



## MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager

DATE: March 25, 2022

SUBJECT: Update Regarding the Medical Use of Low-THC Cannabis

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At their September 19, 2021 [meeting](#), the Public Safety Committee heard a staff briefing on [HB 1535](#) that became effective September 1, 2021, as well as City drug testing policies relative to THC<sup>1</sup>. The Committee members expressed an interest in allowing the use of low-THC cannabis for City employees, particularly for sworn civil service employees, who may be experiencing post-traumatic stress disorder. This memorandum provides an update on current findings and recommendations. In order to better evaluate and address specific needs and requirements of the individual Public Safety departments as well as comply with existing regulatory requirements, management will keep the subject of the use of low-THC cannabis as described in HB 1535 within the contract negotiation process.

### What does HB 1535 provide for?

HB 1535 amended state law to allow certain physicians who register with the state to prescribe low-THC cannabis to patients who meet certain qualifications. Of note, Section 169.003 of the Occupations Code was amended to add cancer and post-traumatic stress disorder to the list of diagnoses eligible for treatment with low-THC cannabis. While Section 169.003(3)(B) states “the physician determines the risk of the medical use of low-THC cannabis by the patient is reasonable in light of the potential benefit for the patient”, HB 1535 is silent on any guidance for what patients with the prescription for low-THC cannabis may or may not do.

### Regulatory Environment

#### Applicable Federal Regulations

With the exception of hemp products that have THC levels of .3% or lower, marijuana/cannabis, and substances derived from marijuana/cannabis, are schedule 1 controlled substances and are

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<sup>1</sup> THC is tetrahydrocannabinol, the cannabinoid molecule in marijuana (cannabis) that is the main psychoactive ingredient.

unlawful for all purposes under federal law. Research indicates federal law and regulations effectively prohibit certain job functions from using any form of cannabis that remains illegal under federal law. These include the following:

**Special Considerations for Firearms.** 18 USC §§ 922(d)(3) & (g)(3) and ATF policy documents state it is unlawful for anyone to possess or receive a firearm under federal law who is an unlawful user of any federal controlled substance, regardless of state law. Accordingly, APD officers and AFD arson investigators cannot be permitted to use low-THC cannabis.

**Federal Motor Carrier Safety Drug & Alcohol Testing.** The City follows Federal Department of Transportation Regulations for drug testing of certain transportation-related employees, specifically those operating Commercial Motor Vehicles. Employees holding a Commercial Driver's License who are engaged in safety sensitive work cannot be permitted to use low-THC cannabis.

**Federal Drug Free Workplace Act.** This federal law requires federal grantees to maintain and enforce policies that prohibit illegal controlled substances in the workplace. Because cannabis remains a schedule 1 narcotic under federal law, the City must continue to exclude all marijuana/cannabis from City workplaces.

### How Other Cities are Treating Medical Marijuana

Staff contacted cities/agencies in Texas and other states (particularly those states that have passed statutes making medical or recreational-use marijuana legal under their respective state laws) to determine whether they allow their first responders to use medical cannabis outside of the workplace and under what conditions; and whether they test for THC in the following table. Of 20 cities that provided a response, Boston, Massachusetts indicated the use of prescription marijuana is allowed; 9 cities indicated that prescription marijuana was not allowed; and the remainder did not provide a response. Note that this information may have changed since it was last provided.

City	State	Random Testing	Test for Marijuana	Allows for Use of Prescription Medical Marijuana
Mesa	AZ	Yes	Yes	Random test done for police only. Prescription Marijuana not allowed.
Phoenix	AZ	Yes	Yes	No. Phoenix information provided for police only.
Aurora	CO	Yes	Yes	Information for Aurora refers to Police Department. Prescription Marijuana not allowed.
Colorado Springs	CO	No	Yes	Testing done for pre-employment only. Prescription Marijuana not allowed.

City	State	Random Testing	Test for Marijuana	Allows for Use of Prescription Medical Marijuana
Denver	CO	No	Yes	Testing based on reasonable suspicion and post-accident. Prescription Marijuana not allowed.
Chicago	IL	Yes	Yes	Testing done on random basis, reasonable suspicion and post-accident. Prescription Marijuana not allowed.
Boston	MA	Yes	Yes	Yes, only for off-duty use.
Albuquerque	NM	Yes	Yes	No
Abilene	TX	No	Yes	Did not provide a response
Arlington	TX	Yes	Yes	No
Brownsville	TX	Yes	Yes	Did not provide a response
Corpus Christ	TX	Yes	Yes	Did not provide a response
Dallas	TX	Yes	Yes	Did not provide a response
Del Rio	TX	Yes	Yes	Random test for all sensitive positions including police and firefighters. Did not provide a response whether prescription marijuana allowed.
Edinburg	TX	Yes	Yes	Testing done on random basis, probable cause, post-accident and pre-employment. Did not provide a response whether prescription marijuana allowed.
Harlingen	TX	Yes	Yes	Did not provide a response
McAllen	TX	Yes	Yes	Random test done for firefighters only. Did not provide a response whether prescription marijuana allowed.
Pharr	TX	Yes	Yes	No
San Antonio	TX	Yes	Yes	No
San Benito	TX	Yes	Yes	Did not provide a response

## Current Activity

Drug testing, particularly as it relates to THC, is a topic being considered as part of current contract negotiations with the EMS Association. In order to better evaluate and address specific needs and requirements of the individual Public Safety departments as well as comply with regulatory requirements described above, management will keep the subject of the use of low-THC cannabis as described in HB 1535 within the contract negotiation process. Staff stands

ready to respond to questions that Council may have, as well as hold an executive session to discuss legal matters related to this topic.

cc: Spencer Cronk, City Manager  
CMO Executive Team  
Joya Hayes, Human Resources Director  
Deven Desai, Labor Relations Officer  
Dr. Mark Escott, Chief Medical Officer  
Brie Franco, Intergovernmental Officer  
Chief Joseph Chacon, Austin Police Chief  
Chief Joel Baker, Austin Fire Chief  
Chief Robert Luckritz, EMS Chief  
Anne Morgan, City Attorney  
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