



STAFF REPORT ON PROPOSED LEGISLATION

To: Mayor Gavin Buckley

From: Michael Mallinoff, City Manager

Date: November 20, 2024

Subject: O-35-24: Fair Cannabis Employment Practices

Purpose of legislation

The purpose of this legislation is to update the City of Annapolis employment policy as a result of the State legalizing cannabis use and possession on July 1, 2023, and generally related to city employment policy.

Impact of legislation on operations and staffing

The City's substance abuse policy, like the substance abuse policy at the State, exists within the realm of personnel regulations. There are no provisions within City Code right now that address drug use, alcohol use, etc. The Governor's executive order referenced in this ordinance made a change to the state's policy, but it did not change state law. The City recommends a similar approach here: making changes to the City's substance abuse policy rather than changes to City Code. The City agrees that the Governor's executive order¹ is a good model to follow, and recommendations regarding the City's substance abuse policy are forthcoming.

That said, there is merit to the spirit of this legislation. With the changes at the state level around cannabis possession and use, there now exist multiple, sometimes conflicting standards with respect to cannabis. All jurisdictions are trying to find a way to respect the hard boundaries that remain while also respecting the changes. The Maryland Commission on Civil Rights (MCCR) has published guidance on cannabis and the workplace (available for download here:

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https://www.mdot.maryland.gov/OHR/EO01.01.2023.16MarylandWorkplaceSubstanceAbusePolicy_AccessiblePDF.pdf

<https://mccr.maryland.gov/Documents/publications/Cannabis%20presentation%20js.6.11.23.pdf>) that is helpful in understanding the changes and developing an approach to cannabis.

For example, the MCCR guidance includes the following.

- An employer with a legitimate business purpose may require an employee or job applicant to submit to a test for use or abuse of controlled substances or alcohol. Md. Code Ann., HealthGen. § 17-214(b)(1), (h).
- With respect to testing, presence does not necessarily mean impairment, and no current test can tell the line between impairment and non-impairment. Positive tests must go to a state-approved lab.
- If supervisor impairment training is used, it should be fairly rigorous and include mandatory referral to counseling instead of termination.
- Medical marijuana use is not protected under the ADA.
- The federal Department of Transportation has required alcohol and drug testing for employees involved in various transportation industries even if not funded with federal dollars, for example those with a commercial driver's license (CDL). The guidance also notes that state marijuana laws do not have bearing on DOT drug-testing requirements.
- Employers have an obligation to protect workers from threats to safety under federal and state occupational safety laws and regulations. The guidance recommends that employers should consider additional restrictions on those in safety sensitive positions.
- Do not adopt a blanket drug-testing policy that fails to leave room for an interactive process to determine whether there is a reasonable accommodation that would address any medication concerns.

In line with this guidance, the new executive order at the state does not talk about pre-employment testing, but it does require state agencies to submit lists of "sensitive" and "safety sensitive" positions that will be subject to heightened discipline for drug-related offenses, including cannabis use. Those lists include both federally mandated positions such as those that require commercial driver's licenses as well as positions such as accountants and conservation specialists. In the City's case, "safety sensitive" positions would include those where impairment would impact the safety of the worker themselves, others in the workplace, or to property. Examples include staff that work on or operate heavy machinery and those that work with children or other vulnerable populations. The City would also include as sensitive any positions that are funded with federal dollars, where the City is expected to conform with the federal definition of a "drug-free workplace".

The City already offers training to supervisors that oversee CDL holders, but we are likely to need to expand this training and ensure it meets the guidelines from MCCR.

Under the Governor's executive order, cannabis and alcohol are grouped together with prescription drugs and all other drugs having their own sections. The state has a mandatory 15-day suspension and treatment for violations if a position is sensitive or safety sensitive. Outside of sensitive and safety sensitive positions, state staff can still be subject to progressive discipline if impaired. The City is likely to use that as a guide in reviewing its own policies.

The City, like many employers, is trying to be responsive to the changes that the Maryland cannabis laws have enacted and is trying to navigate between federal law that hasn't changed and state laws that have changed. We agree that the City's policies need to be updated to reflect the current legal landscape but would prefer to do that through updates to the personnel regulations.

Prepared by Victoria Buckland, Assistant City Manager