

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

MEMORANDUM

TO: Mayor Satya Rhodes–Conway
All Alderpersons

FROM: Michael Haas, City Attorney
Omar Cancio, Law Clerk

DATE: July 12, 2022

RE: Disorderly Conduct Ordinance & Election Officials Enhancer

In response to a request from the Mayor, we have drafted a proposed amendment to Madison General Ordinance (MGO) Sec. 24.02 that would prohibit harassment directed at an individual working in their capacity as an election official. The intent of the proposed ordinance is to protect election officials from unprovoked harassment in both private and public spaces, and to require an increased forfeiture for violations of this subsection. This memorandum outlines the proposed changes to the current Disorderly Conduct ordinance and provides background information related to the issue it is intended to address.

Under current MGO Sec. 24.02, individuals found guilty of disorderly conduct shall be subject to a forfeiture of not more than one thousand dollars (\$1000). Disorderly conduct is defined as conduct which “tends to cause or provoke a disturbance” and applies to both in-person conduct, as well as communications sent via telecommunication message to a telecommunication device. Under the current bail/bond schedule, disorderly conduct citations include a forfeiture of \$300 plus costs, which is a total of \$439.

The proposed amendment to MGO Sec. 24.02(4) would make disorderly conduct targeted at election officials a distinct violation of the ordinance. Individuals found guilty of disorderly conduct towards election officials would be subject to a minimum forfeiture of at least three hundred dollars (\$300), but not to exceed one thousand dollars (\$1000), with a proposed bail amount of \$500. With court costs, the total forfeiture listed on any citation would be \$691, as compared to the total forfeiture of \$439 for typical disorderly conduct citations.

In the aftermath of the 2020 Presidential Election and the January 6th attack on the U.S. Capitol, many election officials working at both the state and local levels have been subjected to harassment and violent threats. Indeed, recent surveys have shown that election officials feel unsafe at work and have listed harassment by the public as their main reason for leaving their jobs. To help address this trend, the proposed ordinance would update MGO Sec. 24.02 to reflect the City's commitment to the safety of election officials and the legitimacy of the election process. In addition to the proposed ordinance, we have drafted a resolution that reinforces the Council's commitment to the protection of election officials from harassment and threats and expresses its support of non-partisan election administration.

Discussion

1. The Ordinance.

Sec. 24.02, MGO currently, states:

24.02 – DISORDERLY CONDUCT.

Whoever does any of the following within the limits of the City of Madison shall be subject to a forfeiture of not more than one thousand dollars (\$1000).

- (1) "In a public or private place, engag[e] in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct...which...tends to cause or provoke a disturbance; or

- (2) With intent to harass, annoy, or offend another, sen[d] a telecommunication message to a telecommunication device and uses any violent, abusive, indecent, or profane language or image, or any other message which tends to cause or provoke a disturbance...”

Sec. 24.02(4), the proposed amendment to Madison’s “disorderly conduct” ordinance, would add the following language to the list of prohibited conduct:

“Whoever does any of the following within the limits of the City of Madison shall be subject to a forfeiture as outlined in subsection (7).

...

- (4) Engages in any of the behavior outlined in numbered paragraphs (1) and (2) of this subsection directed at an individual working in their capacity as an election official or based on their position as an election official.

...

- (7) Penalties. Whoever violates subsections (1), (2), or (3) of this ordinance shall be subject to a forfeiture of not more than one thousand dollars (\$1,000). Whoever subsection (4) of this ordinance shall be subject to a forfeiture of not less than three hundred (\$300) nor more than one thousand dollars (\$1,000).”

2. Background

Across the country, election officials are facing increasing harassment and threats of violence ahead of the 2022 midterm elections.¹ Some election officials have raised concerns about physical safety while performing official duties, as well as more general threats outside the workplace or related psychological effects. For example, a poll of nearly 600 election workers, conducted by the Brennan Center for Justice, found that 1 in 6 local election officials have reported experiencing threats because of their job and that nearly 1 in 3 local election officials say they know at least one election worker

¹ Barbara Rodriguez, *As Election Workers Face Increased Threats and Intimidation, Some States are Trying to Protect Them*, 19TH NEWS (Mar. 30, 2022), <https://19thnews.org/2022/03/states-protect-election-workers-increasing-threats/>.

who left their job at least in part because of fears for their safety due to increased threats or intimidation.²

To combat this troubling trend, some states have responded with administrative actions or legislative proposals. For example, in Oregon, Governor Kate Brown signed a bill into law expanding protections for election administrators against unwanted harassment. Under the new statute, an individual accused of threatening or harassing an election worker could face a misdemeanor charge that includes up to a year in jail and/or more than \$6,200 in fines.³ Similar bills have been introduced in other state legislatures, such as in Washington, where a proposed bill would add prison time and a \$10,000 fine to anyone who harasses an election official.⁴ At the federal level, the U.S. Department of Justice (DOJ) announced the creation of an Election Threats Task Force “to address the rise in threats against election workers, administrators, officials, and others associated with the electoral process.”⁵ The U.S. Attorney General, DOJ officials, and the Director of the FBI have met with more than 1,400 election officials to discuss these threats and announced the first indictment and arrest related to the Task Force on January 21, 2022.⁶

2 “*Local Election Officials Survey (March 2022)*.” THE BRENNAN CENTER (Mar. 10, 2022), <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-march-2022>.

