



Legislation Text

File #: 22665, Version: 2

**Fiscal Note**

It is unknown how many citations may be issued under the Ordinance, but, assuming the issuance of two hundred citations annually, there will likely be an increase in General Fund revenues derived from fines ranging from an estimated \$20,000 to \$50,000.

**Title**

**AMENDED** Repealing and recreating Section 26.01 and amending Section 1.08(3)(a) of the Madison General Ordinances to create an ordinance that specifically addresses various public indecency behaviors including public nudity, public sexual acts and peeping.

**Body**

DRAFTER'S ANALYSIS: Madison does not currently have an ordinance that specifically addresses certain behaviors that constitute public indecency, such as public masturbation, public nudity and peeping in windows or other places where individuals have a reasonable expectation of privacy. Currently, public indecency behavior is most commonly addressed through the issuance of disorderly conduct citations. However, disorderly conduct is not always the appropriate charge and may not properly categorize behavior that may be indecent or sexual in nature, and it is extremely difficult for the police department to determine repeat offenders in the category of sex-related offenses with the disorderly conduct ordinance. It is important to be able to identify such repeat offenders for the protection of the community so that such individuals can be dealt with in a more appropriate fashion, such as referral for criminal charges, and so that licensing agencies and employers who conduct background investigations have an accurate assessment of the individual they are potentially licensing or hiring. This ordinance is modeled on the related state criminal statutes, sec. 944.20, and ordinances from other jurisdictions.\*\*\*\*\*

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 26.01 entitled "Exposure of Person" of the Madison General Ordinances is repealed and recreated to read as follows:

**"26.01 PUBLIC INDECENCY.**

- (1) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.
- (2) Whoever does any of the following is guilty of public indecency:
  - (a) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others.
  - (b) Publicly and indecently exposes genitals or pubic area.
  - ~~(c) Appears publicly in a state of nudity.~~
  - ~~(dc)~~ Engages in masturbation, or conduct which would appear to an ordinary observer to be masturbation, with knowledge that they are in the presence of others or that they can be observed by others.
- (3) No person shall do any of the following without the consent of the other person:
  - (a) Peep into an area where an occupant of the area has a reasonable expectation of privacy, including, but not limited to:
    - 1. restrooms;
    - 2. baths;
    - 3. showers; and
    - 4. dressing rooms.

- (b) Go upon the land of another with the intent to peep into an occupied dwelling of another person;
- (c) "Peep" means any looking of a clandestine, surreptitious, prying, or secretive nature, **whether by direct observation or via camera or other remote viewing or magnification or recording device.**

**(4) In all cases under Subsections (2) and (3), actions must be conducted with lewd and lascivious intent to be violations of this section.**

**(45) Exceptions.**

- (a) This ordinance shall not apply to the following:
  - 1. A mother's breast-feeding of her child.
  - 2. Legitimate, authorized law enforcement activities.
- (b) Sub. (2)(c) shall not apply to the following:
  - 1. Establishments holding an Adult Entertainment License issue pursuant to Sec. 9.05, MGO.
  - 2. A theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

**(56)** Any person violating any provision of this section shall forfeit not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000) upon conviction."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating therein the following:

<u>"Offense</u>	<u>Ord. No./ Adopted Statute No.</u>	<u>Deposit</u>
Public Indecency	26.01	\$500, 1 <sup>st</sup>
		\$1000, 2 <sup>nd</sup> w/in 5 yrs.
		\$2000, 3 <sup>rd</sup> w/in 5 yrs.
		\$3000 4 <sup>th</sup> w/in 5 yrs."

EDITOR'S NOTE:

Section 26.01 currently reads as follows:

**"26.01 EXPOSURE OF PERSON.** It shall be unlawful for any person to make any indecent or immoral exhibition or exposure of her/his person or to cause or to procure any person to do so."