



SMART GROWTH MADISON

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TO: Members of CCOC
FROM: Delora Newton, Executive Director
RE: Madison's lobbying ordinance

At the CCOC meeting on May 17, several members suggested that the most recent attempt to pass a revised lobbying ordinance was unsuccessful because the ordinance was too complicated. It was also suggested that committee members determine why the current ordinance is not workable, how should the city define the term 'lobbyist', and what type of lobbying efforts should be available for public review.

I've tried to take a step back and really think about these three questions. I have suggestions for committee consideration and am distributing this memo early so that a member may draft these ideas into amendment form if someone desires to do so.

Why the current ordinance is not working

I believe there are many reasons for this. First, the definition of lobbyist captures people who have no idea that the City considers them a lobbyist when they are testifying before a public body. For example, should the minister of a church reasonably expect to be considered a lobbyist?

In addition, the City has provided minimal public education on how to comply with the lobbying ordinance and has not enforced the ordinance since its initial passage. So, in many cases, there has not been an opportunity for people to realize they are considered a lobbyist under the City's definition and therefore must comply with registration and reporting requirements.

How Madison should define the term 'lobbyist'

To be most accurate, anyone attempting to influence the outcome of legislation could be considered a lobbyist whether or not they are receiving direct compensation for their efforts. However, many alders believe only business owners and employees lobby because they are the only ones receiving compensation for their efforts.

Therefore, the ordinance needs a good definition of business owner and the following language is being suggested by the Madison Area Chamber of Commerce:

"Business Owner" means a person or entity that owns or leases real property used for commercial or other business purposes (including non-profit entities), regardless of the form of ownership. For purposes of the exemptions set forth in sub. XXX and XXX of this ordinance, any employees, directors, officers, or members of the business would be entitled to the exemption for the Business Owner when acting on behalf of the Business Owner. This definition does not include any trade association or organization, any organization that has a membership of or is acting on behalf of two or more business entities, or any organization that has as a primary purpose advocacy on issues of public policy.

The ordinance should also contain the following exemptions and types of activities that are never exempt from registration and reporting requirements.

Exemptions:

- All communications with the alder who represents the district in which you live
- All communications with the alder who represents the district in which a business is located. The exemption is applicable for owners, employees, director, officers or members of the business who are communicating on behalf of the business.
- All testimony made at public hearings or meetings.
- All communications with City Officials done by volunteers.

Never exempt:

- Anyone representing a trade association or organization, any organization that has a membership of or is acting on behalf of two or more business entities, or any organization that has as a primary purpose advocacy on issues of public policy.
- Any person or entity seeking cash assistance from the City in excess of \$10,000 in a calendar year.
- Communications with City officials that are made via telephone, email, or letter or meetings that are not publicly noticed in accordance with Wisconsin's open meeting laws unless the communication is only with the alder who represents the area in which your residence or business is located.

The research conducted by Alder Brenda Konkel on alleged lobbying violations supports these exemptions and non-exempted communications suggested above. She estimates that only 11% of lobbying efforts are done at public meetings with the rest occurring in private. Therefore, the disclosure of public testimony is not a problem.

I analyzed the complaints filed by Alder Konkel to determine the type of approvals people routinely seek from the City. The list includes:

- Annexation
- Board of Public Works project approval or assessment adjustment
- CDBG grant
- City contract of some type
- Change to an existing ordinance or policy (or creation of new ones)
- Conditional Use Permit
- Demolition Permit
- Façade improvement grant
- Landmarks Commission – project approval
- Liquor license (issuance or renewal)
- Preliminary or Final Plat approval
- Parks Commission project or plan approval
- Planned Unit Development or Planned Commercial Dev approval
- Rezoning request
- Signage review or approval request
- Tax Incremental Financing
- Transit and Parking Commission approval
- Urban Design Commission approval
- Urban Service Area Agreement approval

This extensive list illustrates that major items of interest to the average citizen have at least one publicly noticed meeting during the approval process and, therefore, an opportunity to know who is seeking the approval. Entities seeking these types of City approvals will have to report all private communications with City Officials unless conducted with their alder. Although the public testimony itself is exempt, the City Attorney can be reasonably certain that persons seeking the type of approvals listed above have engaged in private communications with City Officials which must be reported in the event the City Attorney receives a violation complaint.

By including the exemptions above from reporting requirements, small businesses or those who have only occasional contacts with City Officials are not discouraged from communicating because most will not trigger the registration and reporting requirements of the lobbying ordinance. Conversely, those seeking approval of controversial issues or large-scale levels of assistance are likely to have meetings with City Officials outside of public meetings. These are the meetings that should be reported because that is the only way the public will know about them.

Information Used as the Basis for Reporting

Lobbyists should be required to report time spent lobbying instead of money spent lobbying. At the City level, this is more meaningful information and allows the truest analysis of what entities are doing the most lobbying.

Recording the amount of money spent is purely subjective, especially when the amount must include overhead costs. People in the same job with different companies are not

paid equally. Overhead costs vary greatly depending upon the size and efficiency of the company. So comparing money spent is comparing apples and oranges. It is also a more difficult number for the principal to determine because it involves calculating salaries and fringe benefits paid to the lobbyists while both lobbying and preparing to lobby; reimbursement of expenses; an estimate of the costs to conduct, compile, or prepare research, information, statistics, studies or analyses; and costs for office space, utilities, supplies and salaries and benefits for support staff.

However, a comparison of the time spent lobbying on an issue is a direct comparison of how much one company or individual spends as compared to another. It is also much easier to track the time spent in preparing memos, traveling, attending meetings, etc than it is to calculate the costs involved. It is also possible for a small firm operating on a tight budget to spend more hours lobbying than a larger firm does, but under requirements to report the dollars spent, the larger firm will appear to have expended more resources in lobbying efforts than will the small firm.

So for reasons of simplicity and more accurate reporting, the basis of reporting lobbying efforts should be changed to time spent.

Conclusion

Thank you for your careful and thoughtful review of the lobbying ordinance. Please feel free to contact me if I may clarify any point in the memo or provide additional information to help in your decision making.