

**AGENDA # \_\_\_\_\_**

**CITY OF MADISON, WISCONSIN**

A DRAFT SUBSTITUTE ORDINANCE \_\_\_\_\_

amending Sections 2.40(2)(e), (2)(g), (3)(e), (3)(h), creating new Section 2.40(3)(i), amending Sections 2.40(6)(a), (6)(c), (7), (8), (9), (10)(a), (11)(b), (11)(c), (11)(e), (11)(f), and (12), creating new Section 2.40(13), and renumbering current Sections 2.40(13) through (15) to Sections 2.40(14) through (16) of the Madison General Ordinances to modify portions of the lobbying ordinance.

PRESENTED December 14, 2004  
REFERRED CCOC

\_\_\_\_\_  
REREFERRED \_\_\_\_\_  
REPORTED BACK \_\_\_\_\_  
ADOPTED \_\_\_\_\_ POF \_\_\_\_\_  
RULES SUSPENDED \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_

\* \* \* \*

MAYOR SIGNED \_\_\_\_\_  
PUBLISHED \_\_\_\_\_

\* \* \* \*

Drafted by: Michael P. May, City Attorney  
Roger Allen, Assistant City Attorney

Date: February 23, 2005

Fiscal Note: No expenditure required.

SPONSORS: Alds. Verveer and Konkel

APPROVAL OF FISCAL NOTE IS NEEDED  
BY THE COMPTROLLER'S OFFICE  
Approved By  
\_\_\_\_\_  
Comptroller's Office

\* \* \* \*

SUBSTITUTE ORD. NUMBER \_\_\_\_\_  
ID NUMBER 37309  
LEGISTAR ID NUMBER 00059

The Common Council of the City of Madison do hereby ordain as follows:

1. New Subdivision (d) of Subsection (2) entitled "Definitions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is created to read as follows:

"(d) "Business Owner" means an individual who is lobbying on behalf of a business corporation of which he/she owns more than fifty percent (50%) of the shares, of a firm of which he/she is the sole owner, or of a single member limited liability company of which he/she is the sole member, or of a partnership in which he/she is a general partner."

2. Current Subdivisions (d) through (n) of Subsection (2) entitled "Definitions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances are renumbered to Subdivisions (e) through (o), respectively.

3. Renumbered Subdivision (f) of Subsection (2) entitled "Definitions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(e)(f) "Lobbying" means the practice of attempting to influence legislative or administrative action by oral, written or electronic communication with any City official, and includes time spent in preparation for such communication and appearances at public hearings or meetings or service on a committee in which such preparation or communication occurs. ~~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.~~

Approved as to form:

\_\_\_\_\_  
Michael P. May, City Attorney

4. Renumbered Subdivision (h) of Subsection (2) entitled "Definitions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

~~"(g)~~(h) "Lobbying expenditure" means an expenditure related to the performance of lobbying, whether received in the form of an advance or subsequent reimbursement. The term includes an expenditure for conducting research or for providing or using information, statistics, studies or analyses by or at the request of the principal and/or lobbyist in communicating with a City elected official, employee, or member of a City board, committee or commission. ~~that would not have been incurred but for lobbying.~~ "Lobbying expenditure" also includes all expenditures required to be reported in Sub. (10)(a)1.a. - e."

5. Subdivision (e) of Subsection (3) entitled "Exemptions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(e) Participation as a member of a City of Madison board, committee or commission or a committee or subcommittee thereof, ~~or participation as a member of any board, committee or commission, or a committee or subcommittee thereof, which body includes as a member thereof a City official appointed or designated as a member in his or her capacity as a City official.~~"

6. Subdivision (h) of Subsection (3) entitled "Exemptions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(h) Individual Right to Lobby. Nothing in this ordinance may be applied so as to interfere with the right of any individual to engage in lobbying:

1. Solely on her or his own behalf; or
- ~~2. On behalf of a business corporation of which he/she owns more than 50 percent of the shares, of a firm of which he/she is the sole owner, or of a single member limited liability company of which he/she is the sole member, or of a partnership in which the individual is a general partner.~~
- ~~3.2.~~ By communicating solely with a Council member who represents the district in which the individual resides, whether or not such communication is made on behalf of the individual or on behalf of another person.
3. By a Business Owner by communicating, on matters related to the business, solely with the Council member who represents the district in which the business of the Business Owner is located, provided, however, that a business may only utilize one location within the City for this exemption."

