

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2010 APR 29 PM 7:49

CITY OF OAKLAND



CITY HALL • 1 FRANK H. OGAWA PLAZA, 3rd FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Dan Lindheim
City Administrator

(510) 238-3301
Fax (510) 238-2223

INITIATIVE ANALYSIS

CALIFORNIA STATEWIDE INITIATIVE MEASURE TO REGULATE, CONTROL AND TAX MARIJUANA, NOVEMBER 2010

Date: April 29, 2010
Initiative Statute: 1377(09-0024. Amdt.#1S)
Proponents: Richard Seib Lee and Jerry Wayne Jones

DEPARTMENT INFORMATION

Contact: Jeff Baker
Department: Office of the City Administrator
Telephone: 510.238.3671
E-Mail: jbaker@oaklandnet.com

RECOMMENDED POSITION:

STAFF: NO RECOMMENDATION
MEASURE Z COMMITTEE: SUPPORT

Background:

Federal Law. Federal law classifies marijuana as an illegal substance. The Federal Controlled Substances Abuse Act provides criminal sanctions for various activities relating to marijuana. Federal laws are enforced by federal law enforcement agencies that may act independently or in conjunction with state and local law enforcement agencies. (Title 21 U.S. Code Chapter 13, Subchapter D., Offenses and Penalties)

Item: _____
Rules Committee
May 13, 2010

State Law and Proposition 215. Under current state law, the possession, use transportation, or cultivation of marijuana is generally illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, under the state Health and Safety Code, possession of less than one ounce of marijuana is a misdemeanor punishable by a fine, while selling marijuana is a felony and may result in a prison sanction. (California Health and Safety Code § 11357 and Health and Safety Code §§11359, 11360.)

In November 1996, California voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medicinal purposes. Notwithstanding this initiative, the U.S. Supreme Court ruled in 2005 that federal authorities could continue to prosecute California patients and providers engaged in the medicinal cultivation and use of marijuana for violations of federal law. However, the U.S. Department of Justice announced in March 2009 that it would no longer prosecute marijuana patients and providers whose actions are consistent with state medicinal marijuana laws. (See U.S. Justice Department Memorandum for Selected United State Attorneys, Investigations and Prosecutions in States Authorizing the Medical Use Marijuana, October 19, 2009.) (Attachment A)

Local Ordinances: In November 2004, Oakland voters passed the Oakland Cannabis Regulation and Revenue Ordinance, "Measure Z," which made adult, private use of marijuana the lowest Oakland Police Department priority.

Summary of the Initiative: The Initiative allows people 21 years or older, to possess, cultivate, or transport marijuana for personal use. Permits local governments to regulate and tax commercial production and sale of marijuana to people 21 years or older. Prohibits people from possessing marijuana on school grounds, using it in public, smoking it while minors are present, or providing it to anyone under 21 years old. Maintains current prohibitions against driving while impaired. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Savings of up to millions of dollars annually to state and local government on the costs of incarcerating and supervising certain marijuana offenders. Unknown but potentially major tax, fee, and benefit assessment revenues to state and local government related to the production and sale of marijuana products. (See Full Text 09-0024, Regulate, Control, Tax Cannabis, 2010 Initiative) (Attachment B)

Proposal: This Measure (1) legalizes various marijuana-related activities, (2) allows local governments to regulate these activities, (3) permits local governments to impose and collect marijuana-related fees and taxes, and (4) authorizes various criminal and civil penalties.

(1) Legalization of Marijuana-related Activities:

Under the Measure, persons age 21 or older could engage in “personal consumption” of marijuana. Specifically, personal consumption of marijuana would be permitted in a “non-public place,” defined as including a residence or a public establishment licensed for on-site marijuana consumption. The Measure states that persons generally may (1) possess, process, or transport up to one ounce of marijuana; (2) cultivate marijuana on private property in an area up to 25 square feet; (3) possess, harvested and living marijuana plants cultivated in such an area; and (4) possess any items or equipment associated with the above activities. However, the Measure permits local authorities to authorize the possession and cultivation, including commercial production, of larger amounts of marijuana. Under the terms of this Measure, the state could also enact laws to allow larger amounts of marijuana, as well as to enact new laws to regulate the commercial production of marijuana. The Measure prohibits state and local law enforcement agencies from seizing or destroying marijuana that was possessed, used, or sold in accordance with this Measure.

