

CITY OF MADISON, WISCONSIN

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

Creating Section 2.41 of the Madison General Ordinances relating to reporting requirements for independent expenditures in municipal elections.

PRESENTED August 6, 2013
REFERRED Board of Estimates;
Common Council
Organizational Committee

LEGISTAR # 31169

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Date: September 6, 2013
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WORKING DRAFT

DRAFTER'S ANALYSIS: This ordinance would require any organization including corporations, unincorporated associations or organizations recognized by the IRS under sec. 501(c)(4), (5) or (6) of the Internal Revenue Code, to register with the City Clerk and make periodic reports of contributions and disbursements for independent expenditures in elections for Mayor, Alderperson, or Municipal Judge or municipal referendums. The ordinance generally follows state law, but extends the reporting requirements to some entities not covered by state or federal law. This proposal modifies state law provisions by changing the phrase "made" for political purposes to "used" for political purposes. It also adopts the provisions of Wis. Admin. Code § GAB 1.28.

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

Section 2.41 entitled "Organizations Making Independent Disbursements" of the Madison General Ordinances is created to read as follows:

"2.41 ORGANIZATIONS MAKING INDEPENDENT DISBURSEMENTS.

- (1) Declaration of Policy. The Common Council finds and declares that our democratic system of government can be maintained only if the electorate is informed. It further finds that excessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens and to enable candidates to have an equal opportunity to present their programs to the voters. One of the most important sources of information to the voters is available through the campaign finance reporting system. Campaign reports provide information which aids the public in fully understanding the public positions taken by a candidate or political organization. When the true source of support or extent of support is not fully disclosed, or when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to a potential corrupting influence. The Common Council therefore finds that the City of Madison has a compelling interest in designing a system for fully disclosing contributions and disbursements made on behalf of every candidate for public office, and in placing reasonable limitations on such activities. Such a system must make readily available to the voters complete information as to who is supporting or opposing which candidate or cause and to what extent, whether directly or indirectly. This Section 2.41 is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.
(2) Definitions. The following definitions shall apply in the interpretations and the enforcement of this ordinance:

Approved as to form:

“Communication” means any printed advertisement, billboard, handbill, sample ballot, television or radio advertisement, telephone call, e-mail, internet posting, and any other form of communication that may be utilized for a political purpose.

“Contribution” has the meaning given in Wis. Stat. § 11.01 (6), as applied to elections for Madison Mayor, Alderperson or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20, except that Wis. Stat. § 11.01 (6)(a)1. is adopted as follows:

A gift, subscription, loan, advance, or deposit of money or anything of value, except a loan of money by a commercial lending institution made by the institution in accordance with applicable laws and regulations in the ordinary course of business, used for political purposes. In this subdivision “anything of value” means a thing of merchantable value.

“Contributions for political purposes” as used in subs. (10), (11) and (12) of the Section 2.41 means contributions made to

- (a) a candidate for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20 or
- (b) a political committee or
- (c) an individual who makes contributions to a candidate or political committee or incurs obligations or makes disbursements used for political purposes in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20.

“Designated depository account” means a depository account specifically established by an organization to receive contributions and from which to make independent disbursements.

“Disbursement” has the meaning given in Wis. Stat. § 11.01 (7), as applied to elections for Madison Mayor, Alderperson or Municipal Judge.

“Incurred obligation” has the meaning given in Wis. Stat. § 11.01 (11), as applied to elections for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20.

“Independent” means the absence of acting in cooperation or consultation with any candidate or authorized committee of a candidate who is supported or opposed, and is not made in concert with, or at the request or suggestion of, any candidate or any agent or authorized committee of a candidate who is supported or opposed.

“Organization” means any person and organizations specified in sub. (2) of this section, but does not include an individual, committee, or political group subject to registration under Wis. Stat. §§ 11.05 and 11.23.

“Person” includes the meaning given in Wis. Stat. § 990.01 (26).

“Political committee” means every committee which is formed primarily to influence elections for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20 or which is under the control of a candidate for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20.

