

# AIA Wisconsin


A Society of The American Institute of Architects

## MEMO

DATE: AUGUST 29, 2005

TO: COMMON COUNCIL ORGANIZATIONAL COMMITTEE

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FROM: BILL BABCOCK, HON. AIA EXECUTIVE DIRECTOR 

RE: MADISON LOBBYING ORDINANCE & ARCHITECTS

Thank you for the opportunity to comment on the City of Madison lobbying ordinance at the special CCOC meeting on August 8. With testimony limited to three minutes, it was not possible to cover all of the issues and questions included in my written remarks.

The purpose of this memo is to highlight some of the reasons that AIA Wisconsin believes the CCOC should recommend the repeal of the lobbying ordinance. In our opinion, the ordinance is unnecessary, fundamentally flawed and cannot be "fixed" by an assortment of compromise amendments.

- The lobbying ordinance is so complex and confusing that it is practically impossible for anyone to fully understand it and comply with all of its requirements.
- Rather than encouraging greater openness, discussion and transparency in city affairs, the ordinance works to intimidate citizens, create a special class of "power brokers" and discourage broad involvement and participation.
- At best, the enforcement of the ordinance will be uneven and arbitrary. At the worst, it could become selective and targeted.
- In response to complaints filed against several member architects, the City Attorney acknowledged that he did not conduct any independent investigation of the alleged violations and issued what appear to be form letters regardless of the specific circumstances involved and information provided by the individual architects.

321 S. Hamilton Street  
Madison, WI 53703-4000  
Telephone 608.257.8477  
Fax 608.257.0242  
Email [aiaw@aiaw.org](mailto:aiaw@aiaw.org)  
URL [www.aiaw.org](http://www.aiaw.org)

- The examples offered by the City Attorney to illustrate his interpretation of the ordinance's "practice of architecture" exclusion provide no real guidance and create an impossible situation to enforce consistently.
- State statutes and related administrative rules require buildings of 50,000 cubic feet or more to be designed by an architect or professional engineer to protect the health, safety and welfare of the public. When state law requires the involvement of an architect, city ordinances should not attempt to further regulate these professional services by imposing additional municipal registration and reporting requirements on building owners and their design professionals.
- In contrast to the City Attorney's interpretation, an opinion letter prepared by Whyte Hirschboeck Dudek S.C. for AIA Wisconsin concludes as follows:

"In summary, it is our opinion that, when a registered architect's professional services require him/her to appear before City officials for permit approvals, plat approvals, variance or other zoning requests, or the myriad of other City approvals that are necessary for a construction project to commence, the architect should be found to be engaging in the practice of architecture and, therefore, should not have to comply with the Lobbying Ordinance."

- State and UW-Madison building projects represent a serious fundamental problem with the lobbying ordinance. State and university officials who help shepherd these projects through the City's review process apparently are exempt from the registration and reporting requirements of the ordinance because they are public officials. In contrast, according to the City Attorney, the architects and other consultants hired by the state to design these projects are lobbyists subject to the ordinance's registration and reporting requirements. If this is the case, then the City needs to advise the State of Wisconsin that it is required to register as a principal employing a lobbyist and authorize the architects and other private consultants to lobby the city on the state's behalf. You may want to ask the City Attorney for clarification on this.
- A similar problem exists for architects and other design professionals working on City of Madison projects. Architects have been told by city employees that they do not have to register as lobbyists for City projects. You may want to request clarification by the City Attorney on this issue, as well.
- A basic and serious flaw with the lobbying ordinance is the definition of "administrative action." The terminology is from state lobbying statutes related to the development of administrative rules, to which the City has nothing similar. As a result, the definition in the ordinance is too broad and includes actions on individual projects that should more appropriately be considered ministerial and, therefore, exempt.

- The City Attorney seems to have the authority to draw the line and determine what is lobbying and what's not. The ordinance offers no alternative process to resolve differences of opinions short of taking the issue to court.
- What can an architect do if their client is a non-profit organization and refuses to register as a principal employing a lobbyist for fear of jeopardizing its tax-exempt status? The ordinance does not appear to offer any options.
- The City Attorney indicates that the exemption provided in sec. 2.40(3)(f) for furnishing information at the request of a city employee does not apply to architects responding to questions at a commission or committee meeting. Why not?
- It is not clear why the city needs all of the information required by sec. 2.40(10). The expense statement requirements add significant complications to an already complex ordinance for no apparent justifiable reason.
- The City's review and approval process for building projects is extremely open, transparent and inclusive. To our knowledge, Madison is not suffering from stealth architecture. In our opinion, City staff and commissions benefit from the information provided by architects on building projects. The lobbying ordinance is unnecessary, discourages the involvement of architects and serves no meaningful purpose.

With 1,500 individual members, AIA Wisconsin represents architects in private practice, business, industry, government and education, as well as architectural interns, students and allied design and construction industry professionals. As the state society of The American Institute of Architects, its mission is to serve members, advance their value and improve the quality of our built environment.

On behalf of AIA Wisconsin members, thank you for your time and consideration of our comments regarding the City of Madison lobbying ordinance. We encourage you to recommend that the ordinance be repealed. Please let me know if you have any questions.

BB/mo

cc: Mayor Dave Cieslewicz  
Ald. Michael Verveer  
Ald. Judy Compton  
Ald. Ken Golden