

City of Detroit – Human Resources Department
Hearings & Policy Development Plan
<p style="text-align: center;"><b>POLICY: EMPLOYMENT IMPACT OF MICHIGAN’S MEDICAL MARIJUANA ACT</b></p> <p style="text-align: center;">References:</p> <p style="text-align: center;">Medical Marihuana Act – MCL 333.26421 Federal: Controlled Substance Act – Schedule 1 Drug US Department of Transportation Regulation 49 CFR Part 40 [40.151(e)]<sup>1</sup>; City of Detroit Charter City of Detroit Commercial Driver’s License (CDL) Substance Abuse and Alcohol Testing Policy HR Rules and Manual of Standard Personnel Practices</p>

## **PREAMBLE:**

Pursuant to a petition and ballot proposal, Michigan became one of the states enacted legislation allowing for the medical use of marihuana. The Michigan Marihuana Act (MMA) is found at MCL 333.26421 and allows for the medical use of marihuana under the State Law.

The Act provides for a system of registration and issuance of identification cards for qualifying patients and primary caregivers;

- Promulgation of rules to implement the Act;
- Administration and enforcement of the Act;
- An affirmative defense to any prosecution involving marihuana; and
- Penalties for violation of the Act.

It is important to note that the Michigan Act **does not** make marihuana legal. Marihuana remains a Schedule 1 controlled substance. Therefore, the use remains prohibited when engaged in activities governed by Federal law specifically the U.S. Department of Transportation (DOT) Drug and alcohol testing regulations.<sup>1</sup> Persons engaged in the usage, possession and distribution of marihuana will be subject to criminal prosecution.

The U.S. Department of Justice (DOJ) issued guidelines advising against federal prosecution in states having enacted laws authorizing the use of “medical marihuana.”

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<sup>1</sup> 49 CFR 40.151(e) does not authorize “medical marihuana” under a state law to be a valid medical explanation for a transportation employee’s positive drug test results.

This prosecutorial guideline does not remove the drug from the controlled substance schedule; it advises federal prosecutors it is not a cost-effective use of limited resources to arrest people who use or provide medical marihuana in strict compliance with the state law.

The MMA contains an affirmative defense that may be asserted by a person in a prosecution involving marihuana. It is not an absolute bar to the prosecution. The person asserting the affirmative defense must demonstrate compliance with the MMA.<sup>2</sup>

### **SCOPE:**

This policy applies to all City of Detroit Departments. The policy must be viewed in conjunction with the U.S. DOT rules and regulations as well as the City of Detroit Controlled Substance And Alcohol testing policy.

### **POLICY:**

The City of Detroit is bound by prevailing law duly enacted by the Federal, State and Local legislative bodies. In the case of the Michigan Medical Marihuana Act, the State Legislature provides protection for the medical use of marihuana. For those qualifying patients or primary caregivers who act in compliance with the MMA, they shall not be subject to arrest, prosecution, civil penalty or licensing disciplinary action for the use or possession of medical marihuana consistent with the MMA.<sup>2</sup>

The City of Detroit, as an Employer, is required to ensure the safety and protection of the citizens served by its Employees. Therefore, the enactment of the MMA does not override existing policies concerning:

- City of Detroit Substance Abuse Testing Policies and Procedures for Employers with Commercial Driver's License (CDL) or City policies affiliated with DOT Federal Transit Administration Regulations;
- Negligent entrustment of City Vehicles
- Driving while impaired or yielding positive test results post accident, including the operation of City Vehicles or a private vehicle while conducting City business;
- Any employee engaged in conduct or action prohibited by the MMA;

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<sup>2</sup> The reference to "disciplinary action" references any disciplinary action by a business or occupational or professional licensing board or bureau; not the discipline imposed by an Employer for actions which impact the ability to discharge the duties of employment.

- Smoking marihuana in public;
- Possession of marihuana at schools or correctional facilities;
- Operating a vehicle under the influence of marihuana;
- Making a fraudulent claim of medical use or possession to law enforcement to avoid prosecution
- Selling marihuana to someone other than a qualified patient; and
- Selling marihuana during hours of employment, at any City work site and/or on City property

The City of Detroit can not prohibit an Employee's registration under the MMA. In the event an Employee is duly registered as a patient or caregiver pursuant to the registration requirements of MMA, the Employee must provide notification to the Human Resources Department along with a copy of the registration card. The City affirms the need to protect individual dignity, privacy and confidentiality. The information shall be afforded confidentiality and any dissemination controlled consistent with medical information protocols, policies, procedures and the MMA.

An employee who is duly registered under the MMA will be evaluated to ascertain fitness for duty. If the employee is deemed unfit, the employee may submit a request for consideration for a leave of absence. Such leave requests will be evaluated in accordance with the City's Family Medical Leave Act Policy and Human Resources Rule 14, Leaves of Absence.

Any questions concerning this policy, its interpretation or application should be directed to the Hearings & Policy Development Division of the Human Resources Department.

Policy Enacted:

November 4, 2010.

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