a disability" means a worker whose earning capacity is impaired by age or physical or mental deficiency or injury and who is being served in accordance with the recognized habilitation/rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of the worker.
- (r) Other Terms. Any other terms not specifically defined herein shall have the same definitions as set forth under Ch. 104, Wis. Stats. and/or Wis. Admin. Code. § DWD 270-279.
- (3) Minimum Wage Prescribed. Every wage paid or agreed to be paid by any employer to any employee, except as otherwise provided herein shall be not less than the minimum wage established herein.
- (4) Unlawful Wages. Any employer paying, offering to pay, or agreeing to pay any employee a wage lower or less in value than the minimum wage is guilty of a violation of this ordinance.
- (5) Adjustment of Minimum Wage Rate and Authority to Administer Minimum Wage Provisions.

- (a) To prevent inflation from eroding their value, beginning on October 1, 2007 and on each following October 1, the Commission shall calculate and publish an adjusted Minimum Wage and an adjusted Minimum Wage for Tipped Employees by increasing the current Minimum Wage and the current Minimum Wage for Tipped Employees by the rate of inflation during the twelve months prior to September 1 of that year using the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, or a successor index as calculated by the United States Department of Labor. Each adjusted Minimum Wage and adjusted Minimum Wage for Tipped Employees calculated shall take effect on the following January 1. In calculating such a minimum wage rate for calendar year 2008 the Commission shall use the minimum wage rate of \$7.75 per hour for non-tipped employees, the minimum wage rate of \$6.80 per hour for opportunity employees, and the minimum wage rate of \$3.50 per hour for tipped employees as the base wage rates to which CPI-W adjustment shall be applied in establishing the minimum wage rate for that year.
- (b) The Commission shall have the authority to investigate, adjudicate and dispose of any complaint alleging a violation of this ordinance. Such investigations, adjudications and dispositions shall be made as provided under the procedures set forth in sec. 3.23(10)(c), M.G.O., for the investigation and disposition of complaints filed under the Ordinances, sec. 3.23, M.G.O. Any person may file with the Commission a complaint that the wages paid to employees for whom a minimum wage has been established are less than that rate, and the Commission shall investigate the matter and take all proceedings necessary to enforce the payment of a wage not less than the minimum wage.

However, the Commission shall not accept any complaint filed more than two years after the date of the alleged violation of this ordinance. Where it is determined that an employer has violated the provisions of this Minimum Wage Ordinance, in addition to the penalty provisions provided herein any employee whom the Commission determines was not paid the applicable minimum wage established by this ordinance is entitled to liquidated damages in an amount of twice the difference between the rate of pay that the employee was paid and the applicable minimum wage rate established in this ordinance. The Commission shall have the authority to enter such an order for all employees who, in the Commission's determination, were not appropriately compensated under this ordinance, irrespective of whether said employees were the complainants before the Commission.

- (c) The Commission may adopt such rules and regulations as may be necessary to carry out the purpose and provisions of this ordinance.
- (6) Applicability of Minimum Wage. The rates prescribed in this ordinance shall apply to all employees, including indentured apprentices, employed at private employments including nonprofit organizations, whether paid on a time, piece rate, commission, or other basis for each hour of work performed within the City of Madison.
- (7) Ability of Employer's To Pay More Than the Minimum Wage. Nothing contained in this ordinance prohibits an employer from paying more than the minimum rates listed in this ordinance or from treating an employee as a probationary employee for less than the number of days specified in this ordinance.
- (8) Minimum Wage Rates.

- (a) Rates.

- 1. Effective January 1, 2005 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:
 - a. All employees, \$5.70 per hour
 - b. Opportunity employees, \$5.18 per hour.
- 2. Effective January 1, 2006 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:
 - a. All employees, \$6.50 per hour
 - b. Opportunity employees, \$5.81 per hour.
- 3. Effective January 1, 2007 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry at a lesser hourly rate than is indicated below:
 - a. All employees, \$7.25 per hour
 - b. Opportunity employees, \$6.41 per hour.

