



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Enforcement of Marijuana Laws

Eff. Date: 10/13/2023

Madison City Ordinance

Madison General Ordinance 23.20 prohibits possession of marijuana under certain circumstances:

- Possession of more than twenty-eight (28) grams of marijuana
- Possession of marijuana (any amount) by someone under the age of eighteen
- Possession of marijuana (any amount) within 1,000 feet of a school
- Possession of marijuana (any amount) on a school bus
- Possession of marijuana (any amount) on property open to the public without the permission of the property owner, landlord, or tenant
- Smoking marijuana anywhere smoking is prohibited (bars, restaurants, etc.)
- Consuming marijuana in a motor vehicle which is in operation

While simple possession of marijuana remains illegal under state law, the Dane County District Attorney's Office will not prosecute simple possession cases unless extenuating circumstances are present (see below).

The City ordinance prohibiting possession of drug paraphernalia now excludes marijuana-related paraphernalia, and the Dane County District Attorney's Office will not prosecute these cases.

Investigative Expectations

The following guidelines apply to marijuana-related investigations (using marijuana as reasonable suspicion or probable cause):

- Investigative action (contacts, stops, arrests, etc.) should not be taken when an officer simply has suspicion that someone is in possession of marijuana under circumstances permitted by City ordinance.
- Investigative action (contacts, stops, arrests, etc.) should not be taken when an officer simply has suspicion that someone is in possession of marijuana-related drug paraphernalia.
- If circumstances provide suspicion that an individual is possessing or consuming marijuana in a manner not permitted by City ordinance (near a school, etc.) then appropriate investigative steps are permitted.
- If circumstances provide suspicion that an individual is possessing or consuming marijuana under circumstances permitted by City ordinance, but that person is engaged in additional behavior impacting public safety or creating a significant nuisance or disturbance, appropriate investigative steps are permitted (based on violation of state law).
- If circumstances provide suspicion that an individual is in possession of a large amount of marijuana, is in possession of marijuana with intent to deliver, or has delivered marijuana (as prohibited by state law), appropriate investigative steps are permitted.

These expectations apply when the basis for an investigative action (contact, stop, arrest, etc.) is marijuana-related. Reasonable suspicion of other unlawful activity permits investigative actions consistent with Madison Police Department Standard Operating Procedures.

Vehicle Searches

The following guidelines apply to marijuana-related vehicle searches:

- Prior to conducting a search of a vehicle Officers shall also have at least one of these factors present in addition to the odor of marijuana:
 - Plain-view observance of evidence of marijuana shake, residue, or drug paraphernalia
 - Statements and/or admissions that marijuana, contraband, or paraphernalia is on their person or in the vehicle
 - A wanted check reveals that the driver is on active probation or parole, or the driver has an open criminal case
 - Prior knowledge that individual(s) in the vehicle is/are suspected to be involved in illegal drug trafficking or other serious crime(s)
 - Consent is obtained to search the vehicle. Refer to the Searches SOP for further guidance
 - There is evidence the driver has ingested marijuana or the driver displays signs of being under the influence of an intoxicant or drug and the Officer proceeds with conducting an OWI investigation

Note: the vehicle's presence in, or travel through, a "high crime area" may not be used as a sole rationale for warrantless searches of motor vehicles

Enforcement Expectations

Officers may only issue City ordinance citations for marijuana-related offenses consistent with ordinance changes as described above. State criminal charges related to marijuana should only result in arrest or referral under the following circumstances:

- Delivery or possession with intent to deliver charges.
- Simple possession when a significant quantity (50+ grams) is located, and when there is another criminal charge being referred or when the possession is directly related to behavior impacting public safety.

Officers should not make arrests or issue citations for marijuana-related drug paraphernalia.

Contraband

Officers may encounter marijuana during the course of a marijuana-related investigation (as outlined/approved above) or during the course of some other investigation. If marijuana is located but criteria for a marijuana-related arrest or citation is not met, the marijuana should not be returned but must be seized and property tagged for destruction.

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