3 *H.B. 4144, 81st Leg., 1st Reg. Sess.* (Or. 2022).

4 “*Bill Hardening Penalties for Election Worker Harassment OK’d*.” THE ASSOCIATED PRESS (Jan. 12, 2022, at 7:00 p.m.), <https://www.usnews.com/news/best-states/washington/articles/2022-01-12/bill-hardening-penalties-for-election-worker-harassment-okd>.

5 “*Justice Department Launches Task Force to Combat Threats Against Election Workers*.” THE UNITED STATES DEPARTMENT OF JUSTICE (July 29, 2021), <https://www.justice.gov/opa/blog/justice-department-launches-task-force-combat-threats-against-election-workers-0>.

6 “*Assistant Attorney General Kenneth A. Polite Jr. Remarks at Media Availability on the Election Threats Task Force*.” THE UNITED STATES DEPARTMENT OF JUSTICE (Jan., 21 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-kenneth-polite-jr-remarks-media-availability-election-threats>.

Other organizations also have implemented initiatives to address harassment of election officials. In September 2021, the Center for Election Innovation and Research launched the Election Official Legal Defense Network (<https://eoldn.org>). The Network matches election officials in need of legal help as a result of their official duties with licensed attorneys who are willing to provide legal services on a pro bono basis, including to address efforts to undermine officials' job duties or to threaten or harass officials. Also, in June 2022, more than two dozen current and former law enforcement and election officials formed the Committee for Safe and Secure Elections (CSSE), a national organization committed to the protection of election administrators and voters. The goal of the committee is to protect elections, election administrators, and voters by developing solutions to curb intimidation and threats of violence, as well as creating and sharing best practices for election officials and law enforcement.⁷ The committee's 32 members include current and former law enforcement officers as well as election officials of different political affiliations.

3. The proposed amendment to MGO Sec. 24.02 is a modest step towards increasing election officials' safety.

Based on the above information, it is clear that harassment and threats to election officials are a significant and grievous threat to our democratic system. As a battleground state, Wisconsin is at a constant and elevated risk of threats and intimidation towards election officials than other states. The City of Milwaukee Election Commission, for example, has faced a flood of vulgar messages and threats since overseeing the election results that were allegedly "tainted by late night 'ballot dumps.'"⁸

⁷ Rick Hasen, "Law Enforcement and Election Officials Start Joint National Initiative to Protect Election Officials and Voters from Threats and Violence." ELECTION LAW BLOG (June 23, 2022, 6:45 am), <https://electionblog.org/?p=130162>.

⁸ Brenda Wintrobe, "'This is a charade': GOP senator, voting experts urge Wisconsin Republicans to halt election

Madison, Wisconsin's capital city, is similarly vulnerable to targeted attacks upon its election officials, and staff of the Clerk's Office has endured unacceptable harassment, threats and intimidation, particularly since the 2020 Presidential Election.

Under the proposed amendment to MGO Sec. 24.02, the definition of "disorderly conduct" will not change and the definition of "election official" incorporates the definition in Wisconsin Statutes. The main changes to the ordinance will be the creation of a penalty enhancement provision for individuals found guilty of disorderly conduct directed at individuals working in their capacity as election officials. Under normal circumstances, a conviction for disorderly conduct will result in a total forfeiture of \$439, although the maximum possible forfeiture is \$1,000 plus court costs.

Under the proposed changes, a conviction of disorderly conduct targeted at an election official will carry a minimum forfeiture of three hundred dollars (\$300) and a maximum forfeiture of one thousand dollars (\$1000). The proposed ordinance establishes the citation forfeiture to be \$500 plus costs, for a total of approximately \$691. The increased forfeiture reflects the impact that such conduct has on the officials who are simply doing their jobs to conduct elections as well as on the election system itself. It is also important to note that each instance of disorderly conduct can be charged as a separate violation. If the conduct is repeated or poses a significant threat, law enforcement has the option to refer the matter to the District Attorney to consider criminal charges. The proposed ordinance would provide the option to prosecute lower-level disorderly conduct and harassment of election officials as civil violations in municipal court.

Conclusion

In the aftermath of the 2020 Presidential Election and the January 6th attack on the U.S. Capitol, election officials have been the target of a significant increase in threats and acts of intimidation working at both the state and local levels. Recent surveys have shown that election officials feel unsafe at work and have listed harassment by the public as their main reasons for leaving the field entirely.

To combat this trend, the proposed changes to MGO Sec. 24.02 create a municipal offense of engaging in disorderly conduct towards election officials. The accompanying resolution also reinforces the Common Council's commitment to election officials' safety and its endorsement of Wisconsin's nonpartisan election administration system. Together, the proposed ordinance and resolution can send a message to the public that the City will not tolerate acts of bullying, harassment, and threats and intimidation directed at individuals acting in their capacity as election officials, including the City Clerk, staff of the Clerk's Office, and election inspectors who work at the polls.