THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING
COMMISSION

LETTER OF INFORMATION

Bill: SB516/HB556

Contact: Debra Borden, General Counsel
Jordan Baucum Colbert, Government Affairs Liaison

Date: March 9, 2023

Re: Letter of Information

Dear Chairman Melony Griffith and Vice Chair Katherine Klausmeier,

The Maryland-National Capital Park and Planning Commission (the "Commission") takes no position on this bill. However, the Commission respectfully requests the Finance Committee to consider this information and include it in the record.

The Commission was established in 1927 to provide regional long-range planning and park acquisition and development. Since its formation, the Commission has become one of the most recognized leaders in land use planning, parks and recreation, achieving countless awards for innovation and stewardship. As Maryland moves towards legalizing recreational cannabis, we hope the legislature will consider how legal adult-use cannabis will specifically impact employers and workplace policies.

I.

Section 36-405 (B)(2): A local jurisdiction may not establish zoning or other requirements that unduly burden a cannabis licensee.

The "unduly burden" language is problematic. It could be argued that the provisions in § 36-407(B)(1) and (2), which provide that a county or municipality may "prohibit the operation of on-site consumption establishments," and "prohibit or restrict the smoking or vaping of cannabis at on-site consumption establishments," unduly burden a licensee and contradict § 36-405(B)(2). The term "unduly burden" is overly broad and vague and should be defined or clarified. Furthermore, § 36-407(B)(1) and (2) should be reconciled with § 36-405(B)(2) to address the apparent and contradiction. Additionally, clarifying language should be considered if the intent of the bill is to prohibit a local jurisdiction from requiring a special exception or conditional use or imposing other zoning conditions related to the operation of the use.

Section 36-405(B)(4): A local jurisdiction may not prevent an entity whose license may be converted under § 36–401(B)(1)(II) of this subtitle and that is in compliance with all relevant medical cannabis regulations from being granted the license conversion.

Is the intent to prevent local jurisdictions from requiring a new or amended Use and Occupancy Permit for existing medical cannabis dispensaries? Would requiring amendments to existing development approvals to remove conditions associated with the medical cannabis use be considered an attempt to "prevent" the license conversion?

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Section 36-405(c): The use of a facility by a cannabis licensee is not required to be submitted to, or approved by, a county or municipal zoning board, authority or unit if it was properly zoned and operating on or before January 1, 2023.

Our comment is similar to the one above. It appears that the intent is to facilitate conversion of medical dispensaries to adult-use dispensaries, but the term "zoning" is confusing. If the medical dispensary is currently licensed and operating as of January 1, 2023, then any zoning process required **for the premises** has necessarily concluded. If the focus is on the use, then the permit process should be referenced, not zoning.

II.

Section 36-1301 (E)(1): This section does not prevent a government employer from disciplining an employer or a contractor for ingesting cannabis in the workplace or working while impaired by cannabis.

The proposed section (E)(1) as drafted may be read to limit the Commission's ability to discipline employees for positive drug tests. When construed in comparison with section (F), which allows "any employer" to deny employment or discipline employee simply for testing positive for cannabis use if you have an established drug testing policy, an employee may argue that section (F)'s use of the term "any employer" doesn't include a "government employer" because "government employer[s]" have their own Section (E). The Commission recommends changing (F) to (E)(4) and adding the following language after "any employer" in (F): any employer, public or private.

It is also important to acknowledge that drug tests do not measure impairment in real time, which makes it very difficult for employers to create a safe work environment. It also forces employers to use reasonable suspicion standards to gauge whether an employee violated workplace policies, which can be subjective and prone to interpretation. Thus, the legislature should consider protections for employers using a "reasonable suspicion" standard conducted in good faith.

Section 36-1301 (A): Except as provided in this section, neither the state nor any of its political subdivisions may deny a benefit, an entitlement, a driver's license, professional license, housing assistance, social services, or other benefits based on lawful cannabis use or for the presence of cannabinoids or cannabinoid metabolites in the urine, blood, saliva, breath, hair, or other tissue or fluid of an individual who is at least 21 years old or qualifying patient who is under the age of 21 years of age.

A "benefit" could include the provision of medical treatment through workers' compensation, which could include a doctor's recommendation for cannabis for treatment of a work-related injury and/or an Order from the Workers' Compensation Commission requiring an employer to pay for cannabis, which may pose a potential conflict. Under federal law, this provision may not be enforceable within the workplace because cannabis remains a scheduled drug (not to mention the logistics of what is still a cash-only business), and this law would be directly contrary if employers are not permitted to deny a "benefit" under section (A).

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