4. Effective January 1, 2008 and except as otherwise provided within this ordinance, no employer shall employ any employee in any occupation, trade, or industry a lesser hourly rate than \$6.80 to any opportunity employee or \$7.75 per hour to any other employee, plus any adjustments to those hourly wages as determined by the Madison Equal Opportunities Commission pursuant to its authority under subsection (5)(a) herein.

(b) Room and Meal Allowances.

1. Room allowances shall be computed on the basis of 20% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.
2. Meal allowance shall be computed on the basis of 30% of the prescribed minimum rate for employees based on a 40 hour week, rounded off to the nearest 5 cents.

- (c) Tips. Where tips or gratuities are received by the employee from patrons or others, the employer may pay the minimum wage rate established by this subsection, providing the employer can establish by its payroll records that for each week where credit is taken, when adding the tips received to the wages paid, no less than the minimum rate prescribed in sub. (8)(a), was received by the employee. The minimum rate shall be the rate established in par. (1).

1. Minimum Rates For Tipped Employees.

- a. Effective January 1, 2005 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:
 1. All employees, \$2.57 per hour.
- b. Effective January 1, 2006 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:
 1. All employees, \$2.94 per hour.
- c. Effective January 1, 2007 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than is indicated below:
 1. All employees, \$3.28 per hour.
- d. Effective January 1, 2008 and except as otherwise provided within this ordinance, no employer shall employ any tipped employee at a lesser hourly rate than \$3.50 plus any adjustment to that hourly minimum wage rate as determined by the Madison Equal Opportunities Commission pursuant to its authority under subsection (5)(a) herein.

2. Burden of proof.

- a. When the employer elects to take tip credit the employer must have a tip declaration signed by the tipped employee each pay period and show on the payroll records that any required social security or taxes have been withheld each pay period to show that when adding the tips received to the wages paid by the employer, no less than the minimum rate was received by the employee. When the employer's time and payroll records do not contain these requirements, no tip credit shall be allowed.
- b. The Commission may refuse to take action to collect minimum wage deficiencies for a tipped employee who has refused or failed to file an accurate signed tip declaration for the employer each pay period.

3. General Characteristics Of "Tips".

- a. Tip means a sum presented by a customer as a gift or gratuity in recognition of some service performed for them. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally they have the right to determine who shall be the recipient of their gratuity. In the absence of an agreement to the contrary between the recipient and a third party, a tip becomes the property of the person in recognition of whose service it is presented by the customer. Only tips actually received by an employee as money belonging to them which they may use as they choose free of any control by the employer, may be counted in determining whether they are a "tipped employee."

- b. In addition to cash sums presented by customers which an employee keeps as their own, tips received by an employee include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips. Special gifts in forms other than money or its equivalent as above described, such as theater tickets, passes, or merchandise, are not counted as tips received by the employee.
- 4. Tip Pooling. Where employees practice tip splitting, as where waiters or waitresses give a portion of their tips to the bus persons, both the amounts retained by the waiters or waitresses and those given the bus persons are considered tips of the individuals who retain them.
- 5. Service Charge.
 - a. A compulsory charge for service, such as 15% of the amount of the bill, imposed on a customer by an employer's establishment, is not a tip unless distributed by the employer to their employees.
 - b. Similarly, where negotiations between a hotel or restaurant and a customer for banquet facilities include amounts for distribution to employees of the hotel or restaurant, the amounts must be so distributed to the employees at the end of the pay period in which it is earned.
 - c. If the employer in their payroll records can establish a breakdown of the service charge, such as how much is for tips, room charge, decorations, and other chargeable services, only the amount for tips must be paid to the employee at the end of the pay period in which it is earned.
 - d. Similarly, where an accounting is made to an employer for their information only or in furtherance of a pooling arrangement whereby the employer redistributes the tips to the employees upon some basis to which they have mutually agreed among themselves, the amounts received and retained by each individual as their own are counted as their tips.
- 6. Receiving The Minimum Amount "Customarily And Regularly". The employee must receive tips "customarily and regularly" in the occupation in which they are engaged in order to qualify as a tipped employee. If it is known that they always receive more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, waitresses, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of sub. (8)(c) herein may be applied. On the other hand, an employee who only occasionally or sporadically receives tips such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which they normally and recurrently receive tips, they will be considered a tipped employee even though occasionally, because of sickness, vacation, seasonal fluctuations or the like, they fail to receive tips in a particular month.
- 7. The Tip Wage Credit.
 - a. In determining compliance with the wage payment requirements the amount paid to a tipped employee as allowable under sub. (8)(c) by an employer is deemed to be increased on account of tips to equal the minimum wage applicable under sub. (8)(a) to such employee in the pay period for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under sub. (8)(d) & (e). The credit allowed on account of tips may be less than the difference between the applicable minimum wage and the rate for a tipped employee; it cannot be more.
 - b. It is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: "If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips."