This Measure sets forth some limits on marijuana-related activities. It states, for example, that possession of marijuana must be solely for an individual’s personal consumption and not for sale, although sales are permitted to individuals in public establishments licensed for marijuana consumption. The measure specifies that smoking of marijuana in the presence of minors or the consumption of marijuana by the operator of a motor vehicle is prohibited. In addition, the Measure states that it does not amend various existing statutes related to marijuana including laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on the ground of elementary, middle, and high schools.

(2) Allows Local Government Regulation of Commercial Production and Sale:

The Measure allows local government to adopt ordinances and regulations regarding the cultivation, processing, distribution, transportation, sale, or possession for sale of marijuana. For example, local governments would be permitted to license establishments that could sell up to one ounce of marijuana per transaction to persons 21 years and older. The Measure also authorizes local governments to regulate the location, size, hours of operation and signs and displays of such establishments.

Individuals could transport marijuana from a licensed marijuana establishment in one locality to a licensed establishment in another locality, regardless of whether any localities in between permitted the commercial production and sale of marijuana. However, the Measure does not permit the interstate or international transportation of marijuana.

(3) Imposition and Collection of Taxes and Fees:

The Measure permits local governments to impose general, excise, or transfer tax, as well as benefit assessments and fees, on authorized marijuana-related activities. It specifies that the purpose of such taxes, assessments, and fees is to allow local governments to raise revenue or to offset any costs associated with marijuana regulation. The Measure requires that licensed marijuana establishments pay all applicable federal, state and local taxes and fees currently imposed on other similar businesses.

(4) Authorization of Criminal and Civil Penalties:

Under the Measure, any individual licensed to engage in an authorized marijuana activity who negligently gives or sells (or offers to give or sell) marijuana to a person under 21 years of age would be banned from owning, operating, or being employed by a licensed marijuana establishment for one year. In addition, the Measure specifies that persons age 21 years or older who knowingly give (or offer to give) marijuana to persons age 18 through 20 years could be sentenced to county jail for up to six months and fined up to \$1,000 per offense. The Measure does not change existing criminal statutes involving penalties for furnishing marijuana to minors under the age of 18 years. Local governments could impose additional penalties for furnishing marijuana to minors under the age of 18 years. Local governments could impose additional penalties or civil fines on certain marijuana activities inconsistent with the terms of this Measure.

The Measure states that no individual could be punished, fined or discriminated against for engaging in any conduct permitted by the Measure. However, it does specify that employers retain existing rights to address on-the-job consumption of marijuana that affects an employee's job performance.

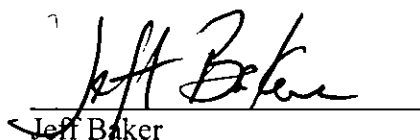
Positive Factors for Oakland:

Further decriminalization of a controlled substance which is already a low law enforcement priority will presumably free up police resources to investigate and resolve other criminal activity. The potential revenue generated from lawfully permitted adult sales may generate significant tax revenues for the City.

Negative Factors for Oakland:

It is unknown how the Federal government will respond to full decriminalization of marijuana; with legalized growth of marijuana for all persons over 21 years of age, cannabis may become more readily available to youth; there is the potential for the development of an underground market for cannabis if local licensing mechanism or local taxation is deemed excessive.