7. Subdivision (i) of Subsection (3) entitled "Exemptions" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is created to read as follows:

"(i) De Minimus Exemption.

1. A principal shall not be required to register or report expenditures if the principal meets all of the following safe harbor provisions:
  - a. The principal does not employ or pay lobbyists who, individually or collectively, engage in lobbying on more than three (3) days during a reporting period, and,
  - b. The principal does not employ or pay lobbyists who, individually or collectively, engage in lobbying on more than five (5) days during a calendar year, and,
  - c. The principal does not have total lobbying expenditures of more than five hundred dollars (\$500) during a calendar year. The five hundred dollars (\$500) exemption is not available to any principal seeking to obtain funds from the City in the form of loans or grants or purchases exceeding ten thousand dollars (\$10,000) in a calendar year.
2. In the event a principal exceeds the safe harbor provisions of Subdivision (i)1., above, all lobbying time and expenses are included within any required registration and reporting requirements."

8. Subdivision (a) of Subsection (6) entitled "Registration" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(a) Every principal who makes expenditures or incurs obligations for the purpose of engaging in lobbying which is not exempt under Subsection (3), shall, by the close of the first business day ~~within five (5) working days~~ after the first lobbying communication made on his/her behalf, cause to be filed with the City Clerk a registration statement specifying the principal's name, business address, the general areas of legislative and administrative action which the principal is attempting to influence, the names of any City agencies in which the principal seeks to influence administrative action, and information sufficient to identify the nature and interest of the principal. The statement shall be signed by an individual identified under Paragraph 5. below who is authorized to represent the principal, and shall be verified. The statement shall include:

1. If the principal is an individual, the name and address of the individual's employer, if any, or the individual's principal place of business if self-employed, and a description of the business activity in which the individual or the individual's employer is engaged.
2. If the principal is a business entity, a description of the business activity in which the principal is engaged and the name of its chief executive officer, or in the case of a partnership or limited liability company, the names of the partners or members.
3. If the principal is an industry, trade or professional association, a description of the industry, trade or profession which it represents, including a specific description of any segment or portion of the industry, trade or profession which the association exclusively or primarily represents and the name of the chief executive officer and the approximate number of its members.
4. If the principal is not an individual, business entity or industry, trade or professional association, a statement of the principal's nature and purposes, including a description of any industry, trade, profession or other group with a common interest which the principal primarily represents or from which its membership or financial support is primarily derived and the approximate number of its members.
5. The name and position or relationship to the principal of any designee who is authorized to sign other documents required under this subsection or Subsections (7), (9) and (10).
6. Each proposed legislative or administrative action in connection with which the principal has made or intends to make a lobbying communication during the period to which the registration applies. The proposed legislative or administrative action is sufficiently identified if it is sufficient to permit a person to ascertain without extraordinary diligence:
  - a. the specific item of legislative or administrative action or private sector business or which the effort is intended to affect and how it is intended to be affected;
  - b. the industries, trades, or professions, or segments or portions thereof, that would be principally affected by the effort;
  - c. in the case of an appropriation, the City program or person for which the appropriation is proposed and the approximate amount, if known; and
  - d. such additional information as the Clerk deems necessary for compliance with this Subsection."

9. Subdivision (c) of Subsection (6) entitled "Registration" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(c) Each principal registered under this section shall, by the close of the first business day after ~~before~~ the principal or a lobbyist for the principal attempts to influence legislative or administrative action in any general area or City agency not previously filed with the City Clerk, provide written notice to the City Clerk of the specific area or agency in which the principal or a lobbyist for the principal will attempt to influence legislative or administrative action and in relation to which a lobbyist is employed. Such notice is sufficient if it complies with Subsection (6)(a)6., above."

