

CITY OF MADISON, WISCONSIN

REPORT OF: City Attorney	PRESENTED <u>March 29, 2005</u>
AUTHOR: Michael P. May City Attorney	REFERRED _____
DATED: March 22, 2005	REREFERRED _____
	REPORTED BACK _____
	ADOPTED _____ POF _____
	RULES SUSPENDED _____
	ID NUMBER <u>37309</u>

TO THE MAYOR AND COMMON COUNCIL:

RE: Lobby Law Changes
File No. 00059

This report contains a section by section analysis of the changes proposed in the substitute ordinance regarding lobbying regulation. These changes have been the subject of much debate and deliberation by the Common Council Organizational Committee. Attached to this report is a redlined version of Sec. 2.40 as it would exist if the substitute ordinance were adopted.

1. Paragraph 1 of the substitute creates a new definition for Business Owner to be used in the Business Owner's exemption for lobbying. A Business Owner is a person or entity that owns or leases real property used for commercial or other business purposes, including non-profit entities. By this definition, employees, directors, officers, or members of the Business Owner can act on behalf of the Business Owner.
2. Paragraph 2 of the amendment simply renumbers other sections.
3. Paragraph 3 of the amendment modifies the definition of lobbying to eliminate the reference to licensed attorneys and architects. This reference had been utilized by attorneys and architects to essentially provide them a full and complete exemption from the lobby law. In my opinion, this is never what was intended. To avoid any confusion, the language is simply being eliminated.

I would note, however, that the City will not and can not regulate the practice of law or architecture. This ordinance does not do so; it regulates lobbying. Lobbying is an activity which may be engaged in by any person. The practice of law may only be engaged in by a lawyer, and the practice of architecture may only be engaged in by an architect.

The Council should be aware that I have been contacted again by the Dane County Bar Association, contending the ordinance regulates the practice of law. I informed the Bar Association's President that I do not believe the ordinance regulates the practice of law. I suggested that, if he can show me where the ordinance improperly regulates the actual practice of law, I would consider appropriate amendments to this ordinance, or clearly limit enforcement of it, to be certain the City does not regulate the practice of law. The state lobby law contains no language excluding the practice of law, and lawyer-lobbyists are able to comply with it.

4. Paragraph 4 of the amendment simply clarifies the definition of a lobbying expenditure.

5. Paragraph 5 of the amendment adds the City TIF Coordinator as one of the officials contact with whom constitutes lobbying.
6. Paragraph 6 clarifies that the exception for participation in boards or committees meant boards or committees of the City, and expands the exemption to cover boards or committees that are not considered City committees, but on which a person has been appointed to that committee by the Mayor and confirmed by the Council.

7. Paragraph 7 modifies the individual right to lobby exemption. It deletes the broad exemption for businesses and replaces it with the right of a Business Owner to lobby the single alderperson in which the place of business is located. Businesses with multiple locations would be required to designate in which one district they consider themselves to be principally located. Persons owning two completely unrelated businesses (as opposed to a similar businesses with different locations or corporate status) would be entitled to utilize exemptions for each separate business.

This paragraph is subject to the amendment that requires all that are seeking cash assistance from the City of over \$10,000 to comply with the lobbying ordinance.

8. Paragraph 8 of the substitute creates a new de minimus exemption. Like the individual right to lobby, it is not available for one who is seeking \$10,000 in cash assistance.

The de minimus exemption provides that a principal is not subject to the lobbying regulations if it meets all three of the following tests: They do not lobby more than three days during a reporting period, they do not lobby more than five days during a calendar year, and they do not have total lobbying expenditures of more than \$1,000 during a calendar year.

9. Paragraph 9 creates a new exemption in the lobby law for testimony at public hearings. It effectively excludes public testimony at public hearings. It excludes public testimony at the Council, and any and all City boards, committees, or commissions from the requirement to register and report as lobbying costs, so long as registration is made at the public hearing.