Respectfully submitted,



Jeff Baker
Assistant to the City Administrator
Staff/Member of the Measure Z Committee

FORWARD TO
THE RULES COMMITTEE:



Office of the City Administrator

Item: ____
Rules Committee
May 13, 2010



U.S. Department of Justice

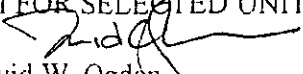
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: 
David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States
Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- ~~financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;~~
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Subject: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

Lanny A. Breuer
Assistant Attorney General
Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Acting Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

LAW OFFICES OF JAMES WHEATON

CALIFORNIA BUILDING
1736 FRANKLIN STREET, 9TH FLOOR
OAKLAND, CALIFORNIA 94612

TEL: 510/208-4554
FAX: 510/208-4562
WHEATON@WELL.COM

27 July 2009

09-0024 Amdt. #/S

The Honorable Jerry Brown
Attorney General of California
ATTN: Mr. Neil Amos
Initiative Coordinator
Office of the Attorney General
1300 I Street, 17th floor
Sacramento, CA 95814
916/445-4752

RECEIVED

AUG 04 2009

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

By Overnight courier

Re: Initiative Measure 09-0024: "Regulate, Control, Tax Cannabis"

Dear Mr. Amos:

Please find enclosed an amendment package for this proposed initiative measure.

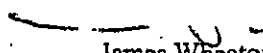
The amendments are technical and nonsubstantive. They do not change the chief purposes or points of the measure.

For your convenience, a redlined copy showing the amendments is attached as Exhibit A. They are limited to pages 2, 3 and 5.

In addition, the complete text of the initiative as amended is attached as Exhibit B to this letter.

Last, I attach original signatures of the proponents approving and explaining the precise amendments, as Exhibit C.

Sincerely,


James Wheaton

Enclosures: as noted

The Regulate, Control and Tax Cannabis Act of 2010

Section 1: Name

This Act shall be known as the "Regulate, Control and Tax Cannabis Act of 2010."

09 - 0024

Amdt. #1 S

Section 2: Findings, Intent and Purposes

This Act, adopted by the People of the State of California, makes the following Findings and Statement of Intent and Purpose:

A. Findings

1. California's laws criminalizing cannabis (marijuana) have failed and need to be reformed. Despite spending decades arresting millions of non-violent cannabis consumers, we have failed to control cannabis or reduce its availability.
2. According to surveys, roughly 100 million Americans (around 1/3 of the country's population) acknowledge that they have used cannabis, 15 million of those Americans having consumed cannabis in the last month. Cannabis consumption is simply a fact of life for a large percentage of Americans.
3. Despite having some of the strictest cannabis laws in the world, the United States has the largest number of cannabis consumers. The percentage of our citizens who consume cannabis is double that of the percentage of people who consume cannabis in the Netherlands, a country where the selling and adult possession of cannabis is allowed.
4. According to The National Research Council's recent study of the 11 U.S. states where cannabis is currently decriminalized, there is little apparent relationship between severity of sanctions and the rate of consumption.
5. Cannabis has fewer harmful effects than either alcohol or cigarettes, which are both legal for adult consumption. Cannabis is not physically addictive, does not have long term toxic effects on the body, and does not cause its consumers to become violent.
6. There is an estimated \$15 billion in illegal cannabis transactions in California each year. Taxing and regulating cannabis, like we do with alcohol and cigarettes, will generate

billions of dollars in annual revenues for California to fund what matters most to Californians: jobs, health care, schools and libraries, roads, and more.

7. California wastes millions of dollars a year targeting, arresting, trying, convicting, and imprisoning non-violent citizens for cannabis related offenses. This money would be better used to combat violent crimes and gangs.
 8. The illegality of cannabis enables for the continuation of an out-of-control criminal market, which in turn spawns other illegal and often violent activities. Establishing legal, regulated sales outlets would put dangerous street dealers out of business.
- B. Purposes
1. Reform California's cannabis laws in a way that will benefit our state.
 2. Regulate cannabis like we do alcohol: Allow adults to possess and consume small amounts of cannabis.
 3. Implement a legal regulatory framework to give California more control over the cultivation, processing, transportation, distribution, and sales of cannabis.
 4. Implement a legal regulatory framework to better police and prevent access to and consumption of cannabis by minors in California.
 5. Put dangerous, underground street dealers out of business, so their influence in our communities will fade.
 6. Provide easier, safer access for patients who need cannabis for medical purposes.
 7. Ensure that if a city decides not to tax and regulate the sale of cannabis, that buying and selling cannabis within that city's limits remain illegal, but that the city's citizens still have the right to possess and consume small amounts, except as permitted under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.
 8. Ensure that if a city decides it does want to tax and regulate the buying and selling of cannabis (to and from adults only), that a strictly controlled legal system is implemented to oversee and regulate cultivation, distribution, and sales, and that the city will have control over how and how much cannabis can be bought and sold, except as permitted

under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.