10. Subsection (7) entitled "Lobbyist Authorization" Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(7) Lobbyist Authorization. ~~By the close of the first business day after~~ ~~Before~~ engaging in lobbying on behalf of a principal, a lobbyist or the principal who employs a lobbyist shall file with the City Clerk a written authorization for the lobbyist to represent the principal, signed by or on behalf of the principal. A lobbyist or principal shall file a separate authorization for each principal represented by a lobbyist. Such authorization shall include the lobbyist's name, current mailing address, business telephone number, and whether the lobbyist is a contract lobbyist or an employee."

11. Subsection (8) entitled "Restrictions on Lobbying" Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(8) Restrictions on Lobbying. Except as authorized under Subsection (3), no person may engage in lobbying as a lobbyist unless the person has been authorized to act as a lobbyist for the principal whom the lobbyist represents under Subsection (7). Except as authorized under Subsection (3), no principal may authorize its lobbyist to engage in lobbying ~~until~~ unless ~~the principal is registered~~ complies with the registration requirements under Subsection (6)."

12. Subdivision (a) of Subsection (9) entitled "Identification of Legislative and Administrative Proposals" Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(a) Except as authorized under Subsection (3), no person may engage in lobbying as a lobbyist on behalf of a principal and no principal may authorize a lobbyist to engage in lobbying on its behalf unless, no later than the ~~end of the fifth working~~ close of the first business day after the principal makes a lobbying communication with respect to a legislative proposal or proposed administrative action not previously identified by the principal under Subsection (6)(a)6. or reported under this section during the period for which the principal is registered, the principal reports to the City Clerk in such manner as the Clerk may prescribe, each proposed legislative or administrative action in connection with which the principal has made or intends to make a lobbying communication. Such report is sufficient if it complies with Subsection (6)(a)6., above. With respect to a lobbying communication relating to the capital or operating budget, the principal shall further identify from among topics provided by the Clerk the topic or topics of its lobbying communications, if any. The report shall be made by a person who is identified by the principal under Subsection (6)(a)5."

13. Subdivision (a) entitled "Statement" of Subsection (10) entitled "Principal's Expense Statement" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(a) Statement. ~~Every principal who makes expenditures or incurs obligations in an aggregate amount exceeding \$500 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 shall~~ file with the City Clerk an expense statement covering each ~~preceding~~ reporting period. Such statement shall be filed on or before April 30, July 31, October 31, and January 31, The statement shall be signed under the penalty for making false statements provided in Subsection (13)(c), by an individual identified under Section (6)(a)5. who is authorized to represent the principal. The statement shall contain the following information:

1. Every principal who makes expenditures or incurs obligations in an aggregate amount of less than \$500 in any reporting period for the purpose of lobbying which is not exempt under Subsection (3) shall, for that reporting period, so indicate by checking the appropriate box on the lobbying expense statement form available from the City Clerk. Every principal who makes expenditures or incurs obligations in an aggregate amount exceeding \$500 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 a complete expense statement for each such reporting period.

2. The aggregate total amount of lobbying expenditures made and obligations incurred for lobbying activities by the principal and all lobbyists for the principal, excluding lobbying

expenditures and obligations for the principal's clerical employees and lobbying expenditures and obligations specified in Paragraphs 2. and 4. below. With respect to expenditures and obligations included in the amount reported under this paragraph:

