

**MADISON'S LOBBYING ORDINANCE
MATERIALS FOR TRAINING PROGRAM**

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NOVEMBER, 2005**

- A. SUMMARY OF MADISON'S LOBBYING ORDINANCE**
- B. COPY OF LOBBYING ORDINANCE**
- C. POWER POINT SLIDES**
- D. REGISTRATION AND REPORTING FORMS**

MADISON'S LOBBYING ORDINANCE

Summary Prepared by:

Michael P. May
City Attorney
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PLEASE NOTE: THIS SUMMARY IS PREPARED FOR EDUCATIONAL PURPOSES. IT DOES NOT REPRESENT THE FORMAL POSITION OF THE OFFICE OF CITY ATTORNEY IN ANY GIVEN CASE.

1. History

- A. Lobbying Ordinance is under Common Council Rules, Sec. 2.40, Madison General Ordinances.
- B. Originally adopted in 2000, effective January 1, 2001, modeled on state law, Wis. Stats. Sec. 13.61, et seq. Not a priority for enforcement for prior City Attorneys.
- C. Proposed amendments and enforcement activities in 2005 led to significant public debate and controversy over the ordinance.
- D. Significant amendments restrict coverage of ordinance effective October, 2005.

2. Purpose

- A. Set forth in Sec. 2.40(1), MGO.
- B. "Fullest opportunity . . . to the people of Madison to petition their government."
- C. "Know who seeks to influence the actions of . . . City government."

3. Structure of Ordinance

- A. Registration and reporting, not a restriction on opportunity to contact city officials. Secs. 2.40 (6) - (10), MGO.
- B. No fee for registration.
- C. Semi-annual reports if spend over \$1,000 in six-month period.
- D. Two ways to view the ordinance:

- i. First way: A broad net is cast, and then many exemptions are given. Assume covered unless exempted.
- ii. Second way: Practically speaking, a relatively small group of lobbyists will actually have to register and report.

4. Who is a Lobbyist?

- A. Definitions in Sec. 2.40(2), MGO.
- B. A Lobbyist is an individual who receives compensation on behalf of another person (the "Principal") to influence administrative (staff) or legislative (committee or elected official) action.
- C. Administrative or legislative action are broadly defined. Secs. 2.40(2)(a), (h) and (i)

5. Who is a Principal?

- A. The Principal is the person who employs or otherwise compensates the Lobbyist.
- B. Lobbyists are always individuals; principals may be individuals, corporations, or other legal entities.

6. "Covered City Officials"

- A. Critical concept under the Lobbying Ordinance, Sec. 2.40(2)(c), MGO.
- B. Contacts with lower level City employees are not lobbying contacts.
- C. "Covered City Officials" are elected officials, department, division or unit heads, TIF coordinator, Mayoral assistants and police or fire officers above a certain rank.
- D. Only contacts with Covered City Officials are lobbying contacts. City to publish list of Covered City Officials.
- E. Example: City Attorney is a Covered City Official; Assistant City Attorneys are not.
- F. Interim or acting officials are covered.

7. "Ministerial Actions"

- A. Another critical concept, related to Covered City Officials, see Sec. 2.40(2)(a), MGO.
- B. Purely ministerial action is not an "administrative action" for purposes of the definition of lobbying. Ministerial actions are normally those with little discretion to be exercised.
- C. Contrast: Dog License v. Zoning Change.

8. General Exemptions and Limited Exemptions

- A, General Exemptions: Apply broadly without exceptions.
- B. Limited Exemptions: Apply in limited circumstances (exceptions to the exemptions) to create coverage under the ordinance. Look at carefully for coverage.
- C. Sec. 2.40(3), MGO.

9. General Exemptions (Secs. 2.40(2)(a) - (g), (I) MGO)

- A. Requests for information from City officials and responses to those requests.
- B. Public officials and employees acting on behalf of the public entity.
- C. Participation on City boards, committees and commissions.
- D. Communications pursuant to contract with the City.
- E. Unpaid volunteers.
- F. Design professionals, but only when preparing materials required for City approval or responding to questions of City staff or at a public meeting. Lose this exemption if cross the line to advocating for a project.

