

# MIAMI BEACH

## COMMITTEE MEMORANDUM

TO: Finance and Economic Resiliency Committee Members

FROM: Eric Carpenter, City Manager

DATE: November 8, 2024

TITLE: DISCUSS A PROPOSED 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 recommends that the Committee review and consider the proposed Resolution along with the employment practices and legal considerations that have been provided.

### **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) 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.

This item returned to the full Commission on July 24, 2024 (C7 AR). The sponsor requested and the Commission voted to refer the item back to the September 20, 2024 FERC Committee.

This item was included on the September 20, 2024 FERC agenda but was not reached.

This item was included on the October 18, 2024 FERC agenda but was deferred by the sponsor.

## **ANALYSIS**

At the June FERC meeting, 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. Also attached is an analysis from the Congressional Research Service from May 2024 which highlights the gaps between federal law and policy and state law and policy regarding marijuana.

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 which are critical in order to determine the potential for on the job impacts.

### 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.

Human Resources surveyed other local governments (see attached) regarding their policies and practices about medical marijuana. There were no organizations identified which have affirming policies or practices regarding employee use of medical marijuana. One city, Hialeah, referred to one example of providing reasonable accommodation to an individual employee who was not in a safety-sensitive position. All jurisdictions we surveyed have a drug-free workplace policy and judiciously use last chance agreements (LCAs) with employees who may test positive in lieu of termination.

### 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 fiscal impact of implementation of this resolution cannot be determined at this time.

### **Does this Ordinance require a Business Impact Estimate?** (FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on .

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

### **FINANCIAL INFORMATION**

N/A

### **CONCLUSION**

The Committee should discuss whether to adopt this Resolution as policy and direct the Administration to propose new workplace guidelines that would better allow City employees to use legally prescribed medical marijuana during nonworking hours and sufficiently in advance of any scheduled work shift, and that 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. The Administration has provided information on employment practices and legal considerations to inform the Committee's debate and its consideration of the proposed Resolution to adopt this policy. The Committee should consider whether or not safety-sensitive positions should be exempted from the policy if adopted. Another issue to consider is the advancement of drug testing capabilities to possibly differentiate past use versus recent use, which may be more likely to cause impairment while on the job.

### **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**

Discuss proposed resolution to permit employee use of medical marijuana