



COMMISSION MEMORANDUM

TO:	Honorable Mayor and Members of the City Commission
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FROM: Interim City Manager Rickelle Williams

DATE: July 24, 2024

TITLE: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ESTABLISHING AS THE POLICY OF THE CITY OF MIAMI BEACH THAT MEDICAL MARIJUANA IS MEDICINE AND NOT AN ILLICIT RECREATIONAL DRUG; THAT EMPLOYEES OF THE CITY WHO ARE PRESCRIBED MEDICAL MARIJUANA BY A PROPERLY LICENSED MEDICAL PROFESSIONAL IN COMPLIANCE WITH ALL REQUIREMENTS SET FORTH IN FLORIDA LAW SHALL BE PERMITTED TO USE THIS PROPERLY PRESCRIBED MEDICATION DURING NONWORKING HOURS AND SUFFICIENTLY IN ADVANCE OF ANY SCHEDULED WORK SHIFT IN ORDER TO ENSURE THAT THE EMPLOYEE IS NOT IMPAIRED BY THE USE OF THE MEDICAL MARIJUANA WHILE ON THE JOB; AND DIRECTING THE CITY ADMINISTRATION TO DRAFT AND PROMULGATE WRITTEN DIRECTIVES EFFECTUATING THIS CITY POLICY.

RECOMMENDATION

The Administration has provided information on employment practices and legal considerations to inform the Commission's debate and its consideration of the proposed Resolution to adopt this policy.

BACKGROUND/HISTORY

At the February 21, 2024 City Commission meeting, the Mayor and City Commission approved a referral (Item C7 O) to the Finance and Economic Resiliency Committee (FERC or Committee) to discuss a proposed resolution to establish a policy for the City that would allow employees of the City who are prescribed medical marijuana by a properly licensed medical professional to be permitted to use properly prescribed medication during nonworking hours and sufficiently in advance of any scheduled work shift. A proposed resolution sponsored by Commissioner Rosen Gonzalez was presented at the meeting but was not adopted and was instead referred to FERC for further discussion.

This item was included on the May 24, 2024 FERC agenda but was not reached.

This item was discussed at the June 28, 2024 FERC meeting. The Committee voted to return the proposed resolution to the full Commission with an unfavorable recommendation with a two (2) to one (1) vote, with one Committee member being absent. An additional recommendation was made by FERC members that the proposed resolution, if adopted, should be modified to consider an exemption from the policy of certain positions to be determined.

ANALYSIS

For the May and June FERC meetings, the City Administration provided a full analysis of facts surrounding medical marijuana and implications in the workplace. The June 28, 2024 memo to FERC is attached, with reference links, for this full analysis.

Medical marijuana intersects with many workplace topics including:

- State law, legality of medical marijuana, workplace rules, drug-free workplace discounts for Worker's Compensation Insurance
- Federal law, illegality of marijuana, and drug-free workplace guidelines for receiving federal grants
- A requirement of providing reasonable accommodations for disabilities and disabling medical conditions under the Federal Americans with Disabilities Act (ADA)
- The City's drug-testing practices of pre-employment testing for safety sensitive positions, random drug testing and "positive" thresholds under the City's collective bargaining agreements, post-accident testing, and testing for reasonable suspicion of impairment at work
- Recent trends, including new tests for marijuana

Current practices:

The City of Miami Beach's current employee drug testing practices and procedures are designed with the goals of engaging and assisting employees with a substance use disorder as well as to maintain a safe workplace. The City provides a confidential and free Employee Assistance Program to assist any employee who may have a substance abuse issue or any other issue impacting their work performance or personal life.

Human Resources thoughtfully engages with employees, Departments, and the City Attorney's Office to provide reasonable accommodations to any applicant or employee impacted in the workplace by a disability or medical condition.

Drug-free workplace designation:

Per the United States Department of Labor (DOL), "Under the Drug-Free Workplace Act of 1988, federal workplaces and non-federal workplaces with a federal contract of \$100,000 or more or a federal grant in any amount must implement a Drug-Free Workplace Program, which includes drug testing requirements." (See Section 702 of [USCODE-2009-title41-chap10.pdf \(govinfo.gov\)](#)) The Drug-Free Workplace Program is guided by the Substance Abuse and Mental Health Services Administration (SAMHSA), which defines a drug-free workplace:

It is an employment setting where all employees adhere to a program of policies and activities designed to provide a safe workplace, discourage alcohol and drug abuse and encourage treatment, recovery and the return to work of those employees with such abuse problems.

The Human Resources (HR) Director certifies that the City of Miami Beach is a Drug-Free Workplace on all required Federal grant forms.

There are also important impacts of Drug-Free Workplace policies under Florida law:

As stated in [drug-free-workplace-guide.pdf \(myfloridacfo.com\)](#), provided by the State of Florida Division of Workers' Compensation, "In 1990, legislation was enacted that created the Florida Drug-Free Workplace Program. The intent was to 'promote drug-free workplaces in Florida, in order that employers (would) be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success

without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug abuse by employees.” (See Sections 440.101 and 102, Florida Statutes)

FISCAL IMPACT STATEMENT

The City's Human Resources (HR) Director or Risk Manager certifies annually that the City of Miami Beach is a Drug-Free Workplace to the State of Florida Division of Workers' Compensation.

- This certification provides the City of Miami Beach an annual five percent (5%) credit (a discount valued at almost \$30k annually) to our workers' compensation insurance premiums as the City is self-insured.
- The City also purchases excess worker's compensation (WC) insurance. We anticipate that not maintaining a Drug-Free Workplace Program would impact the ability of the City to re-insure. This would negatively impact the City's self-insurance fund.
- Under State Law, the City is not required to provide an employee WC benefits if drugs are found in the employee's system at or above threshold levels. This protects the City's self-insurance fund.
- The City could be exposed to comparative or contributory negligence if the City were to allow an accommodation for the use of a Schedule 1 drug and impairment was a contributory factor in a workplace accident. This would negatively impact the City's self-insurance fund.

At the request of the FERC, the City's Grants Division reviewed Federal Grant agreements and found that:

- Federal Grants totaled about \$38 million over the last 5 years from 2019-2024 (to date)
- Of these grants, agreements totaling \$14 million contained some form of the “Drug Free Workplace” clause as described below:

Drug-Free Workplace Recipients must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1 536 Subpart B. Additionally, in accordance with these regulations, the Recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Does this Ordinance require a Business Impact Estimate?

(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

If members of the City Commission adopt this Resolution as policy and direct the Administration to propose new workplace guidelines that would better allow City employees, with some exempted positions, to use legally prescribed medical marijuana during nonworking hours and sufficiently in advance of any scheduled work shift, procedures and practices would be developed

and adopted to more broadly accommodate the use of medical marijuana by employees of the City of Miami Beach provided that an employee was not impaired at work. Any changes to current practices affecting employees governed by collective bargaining agreements must also be bargained.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Human Resources

Sponsor(s)

Commissioner Kristen Rosen Gonzalez

Co-sponsor(s)

Condensed Title

Establish Policy for Medical Marijuana for City Employees. (Rosen Gonzalez) HR