October 1, 2014

Terry Witkowski, chairman
Public Safety Committee
Milwaukee Common Council
200 E. Wells Street
Milwaukee, WI 53202
Via fascimile to (414) 286-3456.

Re: File # 140697 marijuana possession

Dear Alderman Witkowski,

When the Wisconsin Legislature adopted 2013 Wisconsin Act 293 on local
ordinances regarding possession of marijuana, it created new law that is risky for
Milwaukee and every other local government in Wisconsin. The challenge for the
City of Milwaukee is to figure out a way to minimize the potential risks to city
residents and public safety from an ill-conceived state law.

The Public Safety Committee has File # 140697 on marijuana possession on its
agenda for tomorrow's October 2, 2014 meeting. This is not a simple matter of
compliance with a new state law – the proposed ordinace changes raise
complicated issues about how our city should address marijuana possession. The
proposal could have harmful unintended consequences, if the Milwaukee Police
Department, City Attorney's Office and the Milwaukee County District Attorney,
do not get and remain on the same page on charging decisions. Let me explain.

2013 Wisconsin Act 293 allows the City to change its ordinances to prohibit the
possession of any amount of marijuana and to prosecute a person for a second or
subsequent offense of possessing marijuana. However, if a complaint is issued
where it is alleged that a person has possessed more than 25 grams of marijuana
or is alleged to have committed a second or subsequent offense, the subject of the
complaint may not be prosecuted by the City for the same action unless the
charges are dismissed or the district attorney declines to prosecute the case.

The Act does not lessen the District Attorney's ability to bring criminal charges.
Second and subsequent offenses for marijuana possession may be charged as class
I felonies punishable by a fine of up to $10,000 and/or imprisonment for up to 3.5
years. It is no wonder the District Attorney does not charge or dismisses charges
in some cases.

However, the Act affords an alternative prosecutorial route by the City in its Municipal Court for a civil forfeiture, if the District Attorney declines to bring charges or dismisses them. The City does **not** have to cite people under the city's ordinance, even if the Act allows it to do so. How will the City (i.e. police, prosecutors, and municipal court) decide to act? How will it allocate its limited law enforcement and judicial resources to maximize public safety? How will it deal with the inevitable delay between arrests and the District Attorney's decision not to charge or dismiss? How will it avoid making decisions on the basis of collecting as much in fines as possible versus public safety?   Will it use evidence-based decision making?

One way to reduce the potential harm to residents and the criminal justice system from this change is to reduce the amount of the current fines for marijuana possession. Currently they are as much as $500. However, only a small percentage of the judgements are collected. Instead, individuals run the risk to being incarcerated in the County Jail, if they fail to pay the fines. Incarcerating poor people who cannot afford to pay high fines creates serious harm. These people are in jeopardy of losing employment or schooling. Their families are stressed. If jailed, they may not learn the lession we want them to learn – they may learn criminal attitutes and behavior.

Therefore, I'd encourage you to carefully review the proposed ordinance – consult with key players in the criminal justice system – and before you act reduce the fines to reduce the risk of harming residents and public safety.

Thank you for your consideration.

Sincerely yours,

Christopher Ahmuty
Executive Director