This exemption will greatly diminish the amount of time and reporting under the lobbying ordinance. It is an exemption which previously existed under the state lobby law, but was removed by the legislature in 1990. See 1989 Wis. Act 338, Sec. 10. See also current Sec. 13.62(10), Wis. Stats., which explicitly covers testimony at public hearings under the state lobby law. In contrast to the state law, Milwaukee's lobbying ordinance does provide an exemption for public testimony.

I should also note that, to the extent these public hearing appearances do not constitute lobbying, one of the primary tools that the Office of City Attorney (OCA) intended to use for enforcement of the ordinance will no longer be available. One of the primary tools OCA intended to use was to review those registration slips and compare them to the actual reporting of lobbying issues and expenditures. Because those who register and speak at public hearings (except for those seeking financial assistance from the City) are not lobbying under the substitute, it will provide OCA with less information for enforcement of the ordinance to review those registration slips. While the level of such registrations may provide some evidence of lobbying done outside the hearing process, there will no longer be the direct relationship.

10. Paragraph 10 creates a new (3)(k) of the ordinance, and explicitly pulls back within the ambit of the lobbying ordinance persons seeking \$10,000 or more in cash assistance from the City during a calendar year. Thus, the three exemptions discussed above would not apply to any such person or entity seeking funds from the City (except for responses to RFPs and public works contracts.)

This subsection, combined with those above, means that the primary area of enforcement for the OCA will relate to those seeking funds from the City. These will be the entities whose registration

at public hearings do constitute lobbying, and therefore should be reflected in the filing of registration and expenditure reports. Thus, while enforcement from our office will not cover easily all means of lobbying, it would cover those seeking cash assistance.

The interplay of these several amendments present a policy question for the Common Council. The net effect is that those who lobby only through appearance at public meetings, whether it be at the Plan Commission, UDC, ALRC, or anywhere else, will not have to report such time and will effectively remove all of that time from the reporting requirements under the ordinance. Those who appear before any of these bodies and are seeking cash assistance from the City will be required to report that time, and thus will be more likely to be subject to enforcement activities. Note that even those who may take advantage of some of these exemptions still must report any time spent lobbying to officials outside of the public meetings. Whether the OCA can effectively enforce the reporting for those types of meetings is unclear. As noted above, the level of registrations may provide some evidence of the likelihood of lobbying outside the public testimony arena, but will no longer be direct evidence of lobbying activity.

11. Paragraph 11 requires that the principal or lobbyist file with the Clerk, by the close of the first business day after they begin attempting to influence legislation, to identify the area in which they are attempting to lobby. The law retains the five-day period for initial registration.
12. Paragraph 12 modifies the time for filing a lobbyist authorization to match with the time for the principal registration under (6).
13. Paragraph 13 clarifies the intent of the principal's registration requirements.
14. Paragraph 14 is a corresponding change in the ordinance to match that set out in Paragraph 11.
15. Paragraph 15 slightly modifies a principal's reporting requirement under the ordinance. If a principal does not expend more than \$500 in any reporting period, the principal merely reports that fact. If the principal expends more than \$500 in any reporting period, they must file a complete expense statement for that period and for any subsequent period under the ordinance.
16. Paragraph 16 simply clarifies that information on the ordinance will be provided at times of re-registration and eliminates the requirement to file a form acknowledging receipt of materials by a principal.
17. Paragraph 17 clarifies that there will be a specific complaint form for those wishing to fill out complaints.
18. Paragraph 18 requires the City Clerk to conduct semi-annual training workshops on the lobbying ordinance.
19. Paragraph 19 requires the City Attorney to participate in the workshops of the City Clerk, and allows the City Attorney to institute actions based upon information that comes to the OCA rather than on a formal complaint.
20. Paragraph 20 amends the ordinance to impose a duty to cooperate on principals and lobbyists.

Michael P. May
City Attorney