

SEPT 6 2005. CCOC MTS.

**PROPOSED AMENDMENTS TO THE MADISON LOBBYING ORDINANCE  
MGO 2.40**

Dear Alders:

On August 5<sup>th</sup>, a "compromise" document was announced on amendments to Madison's lobbying ordinance. The core of the compromise was the exemption from compliance to the registration and reporting requirements given business owners and their employees. However, this exemption only pertains to activities directly relating to their businesses, not to those relating to services they provide to the public. This will result in segments of the business community being treated differently with regard to lobbying without any logical nexus to the public good, or to the announced aims of the lobbying ordinance. We understand the intent of the lobbying ordinance is to insure that the activities of those who hold themselves out to the public as lobbyists will be reported as will lobbying efforts relating to projects that have a significant impact on the City.

As the government affairs director for the REALTORS Association of South Central Wisconsin (RASCW), I spend a relatively small portion of my time lobbying elected officials or city employees, but we can agree that I am a lobbyist and should be subject to registration and reporting requirements. With very few exemptions, however, our 3,000 Members are not lobbyists in spirit or practice.

While we are pleased that some small businesses gain relief from the provisions of MGO 2.40 under the compromise, we believe that it excludes thousands of independent contractors, such as our Members, who may contact city officials or employees incidental to their primary duties. Under the proposed amendments, if a shop owner wishes to expand a building and requires City permits, he/she may petition the city and not be a lobbyist. If they ask a REALTOR® to appear at a meeting, incidental to other responsibilities, the REALTOR® becomes a lobbyist and the shop owner a principal. Thus, the ordinance captures two groups of people who should be excluded; the independent contractor who is not a lobbyist by trade or practice and the small business person, home owner, etc. who now becomes a principal.

We believe that the lobbying ordinance can better focus on its intended goal by introducing the following amendments.

**INDIVIDUAL RIGHT TO LOBBY – INDEPENDENT CONTRACTORS**

The following two amendments permit a de minimus for lobbying communications by independent contractors (who provide services other than lobbying) hired by an individual or business owner. This mirrors the approach used by the state in providing relief from registration and reporting for the many individuals who will contact the state to provide information or support for a project only a few times a year. Application to the City ordinance will obviously not exempt people like me, who make numerous contacts for one principal (the RASCW) or for some of our Members who actually do make a significant number of contacts on major projects for one principal. They are lobbyists and we recognize that.

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**Creation of a new definition of an “independent contractor” in MGO 2.40(2) that reads:**

“Independent contractor” means an individual who (i) is retained by a person for a service other than lobbying, (ii) is not an employee of the person and (iii) does not hold himself or herself out to the public as engaged in the business of representing others for the purpose of lobbying.

-and-

**Creation of a new MGO 2.40(3)(i)1.c. that reads:**

By an independent contractor provided that he or she does not make lobbying communications on behalf of a single person on more than 5 days within a reporting period.

**PUBLIC TESTIMONY**

This amendment provides a true compromise between the need to encourage business people to provide information and opinion to the city and the need to capture relevant information on lobbying efforts. Obviously, public testimony is the best venue for reporting contacts with the city. The individual registers to speak, creating a paper record of whom they represent and then, when they speak, a taped record. Under this amendment, an independent contractor who provides registered testimony need not become a lobbyist. All registered lobbyists and principals would be required to report.

**Creation of a new MGO 2.40(3)(i)1.d that reads:**

By any individual appearing at a meeting of the Common Council or any City board, commission or committee, provided that (i) the individual registers at the time of the testimony and, (ii) if the individual appears on behalf of a principal who is otherwise required to file reports under Sub. (10), the appearance and preparation for the appearance are disclosed by the principal as a lobbying expenditure under Sub. (10).

### CLARIFICATION OF THE RESIDENTIAL ZONING/VARIANCE EXCEPTION

Under the proposed ordinance, if REALTORS® represent an existing single family, owner occupied, home or duplex for purposes relating to the zoning or variance issue, they are not lobbyists. If they represent an individual seeking to **build** a single family, owner occupied home or duplex, they are lobbyists and the property owner is a principal. There is no logic to this distinction. If they represent the owner occupant for an issue relating to street lighting or a stop sign, they are lobbyists and the homeowner is a principal. This compromise provides an exemption for those representatives of real estate on which up to four dwelling units exist or may exist. It is difficult to argue that issues relating to a single home or buildings up to a four-plex are of city-wide significance.

#### Creation of a new MGO 2.40(3)(i)2.c that reads:

By a representative or licensee of an owner, prospective owner or lessee of real estate who is requesting a variance, zoning change or other City approval that benefits the real estate, provided that the real estate has or will only contain four or fewer dwelling units.

