

INTRODUCED: April 13, 2020

A RESOLUTION No. 2020-R030

To request that the Mayor amend the Administrative Regulations of the City, to the extent permitted by law, to exclude from substance detection testing the testing of City employees and applicants for employment with the City, except for public safety personnel and applicants for public safety positions, for marijuana use.

Patron – Ms. Lynch

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: MAY 11 2020 AT 6 P.M.

WHEREAS, Senate Bill 2, adopted by both chambers of the Virginia General Assembly during its 2020 session, purports to decriminalize simple marijuana possession and imposes a civil penalty of no more than \$25.00 for any such possession; and

WHEREAS, Administrative Regulation # 4053 of the City's Administrative Regulations requires City employees and applicants for employment with the City to, in part, "submit to substance detection testing (alcohol and drug tests) when requested to do so by management" and further provides that any employee in violation of the City's substance abuse policy shall be subject to discipline up to and including termination; and

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: MAY 11 2020 REJECTED: _____ STRICKEN: _____

WHEREAS, the Council believes that it is in the best interests of the citizens and employees of the City of Richmond that the Mayor amend the Administrative Regulations of the City, to the extent permitted by law, to exclude from substance detection testing the testing of City employees and applicants for employment with the City, except for public safety personnel and applicants for public safety positions, for marijuana use, in light of the Virginia General Assembly's recent adoption of Senate Bill 2, which purports to decriminalize simple marijuana possession, during the Virginia General Assembly's 2020 session;

NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That the Council hereby requests that the Mayor amend the Administrative Regulations of the City, to the extent permitted by law, to exclude from substance detection testing the testing of City employees and applicants for employment with the City, except for public safety personnel and applicants for public safety positions, for marijuana use.



Richmond City Council

The Voice of the People

Richmond, Virginia

Ordinance/Resolution Request

TO Haskell Brown, Interim City Attorney

THROUGH Lawrence R. Anderson, Council Chief of Staff *MLB on Behalf*

FROM Joyce L. Davis, Council Policy Analyst *JLD*

COPY Stephanie Lynch, 5th District Council Member
 Meghan Brown, Deputy Council Chief of Staff *MLB*
 Tabrica Rentz, Interim Deputy City Attorney
 Amy Robins, 5th District Council Liaison

DATE March 13, 2020

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TITLE Request to Change the City of Richmond's Administrative Regulations #4302 to remove Marijuana from substance detection test for pre-employment and random screenings.

This is a request for the drafting of an **Ordinance** **Resolution**

REQUESTING COUNCILMEMBER/PATRON

Council member Stephanie Lynch

SUGGESTED STANDING COMMITTEE

Education and Human Services

ORDINANCE/RESOLUTION SUMMARY

Request to change the City of Richmond's Administrative Regulations #4302, Substance Abuse Policy to remove Marijuana from substance detection test for pre-employment and random screenings.

BACKGROUND

Currently, under Virginia Code § 18.250.1, simple possession of marijuana is considered a misdemeanor offense subject to jail time or fines. For a first offense, persons may be placed on probation with deferred judgment and 100 hours of community service¹ or if convicted may face jail time of up to 30 days, as well as a \$500 fine. For a second or subsequent offense, the individual may be punished as by a max of 12 months in jail and face a \$2,500 fine (punishable as a class 1 misdemeanor).² With current law, a defendant's driver's license is suspended or revoked for six months by DMV for a conviction or deferred disposition of a drug offense.

In the 2020 Virginia General Assembly session, SB 2 was voted by the General Assembly and is waiting for the Governor's signature for potential implementation in July 2020. A proposed law in the 2020 Virginia General Assembly 2020 session (SB 2) would make possession of one

¹ <https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-251/>

² <https://law.lis.virginia.gov/vacode/title18.2/chapter7/section18.2-250.1/>

ounce or less of marijuana a civil penalty punishable by a \$25 fine and no jail time. The legislation also seals records of past and future convictions and prohibits employers and educational institutions from inquiry about violations, with exceptions of inquiry for law enforcement agencies. ³ Under the state law in Virginia, marijuana has been decriminalized to civil penalties, however under federal law, the drug remains illegal and has not changed from simple possession of marijuana to a civil penalty. The drug remains classified at the federal level as a Schedule I drug in the federal Drug Control Act⁴.

Reportedly, a number of young people are arrested in Virginia for simple marijuana offenses. In the 2018 Virginia State Police Crime Report, it is reported that approximately 29,000 arrests were made for marijuana offenses in Virginia. The majority of the arrests were young people aged 18-24. ⁵

Drug Type	11 - 17	18 - 24	25 - 34	35 - 44	45 - 54	55 - 64	65 and over	Unknown	Total
Marijuana	1,834	13,318	8,649	3,133	1,265	556	108	3	28,866
Total Drugs	2,206	17,709	16,344	7,428	3,484	1,506	260	5	48,942

Source: Data extracted from the Virginia State Police Crime Report, Chart for total drug arrests in Virginia

Under current law, a drug charge and marijuana conviction may bar an individual from employment in certain industries and with a misdemeanor conviction, an individual could be deemed ineligible for employment or housing. Changing this law to allow individuals to enter employment without knowledge of drug usage may present on the job safety challenges, disruption and the need for supportive counseling. As the current Administrative Regulations dictate zero tolerance and termination, other relevant substance abuse policies of the City's Administrative Regulations may need review and an amendment of the current policies for changes to align with this recommendation. One example is the zero tolerance policy, which may include graduated sanctions for first and second offenses or counseling options.

Given the change in the law in Virginia to a civil penalty rather than a criminal conviction, a recommendation is made to change the City's Administrative Regulation #4053 to remove marijuana as a drug from the list of drugs subject to substance abuse detection testing.

FISCAL IMPACT STATEMENT

Fiscal Impact: Yes No

Budget Amendment Required: Yes No

Fiscal Impact: Human Resources could derive a savings from not having to pay the costs for the pre-employment screening specifically related to marijuana.

Attachment/s Yes No

³ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB2>

⁴ <https://www.dea.gov/drug-scheduling>

⁵ [https://www.vsp.virginia.gov/downloads/Crime in Virginia/Crime in Virginia 2018.pdf](https://www.vsp.virginia.gov/downloads/Crime%20in%20Virginia/Crime%20in%20Virginia%202018.pdf), pg. 67