



# ACTON POLICE DEPARTMENT

DEPARTMENT MANUAL; P&P: Administration		
POLICY & PROCEDURE # 4.19	DATE OF ISSUE: 11/28/2016	EFFECTIVE DATE: 11/28/2016
SUBJECT: PERSONNEL MARIJUANA POSSESSION AND USE	ISSUING AUTHORITY: Chief Francis J. Widmayer III	
REFERENCE(S): Massachusetts Police Accreditation Commission # None	<input checked="" type="checkbox"/> NEW <input type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	

## I. PURPOSE

I want to take this opportunity to remind all employees that this Department has a rule prohibiting criminal misconduct, and that includes the use or possession of marijuana. Regardless of what Massachusetts voters have done to "legalize" the use and possession of certain amounts of marijuana for recreational or "medical" purposes, **marijuana remains a Schedule I controlled substance under the federal Controlled Substances Act**, 21 U.S.C. 812(b)(1) whose use, sale, and possession are federal crimes. Moreover, any involvement by a police officer as a "caretaker" under the Massachusetts law permitting the use and possession of "medical" marijuana, or as a participant in the medical or recreational marijuana business, amounts to conduct unbecoming a police officer.

State laws allowing marijuana use do not protect Department members against employment-related sanctions. Similarly, employees using marijuana for "medical" reasons are not protected from sanctions under the Americans with Disabilities Act (ADA) or the Commonwealth's disability discrimination laws requiring reasonable accommodation of disabling medical conditions. Section 7 of the citizens' petition adopted in November 2012 states in paragraph (D):

Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or smoking medical marijuana in any public place.

Furthermore, the new Chapter 94G, section 2(e) provides that:

This chapter shall not require an employer to permit or accommodate conduct otherwise allowed by this chapter in the workplace and shall not affect the authority of employers to enact and enforce workplace policies restricting the consumption of marijuana by employees.

Of additional interest to police officers are the restrictions against purchasing or even possessing firearms and ammunition. In particular, 18 U.S.C. 922(g)(3) prohibits an unlawful user of a controlled substance (as defined by the federal Controlled Substances

Act) from possessing any firearms or ammunition. An open letter to all federal firearms licensees issued by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on September 21, 2011, made it clear that those who are users of marijuana, regardless of whether the state has passed legislation authorizing the use for medicinal purposes, are still unlawful users of a controlled substance under 18 U.S.C. § 922(g)(3). This rationale similarly applies to state laws authorizing recreational use of marijuana. As a result, under federal law, a person may not possess or purchase a firearm or ammunition if the person uses marijuana under Massachusetts law for any reason.

Naturally, one of the essential job functions of a police officer is to lawfully possess and use a firearm and ammunition. I cannot allow an officer to work if I become aware that such a person is prohibited by federal law from carrying out such an essential job function. This can be a legitimate basis for termination. In fact, the ATF memo's reasoning makes it highly questionable as to how a Department could be legally justified in issuing a firearm or ammunition to a known user of marijuana for any reason without violating federal law.

In summary, all Department personnel are still prohibited from using or possessing marijuana, regardless of the laws with respect to marijuana possession and usage in Massachusetts.

## **PERSONNEL MARIJUANA POSSESSION AND USE**

**History:** General Order 2016-1: Personnel Marijuana Possession and Use