10. Limited Exemptions - Business (Secs. 2.40(3)(h) - (ic), MGO)

- A. Series of exemptions, but limited to certain instances.
- B. Business-related exemptions:
 - i Business "owner" on behalf of the business located in Madison.
 - ii. "Owner" includes employees, directors, officers.

- iii. Individual or business owner in response to questions.
 - iv. Independent contractor (defined as a non-attorney hired for services other than lobbying) provided they only make lobbying contacts on 5 days in a reporting period.
- C. Exceptions to the Exemptions: These exceptions bring certain activities back within the registration and reporting requirements:
- i. Seeking cash assistance (loan, grant, TIF or similar) of more than \$10,000 in one year. Excludes services provided to the City.
 - ii. Seeking approval of a non-residential development over 40,000 gross square feet.
 - iii. Seeking approval of residential development with over 10 dwelling units.
- D. Additional Exceptions to Business Limited Exemptions. These exceptions bring back within the registration and reporting requirement for those claiming the business limited exemptions:
- i. In addition to the other exceptions set out above.
 - ii. Individual who holds himself or herself out as a lobbyist.
 - iii. Employees of trade associations, joint business entities or advocacy groups.
 - iv. Employees of business hired to do lobbying: a safe harbor of no more than 5 days of lobbying in a reporting period.

11. Limited Exemptions -- Individual

- A. Individual acting on their own behalf.
- B. Contacting Council member where individual resides.
- C. Owner-occupied house or duplex for approvals on construction.
- D. Tax assessment challenge before the Board of Review.
- E. Exceptions to the Exemptions: These exceptions bring certain activities back within the registration and reporting requirements:
 - i. Seeking cash assistance (loan, grant, TIF or similar) of more than \$10,000 in one year. Excludes services provided to the City.

- ii. Seeking approval of a non-residential development over 40,000 gross square feet.
- iii. Seeking approval of residential development with over 10 dwelling units.

12. Alternative View: Who's Covered?

- A. A shorthand -- not foolproof -- way of determining coverage.
- B. Are you:
 - i. Being paid? and
 - ii. Seeking over \$10,000 from the City? or
 - iii. Seeking large development approval?, or
 - iv. A "real lobbyist"?

13. Reporting Requirements

- A. Lobbyist Registration and Authorization of Principal required within 5 days of lobbying.
- B. Register with City Clerk on approved forms.
- C. No fee (yet) for registration.
- D. Principal must indicate if lobbyist is authorized to make other filings.
- E. Must identify and update matters on which lobbyist will lobby, including budget issues.
- F. If principal spends more than \$1,000 on lobbying expenses in the six month reporting period, an expense statement must be filed.
- G. Requires lobbyist to keep track of time and contacts with covered City officials, and to have estimated hourly costs if an employee.

14. Prohibited Practices (Sec. 2.40(4), MGO)

- A. Lobbyist and Principal may not:
 - i. Instigate a matter for employment.
 - ii. Furnish anything of value to City elected officials.

- iii. Take a matter on contingency of lobbying.
- iv. Use "corrupt means" to influence legislation, including failure to disclose real interest.

15. Penalties (Sec. 2.40(14), MGO).

- A. Suspension for failure to comply with ordinance.
- B. Lobbyist: Forfeiture of up to \$5,000.
- C. Principal: Forfeiture of up to \$1,000.
- D. False filings: Forfeiture of up to \$1,000.

16. Enforcement (Sec. 2.40(11) - (13), MGO).

- A. Training by Clerk and City Attorney twice per year.
- B. Clerk is to refer complaints to the City Attorney.
- C. Duty to cooperate with requests for information from the City Attorney.
- D. City may commence action for forfeitures in Municipal Court.
- E. Office of City Attorney likely will continue efforts to review filings with specific committees and the Common Council.
- F. Office of City Attorney likely will ask for compliance before commencing any forfeiture actions.

17. Questions

- A. Contact the City Clerk, 266-4601, or
- B. Contact the City Attorney, 266-4511.

Michael P. May, City Attorney
November, 2005