- (3) A corporation, or association organized under Wis. Stat. chs. 185 or 193, or an organization recognized under Sections 501(c)(4), (c)(5), (c)(6) of the Internal Revenue Code, is a person and qualifies as an organization that is not prohibited by Wis. Stat. § 11.38 (1) (a) 1., from making independent disbursements until such time as a court having jurisdiction in the State of Wisconsin rules that a corporation, or association organized under Wis. Stat. chs. 185 or 193, or an organization recognized under Sections 501(c)(4), (c)(5), (c)(6) of the Internal Revenue Code, may constitutionally be restricted from making an independent disbursement.
- (4) Upon accepting contributions made for, incurring obligations for, or making an independent disbursement exceeding twenty-five dollars (\$25) in aggregate during a calendar year, an organization supporting or opposing any candidate for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20 shall establish a designated depository account in the name of the organization. Any contributions to and all disbursements of the organization shall be deposited in and disbursed from this designated depository account. The organization shall select a treasurer for the designated depository account and no disbursement may be made or obligation incurred by or on behalf of an organization without the authorization of the treasurer or designated agents. The organization shall register with the City Clerk.

- (5) The organization shall file a registration statement with the City Clerk and it shall include, where applicable:
  - (a) The name, street address, and mailing address of the organization.
  - (b) The name and mailing address of the treasurer for the designated depository account of the organization and any other custodian of books and accounts for the designated depository account.
  - (c) The name, mailing address, and position of other principal officers of the organization, including officers and members of the finance committee, if any.
  - (d) The name, street address, mailing address, and account number of the designated depository account.
  - (e) A signature of the treasurer for the designated depository account of the organization and a certification that all information contained in the registration statement is true, correct and complete.
- (6) The organization shall comply with Wis. Stat. § 11.05 (5), and notify the City Clerk within ten (10) days of any change in information previously submitted in a statement of registration.
- (7) An organization making independent disbursements shall file the oath for independent disbursements required by Wis. Stat. § 11.06 (7).
- (8) An organization receiving contributions for independent disbursements or making independent disbursements shall file periodic reports as provided Wis. Stat. §§ 11.06, 11.12, 11.19, and 11.20, and include all contributions received for independent disbursements, incurred obligations for independent disbursements, and independent disbursements made. When applicable, an organization shall also file periodic reports as provided in Wis. Stat. § 11.513.
- (9) An organization making independent disbursements shall comply with the requirements of Wis. Stat. §§ 11.30 (1) and (2) (a) and (d), and include an attribution identifying the organization paying for any communication, arising out of independent disbursements on behalf of or in opposition to candidates, with the following words: "Paid for by" followed by the name of the organization and the name of the treasurer or other authorized agent of the organization followed by "Not authorized by any candidate or candidate's agent or committee."
- (10) Scope of Regulated Activity; Election of Candidates. Individuals other than candidates and persons other than political committees are subject to the applicable requirements of Wis. Stat. ch.11, when they:
  - (a) Make contributions or disbursements for political purposes in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20., or
  - (b) Make contributions to any person at the request or with the authorization of a candidate or political committee in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20, or
  - (c) Make a communication for a political purpose in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20.
- (11) A communication is for a "political purpose" if either of the following applies:
  - (a) The communication contains terms such as the following or their functional equivalents with reference to a clearly identified candidate and unambiguously relates to the campaign of that candidate:
    - 1. "Vote for;"
    - 2. "Elect;"
    - 3. "Support;"
    - 4. "Cast your ballot for;"
    - 5. "Smith for Mayor;"
    - 6. "Vote against;"
    - 7. "Defeat;" or
    - 8. "Reject."
  - (b) The communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20. A communication is susceptible of no other reasonable interpretation if it is made during the period beginning on the sixtieth (60<sup>th</sup>) day preceding a special, or spring election in a race for

Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20 and ending on the date of that election or during the period beginning on the thirtieth (30<sup>th</sup>) day preceding a primary election and ending on the date of that election and that includes a reference to or depiction of a clearly identified candidate in a race for Madison Mayor, Alderperson, or Municipal Judge or for municipal referendums held pursuant to Wis. Stat. § 9.20 and:

1. Refers to the personal qualities, character, or fitness of that candidate;
2. Supports or condemns that candidate's position or stance on issues; or
3. Supports or condemns that candidate's public record.

(12) Consistent with Wis. Stat. § 11.05 (2), nothing in sub. (1), (2), or (3) should be construed as requiring registration and reporting, under Wis. Stat. §§ 11.05 and 11.06, of an individual whose only activity is the making of contributions.

(13) Penalty.

Any person who violates any provision of this section or fails to comply with any of its requirements shall, upon conviction, be subject to forfeiture of not more than one thousand dollars (\$1,000). (Each day of violation or non-compliance shall be considered a separate offense.)”