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City of Racine, Wisconsin
COMMON COUNCIL

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Public Safety and Licensing Committee **LEGISLATION ITEM #:** Ord. 0003-19

AGENDA DATE: February 26, 2019

DEPARTMENT: City Attorney's Office

Prepared By: City Attorney Scott R. Letteney

Reviewed By: N/A

SUBJECT: Proposed Ordinance 0003-19, updating Racine Ordinance section 66-261

EXECUTIVE SUMMARY: Proposed Ordinance 0003-19, assures that Racine Ordinance section 66-261 specifically complies with existing state law, Wisconsin Statute 66.0107(bm), provides a specific forfeiture of "not less than \$1.00 nor more than \$75.00, plus court costs," for violations of Racine Ordinance section 66-261, rather than the catch-all section 1-15, and changes the bond amount set forth in Racine Ordinance section 66-3 for violations of Racine Ordinance section 66-261 to \$75.00.

BACKGROUND & ANALYSIS: First offense possession of 25 grams or less of marijuana has been prohibited by City of Racine Ordinance at least since 1990. Proposed Ordinance 0003-19:

1. Cleans up statutory references in Racine Ordinance section 66-261,
2. Amends the forfeiture to that directed by the Common Council, i.e., \$1.00 to \$75.00, and
3. Amends the municipal court bond schedule to be consistent with the changed forfeiture range.

On June 19, 1990, by Ordinance 23-90 the Common Council passed the following ordinance:

Sec. 66-261. - Possession of 25 grams or less.

It shall be unlawful for any person to carry, possess or use 25 grams or less of marijuana, as that substance is defined in Wis. Stats. § 161.01(14), unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner filled out in the course of his professional practice, or except as otherwise authorized by Wis. Stats. ch. 161. Any person who is charged with possession of more than 25 grams

36 of marijuana, or who is charged with possession of any amount of marijuana following a
37 conviction for possession of marijuana in this state, shall not be prosecuted under this
38 section.
39

40 Ordinance Section 66-261 still exists today in exactly this same form and language. It has not changed in
41 in its almost 29 years.
42

43 The first sentence of Section 66-261 of the Racine Code of Ordinances states that it is illegal for
44 any person to possess 25 grams or less of marijuana, unless that person has a prescriptions for
45 marijuana. The second sentence of Section 66-261 states that, if a person possesses more than 25 grams
46 of marijuana or if a person has a prior conviction for possession of marijuana in Wisconsin, that person
47 may not be prosecuted by the City of Racine under this ordinance. Thus, first offense possession of 25
48 grams or less of marijuana is currently a civil ordinance violation in the City of Racine.
49

50 It is explicitly legal for cities in Wisconsin to have an ordinance prohibiting first offense
51 possession of 25 or fewer grams of marijuana. Wisconsin state law, specifically Wisconsin Statute
52 section 66.0107(1)(bm), provides the only lawful authority for any municipality in Wisconsin to prohibit
53 marijuana possession. That section, by its clear, unambiguous, and unequivocal language states that
54 municipalities may “[e]nact and enforce an ordinance to prohibit the possession of marijuana,” in the
55 amount of 25 grams or less, unless the possession of marijuana is by prescription, and unless the person
56 previously has “a conviction in this state for possession of marijuana.”
57

58 So, Wisconsin Statute section 66.0107(1)(bm) allows municipal governments to:
59

- 60 1. Prohibit possession of marijuana,
- 61 2. In the amount of 25 grams or less,
- 62 3. Unless the marijuana is possessed pursuant to a prescription, and
- 63 4. Unless the person has a prior conviction in Wisconsin for any amount of marijuana.
64

65 Racine Ordinance 66-261 does the following:
66

- 67 1. Prohibit possession of marijuana,
- 68 2. In the amount of 25 grams or less,
- 69 3. Unless the marijuana is possessed pursuant to a prescription, and
- 70 4. Unless the person has a prior conviction in Wisconsin for any amount of marijuana.
71

72 Racine Ordinance section 66-261 follows precisely the language of Wisconsin Statute section
73 66.0107(1)(bm), with two *non-substantive* exceptions. First, when Racine Ordinance section 66-261 was
74 enacted, the chapter of the Wisconsin Statute that proscribed drug possession was Chapter 161. In
75 1995, the Wisconsin Statutes underwent a major revision and renumbering. Chapter 161 was
76 renumbered to Chapter 961. Wisconsin Statute section 161.01(14), which defined “marijuana,” as
77 referenced in Racine Ordinance section 66-261, was renumbered to Wisconsin Statute section
78 961.01(14), which still defines “marijuana.” In all that time, Racine Ordinance section has not been
79 changed or updated to include the new statute number. Second, the existing ordinance states that it is
80 “unlawful for any person to carry, possess or use 25 grams or less of marijuana.” Wisconsin Statute
81 66.0107(bm) only permits a municipality to “prohibit the possession of marijuana.” While it is a
82 difference in terminology. It is not a practical, substantive difference.
83

84 To be clear, for at least 29 years, the Racine Police Department has been able to – and the data
85 shows that it has – issue civil ordinance violation citations for first possession of 25 grams or less of
86 marijuana. As to that law, there is nothing new.