5. Whenever a collective bargaining agreement exists, the Commission may consider the written application of labor and management for a waiver or modification to the requirements of par. (3) or (4), based upon practical difficulties or unnecessary hardship in compliance. If the Commission determines that compliance with par. (3) or (4) is unjust or unreasonable and that granting a waiver or modification will not be dangerous or prejudicial to the life, health, safety or welfare of the employees, the department may grant a waiver or modification.
- (b) Lodging means living accommodations which are adequate, decent and sanitary, according to usual and customary standards. Employees shall not be required to share a bed.
- (c) Room and board deductions may not be made from the wages of a seasonal non-resident agricultural employee that would result in the employee receiving less than the prescribed minimum rate.
- (12) Exceptions To Minimum Wage. Unless otherwise specifically set forth within this ordinance, the provisions of this ordinance shall not be applicable under any circumstance or with regard to an employment where, in the absence of this ordinance, any of the provisions of Wisconsin Administrative Codes would make the State Minimum Wage provisions inapplicable.
- (13) Deductions And Record Keeping. The City of Madison does hereby adopt and incorporate into this ordinance, as though fully set forth herein, the provisions of Wis. Admin. Code § DWD 272.10 and DWD § 272.11. Such listings of deductions and such records shall be made available for inspection and copying by any authorized employee of the Madison Equal Opportunity Commission during the regular business hours of the employer.
- (14) Interpretation Of Hours Worked.
 - (a) The City of Madison does hereby adopt and incorporate into this ordinance, as though fully set forth herein, the provisions of Wis. Admin Code § DWD 272.12.
 - (b) To the extent that there are any conflicts between those provisions of the Wis. Admin. Code and this ordinance, the provisions of this ordinance shall govern.
 - (c) Any hours of work which constitute sleeping time under the provisions of Wis. Admin. Code § DWD 272.11(2)(d), shall be exempt from the hourly minimum wage rates of Subsection (8) herein. Such hours shall be subject to the appropriate state and federal wage rates in force and effect at the time such wages are earned.
- (15) Prohibition Of Displacement. An employer may not displace an employee solely for the purpose of hiring an employee to be paid the opportunity wage.
- (16) Domestic Service Employment, Casual Employment.
 - (a) Domestic Service Employment.
 1. "Domestic service employment" means all services related to the care of persons or maintenance of a private household or its premises, on a regular basis, by an employee of a private household. Such occupations shall include, but not be limited to, the following: butlers, chauffeurs, cooks, day workers, gardeners, graduate nurses, grooms, handy persons, house cleaners, housekeepers, laundry persons, practical nurses, tutors, valets and other similar occupations.
 2. Domestic workers who reside in the employer's household are covered under the rates prescribed by this ordinance. Employers may take credit for board and lodging as prescribed herein.
 3. Record keeping requirements provided in sub. (11) shall apply.
 - (b) Casual Employment. "Casual employment" means employment which is on an irregular or intermittent basis for not more than 15 hours per week for any one employer. This applies to the following: baby-sitting, mowing lawns, raking leaves, shoveling snow or other similar odd jobs. The minimum rates prescribed by this ordinance shall not apply to casual employment in or around a home in work usual to the home of the employer, and not in connection with or part of the business, trade or profession of the employer.
- (17) Recreational Or Educational Camps.
 - (a) Minimum Rates. The minimum wage of all employees employed in recreational or educational camps and day camps, except counselors, shall be computed on an hourly basis as prescribed in sub (5).
 - (b) Allowances for Board and Lodging. Where board or lodging or both are furnished by the employer in accordance with sub. (9), and accepted and received by the employee, an allowance may be made not to exceed the amounts specified in sub. (8)(d).