9. Tax and regulate cannabis to generate billions of dollars for our state and local governments to fund what matters most: jobs, healthcare, schools and libraries, parks, roads, transportation, and more..
10. Stop arresting thousands of non-violent cannabis consumers, freeing up police resources and saving millions of dollars each year, which could be used for apprehending truly dangerous criminals and keeping them locked up, and for other essential state needs that lack funding.
11. Allow the Legislature to adopt a statewide regulatory system for a commercial cannabis industry.
12. Make cannabis available for scientific, medical, industrial, and research purposes.
13. Permit California to fulfill the state's obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety within the State.
14. Permit the cultivation of small amounts of cannabis for personal consumption.

C. Intent

1. This Act is intended to limit the application and enforcement of state and local laws relating to possession, transportation, cultivation, consumption and sale of cannabis, including but not limited to the following, whether now existing or adopted in the future: Health and Safety Code sections 11014.5 and 11364.5 [relating to drug paraphernalia]; 11054 [relating to cannabis or tetrahydrocannabinols]; 11357 [relating to possession]; 11358 [relating to cultivation]; 11359 [possession for sale]; 11360 [relating to transportation and sales]; 11366 [relating to maintenance of places]; 11366.5 [relating to use of property]; 11370 [relating to punishment]; 11470 [relating to forfeiture]; 11479 [relating to seizure and destruction]; 11703 [relating to definitions regarding illegal substances]; 11705 [actions for use of illegal controlled substance]; Vehicle Code sections 23222 and 40000.15 [relating to possession].
2. This Act is not intended to affect the application or enforcement of the following state

laws relating to public health and safety or protection of children and others: Health and Safety Code sections 11357 [relating to possession on school grounds]; 11361 [relating to minors as amended herein]; 11379.6 [relating to chemical production]; 11532 [relating to loitering to commit a crime or acts not authorized by law]; Vehicle Code section 23152 [relating to driving while under the influence]; Penal Code section 272 [relating to contributing to the delinquency of a minor]; nor any law prohibiting use of controlled substances in the workplace or by specific persons whose jobs involve public safety.

Section 3: Lawful Activities

Article 5 of Chapter 5 of Division 10 of the Health and Safety Code, commencing with section 11300 is added to read:

Section 11300: Personal Regulation and Controls

- (a) Notwithstanding any other provision of law, it is lawful and shall not be a public offense under California law for any person 21 years of age or older to:
- (i) Personally possess, process, share, or transport not more than one ounce of cannabis, solely for that individual's personal consumption, and not for sale.
 - (ii) Cultivate, on private property by the owner, lawful occupant, or other lawful resident or guest of the private property owner or lawful occupant, cannabis plants for personal consumption only, in an area of not more than twenty-five square feet per private residence or, in the absence of any residence, the parcel. Cultivation on leased or rented property may be subject to approval from the owner of the property. Provided that, nothing in this section shall permit unlawful or unlicensed cultivation of cannabis on any public lands.
 - (iii) Possess on the premises where grown the living and harvested plants and results of any harvest and processing of plants lawfully cultivated pursuant to section 11300(a)(ii), for personal consumption.
 - (iv) Possess objects, items, tools, equipment, products and materials associated with

activities permitted under this subsection.