87
88 On December 18, 2018, the Common Council took two actions regarding marijuana:

- 89
90 1. **Agenda Item 0859-18** – The Common Council ordered “the Chief of Police direct that all
91 first offense possession of marijuana violations be issued civil ordinance citations as
92 opposed to being referred for criminal charges.”
93 2. **Agenda Item 0860-18** – The Common Council directed that the forfeiture for a violation
94 of Racine Ordinance section 66-261 be reduced from the existing \$1,000 (under the
95 catch-all Section 1-15) to “a range of one dollar to seventy five dollars.”
96

97 As to **Agenda Item 0859-18**, the Order of the Common Council has been transmitted to Chief
98 Howell. On January 17, 2019, I forwarded to the Common Council my email of the same date to Chief
99 Howell, formally notifying the Chief of the Order. The action of the Common Council pursuant to Agenda
100 Item 0859-18 has been completed. The Common Council’s Order to Chief Howell is in effect.
101

102 As to **Agenda Item 0860**, the Racine Code of Ordinances must be amended to change the existing
103 forfeiture amount to “a range of one dollar to seventy five dollars.” Because of such change in
104 forfeiture, this is an opportune moment to update the old statutory reference in Racine Ordinance
105 section 66-261 of “Wisconsin Statute section 161.01(14)” to the new statutory reference of “Wisconsin
106 Statue section 961.01(14).” It is also a chance to change language in the existing ordinance “carry,
107 possess or use” to “prohibit,” as I discussed above.
108

109 As it currently exists, Racine Ordinance section 66-3, sets the bond amount for violations of Racine
110 Ordinance section 66-261, first possession of 25 grams or less of marijuana, at \$225.00. The municipal
111 judge sets the bond amount, which is to be confirmed by the Common Council. The “bond amount” is
112 that dollar amount stated on citations as the amount a person may pay rather than appearing in court. If
113 a person pays that amount, and does not appear in court on the citation, the person is found guilty by
114 default and the bond amount paid is forfeited.
115

116 Proposed Ordinance 0003-19, attached hereto, does three things:

- 117
118 1. It assures that Racine Ordinance section 66-261 specifically complies with existing state
119 law, Wisconsin Statute 66.0107(bm), and corrects the internal statutory reference to
120 Wisconsin Statue section 961.01(14).
121 2. It provides a specific forfeiture of “not less than \$1.00 nor more than \$75.00, plus court
122 costs,” for violations of Racine Ordinance section 66-261, rather than the catch-all
123 section 1-15.
124 3. It changes the bond amount set forth in Racine Ordinance section 66-3 for violations of
125 Racine Ordinance section 66-261 to \$75.00.
126

127 **BUDGETARY IMPACT:** There is no budgetary impact to amend the ordinance.

128

129 **OPTIONS/ALTERNATIVES:** Decline to approve the ordinance change, which would be inconsistent with
130 the Common Council's action of December 18, 2018, as set forth above.

131

132 **RECOMMENDED ACTION:** Approve proposed Ordinance 0003-19, which amends Racine Ordinance 66-
133 261.

134

135 **ATTACHMENT(S):** Proposed Ordinance 0003-19

Ordinance 0003-19

Part 1: To amend the title of section 66-261 to read: "Possession of marijuana."

Part 2: To re-create subsection 66-261(a) and add subsection 66-261(b) so that the section reads as follows:

"Sec. 66-261. - Possession of 25 grams or less.

(a) It shall be unlawful for any person to possess marijuana, in the amount of 25 grams or less, as that substance is defined in Wis. Stat. § 961.01(14), unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner acting in the course of his or her professional practice, or except as otherwise authorized by Wis. Stats. ch. 961. Any person who is charged with possession of more than 25 grams of marijuana, or possession of any amount of marijuana following a conviction in any court in Wisconsin for possession of marijuana, shall not be prosecuted under this section.

(b) Penalties. Upon conviction, any person found to be in violation of this section shall forfeit not less than \$1.00 nor more than \$75.00, plus court costs."

State Law reference— Power of municipalities to prohibit criminal conduct, Wis. Stat. § 66.0107; Uniformed Controlled Substances Act, Wis. Stats. Ch. 961.

Part 3: To amend the table in section 66-3 to reduce the bond amount for a violation of section 66-261 from \$225.00 to \$75.00.

Part 4: This ordinance shall take effect upon passage by a majority vote of the members-elect of the Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A