- (c) Counselors. The minimum wage of counselors employed in seasonal recreational or educational camps and day camps may be computed on a weekly basis as follows:
 - 1. Adult counselors 18 years of age and over:
PER WEEK
 - a. If board and lodging are not furnished, the rate shall be not less than \$140.00, effective January 1, 2005.
 - b. If board only is furnished, the rate shall be not less than \$110.00 effective January 1, 2005.
 - c. If board and lodging are furnished, rate shall not be less than \$91.00, effective January 1, 2005.
 - 2. Counselors 17 years of age and under:
PER WEEK
 - a. If board and lodging are not furnished, the rate shall be not less than \$123.00, effective January 1, 2005.
 - b. If board only is furnished, the rate shall be not less than \$92.00 effective January 1, 2005.
 - c. If board and lodging are furnished, rate shall not be less than \$74.00, effective January 1, 2005.
- (d) Records. Recreational or educational camps and day camps are not required to keep the daily and weekly time records required by s. DWD 272.11 (1) (d), (e), and (f), for counselors employed and paid on a weekly basis.
- (e) Definitions. For the purpose of this section:
 - 1. A "recreational or educational camp" means a camp operated under trained leadership for the purpose of providing group experience for and contributing to the physical, mental, spiritual and social growth of campers who are less than 18 years of age and who make such camp their residence during the camping period.
 - 2. A "recreational or educational day camp" means a camp operated under trained leadership for the purpose of providing group experience and contributing to the physical, mental, spiritual and social growth of campers who participate in such camping program during daytime periods, but not overnight.
 - 3. A "camp counselor" means a person employed by a "recreational or educational camp" or recreational or educational day camp" who leads, directs and instructs campers in such camps in their camping program and activities and shares responsibility for the total care and well-being of campers.
- (18) Caddies. Effective January 1, 2005, the minimum wage of employees employed as caddies shall be:
 - \$5.90 - 9 holes
 - \$10.50 - 18 holes
- (19) Student Worklike Activities And Employment.
 - (a) Independent Colleges and Universities.
 - 1. Independent colleges and universities may employ full-time students who are 18 years of age and over for 20 hours per week or less at the federal minimum wage rates established under 29 USC 206.
 - 2. Students who work at independent colleges or universities for over 20 hours per week shall be paid at the rates established under sub.(5).
 - (b) Elementary and Secondary Schools. Student worklike activities that meet the criteria of Wis. Admin. Code § DWD 270.085 are not covered by the minimum wage provisions of this ordinance
- (20) Subminimum Wage Licenses For Habilitation/Rehabilitation Facilities And For The Employment Of Workers With Disabilities And Student Learners. The provisions of this ordinance do not apply to any facility or employer who holds a license in good standing and issued by the State of Wisconsin pursuant to Wis. Admin. Code § DWD 272.09 allowing said employer or facility to pay subminimum wages.
- (21) Penalty For Intimidating Witness. No employer may discharge or threaten to discharge, or in any way discriminate, or threaten to discriminate against any employee because the employee has filed a complaint alleging a violation of this ordinance, has otherwise asserted his or her rights under this ordinance, has informed any other employee of his or her rights under this ordinance, has testified or is about to testify, or because the employer believes that the employee may testify, in any investigation or proceeding relative to the enforcement of this ordinance. Any employer who

engages in such prohibited activity is guilty of a violation of this ordinance, and upon conviction thereof shall be subjected to a forfeiture of not less than \$25 nor more than \$2,500 for each offense.