- (b) "Personal consumption" shall include but is not limited to possession and consumption, in any form, of cannabis in a residence or other non-public place, and shall include licensed premises open to the public authorized to permit on-premises consumption of cannabis by a local government pursuant to section 11301.
- (c) "Personal consumption" shall not include, and nothing in this Act shall permit cannabis:
 - (i) possession for sale regardless of amount, except by a person who is licensed or permitted to do so under the terms of an ordinance adopted pursuant to section 11301;
 - (ii) consumption in public or in a public place;
 - (iii) consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator;
 - (iv) smoking cannabis in any space while minors are present.

Section 11301: Commercial Regulations and Controls

Notwithstanding any other provision of state or local law, a local government may adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

- (a) cultivation, processing, distribution, the safe and secure transportation, sale and possession for sale of cannabis, but only by persons and in amounts lawfully authorized;
- (b) retail sale of not more than one ounce per transaction, in licensed premises, to persons 21 years or older, for personal consumption and not for resale;
- (c) appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;
- (d) age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such licensed premises are 21 or older;
- (e) consumption of cannabis within licensed premises;

- (f) safe and secure transportation of cannabis from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption of cannabis;
- (g) prohibit and punish through civil fines or other remedies the possession, sale, possession for sale, cultivation, processing, or transportation of cannabis that was not obtained lawfully from a person pursuant to this section or section 11300;
- (h) appropriate controls on licensed premises for sale, cultivation, processing, or sale and on-premises consumption, of cannabis, including limits on zoning and land use, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;
- (i) appropriate environmental and public health controls to ensure that any licensed premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;
- (j) appropriate controls to restrict public displays, or public consumption of cannabis;
- (k) appropriate taxes or fees pursuant to section 11302;
- (l) such larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under section 11300(a) for personal possession and cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons authorized to do so under this section;
- (m) any other appropriate controls necessary for protection of the public health and welfare.

Section 11302: Imposition and Collection of Taxes and Fees

- (a) Any ordinance, regulation or other act adopted pursuant to section 11301 may include imposition of appropriate general, special or excise, transfer or transaction taxes, benefit assessments, or fees, on any activity authorized pursuant to such enactment, in order to permit the local government to raise revenue, or to recoup any direct or indirect costs associated with the authorized activity, or the permitting or licensing scheme, including

without limitation: administration; applications and issuance of licenses or permits; inspection of licensed premises and other enforcement of ordinances adopted under section 11301, including enforcement against unauthorized activities.

- (b) Any licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties or other financial responsibility imposed on all or similarly situated businesses, facilities or premises, including without limitation income taxes, business taxes, license fees, and property taxes, without regard to or identification of the business or items or services sold.

Section 11303: Seizure

- (a) Notwithstanding sections 11470 and 11479 of the Health and Safety Code or any other provision of law, no state or local law enforcement agency or official shall attempt to, threaten to, or in fact seize or destroy any cannabis plant, cannabis seeds or cannabis that is lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used in compliance with this Act or any local government ordinance, law or regulation adopted pursuant to this Act.

Section 11304: Effect of Act and Definitions

- (a) This Act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in dangerous activities such as driving, or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive.
- (b) Nothing in this Act shall be construed or interpreted to permit interstate or international transportation of cannabis. This Act shall be construed to permit a person to transport cannabis in a safe and secure manner from a licensed premises in one city or county to a licensed premises in another city or county pursuant to any ordinances adopted in such cities or counties, notwithstanding any other state law or the lack of any such ordinance

in the intervening cities or counties.

- (c) No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(d) Definitions

For purposes of this Act:

- (i) "Marijuana" and "cannabis" are interchangeable terms that mean all parts of the plant Genus Cannabis, whether growing or not; the resin extracted from any part of the plant; concentrated cannabis; edible products containing same; and every active compound, manufacture, derivative, or preparation of the plant, or resin.
- (ii) "One ounce" means 28.5 grams.
- (iii) For purposes of section 11300(a)(ii) "cannabis plant" means all parts of a living Cannabis plant.
- (iv) In determining whether an amount of cannabis is or is not in excess of the amounts permitted by this Act, the following shall apply:
- (a) only the active amount of the cannabis in an edible cannabis product shall be included;
- (b) living and harvested cannabis plants shall be assessed by square footage, not by weight in determining the amounts set forth in section 11300(a);
- (c) in a criminal proceeding a person accused of violating a limitation in this Act shall have the right to an affirmative defense that the cannabis was reasonably related to his or her personal consumption.
- (v) "residence" means a dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person or persons for residential purposes, and includes that portion of any structure intended for both

commercial and residential purposes.