- a. Lobbying expenditures made and obligations incurred for lobbying shall include compensation to lobbyists for lobbying, whether in cash or in kind, and reimbursements to lobbyists and to the principal or officers or employees of the principal for lobbying or expenses.
  - b. Except as provided in Subparagraph c., lobbying expenditures made and obligations incurred in preparing for lobbying shall be included in the aggregate total.
  - c. A reasonable estimate of lobbying expenditures made and obligations incurred for conducting, compiling or preparing research, information, statistics, studies or analyses used in lobbying shall be included in the aggregate total. Lobbying expenditures and obligations shall not be reported under this paragraph if the use in lobbying occurs more than three (3) years after the completion of the research or the compilation or preparation of the information, statistics, studies or analyses. If the research, information, statistics, studies or analyses are used by the principal both for lobbying and for purposes other than lobbying, the principal shall allocate the lobbying expenditures and obligations among the purposes for which the research, information, statistics, studies or analyses are used and include the portion allocated to lobbying in the aggregate total.
  - d. Lobbying expenditures made and obligations incurred for providing or using research, information, statistics, studies or analyses in lobbying shall be included in the aggregate total.
  - e. Lobbying expenditures made and obligations incurred for paid advertising and any other activities conducted for the purpose of urging members of the general public to attempt to influence City of Madison legislative or administrative action shall be included in the aggregate total.
- ~~2- 3.~~ If a lobbyist is an employee, officer or director of a principal and the lobbyist is paid a salary or given consideration other than reimbursement of expenses, the aggregate total amount of lobbying expenditures made or obligations incurred by the principal for office space, utilities, supplies and compensation of employees who are utilized in preparing for lobbying communications. Any lobbying expenditures made or obligations incurred for the office overhead costs which are included in the amount reported under Subdivision (a)1. shall not be included in the amounts reported under this Subdivision (a).
- ~~3- 4.~~ The principal's quarterly expense report shall include a record disclosing each lobbying communication. The record shall be supplied on a form provided by the City Clerk and shall include identification of each City official contacted, the number of times each official received a lobbying communication, the subject of each communication, and the identity of the lobbyist who made the communication.
- ~~4- 5.~~ The total lobbying expenditures made and obligations incurred for personal travel and living expenses."

14. Subdivision (b) of Subsection (11) entitled "Duties of the City Clerk" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(b) At the time of initial registration and re-registration, the City Clerk shall provide the principal with a copy of the City's lobbyist law and any related material which the Clerk determines will serve the purposes of this ordinance. ~~Each principal shall sign a statement acknowledging receipt of these materials.~~"

15. Subdivision (e) of Subsection (11) entitled "Duties of the City Clerk" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(e) Any person who believes a violation has occurred may file a written inquiry complaint form with the City Clerk who shall refer the matter to the City Attorney."

16. Subdivision (f) of Subsection (11) entitled "Duties of the City Clerk" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is created to read as follows:

"(f) The City Clerk, in consultation with the Organizational Development and Training Unit, shall conduct annual training workshops concerning the laws related to lobbying."

17. Subsection (12) entitled "Duties of the City Attorney" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is amended to read as follows:

"(12) Duties of the City Attorney.

~~(a) The City Attorney shall conduct annual workshops concerning the laws related to lobbying.~~

~~(b) (a) Upon receipt of a referral from the City Clerk, t~~ The City Attorney shall review alleged violations of this section to determine whether the allegation has merit. The City Attorney may summarily dismiss any allegation which s/he finds to be without merit.

~~(c) (b)~~ If the City Attorney believes an allegation has merit, s/he shall prepare and file a complaint in Municipal Court. The complaint shall identify the provision of this ordinance alleged to be violated.

~~(d) (c)~~ No later than April 1 of each year, the City Attorney shall file a report with the Mayor and the Common Council concerning actions s/he has taken under this section and the disposition of those actions, including a summary of its determinations.

~~(e) (d)~~ The City Attorney may commence a civil action to require forfeitures for any violation of this section."

18. New Subsection (13) entitled "Duty to Cooperate" of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances is created to read as follows:

"(13) Duty to Cooperate. Principals and lobbyists are required to keep and maintain legible copies of all accounts, bills, receipts, books, papers and other documents necessary to substantiate any expense statement and all other required filings under this ordinance. Such records shall be maintained for a period of not less than three years after the filing of such expense statements or other required filings. Such records shall be provided to the City Attorney within 15 days of a request by the City Attorney for the production of such records."

19. Current Subsections (13) through (15) of Section 2.40 entitled "Lobbying Regulated" of the Madison General Ordinances are renumbered to Subsections (14) through (16), respectively.