- (22) Definition Of Violation. Each day during which any employer shall employ a person for whom a minimum wage has been fixed at a wage less than the minimum wage fixed shall constitute a separate and distinct violation of this ordinance. The penalty for each violation shall be a forfeiture of not less than \$25.00 and not more than \$200 for a first offense within one year, not less than \$200 nor more than \$1,000 for a second violation within one year and not less than \$1,000 nor more than \$2,500 for a third or subsequent violation within one year. These penalty provisions are in addition to any remedies or damages the Commission may award to an aggrieved employee under sec. 3.23(10)(c)2.b., M.G.O. The Madison Equal Opportunities Commission may, upon determining that a violation of this ordinance has occurred, refer such violation to the City Attorney. The City Attorney, at his/her discretion, may thereafter pursue an action in the Madison Municipal Court to recover a forfeiture for such violation."
- (23) Education and Outreach. The Commission shall develop a plan for community outreach and education and shall, by no later than July 1, 2004, submit such plan to the Common Council for its approval. The goal of this outreach and education program shall be to reasonably inform community employers of the requirements of this ordinance.
- (24) Advisory Committee. The Commission shall develop a plan to create a small business advisory committee and shall, by no later than July 1, 2004, submit such plan to the Common Council for its approval. The goal of this advisory committee shall be to involve community employers in implementation, enforcement and evaluation of this ordinance."

AGENDA # _____

CITY OF MADISON, WISCONSIN

REPORT OF: The City Comptroller

TITLE: Fiscal note for a 4th Substitute Ordinance and 4th Substitute Alternate Ordinance creating Sections 3.23(10)(b)10 and 3.45 of the Madison General Ordinances to establish a minimum wage for the City of Madison.

**AUTHOR: Dan Bohrod
Administrative Analyst**

DATED: March 29, 2004

PRESENTED October 7, 2003

REFERRED _____

REREFERRED _____

REPORTED BACK _____

ADOPTED _____ POF _____

ID NUMBER 34840

TO THE MAYOR AND COMMON COUNCIL:

U.S. Census data suggest that the Ordinance could affect approximately 10% of all jobs in the City of Madison, or an estimated 17,000 jobs. The City currently has no administrative structure in place to monitor or police an Ordinance of this nature.

The City Equal Opportunities Commission has indicated that the minimum enforcement and administration costs will include the need for an additional .50 FTE EOC Investigator (estimated cost: \$20,000 to \$30,000 annually, including salary and fringe benefits) specializing in wages and hours enforcement issues. Depending on the complexity of potential investigations, the additional staff will provide for the processing of perhaps 25 to 50 cases. More staff resources would be required if additional investigations were required. In addition, EOC indicates that it will require an estimated \$3,000 in one-time costs for staff training and materials; an estimated \$3,000 annually for additional hourly support; and additional resources annually for public education, training and outreach. (It should be noted that administration and enforcement of wage-related requirements represents a completely new area of oversight for the City/EOC and may require the need for additional staff or training resources beyond those currently anticipated.) Further, if legal challenges are raised against Ordinance provisions, the City Attorney will need to reallocate staff resources to address the litigation. No provision for these costs has been included in the 2004 City operating budget.

Because the City has already enacted a minimum Living Wage Ordinance (MGO 4.02) that requires wage payments to City employees and employees of City contractors that exceed the proposed minimum wage level, few other direct costs to the City are anticipated.

The State Department of Workforce Development has indicated that there are an estimated 7,900 employers in Madison that might be covered by provisions of the Ordinance. Although not currently

required in the Ordinance, if the City were to actively engage in a Minimum Wage notification effort, the costs might range from \$5,000 to \$10,000 for postage, materials and staff time.

The Ordinance includes penalty provisions that would require an employer found in violation of the Ordinance requirements to pay a fine for each day a violation was found to have occurred, in addition to remedies or damages awarded to an aggrieved employee. Penalty amounts are not less than \$25 and not more than \$200 for a first offense within one year, from \$200 to \$1,000 for a second violation, and from \$1,000 to \$2,500 for a third and subsequent violation within one year. Since each day constitutes a separate violation under terms of the Ordinance, an employer who may have underpaid an employee for a two-week period (10 work days) would be subject to total forfeitures of not less than \$8,225 and not more than \$21,200. Penalty amounts would be paid to the City general fund, less court costs. The City Attorney does not anticipate a large volume of cases that will result in the imposition of these penalties.

Estimates regarding the indirect effects of the minimum wage Ordinance on the broader economic activity would be speculative and are not quantifiable in advance of its adoption.

Respectfully submitted,

Dean Brasser
City Comptroller