



MEMORANDUM

LEGISLATIVE REFERENCE BUREAU

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To: Ald. Ashanti Hamilton, Chair, Judiciary & Legislation Committee
From: Richard L. Withers, Legislative Fiscal Analyst Ext. 8532
Date: February 16, 2012
Subject: Setting and Approving Municipal Court Forfeiture Schedules
Common Council File Number 111290

The Judiciary and Legislation Committee considered Resolution File Number 111290 on January 30, 2012, at which time the file was held to the call of the Chair. The resolution would approve a revised Municipal Court Non-Traffic Deposit Schedule.

Testimony presented by Jane Tabaska on behalf of the Municipal Court indicated that the forfeiture amounts in the schedule that was previously approved (File Number 090394) have not changed, but obsolete forfeitures were deleted and new forfeiture amounts were added for violations enacted since approval of the prior schedule. I reviewed the schedule, and this appears to be a correct description of the revisions.

Questions and comments by Committee Member Ald. Bohl raised an issue of the respective authority of the Municipal Judges and the Common Council in the process of setting and approving the non-traffic forfeiture schedule. Ald. Bohl was particularly concerned about the apparent low penalties for juveniles in drug-related offenses. Following discussion with Presiding Judge Mosley, Ald. Bohl advised the Court that his concerns have been addressed, and he has no objection at this time to the file moving forward.

The Legislative Reference Bureau was requested to provide information about the statutory framework for setting and approving non-traffic forfeiture schedules. I discussed the issues with Assistant City Attorney Kurt Behling and reviewed recent legislation.

Section 800.037, Wis. Stats., cited in the resolution, provides that, "The municipal court, with the approval of the governing body of the municipality, shall set the deposit schedule for all other cases." This means cases other than traffic and boating cases where the schedule is set uniformly by the state.

The legislature created this section effective January 1, 2011, with the passage of 2009 Wis. Act 402. This legislation repealed former s. 800.03, Wis. Stats., that provided in pertinent part:

(1)(c). In other violation, the person may make such a plea and deposit only if the governing body of the municipality has approved the deposit schedule under sub. (3)

(3) The amount of the deposit shall be set by the municipal judge, but shall not be effective until approval by the governing body of the municipality.

The Wisconsin Legislative Act Memo for 2009 Wis. Act 402 (revised June 4, 2010), notes: "Act 402 provides that a municipal court is a coequal branch of municipal government, subject to the

superintending authority of the Supreme Court, through the chief judge of a judicial administrative district.”

It appears that the language of s. 800.037 does not prohibit the Municipal Court from establishing forfeiture deposits in individual cases or by publishing a schedule prior to approval of the Common Council of a deposit schedule.

The Common Council is not given authority under this statutory language to set any particular forfeiture schedule amounts. It is not clear, however, what impact the failure or refusal of the Common Council to approve a forfeiture schedule has. Individual defendants may have standing to challenge the deposit amounts if the schedule is not approved. This question does not appear to have arisen in other Wisconsin jurisdictions.

Please feel free to contact the bureau if you have any questions or would like further information. If you have questions about the potential legal impact of a failure of the Common Council to approve the proposed forfeiture schedule, the bureau can assist in requesting the advice of the City Attorney's Office.

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