

..Number

201609

..Version

PROPOSED SUBSTITUTE B

..Reference

..Sponsor

ALD. LEWIS, DIMITRIJEVIC, DODD AND ZAMARRIPA

..Title

A substitute ordinance relating to possession of marijuana and marijuana-related paraphernalia.

..Sections

106-36-1-0 am

106-36-1-g rp

106-36-1-k-0 am

106-36-1-k-1 rp

106-36-1-k-2 rp

106-36-1-k-3 rp

106-36-1-k-4 rp

106-36-1-k-5 rp

106-36-1-k-6 rp

106-36-1-k-7 rp

106-36-1-k-8 rp

106-36-1-k-9 rp

106-36-1-k-10 rp

106-36-1-k-11 rp

106-36-1-k-12 rp

106-36-1-k-13 rp

106-36-3-c am

106-36-3-d am

106-38 rc

..Analysis

This ordinance prohibits possession of marijuana by a person:

1. Without a valid prescription from a practitioner as defined by state law.
2. Under the age of 18.
3. With greater than 29 grams of marijuana.
4. On the premises of a school or playground.
5. Inside a school bus.

This ordinance further prohibits open possession of marijuana by a person:

1. On private property without the permission of the owner, landlord or tenant.
2. On public property.

In addition, the ordinance also changes the definition of drug paraphernalia by exempting paraphernalia associated with marijuana, with the exception of:

1. Delivering drug paraphernalia to a minor.
2. Advertising drug paraphernalia.

Finally, the ordinance repeals the penalty for smoking marijuana in public and creates a penalty for smoking marijuana in violation of city anti-smoking code provisions with a forfeiture of not less than \$0 nor more than \$50.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 106-36--01 of the code is amended to read:

### **106-36. Drug Paraphernalia.**

1. DEFINITION. In this section "drug paraphernalia" means all equipment, products and materials of any kind which are used, designed for use or primarily intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog, as defined in ch. 961, Wis. Stats., >>with the exception of s. 961.14(4)(t),<< in violation of this section. ~~[[#]]~~ >>The term<< includes, but is not limited to:

Part 2. Section 106-36-1-g of the code is repealed.

Part 3. Section 106-36-1-k-0 of the code is amended to read:

k. Objects used intended for use or designed for use in ingesting, inhaling or otherwise introducing ~~[[marijuana,]]~~ cocaine ~~[[, hashish or hashish oil]]~~ into the human body, including, but not limited to ~~[:]~~ >> miniature cocaine spoons and cocaine vials.<<

Part 4. Section 106-36-1-k-1 to 13 of the code is repealed.

Part 5. Section 106-36-3-c and d of the code are amended to read:

### **3. PROHIBITED ACTIVITES**

c. Delivery of Drug Paraphernalia to a Minor. Any person 17 years of age or over who violates par. b by delivering drug paraphernalia >>, including any paraphernalia intended for the use of marijuana as defined in ch. 961, Wis. Stats.<< to a person under 17 years of age who is at least 3 years younger than the violator is guilty of a special offense.

d. Advertisement of Drug Paraphernalia. No person may place in any newspaper, magazine, handbill or other publication, or upon any outdoor billboard or sign, any advertisement, knowing that the purpose of the advertisement, in whole or in

part, is to promote the sale of objects designed or intended for use as drug paraphernalia >>, including any paraphernalia intended for the use of marijuana as defined in ch. 961, Wis. Stats.<<

Part 8. Section 106-38 of the code is repealed and recreated to read:

**106-38 Possession of Marijuana.**

**1. DEFINITIONS.** In this section:

- a. "Marijuana" shall have the meaning in s. 961.01(14) Wis. Stats.
  - b. "Open possession" means possession that is externally visible without the aid of any search or other form of physical intervention.
  - c. "Practitioner" shall have the meaning in s. 961.01(19) Wis. Stats.
  - d. "Private property" means an area to which the public at large is not invited or permitted, such as a private residence.
3. "Public property" means any space to which the public is invited or in which the public is permitted.

**2. POWER OF MUNICIPALITIES TO PROHIBIT POSSESSION OF MARIJUANA.** In accordance with s. 66.0107(1)(bm), Wis. Stats., if a complaint is issued regarding an allegation of possession of more than 29 grams of marijuana, or possession of any amount of marijuana following a conviction in this state for possession of marijuana, the subject of the complaint may not be prosecuted under this section for the same action that is the subject of the complaint unless the charges are dismissed or the district attorney declines to prosecute the case.

**3. POSSESSION.** Unless obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, it is unlawful to possess marijuana by a person:

- a. Who is under the age of 18.
- b. In excess of 29 grams.
- c. On the premises of a school or playground.
- d. Inside a school bus.

**4. OPEN POSSESSION.** It is unlawful for a person to openly possess marijuana:

- a. On private property without the permission of the owner, landlord or tenant.
- b. On public property.

**5. PENALTY.** Any person violating this section shall upon conviction:

- a. Forfeit not less than \$0 nor more than \$50.
- b. Be permitted to perform community service work and attend substance abuse education and counseling in lieu of payment of the forfeiture specified under par. a.

..LRB

APPROVED AS TO FORM

\_\_\_\_\_  
Legislative Reference Bureau

Date:\_\_\_\_\_

..Attorney  
IT IS OUR OPINION THAT THE ORDINANCE  
IS LEGAL AND ENFOCEABLE

---

Office of the City Attorney

Date:\_\_\_\_\_

..Requestor  
..Drafter  
LRB 176622-4  
Christopher H. Hillard  
7/7/2021