### INCREASED SPENDING THRESHOLD FOR REPORTING

The current ordinance provides for a \$500 standard for a three month reporting period, to trigger the requirement to register as a principal. The proposed ordinance provides a \$1000 standard for a six month reporting period. During the debate on this issue, it was generally recognized that this standard was unworkably low. The proposed amendment raise the standard for reporting to \$2000 for a six-month reporting period. This figure is still sufficiently low that it will not exempt large projects.

#### Amend MGO 2.40(10(a) to read:

Statement. Every principal who makes expenditures or incurs obligations in an aggregate amount exceeding ~~\$500~~ \$2,000 in any reporting period for the purpose of engaging in lobbying which is not exempt under Subsection (3) shall, for the remainder of that calendar year, file with the City Clerk an expense statement covering each preceding reporting period. Failure to file such a statement is a certification that lobbying expenditures have not exceeded \$2,000 for the reporting period. Such statement shall be filed on or before ~~April 30,~~ July 31 and ~~October 31,~~ January 31. The statement shall be signed under the penalty for making false statements provide in Subsection (13)(c), ~~by an individual identified under Section (6)(a)5-~~ by the lobbyist, if so authorized by the principal, or by the principal. ~~is authorized to represent the principal~~ The state shall contain contain the following information

### **PROVIDE REASONABLE PENALTIES**

This amendment recognizes that penalties should be brought more into line with other penalties provided by City ordinances. Further, professional lobbyists and principals of major projects are those most likely to be equipped to comply with a complex ordinance. Those most likely to violate the ordinance will be those not experienced either as lobbyists or principals. The preference here would be to provide a warning for the first violation, but if penalties are imposed, they should be limited to the above.

**Amend MGO 2.40(13) to read:**

#### Penalties

- (a) Any principal who violates any provision of this ordinance may be required to forfeit not more than \$250. ~~\$5,000. In the case of a partnership, each of the partners is jointly and severally liable for any forfeiture imposed under this ordinance.~~
- (b) Any lobbyist who violates any provision of this ordinance may be required to Forfeit not more than \$500. ~~\$1,000.~~
- (c) ~~Any lobbyist who falsifies information provided under Subsection (10)(d) or any principal who files or any person who files or causes to be filed a falsified statement under Sub. (10) may be required to forfeit not more than \$1,000 in addition to any forfeiture imposed under any other provision of this ordinance.~~
- (d) Any principal, lobbyist or other individual acting on behalf of a principal who files a statement under Subs. (7), (9), or (10) which he or she does not believe to be true may be required to forfeit not more than \$1,000 in addition to any forfeiture imposed under any other provision of this ordinance.

### **DEFINITION OF THOSE PROVIDING REGULATED PROFESSIONAL SERVICES**

This amendment simply recognizes that individuals providing regulated professional services (other than lobbying) are not lobbyists. As noted, many independent contractors who are regulated professionals may provide information and testimony incidental to their primary activities. This is the situation with almost all REALTORS®

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**Amend MGO 2.40(2)(f) to read:**

“Lobbying” means the practice of attempting to influence legislative or administrative action by oral, written or electronic communication with any covered City official, and includes time spent in preparation for such communication and appearances at public hearing or meetings or service on a committee in which such preparation or communication occurs. The mere appearance and registration in support, opposition or for informational purposes at a public hearing, without speaking or engaging in any further lobbying communications, is not itself an act of lobbying; if the individual otherwise engages in lobbying requiring registration under this ordinance, such appearances may be lobbying. Attorneys, architects and other licensed professionals are not exempt from this ordinance. However, a certain limited area of actions taken by them are not consider lobbying: the term “lobbying” does not include actions by licensed attorneys, the performance of which is prohibited under Sec. 757.30, Wis. Stats., to persons not licensed as attorneys; it does not include the practice of architecture, as defined in Sec. 443.01(5), Wis. Stats., and forbidden to unregistered persons under Sec. 443.02(2), Wis. Stats; and, it does not include any activities conducted by any individual that constitute the practice of a profession subject to licensing and regulation by the State of Wisconsin.

We would appreciate your review of these proposed amendments and your comments. We believe that their adoption will serve the goals of a city lobbying ordinance, while releasing those individuals (both independent contractors and principals) who should not be the focus of the registration and reporting requirements. The amendments will free the City from the responsibility of gathering and reviewing information that is extraneous to the public good. Most importantly, they will assure many businesspeople that they can have some limited interaction with the City, providing information valuable both to principals and city officials without having to become lobbyists and their customer/clients having to become principals.

Sincerely,

Phil Salkin  
Government Affairs Director, RASCW