- (vi) "local government" means a city, county, or city and county.
- (vii) "licensed premises" is any commercial business, facility, building, land or area that has a license, permit or is otherwise authorized to cultivate, process, transport, sell, or permit on-premises consumption, of cannabis pursuant to any ordinance or regulation adopted by a local government pursuant to section 11301, or any subsequently enacted state statute or regulation.

Section 4: Prohibition on Furnishing Marijuana to Minors

Section 11361 of the Health and Safety Code is amended to read:

Prohibition on Furnishing Marijuana to Minors

- (a) Every person 18 years of age or over who hires, employs, or uses a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.
- (b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.
- (c) Every person 21 years of age or over who knowingly furnishes, administers, or gives, or offers to furnish, administer or give, any marijuana to a person aged 18 years or older, but younger than 21 years of age, shall be punished by imprisonment in the county jail for a period of up to six months and be fined up to \$1,000 for each offense.
- (d) In addition to the penalties above, any person who is licensed, permitted or authorized to perform any act pursuant to Section 11301, who while so licensed, permitted or authorized, negligently furnishes, administers, gives or sells, or offers to furnish, administer, give or sell, any

marijuana to any person younger than 21 years of age shall not be permitted to own, operate, be employed by, assist or enter any licensed premises authorized under Section 11301 for a period of one year.

Section 5: Amendment

Pursuant to Article 2, section 10(c) of the California Constitution, this Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act. Such permitted amendments include but are not limited to:

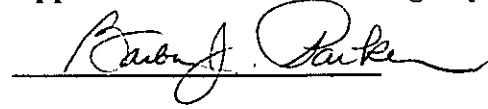
- (a) Amendments to the limitations in section 11300, which limitations are minimum thresholds and the Legislature may adopt less restrictive limitations.
- (b) Statutes and authorize regulations to further the purposes of the Act to establish a statewide regulatory system for a commercial cannabis industry that addresses some or all of the items referenced in Sections 11301 and 11302.
- (c) Laws to authorize the production of hemp or non-active cannabis for horticultural and industrial purposes.

Section 6: Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2010 APR 29 PM 7:50

REVISED
Approved as to Form and Legality



INTRODUCED BY _____

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

**RESOLUTION SUPPORTING THE 2010 CALIFORNIA INITIATIVE
MEASURE 09-0024, ENTITLED, REGULATE, CONTROL AND TAX
CANNABIS, WHICH WOULD LEGALIZE AND REGULATE CANNABIS
(MARIJUANA)**

WHEREAS, California's laws criminalizing cannabis (marijuana) need to be reformed;
and

WHEREAS, California could regulate cannabis in the same way that the state regulates
alcohol, allowing adults to possess and consume small amounts of cannabis; and

WHEREAS, there is an estimated \$15 billion in illegal cannabis transactions in
California each year, but because cannabis remains illegal, our state sees none of the
revenue; and

WHEREAS, taxing and regulating cannabis, in the same way that the state regulates
alcohol and cigarettes, would generate billions of dollars in annual revenue for California
to fund what matters most to Californians: jobs, health care, schools and libraries, roads,
and more; and

WHEREAS, California should stop arresting thousands of non-violent cannabis
consumers, freeing up police resources and saving millions of dollars each year, which
could be used to apprehend truly dangerous criminals and keep them locked up, and for
other essential state needs that lack funding; now therefore be it

RESOLVED: that the Oakland City Council endorses the California Initiative Measure 09-0024: Regulate, Control and Tax Cannabis, which will appear on the November 2010 statewide ballot, and which would legalize and regulate cannabis.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California