

# City of Philadelphia



Council of the City of Philadelphia  
Office of the Chief Clerk  
Room 402, City Hall  
Philadelphia

(Resolution No. 170839)

## RESOLUTION

Authorizing City Council's Committee on Labor & Civil Service to hold hearings regarding the State's recent legalization of medical marijuana and to address questions related to medical marijuana's potential impact on employers and employees in Philadelphia.

WHEREAS, The Medical Marijuana Act (MMA), 35 Pa.C.S.A. §10231.101 was signed into law by Governor Tom Wolf on April 17, 2016, after approval by the House on April 13, 2016, and the Senate on April 12, 2016. The law allows for the removal of criminal penalties for medical marijuana usage in the Commonwealth of Pennsylvania and became effective May 17, 2016; and

WHEREAS, Twenty-eight other states – Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Vermont, Washington State, West Virginia – and the District of Columbia have laws regulating the use of medicinal marijuana; and

WHEREAS, Many of these states are several years into implementation of their medical marijuana legislation, and during this time, various legal questions have been raised, some of which concern the overlap of medical marijuana and employment. Oftentimes these legal issues arise when an employer refuses to hire or terminates an employee due to a positive drug test, but that employee is a medical marijuana user; and

WHEREAS, In some states, the court has ruled in favor of the employer. For example, the Supreme Court of Colorado in 2015 held that the plaintiff in *Coats v. Dish Network*, was not protected under a Colorado state statute prohibiting an employer from terminating employment for lawful activity off the premises, since the court interpreted "lawful" to mean lawful under the state and federal law, and marijuana is still illegal as per federal law; and

# City of Philadelphia

RESOLUTION NO. 170839 continued

WHEREAS, In other states, the court has ruled in favor of the employee. For example, the Superior Court of Rhode Island in *Callaghan v. Darlington Fabrics Corp.*, et al, held that employers cannot refuse to hire an individual who is a medical marijuana cardholder and would not pass the pre-employment drug test, relying on the state's medical marijuana law. This case was decided this year (2017); and

WHEREAS, Additionally, the District Court of Connecticut held in *Noffsinger v. SSC Niantic Operating Company LLC*, that various federal laws prohibiting usage and sale of marijuana do not preempt Connecticut's Palliative Use of Marijuana Act (PUMA), which protects employees and job applications from employment discrimination based on medical marijuana use permitted under state law, decided this year (2017); and

WHEREAS, Employers in Philadelphia need guidance on how to handle employees and potential applicants with their use of medicinal marijuana. They also need guidance on protections for employees from being discriminated against for their use of medicinal marijuana, as it relates to both the state and federal law, and interaction with the Americans With Disabilities Act and the Family and Medical Leave Act; and

WHEREAS, The Philadelphia workforce is comprised of individuals who travel from surrounding states, such as Delaware, New Jersey, and Maryland, and guidance is needed on the interaction between different laws among the states and how it relates to out-of-state employees; and

WHEREAS, Guidance is also needed on the status of individuals who have prior convictions related to marijuana as it relates to working in the medical marijuana industry and the potential to work in the recreational marijuana industry, especially since marijuana convictions overwhelmingly impact minority populations; and

WHEREAS, DACA recipients and undocumented immigrants in Philadelphia, a Sanctuary City, need guidance on how this recent legalization could impact their ability to stay in the United States. For example, guidance is needed on how employers and law enforcement may handle cases where a DACA recipient is also a medical marijuana patient. Similar guidance will also be needed for how this legislation may impact visa holders who are also medical marijuana patients in Philadelphia; and

WHEREAS, Organizations like The Chamber of Commerce for Greater Philadelphia are also looking at the overlap of medical marijuana and employment, and will be hosting an event the morning of October 18, 2017. The event will cover how medical marijuana impacts employment law and include information for human resource professionals who are counseling employers, among other issues; now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That it hereby authorizes City Council's Committee on Labor & Civil Service to hold hearings regarding

# City of Philadelphia

*RESOLUTION NO. 170839 continued*

the State's recent legalization of medical marijuana and to address questions related to medical marijuana's potential impact on employers and employees in Philadelphia.

# City of Philadelphia

*RESOLUTION NO. 170839 continued*

CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the twenty-eighth of September, 2017.

Darrell L. Clarke  
PRESIDENT OF THE COUNCIL

Michael A. Decker  
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Parker, O'Neill, Jones, Oh, Taubenberger,  
Henon and Green

Sponsored by: Councilmembers Parker, O'Neill, Jones, Oh, Taubenberger,  
Henon, Green, Greenlee, Domb and Gym