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**City of Racine, Wisconsin
Common Council**

AGENDA BRIEFING MEMORANDUM

COMMITTEE: Public Safety and Licensing LEGISLATION ITEM #: Ord. 10-19

AGENDA DATE: 5/22/19

DEPARTMENT: City Attorney’s Office

Prepared By: Deputy City Attorney Nhu Arn

SUBJECT: Revisions to the Vapor Ordinance

EXECUTIVE SUMMARY:

Several changes have been made to the current draft ordinance as a result of the PS&L Committee’s discussion at its previous meeting. These changes include:

- 1) The words “fine” have been replaced with “forfeiture.”
 - 2) The penalty for persons under 18 years of age who violate the ordinance has been changed from the unspecified default amount (\$1 to \$1000 penalty range), to a range of \$50-100.
 - 3) The penalty for persons who sell/provide vapor products to minors have been changed from “not more than” to “not less than,” which requires a minimum forfeiture. The amounts also changed, starting with \$100 (first offense), \$300 (second offense), \$500 (second offense), and \$1000 (4th and subsequent).
 - 4) Removal of “nicotine” as a prohibited product, since this is already regulated by state statute and requires strict conformity, per Wis. Stat. sec. 254.92(4). Given the changes to the forfeiture amounts, the ordinance no longer strictly complies with state statute and as such, cannot include the prohibition of nicotine.
 - 5) The “imprisonment” language has been removed from the ordinance, since the statute only allows for this in cases where there is a statutory counterpart for the ordinance. While state law prohibits nicotine, there is no counterpart for the prohibition of vapor products by minors. See Wis. Stat. sec. 66.0109.
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31 **BACKGROUND & ANALYSIS:**

32 As a follow-up to Ald. Perez’s questions and the issues discussed by the PS&L Committee at its previous
33 hearing, the ordinance has been amended as highlighted above, to address these concerns. As a result of
34 these changes, it was necessary to make several other changes to the ordinance in order to comply with
35 state law.

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37 **BUDGETARY IMPACT:** N/A

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39 **OPTIONS/ALTERNATIVES:**

- 40 1) Adopt the ordinance as drafted.
41 2) Defer back to the City Attorney’s Office for additional changes.
42 3) Receive and file.
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44 **RECOMMENDED ACTION:** N/A. This is a policy and legislative decision best left up to the
45 Committee and Common Council.

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47 **ATTACHMENT(S):** Revised Ordinance #10-19