Legislation Text

File #: 62417, **Version:** 1

The proposed ordinance updates regulations concerning cannabis use. These changes would most likely result in fewer cannabis related citations.
From January 1, 2019 to August 1, 2020, 468 cannabis citations were issues representing approximately $54,000 of which $14,000 has been paid.

Repeal and recreate Section 23.20 and amending Section 1.08(3)(a) of the Madison General Ordinances to update regulations concerning cannabis and revise bail deposits for violations thereof.
DRAFTER'S ANALYSIS: This ordinance creates several definitions including definitions for hemp, cannabis and cannabis derivatives. This ordinance repeals the City's current ordinance regulating use and possession of cannabis. It repeals the current bail deposit for possession of small amounts of cannabis. This ordinance permits an individual who is 18 years or age or older to possess 28 grams (slightly less than an ounce) or less of cannabis and cannabis derivatives on private or public property with the permission of the owner, landlord or tenant. It prohibits the possession on school property, within 1000 feet of any school and on school buses. It further prohibits the possession of more than 28 grams of cannabis or cannabis derivatives on public or private property. This ordinance permits the consumption of cannabis or cannabis derivatives on private property or public property with the permission of the owner, landlord or tenant as long as such consumption is not in violation of MGO Sec. 23.05 (smoking regulations). This ordinance prohibits the consumption in a motor vehicle which is in operation. This ordinance permits the possession and consumption of cannabis or cannabis derivatives if the individual has a prescription for said possession, this language mirrors state statute. The ordinance establishes bail deposits for violations of the ordinance. While it is currently a violation of state statute and federal law to possess or consume cannabis or cannabis derivatives in the City, at the direction of the Dane County District Attorney's Office, the Madison Police Department would not refer charges for cases that only involve possession of less than 28 grams of cannabis. This ordinance does not prohibit or restrict a police officer from referring charges for possession with intent to deliver cannabis to the Dane County District Attorney's office, even if the individual is in possession of less than 28 grams of cannabis.

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

1. Section 23.20 entitled "Regulations Concerning Marijuana and Cannabis" of the Madison General Ordinances is hereby repealed and recreated as Section 23.20 entitled "Regulations Concerning Cannabis" of the Madison General Ordinances to read as follows:

"**23.20 REGULATIONS CONCERNING CANNABIS.**

(1) Definitions.

"Consume" means to smoke, inhale, exhale or ingest in any manner cannabis or cannabis derivatives.

"Hemp" is any part or derivative of the plants in the genus cannabis with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis or per volume or weight.

"Cannabis" means all parts of the plants in the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include marijuana derivatives or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant that is incapable of germination. It does not include hemp or synthetic chemical cannabinoids.

"Cannabis derivative" means any substance derived from plants in the genus cannabis that has a delta-9 tetrahydrocannabinol (THC) concentration of more than 0.3 percent per volume or weight. It does not include hemp or synthetic chemical cannabinoids.

"Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or subject to Wis. Stat. § 448.21(3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to or administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state.

"Private property" means an area to which the public at large is not invited or permitted, such as a private residence.

"Public property" means any space to which the public is invited or in which the public is permitted.

"School bus" means a motor vehicle that is capable of carrying ten (10) or more passengers in addition to the operator of a motor vehicle for the purposes of transporting pupils to or from a public school, a private school, a technical college, or curricular or extracurricular activities.

(2) Possession. A person who is eighteen (18) years of age or older may possess cannabis or cannabis derivatives in an amount not to exceed twenty-eight (28) grams on public property with the permission of the property owner, landlord or tenant or on private property. Exceptions:

(a) Cannabis or cannabis derivatives may not be possessed in an amount greater than twenty-eight (28) grams on public or private property.

(b) Cannabis or cannabis derivatives may not be possessed within one thousand (1,000) feet of any private or public school premise.

(c) Cannabis or cannabis derivatives may not be possessed on a school bus.

(3) Consumption. A person who is eighteen (18) years of age or older may consume cannabis or cannabis derivatives on private property with the permission of a person who is lawfully on the property or on public property with permission of the owner, landlord or tenant. No person may consume cannabis or cannabis derivatives in a motor vehicle which is in operation. No person may consume cannabis or cannabis derivatives in violation of MGO Sec. 23.05 or Wis. Stats. Sec. 346.63.

(4) Prescription. Any person who has obtained cannabis or cannabis derivatives directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of the

practitioner's professional practice may possess cannabis or cannabis derivatives on public or private property and may consume cannabis or cannabis derivatives on private property with the permission of a person who is lawfully on the property or on public property with the permission of the owner, landlord or tenant.

(5) A violation of this Section shall be subject to a forfeiture of up to one hundred dollars ($100)."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

See "Schedule of Deposits" table in Attachments.

EDITOR'S NOTE:

1. A new or revised forfeiture range must be approved by the Municipal Judge prior to adoption. This revised range has been so approved.

2. Section 23.20 currently reads as follows:

"**23.20 REGULATIONS CONCERNING MARIJUANA AND CANNABIS.**

(1) Purpose. The people of Madison specifically determine that the regulations herein contained concerning marijuana and cannabis are necessary to serve the ethical purpose of providing just and equitable legal treatment of the residents of this community and to preserve the respect of such residents for law, its process, and its administration.

(2) Definitions. In this section:

Cannabis. The resin extracted from any part of the plant Cannabis Sativa L., or any other nonfibrous extract from any part of the plant containing delta-9-tetrahydrocannabinol.

Casually possess. The possession of not more than twenty-eight (28) grams of cannabis, or one hundred and twelve (112) grams of marijuana.

Marijuana. All parts of the plant Cannabis Sativa L., whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. It does not include cannabis or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

Practitioner.

1. A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

2. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this

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state.

Public place. A place which is in public ownership or a place to which the public has access; distinguished from a private place.

(3) A person may casually possess marijuana or cannabis in a private place. Such casual possession is not a crime and is not subject to forfeiture.

(4) No person shall casually possess marijuana or cannabis in a public place unless such marijuana or cannabis was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of her, his, or its professional practice.

(5) A violation of Subsection (4) of this ordinance shall be subject to a forfeiture of up to one hundred dollars ($100). (Am. by Ord. 9244, 8-14-87)

(6) A violation of this ordinance is not a crime and shall not subject a person found in violation thereof to loss of civil rights or to other disabilities imposed upon a person convicted of a crime. No entry or other record may be made which indicates that a person alleged or found to have violated this ordinance has been arrested for, charged with, prosecuted for, or convicted of a crime.

(7) Separability Clause. If any subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof."