

## Legislation Text

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**File #:** 04663, **Version:** 2

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### Fiscal Note

This ordinance would require Public Health and City Attorney staff to develop related materials, respond to possible complaints, and conduct related investigations. Staff time of both the Public Health and Attorney's Office agencies will therefore be required to support these functions. The associated fiscal impact is likely to be small, unless a complaint is contested and appealed. In that case, considerable additional staff time may be consumed by the Public Health and Attorney's Office agencies. No appropriation is required at this time, nor is any impact upon the tax levy anticipated.

### Title

SUBSTITUTE - Creating Section 7.09 of the Madison General Ordinances, which creates a signage requirement for pharmacies regarding where emergency contraception may be obtained if the pharmacy does not carry it or if it is out of stock, requires the Board of Health to create written materials regarding emergency contraception, creates an investigation process for the Director of the Public Health Department, and creates penalties for violating this Section.

### Body

**DRAFTER'S ANALYSIS:** This creates a new ordinance to provide accurate information regarding emergency contraception to avoid unwanted pregnancies. It requires pharmacies to have adequate notices regarding the pharmacy's ability to dispense emergency contraception. This ordinance requires the Board of Health for Madison and Dane County to develop written materials regarding emergency contraception. It requires the Director of Public Health or designee to investigate all complaints of violation of this section and it requires all pharmacies to cooperate with said investigations. It also establishes penalties for violation of this section.

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

Section 7.09 entitled "Emergency Contraception Access" of the Madison General Ordinances is hereby created to read as follows:

#### **"7.09 EMERGENCY CONTRACEPTION ACCESS.**

- (1) Statement of Purpose. The purpose of this section is to enable women to prevent unintended pregnancies by ensuring timely access to emergency contraception at pharmacies.
- (2) Definitions. For the purpose of this section words and phrases used shall have the meanings designated in Wis. Stat. Sec. 450 and Phar 10 Wis. Admin. Code unless the context clearly indicates a different meaning, with the following additions and modifications for use in this section only:
  - Department shall mean the City of Madison Department of Public Health.
  - Director shall mean the Director of Public Health for Madison and Dane County or the Director's designee.
  - Dispense shall mean to fill a valid patient request, presented to a pharmacist, in accordance with professional standards of practice.
  - Emergency Contraception shall mean a drug, medicine, oral hormonal compound or mixture that prevents pregnancy after sexual intercourse and is approved by the Federal Food and Drug Administration. It does not include any drug or medicine that is prescribed to terminate a pregnancy.
  - Pharmacy shall mean any place in which prescription drugs, as defined in Sec. Wis. Stats. 450.01(20), are compounded or dispensed and which is licensed under Sec. Wis. Stats. 450.06. It shall not mean a pharmacy located within:
    - a. Hospitals as defined under HFS Admin. Code 124.02. or
    - b. Nursing homes as defined by Wis. Stats. Sec. 50.01(3) or
    - c. Home health agencies as defined by Wis. Stats. Sec. 50.49.
  - Sexual Assault Victim shall mean a female who alleges or for whom it is alleged that she has suffered a sexual assault.
- (3) Pharmacy Requirements. A pharmacy that cannot immediately dispense emergency contraception must provide the name, address and phone number of a pharmacy that is known to dispense emergency contraception. The pharmacy must conspicuously post, at or adjacent to each counter where prescription drugs are dispensed a sign not smaller than eleven by eight and one-half inches (11" x 8 ½"). The sign lettering shall be in bold and clearly visible. The sign must contain the following language:

**"NOTICE: This pharmacy is currently out of Emergency Contraception (EC). EC, sometimes called "the morning after pill," is a FDA approved high dose of oral contraception that should be taken as soon as possible after unprotected intercourse to prevent pregnancy. The FDA approves this up to 72 hours (3 days) after unprotected intercourse, some studies indicate that this product can be effective up to 120 hours (5 days) after unprotected intercourse. You do not need a prescription to obtain EC if you are 18 or older; if you are under 18, you must get a doctor's prescription. A location where EC is known to be available is [name of pharmacy], [address of pharmacy], or the pharmacist here will refer you to another pharmacy that is known to have the medication in stock."**

- (4) A pharmacy that does not stock emergency contraception must provide the name, address and phone number of a pharmacy that is known to dispense emergency contraception. The pharmacy must conspicuously post, at or adjacent to each counter where prescription drugs are dispensed a sign not smaller than eleven by eight and one-half inches (11" x 8 ½"). The sign lettering shall be in bold and clearly visible. The sign must contain the following language:

**"NOTICE: This pharmacy does not stock Emergency Contraception (EC). EC, sometimes called "the morning after pill," is a FDA approved high dose of oral contraception that should be taken as soon as possible after unprotected intercourse to prevent pregnancy. The FDA approves this up to 72 hours (3 days) after unprotected intercourse. Some studies indicate that this produce can be effective up to 120 hours (5 days) after unprotected intercourse. You do not need a prescription to obtain EC if you are 18 or older; if you are under 18, you must get a doctor's prescription. A location where EC is known to be available is [name of pharmacy], [address of pharmacy], or the pharmacist here will refer you to another pharmacy that is known to have the medication in stock."**

- (5) Written Information. The Board of Health for Madison and Dane County shall develop and prepare written information relating to emergency contraception for the prevention of pregnancy. The information shall be clearly written and readily comprehensible in a culturally competent manner. The information shall explain in a medically and factually accurate and unbiased manner information regarding emergency contraception, including but not limited to the following:
- (a) The pharmacological nature of emergency contraception;
  - (b) The effectiveness of emergency contraception in preventing pregnancy;
  - (c) Where emergency contraception can be obtained; and
  - (d) How emergency contraception is administered.
- (6) Responsibilities of the Director. The Director shall:
- (a) Investigate every complaint of noncompliance with this section;
  - (b) Determine whether the complaint is substantiated;
  - (c) Compile the substantiated complaints and analyze them at least annually, to determine if there is any pattern of failure to provide services or notice under this section;
  - (d) Prepare an annual report that summarizes the substantiated complaints and actions taken by involved parties to address those complaints. This report shall be readily made available to the public; and
  - (e) On an annual basis, review the above listed signage language to insure that it is the most accurate and complete information available.
- (7) Complaint Investigation. Any person deprived of information about or access to emergency contraception in violation of this section may file a complaint with the Director. Any person with knowledge of a pharmacy that has deprived information about or access to emergency contraception in violation of this section may file a complaint with the Director. Pharmacies must allow the Director to thoroughly investigate complaints of noncompliance with this section. Pharmacies may not threaten, intimidate, impede, interfere with or otherwise obstruct the Director's investigation process. Pharmacies

- shall not knowingly give false information to the Director.
- (8) Penalties.  
A pharmacy that violates this section shall forfeit: not less than two hundred and fifty dollars (\$250) nor more five hundred dollars (\$500) for the first offense; not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2500) for each subsequent offense. Each day of violation and every violation of any provision of this ordinance may constitute a separate offense.
- (9) Effective Date. This ordinance shall become effective on January 1, 2007.
- (10) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall have no affect on the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein."