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2011 MAR 10 PM 1:34

CITY OF OAKLAND



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

Office of the City Administrator  
Dan Lindheim  
City Administrator

(510) 238-3301

March 22, 2011

Public Safety Committee  
Oakland City Council  
Oakland, California 94612

**RE: Annual Report of the Measure Z Cannabis Oversight Committee For  
Calendar Years 2009 and 2010**

Chairperson Kernighan:  
Members of the Public Safety Committee:

Pursuant to City of Oakland Ordinance No. 12694 C.M.S., Section 1 (c), the  
Annual Report of the Measure Z Committee for Calendar Years 2009 and 2010 is  
forwarded for City Council review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dan Lindheim', written over a horizontal line.

Dan Lindheim  
City Administrator

Prepared by: Jeff Baker  
Assistant to the City Administrator,  
Measure Z Committee Member, and  
Staff assigned to the Measure Z Committee

Item: \_\_\_\_\_  
Public Safety Committee  
March 22, 2011

# Measure Z Committee

One Frank H. Ogawa Plaza  
Oakland, CA 94612

February 24, 2011

Public Safety Committee  
Oakland City Council  
Oakland, California

*Richard Lee, Chair*  
*Dale Gieringer, Vice Chair*  
*Joseph Villatoro*  
*Leslie Bonett*  
*F. Matt Hummell*  
*Keith Stephenson*  
*Dhar Mann*  
*James Anthony*  
*Wendy Hemdon*  
*T. C. Everett*  
*Jeff Baker*

Chairperson Kernighan and Members of the Committee:

We are pleased to submit the Annual Report of the Measure Z Cannabis Oversight Committee for Calendar Years 2009 and 2010. Pursuant to City Council Ordinance No. 12694 C.M.S., the Committee is charged to “advise the City Council of concerns and issues regarding the lowest law enforcement [priority] policy for private adult cannabis offenses, make recommendations to the City Council regarding policy implementation, and report annually to the City Council on the implementation of Measure Z.”

The Committee met eight times in 2009 and six times in 2010, respectively. New members to the Committee during both years include Wendy Hemdon (City Auditor), Matt Hummel (District 5), TC Everett (At-Large), Dhar Mann (District 6) and Jeff Baker (City Administrator). All seats on the Committee are presently filled. Vacating members include Cathi Bartice (City Auditor) and Bill Uber (City Administrator).

Three major issues predominate the past two years: (1) the creation of a fee structure for Measure A Clubs, (2) review of OPD arrest records for private cannabis use and (3) the decriminalization of cannabis.

The Committee discussed the formation and operation of Measure Z Clubs in Oakland, defined as “private” premises where marijuana is sold and used by adult member patrons. There is considerable controversy surrounding this issue, since there is no “official” recognition of Measure Z Clubs and the operation of said establishments is a violation of State and Federal law. To provide a pathway to legalization, taxation and regulation, the Committee convened an Ad Hoc Committee to develop a fee schedule for submittal to the Oakland Finance Committee for consideration and approval. The final draft of the “Measure Z Club Fee Schedule” is being completed for Committee review.

The Oakland Police Department maintains a policy stating the investigation, citation and arrest for private cannabis offenses is the lowest law enforcement priority. All officers received training on the cannabis policy. As of February 11, 2011, the Oakland Police Department has not drafted a training bulletin on this issue, however, statistics corroborate enforcement of private adult cannabis offenses is a low priority within the Department. In 2009, OPD arrested/cited 5326 persons for drug related offenses. Of those, 255 (4.7%) were arrested/cited for possession of less than one ounce of

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One Frank H. Ogawa Plaza  
Oakland, CA 94612

cannabis. In 2010, 3,274 persons were arrested/cited for drug related offenses, with 111 arrested/cited for possession of less than one ounce of cannabis. The majority of persons arrested/cited for private cannabis possession were in a public place and often the result of specific complaints or investigations into other criminal activity.

### Criminal Marijuana Arrest Statistics for Calendar Years 2004 – 2010\*

Arrest Type	2004	2005	2006	2007	2008	2009	2010
Possession of Marijuana for Sale - § 11359 HS	198	377	311	508	618	571	517
Cultivation of Marijuana - § 11358 HS	20	4	9	13	29	37	58
Sales/Transportation of Marijuana - § 11360 HS	226	201	111	115	164	128	136

\* NOTE: These arrest totals are for adults only. Juvenile arrest totals are not available.

In November 2010, the California State Ballot included Proposition 19, the Initiative to “Regulate, Control and Tax Cannabis Act of 2010.” Among its statement of intent and purpose, the Initiative sought to: “...Regulate cannabis like we do alcohol: Allow adults to possess and consume small amounts of cannabis; [i]mplement a legal regulatory framework to better police and prevent access to and consumption of cannabis by minors in California; [p]ut dangerous, underground street dealers out of business, so their influence in our communities will fade; [p]rovide easier, safer access for patients who need cannabis for medical purposes.” The 2010 Initiative movement was headed by Richard Lee, current Chairperson of the Measure Z Committee. Members of the Measure Z Committee officially endorsed the 2010 Initiative, as well as the Oakland City Attorney and the Oakland City Council. If passed, the 2010 Initiative, among other things, would legalize the possession of up to one ounce of cannabis, allow growth of cannabis on private property and allow local governments the choice to regulate and tax the cultivation of cannabis. The Initiative failed 54% to 46% of votes cast.

At the end of Calendar Year 2010, the following items (among others) were on the Pending List:

1. Establishment of guidelines for Measure Z Clubs to deal with the issue of fees to be paid by licensed Measure Z Clubs.
2. Draft a Measure Z Training Bulletin for OPD (modeled after the Medicinal Cannabis Training Bulletin.)
3. Monitor on an ongoing basis, “private, adult” marijuana offense arrests.
4. Review extent of OPD compliance with federal law regarding medicinal grows.

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Oakland, CA 94612

5. Recommendation to Oakland City Council to license cannabis smoking premises in the City of Oakland.
6. Review of Oakland compliance/non-compliance policies with the deferral policy of the Drug Enforcement Agency (DEA): Is OPD providing local "assistance?"

The Committee remains committed to the decriminalization of adult cannabis use and will continue to submit recommendation to the Oakland City Council to advance the implementation of Measure Z as approved by Oakland voters in 2004.

Respectfully Submitted:

Richard Lee  
Chairperson  
Measure Z Committee

#### Attachments

- (1) Attendance Records, Measure Z Committee, 2009
- (2) Attendance Records, Measure Z Committee, 2010
- ~~(3) Oakland Police Department Activities Related to Arrests for Criminal Marijuana Offenses, 2009~~
- (4) Oakland Police Department Activities Related to Arrests for Criminal Marijuana Offenses, 2010
- (5) California Initiative Measure 09-0024: "Regulate, Control Tax Cannabis"
- (6) Memorandum, Measure Z Committee, December 17, 2009, to Urge the Oakland City Council Adopt A Resolution in Support of the "Regulate, Control and Tax Cannabis Act of 2010."
- (7) Oakland Resolution 82774, Resolution Supporting the 2010 California Initiative Measure 09-0024, Entitled, Regulate, Control and Tax Cannabis, Which Would Legalize and Regulate Cannabis (Marijuana)
- (8) "Just A Matter of When?" Legalizing marijuana has failed in California. But even in defeat, Proposition 19 might mark the beginning of the end for prohibition. Brian Doherty, Reason Magazine. February 2011 (Republished with permission from author.)

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March 22, 2011

Attachment 1:

Attendance Records, Measure  
Z Committee, 2009

**Attachment 1**

**Attendance Record, 2009 Measure Z Committee**

Representing	Committee Member	Jan 15 <sup>th</sup>	Feb 19 <sup>th</sup>	March 19 <sup>th</sup>	April 16 <sup>th</sup>	May 21 <sup>st</sup>	June 18 <sup>th</sup>	July 16 <sup>th</sup>	Aug 20 <sup>th</sup>	Sept 17 <sup>th</sup>	Oct 15 <sup>th</sup>	Nov 19 <sup>th</sup>	Dec 17 <sup>th</sup>
District 1	Dale Gieringer	P*	C*	P	C	P	P	P	SR*	C	P	P	P
District 2	Joseph E. Villatoro	P	C	P	C	P	P	E	SR	C	P	P	P
District 3	Richard Lee	P	C	P	C	P	P	P	SR	C	P	A	P
District 4	James Anthony	E	C	P	C	P	E	P	SR	C	P	P	P
District 5	Matt Hummel	V	V	V	V	V	V	V	V	V	P	P	P
District 6	Vacant	V	V	V	V	V	V	V	V	V	V	V	V
District 7	Keith Stephenson	P	C	P	C	P	P	P	SR	C	P	E	E
At-Large	TC Everett	V	V	V	V	V	V	V	SR	C	P	P	P
Mayor	Leslie Bonett	P	C	P	C	P	P	P	SR	C	P	P	P
Auditor	Wendy Herndon	—	—	—	—	—	—	—	—	—	—	US	E
Auditor	Cathi Bartice	P	C	P	C	P	E	E	SR	C	V	XX	XX
City Administrator	Bill Uber	P	C	P	C	P	P	P	SR	C	P	XX	XX
City Administrator	Jeff Baker	—	—	—	—	—	—	—	—	—	—	US	US

\* P indicates "Present"  
 E indicates "Excused"  
 V indicates "Vacant"  
 C indicates a "Cancelled Meeting"  
 SR indicates "Summer Recess"

A indicates "Absence"  
 US indicates "Unsworn Member"  
 — indicates Position occupied by earlier appointee  
 XX indicates Member Left Committee

Attachment 2:

Attendance Records, Measure  
Z Committee, 2010

**Attachment 2  
Attendance Record, 2010 Measure Z Committee**

Representing	Committee Member	Jan 21 <sup>st</sup>	Feb 18 <sup>th</sup>	March	April 1 <sup>st</sup>	May 20 <sup>th</sup>	June 17 <sup>th</sup>	July 15	Aug 19 <sup>th</sup>	Sept 16 <sup>th</sup>	Oct 21 <sup>st</sup>	Nov 18 <sup>th</sup>	Dec 16 <sup>th</sup>
District 1	Dale Gieringer	C*	Present	C	Excused	Present	Present	C	Present	Excused	C	C	C
District 2	Joseph E. Villatoro	C	Excused	C	Present	Present	Present	C	Present	Present	C	C	C
District 3	Richard Lee	C	Present	C	Present	Present	Present	C	Present	Present	C	C	C
District 4	James Anthony	C	Excused	C	Present	Excused	Excused	C	Present	Excused	C	C	C
District 5	Matt Hummel	C	Present	C	Excused	Excused	Present	C	Present	Excused	C	C	C
District 6	Dhar Mann	C	Vacant	C	Vacant	Vacant	Present	C	Present	Present	C	C	C
District 7	Keith Stephenson	C	Present	C	Present	Excused	Excused	C	Present	Present	C	C	C
At-Large	TC Everett	C	Present	C	Present	Present	Present	C	Present	Present	C	C	C
Mayor	Leslie Bonett	C	Excused	C	Present	Present	Present	C	Excused	Excused	C	C	C
Auditor	Wendy Herndon	C	Excused	C	Present	Excused	Present	C	Present	Present	C	C	C
City Administrator	Jeff Baker	C	Present	C	Present	Present	Present	C	Present	Present	C	C	C

\* G indicates a "Cancelled Meeting"



Attachment 3:

Oakland Police Department  
Activities Related to Arrests  
for Criminal Marijuana  
Offenses, 2009

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# CITY OF OAKLAND

## MEMORANDUM

To: Measure Z Committee  
 From: Oakland Police Department  
 Date: March 18, 2010

Subject: Police Department Activities Related to Arrests for Criminal  
 Marijuana Offenses for 2009

The Oakland Police Department maintains a policy stating that the investigation, citation and arrest for private cannabis offenses is the lowest law enforcement priority. All officers receive training on the marijuana policy. As of this date, the Oakland Police Department has not drafted a training bulletin in that respect, however statistics bear out the fact that enforcement of private adult cannabis offenses is a low priority.

In 2009, the Oakland Police Department arrested/cited 5326 persons for drug related offenses. Of those persons, only 255 (4.7%) were arrested/cited for possession of less than one ounce of marijuana. Of the total, only 55 (1%) persons were arrested/cited for possession of more than an ounce of marijuana. The majority of persons arrested/cited for private cannabis possession were in a public place and often are the result of specific complaints or investigations into other criminal activity.

In 2010, the trend continues. For example, during the week of 15 - 21 February, the Oakland Police Department made 108 drug-related citation/arrests. Of these, only three (2.7%) were for possession of less than one ounce of marijuana.

### Criminal Marijuana Arrest Statistics for Calendar Years 2003 - 2009\*:

Arrest Type	2003	2004	2005	2006	2007	2008	2009
Possession of Marijuana for Sale - § 11359 HS	297	198	377	311	508	618	571
Cultivation of Marijuana - § 11358 HS	8	20	4	9	13	29	37
Sales/Transportation of Marijuana - § 11360 HS	118	226	201	111	115	164	128

\* NOTE: These arrest totals are for adults only. Juvenile arrest totals are not available.

Item:   E-1    
 Measure Z  
 April 16, 2009

**City of Oakland Overall Crime Statistics:**

Statute	Total 2008	Total 2009	% Change
Homicide	119	97	-18%
Aggravated Assault			
Shootings	665	494	-26%
Other Assaults	2031	1827	-10%
Rape	231	249	8%
Robbery			
Robbery	3486	3149	-10%
Carjacking	341	278	-18%
Burglary			
Auto	3568	3456	-3%
Residential	3105	3489	12%
Commercial	817	581	-29%
Other	267	229	-14%
Unknown	168	189	13%
Larceny	6640	6212	-6%
Arson	288	202	-30%
Vehicle Theft	8164	6272	-23%
Grand Totals	29890	26724	-11%

**Crime Trends:**

A troubling crime trend emerged in 2009; one that relates to crimes associated with marijuana cultivation operations. There were a number of robberies and burglaries which took place at marijuana cultivation sites. There were two homicides directly related to cultivation operations.

Since the beginning of 2010, there have been two burglaries and three robberies at marijuana cultivation operations within the City. This issue is not specific to Oakland. Throughout the state; marijuana growing operations are being targeted by people intent on stealing the valuable crop. Persons involved in growing marijuana often take to arming themselves to protect their crop; however this can lead to violent confrontations.

Additionally, on a state wide level, large marijuana growing operations are being discovered, usually on public land. They are mainly the product of Mexican drug gangs and in addition to the violence that is associated with protecting the crops, significant environmental harm has occurred from the use of illegal fertilizer, the fouling of water supplies, wildfires and the removal of native plants.

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Michael Poirier  
Lieutenant of Police

Attachment 4:

Oakland Police Department  
Activities Related to Arrests  
for Criminal Marijuana  
Offenses, 2010

# CITY OF OAKLAND

## MEMORANDUM

To: Measure Z Committee  
 From: Oakland Police Department  
 Date: 4 Feb 11

Subject: **Police Department Activities Related to Arrests for Criminal  
 Marijuana Offenses for 2010**

The Oakland Police Department maintains a policy stating that the investigation, citation and arrest for private cannabis offenses is the lowest law enforcement priority. All officers receive training on the marijuana policy. As of this date, the Oakland Police Department has not drafted a training bulletin in that respect, however statistics bear out the fact that enforcement of private adult cannabis offenses is a low priority.

In 2010, the Oakland Police Department arrested/cited 3,274 persons for drug related offenses. Of those persons, only 111 (3) were arrested/cited for possession of less than one ounce of marijuana. Of the total, only 3 (0%) persons were arrested/cited for possession of more than an ounce of marijuana. The majority of persons arrested/cited for private cannabis possession were in a public place and often are the result of specific complaints or investigations into other criminal activity.

### **Criminal Marijuana Arrest Statistics for Calendar Years 2004 - 2010\*:**

Arrest Type	2004	2005	2006	2007	2008	2009	2010
Possession of Marijuana for Sale - § 11359 HS	198	377	311	508	618	571	517
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\* NOTE: These arrest totals are for adults only. Juvenile arrest totals are not available.

Item:   E-1    
 Measure Z  
 April 16, 2009

# CITY OF OAKLAND

## MEMORANDUM

To: Measure Z Committee  
From: Oakland Police Department  
Date: 4 Feb 11

Subject: **Police Department Activities Related to Arrests for Criminal  
Marijuana Offenses for 2010**

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The Oakland Police Department maintains a policy stating that the investigation, citation and arrest for private cannabis offenses is the lowest law enforcement priority. All officers receive training on the marijuana policy. As of this date, the Oakland Police Department has not drafted a training bulletin in that respect, however statistics bear out the fact that enforcement of private adult cannabis offenses is a low priority.

In 2010, the Oakland Police Department arrested/cited 3,274 persons for drug related offenses. Of those persons, only 111 (3) were arrested/cited for possession of less than one ounce of marijuana. Of the total, only 3 (0%) persons were arrested/cited for possession of more than an ounce of marijuana. The majority of persons arrested/cited for private cannabis possession were in a public place and often are the result of specific complaints or investigations into other criminal activity.

### **Criminal Marijuana Arrest Statistics for Calendar Years 2004 - 2010\*:**

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Arrest Type	2004	2005	2006	2007	2008	2009	2010
Possession of Marijuana for Sale - § 11359 HS	198	377	311	508	618	571	517
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Sales/Transportation of Marijuana - § 11360 HS	226	201	111	115	164	128	136

\* NOTE: These arrest totals are for adults only. Juvenile arrest totals are not available.

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April 16, 2009

### City of Oakland Overall Crime Statistics:

The City of Oakland experienced an overall drop of 14% in Part One crimes. See attachment for details of individual crime statistics.

### Crime Trends:

Like 2009, 2010 saw numerous crimes associated with marijuana cultivation operations. There were a number of shootings, robberies and burglaries which took place at marijuana cultivation sites.

This issue is not specific to Oakland. Throughout the state; marijuana growing operations are being targeted by people intent on stealing the valuable crop. Persons involved in growing marijuana often take to arming themselves to protect their crop; however this can lead to violent confrontations.

Another troubling trend related to marijuana cultivation operations is the abundance of marijuana that is being directed to illicit markets. I have observed that cultivators in Northern California are selling marijuana to persons in other states for cash or trading marijuana for firearms.

---

Michael Poirier  
Lieutenant of Police



# OAKLAND POLICE 2010 YEAR END CRIME REPORT

This report is run by the date the crimes occurred. Because both reporting of crimes and data entry can be a month or more behind, not all crimes have been recorded yet. This can create a false reduction in crime in both property and violent crimes. For a more accurate week to week or month to month or current period to same period in a previous year comparison, it is best to compare periods that are between 30 and 60 days prior to the current date. The only certified crime statistics are the UCRs.

Part I Crimes All totals include attempts except homicides.	YTD 2007	YTD 2008	YTD 2009	YTD 2010	% Change YTD	3 Year Average	Over/ Under
Murder - 187(A) PC UCR Count	120	118	101	90	-25%	109	(13)
Non-UCR Murders	120	118	101	90	-25%	109	(13)
Aggravated Assault	2,937	2,998	2,572	2,430	-16%	2,667	(237)
Firearm - 245(A)(2) PC	498	514	366	444	21%	441	(3)
Other Than Firearm - 245(A)(1) PC	838	771	744	675	-19%	750	(55)
Firearm - Other	438	450	371	356	-23%	426	(30)
Domestic Violence - 273.5 PC	487	504	527	415	-20%	482	(67)
Child Abuse	387	434	258	177	-54%	290	(115)
Elder Abuse	17	15	18	17	6%	17	(0)
Firearm Assault on Officer	3	7	5	3	-40%	5	(2)
Assault on Officer - Other	62	43	51	36	-29%	43	(7)
Misc. Assault	207	260	232	207	-11%	255	(26)
Rape	246	214	217	191	-22%	207	(16)
Robbery	3,677	3,590	3,242	3,149	-3%	3,278	(128)
Firearm	1,564	1,582	1,308	1,258	-3%	1,472	(264)
Knife or Cutting Instrument	142	143	129	126	-2%	133	(7)
Strong Armed	1,386	1,308	1,334	1,208	-12%	1,283	(75)
Other Dangerous Weapon	135	105	79	64	-22%	88	(19)
Residential Robbery - 212.5(A) PC	136	129	128	188	43%	147	(36)
Carjacking - 215(A) PC	314	323	264	226	-29%	270	(44)
Burglary	8,274	7,702	8,815	7,951	-10%	8,169	(218)
Auto	3,903	3,452	4,149	3,289	-20%	3,780	(499)
Residential	2,754	2,881	3,285	3,674	32%	2,800	(524)
Commercial	1,073	796	566	522	-32%	628	(106)
Other (Includes boats, aircraft, etc.)	262	250	274	206	-21%	277	(61)
Unknown	282	323	541	550	19%	374	(124)
Motor Vehicle Theft	9,824	8,048	6,270	4,458	-54%	6,509	(1,601)
Domestic Violence	5,917	6,228	6,126	5,251	-15%	5,862	(65)
Receive/Possess/Sell Stolen Property	103	132	94	78	-24%	101	(23)
Other Larcenies	5,814	6,096	6,032	5,153	-13%	5,760	(60)
Arson	268	283	210	142	-47%	212	(76)
<b>Total Part One Crimes</b>	<b>31,265</b>	<b>29,182</b>	<b>27,557</b>	<b>23,641</b>	<b>-14%</b>	<b>26,793</b>	<b>(3,152)</b>
Part 2 Crimes of Focus Includes Attempts	YTD 2007	YTD 2008	YTD 2009	YTD 2010	% Change YTD	3 Year Average	Over/ Under
Weapons Possessing/Carrying	2,781	2,837	2,753	2,696	-2%	2,621	(66)
Drug Possession & Sales	3,811	4,458	3,872	2,892	-25%	3,419	(527)
Assaults - Simple	2,931	2,877	2,893	2,791	-5%	2,854	(63)
Domestic Battery	2,511	2,452	2,516	2,453	-2%	2,471	(18)
Elder Abuse	69	31	12	9	-87%	27	(18)
Child Abuse	172	178	138	154	12%	171	(3)
Assault on Officer - Other	179	216	227	173	-22%	203	(30)
Prostitution & Commercialized Vice	285	334	342	499	72%	492	(7)
Non-Rape Sex Crimes	942	754	650	613	-3%	672	(59)
<b>Total Part Two Crimes</b>	<b>8,750</b>	<b>9,260</b>	<b>8,810</b>	<b>7,491</b>	<b>-15%</b>	<b>8,520</b>	<b>(1,029)</b>

CREATED BY FORENSIC LOGIC

Attachment 5:

California Initiative Measure  
09-0024: “Regulate, Control  
Tax Cannabis”

# LAW OFFICES OF JAMES WHEATON

CALIFORNIA BUILDING  
1735 FRANKLIN STREET, 9TH FLOOR  
OAKLAND, CALIFORNIA 94612

TEL: 510/206-4564  
FAX: 510/206-4562  
WHEATON@WELL.COM

27 July 2009

09-0024

Amdt. #/S

The Honorable Jeny Brown  
Attorney General of California  
ATTN: Mr. Neil Amos  
Initiative Coordinator  
Office of the Attorney General  
1300 J Street, 17<sup>th</sup> 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.

Cordially,

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. #15

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 Purposes:

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. Perform 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 tetrahydrocannabinol]; 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 deem 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, can ying, 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.

Attachment 6:

Memorandum, Measure Z  
Committee, December 17,  
2009, to Urge the Oakland  
City Council Adopt A  
Resolution in Support of the  
“Regulate, Control and Tax  
Cannabis Act of 2010.”

## *Measure Z Committee*

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April 15, 2010

Oakland City Council Rules Committee  
Council Chambers, City Hall, One Frank H. Ogawa Plaza

To: Chairperson Brunner, Members of the Rules Committee

From: James Anthony, Chairperson, Measure Z Committee

Re: Recommendation from the Measure Z Committee to Urge  
The Oakland City Council to Adopt A Resolution in Support  
of the "Regulate, Control and Tax Cannabis Act of 2010"

During the December 17, 2009 Measure Z Committee, the following Motion was made and action taken:

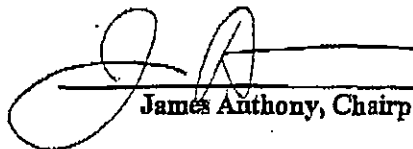
Member Richard Lee made a Motion that the Measure Z Committee forward the Final Language of the "Regulate, Control and Tax Cannabis Act of 2010" to the Oakland City Council for endorsement and adoption of a City Council Resolution of support of the Initiative. The Motion was seconded by Member Joseph E. Villatoro.

~~A roll-call vote was taken~~

On the Motion:

Member Gieringer - Aye  
Member Villatoro - Aye  
Member Lee - Aye  
Member Hummel - Aye  
Member Everett - Abstain  
Member Bonett - Aye  
Member Baker - (Not Sworn In)  
Chairperson Anthony - Aye

The Motion passed with six affirmative votes.

  
James Anthony, Chairperson

Attachments

Item: \_\_\_\_\_  
Rules Committee  
April 15, 2010

Attachment 7:

Oakland City Council  
Resolution 82774, Resolution  
Supporting the 2010 California  
Initiative Measure 09-0024,  
Entitled, "Regulate, Control  
and Tax Cannabis," Which  
Would Legalize and Regulate  
Cannabis (Marijuana)

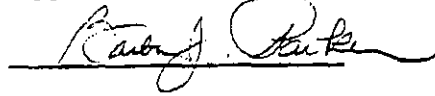


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2010 APR 29 PM 7:50

REVISED

Approved as to Form and Legality



INTRODUCED BY \_\_\_\_\_

OAKLAND CITY COUNCIL

82774

Resolution No. \_\_\_\_\_ C.M.S.

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**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, MAY 18 2010, 20      

PASSED BY THE FOLLOWING VOTE:

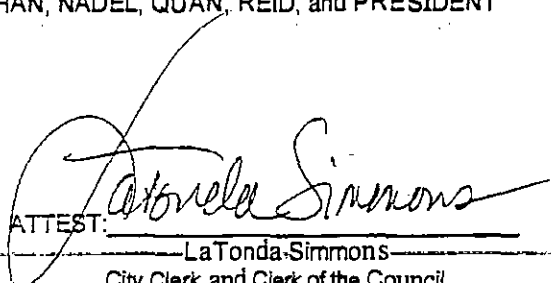
AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT  
BRUNNER - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



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

Attachment 8:

“Just A Matter of When?”

*Legalizing marijuana has failed in California. But even in defeat Proposition 19 might mark the beginning of the end for prohibition.*, Brian

Doherty, Reason Magazine, February 2011, (Republished with permission from the Author.)

<http://reason.com/archives/2011/01/18/just-a-matter-of-when>

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## Just a Matter of When?

**Legalizing marijuana has failed in California. But even in defeat, Proposition 19 might mark the beginning of the end for prohibition.**

Brian Doherty from the [February 2011](#) issue

On Homecoming Day at the University of Southern California, Elizabeth Tauro strode purposefully through the dense, shifting mob of pre-game partiers, bearing huge rolls of “Yes on 19” stickers on each arm.

Saying yes to California’s Proposition 19 would have meant that adults could legally possess up to an ounce of marijuana. They also would have been allowed to grow marijuana on up to 25 square feet of their property. Local governments would have been free to raise (but not reduce) these limits on possession and cultivation. They would also have been authorized to license, regulate, and tax sales of the long-demonized weed.

Tauro, a senior majoring in public policy, was working the crowd on this Saturday before Election Day on behalf of Students for Sensible Drug Policy. At this point in the campaign, she said, she was mostly “just letting everyone know that Tuesday is Election Day” rather than arguing the benefits of pot legalization. “Our generation supports reforming marijuana laws,” she said. “It’s just a question of whether they vote.”

Not enough of them did. Proposition 19 lost by 54 percent to 46 percent just six weeks after most polls showed it wimming. The drug war's foes had been on the verge of achieving a staggering victory, one that would have forced a confrontation with the federal government. Instead they saw history slip through their fingers.

Yet reformers are still optimistic. Prop. 19 won a higher vote total (and higher vote percentage) than any previous attempt to legalize pot in the United States. It made legalization—not medical marijuana, not decriminalization, but full legalization—a legitimate political debate in the country's biggest state. And it forged a coalition that stretched far beyond the usual axis of antiprohibition activists, notwithstanding some dissension within the ranks. The opposition, meanwhile, conceded some important arguments to the reformers, suggesting that public opinion has moved further along than ever before. The legalization of marijuana, activists argue, is a matter of *when*, not *if*.

### Who Supported Prop. 19

Prop. 19 sprang from the brain and bank account of Richard Lee, a medical marijuana entrepreneur who operates a big dispensary and associated retail stores in Oaldand as well as Oaksterdam University, a vocational school for the new industry that has had more than 12,000 students pass through since 2007.

Lee has played the local politics of medical marijuana as skillfully as anyone, winning city approval for industrial-sized indoor growing operations to feed the medical distribution system as well as a statement of intent to legalize the general sale of marijuana to adults as soon as the state permits it. Lee's opponents paint him as the would-be kingpin of legal pot, using the political system to guarantee that his in-the-works industrial grows will corner a market he is fighting to create.

Even while thriving within the medical marijuana system, Lee has always pushed for full legalization, because he thinks "prohibition is hypocritical, unjust, and unfair." In March 2009, a poll Lee commissioned showed, for the first time, a majority of California voters supporting legalization. At that point, he began drafting language for a ballot initiative. Two other legalization measures vied for the 2010 ballot, but only Lee, who spent nearly \$1 million just on gathering signatures, had the money to succeed.

Traditional drug reform groups initially either snubbed Lee or advised him that a presidential election year would be better. "It was surprising to see how hostile they got," he says. Lee joined the board of the Marijuana Policy Project, hoping he could steer it toward supporting his initiative, but the group lacked the money and the will, leading Lee

to resign and go it largely alone. Representatives of the Drug Policy Alliance (DPA) did help him with drafting the language of the initiative, while remaining doubtful about the timing.

The major drug reform groups did eventually all get behind Prop. 19, and two of the biggest moneybags in reform circles, George Soros and Peter Lewis, chipped in during the last days of the campaign. (Soros' \$1 million donation was funneled not through Lee's organization but through a separate pro-19 group managed by the DPA.) It "hurt us," Lee says, that the big drug policy groups "didn't get on board until late in the process."

But long before Soros hopped on, the Yes on 19 coalition had expanded far beyond the drug policy world. Seasoned Democratic operatives joined the pro-19 campaign, even though incoming California Gov. Jerry Brown opposed it and Sen. Dianne Feinstein chaired the opposition. The progressive netroots blog *Firedoglake* launched a "Just Say Now" campaign that, together with Students for Sensible Drug Policy, placed 50,000 targeted get-out-the-vote calls. And perhaps most significantly, the proposition was endorsed by such drug policy newbies as the California chapter of the National Association for the Advancement of Colored People (NAACP) and the League of United Latin American Citizens of California.

"The groups most adversely affected by the drug war—minorities, Latinos, African Americans—were not [traditionally] in the fray," says Neill Franklin, a former police officer who leads Law Enforcement Against Prohibition (LEAP). When the NAACP endorsed Prop. 19, he says, it was "a game changer. I called [Alice Huffman, head of the California NAACP,] up and told her I was law enforcement, and I was for Proposition 19. She said she practically fell out of her chair." LEAP sent representatives to more than 250 events around the state, emphasizing that police and court resources should be used more productively than in the failed attempt to get people to stop selling and using a relatively benign drug. (A September 2010 study for the Cato Institute by Harvard economist Jeffrey Miron found that California spends \$960 million a year on marijuana law enforcement.) LEAP recruited the National Black Police Association and the National Latino Officers Association for the cause.

Organized labor was another important source of new support. Dan Rush, special operations director for the United Food and Commercial Workers (UFCW) Union Local #5, got excited about the jobs that could be created in a legal market for marijuana and hemp. He convinced his union, against initial doubts, that "this initiative would create an

industry in retail, agriculture, and food processing, and UFCW is a retail, agriculture, and food processing union." He became labor director for the Yes on 19 campaign.

Rush convinced the powerful Service Employees International Union and the Northern California Council of the Longshoremen to back Prop. 19, and he persuaded the California Labor Federation (CLF) to refrain from opposing it. When the next legalization campaign comes along, Rush swears he'll be able to move the CLF from neutrality to support, which could be a key step toward changing minds in the Democratic Party.

### Who Didn't Support Prop. 19

Although Prop. 19 found new allies in the civil rights and labor movements, it did not have the unified support of the marijuana reform movement. The most successful and active medical marijuana group, Americans for Safe Access (ASA), was officially neutral. That in itself was not necessarily a problem. Given the group's institutional mandate to deal exclusively with medical marijuana, Yes on 19 spokesperson Dale Sky Jones says, ASA's neutrality was "the closest they could come to officially supporting us."

Medical marijuana dispensaries were split on the issue. Although the initiative was ultimately crafted to change nothing at all about the laws in place protecting doctor-certified patients' access to pot and their ability to grow, possess, and exchange it, rumors were rife that they would be hit with new limits on how much they could possess. (The current limit—set by court decisions, not statute—is whatever is deemed medically necessary for the patient.) Others noted that the proposition didn't legalize smoking pot in public, and worried that this would be a loophole allowing authorities to harass medicinal smokers. Pro-19 canvassers say many dispensaries refused to allow campaign literature in their shops. Since the passage of California's Compassionate Use Act in 1996, the medical folks had managed to create a market niche for sellers and a relatively safe haven for users, and many feared that opening up the market to more competition would be bad for their bottom line.

For the same reason, and with more anger, most of the growers from Northern California's fertile Humboldt and Mendocino counties were against Prop. 19. The initiative lost in both. Allen St. Pierre, executive director of the National Organization for Reform of Marijuana Laws (NORML) and one of the oldest warriors in the national drug policy fight, says the growers rebelled when they decided there was "no way post-prohibition for anyone to fetch \$15 or \$25 for a gram of dried vegetable matter." People currently making

\$25 to \$30 an hour trimming weed in Humboldt imagined their jobs reduced to minimum-wage work or eliminated entirely.

Prop. 19 supporters pushed back with the idea of a post-legalization market similar to the market for wine, with room for both cheap, mass-produced offerings like Two-Buck Chuck and expensive, artisanal products like Chateau Petrus for connoisseurs. But with the growing medical market already driving down prices, most Northern California growers didn't want to hear it. They saw Lee as the wannabe Sam Walton of grass. "People will want something faceless and easy," one grower told me. "They want their fuclndg Big Mac. In order to make something of quality, you have to deal with a lot more labor and a lot more time. Just use machines, turn out crap, sell it cheap."

In the end, it might not matter whether the "marijuana community" per se supports legalization. The total number of voters in the major growing counties amounted to only 65,000 or so ballots in an election that was lost by half a million, and even adding all the people across the state involved in cutting or moving their product wouldn't be enough to have ensured victory. Still, many Prop. 19 strategists say they want to bring in medical marijuana producers, sellers, and consumers as stakeholders from the beginning next time around. They hope to persuade all involved that full legalization would ensure less police harassment, and less danger from violent black market criminals, and they hope to persuade producers that, especially in the short term, there will still be room for small family-growers.

Other activists are less forgiving. "If growers are against legalization," *West Coast Leaf* Publisher Chris Conrad told *The Huffington Post*, "they can't be part of the legalization process, and now it's up to them to show good-faith support or be left out of the process.... Prop. 19 offered them a legal customer base, a statewide regulatory framework, and a local voice to protect their interests. The next campaign is more likely to pitch a more restrictive approach to bring [in] more conservative voters like Asians and housewives, who want heavy-handed controls, and will consider whether growers deserve any consideration at all. Those folks are unreliable at best, traitors to the cause at worst."

### What the Opposition Concedes

The narrow space around the sunken floor of Hollywood's hip Café Was was crammed with a dozen reporters. Cameras jockeyed for an angle on the table where activist/actor Danny Glover, singer Melissa Etheridge, and likely 2012 Republican presidential candidate Gary Johnson talked about the importance of passing Proposition 19. Also on



the bill: comic actor Hal Sparks, Sarah Lovering of the Marijuana Policy Project, and 20-year L.A. police veteran Stephen Downing of LEAP.

The activists pointed out the fiscal madness of spending billions over decades on a failed attempt to stop people from using a benign weed. They talked about the taxes not collected when a \$14 billion industry is driven into the black market. They discussed the rape kits that went untested while police processed 861,000 misdemeanor pot arrests in California last year. They argued that it's actually easier to keep kids from pot in a legal market, since legal merchants check ID and illegal drug dealers don't. They noted that we don't tend to see illegal vineyards in state and national parks in California, where violent drug dealers sometimes grow their wares.

Alone and earnest on the sidewalk outside the club, a blonde woman in a business suit was passing out pamphlets. It was Alexandra Datig, one of the primary public voices against Prop. 19. She comes from the "I stopped; you shouldn't start" school. A former call girl in Heidi Fleiss' famous escort business, Datig insists that her own life was derailed by drugs—pot and the harder stuff she insists pot led to—and that legalization will only create more stories like hers.

Datig's pamphlet shed light on the shifting shape of the drug reform debate. It stressed, for example, that voting against Prop. 19 would "not interfere with a patients [sic] access to medical marijuana." Those who remember the mid-1990s might be amazed that the anti-19 forces declined to attack, and in fact defended, medical marijuana, just 14 years after a remarkably contentious political fight over the Compassionate Use Act, a.k.a. Proposition 215, the first successful initiative to legalize marijuana for medical purposes in the United States. Medical pot is now as mainstream in California as surfing, and 14 other states and Washington, D.C., have embraced it as well.

Datig's literature also implicitly accepted a central argument of the legalizers: that black markets create negative ancillary effects. "Legalization would not eliminate the black market or organized crime," the pamphlet warned. "Black market sales to kids would expand.... Taxation would return buyers to the black market." The No on 19 forces thus conceded that the black market created by prohibition is something to worry about.

That was the most striking thing about the Prop. 19 fight: The opposition was not defending the drug war status quo. They just picked at particular aspects of the initiative, hoping to move lukewarm legalizers into the no column. While that approach undoubtedly helped lull Prop. 19's chances, it is great news for the larger debate over drug policy.

Although 26 of the state's biggest daily newspapers editorialized against the initiative, many used language like this from the *San Francisco Chronicle*: "We agree with the architects of Prop. 19 that the 'war on drugs'—especially as it applies to marijuana—has been an abject failure."

The opposition to 19 was also heavily outspent, by more than 10 to one. The last time a major drug law reform was on the ballot in California—Prop. 5 in 2008, which would have moved nonviolent drug offenders from jail to a largely treatment-oriented model—it was defeated with \$1.8 million in California Correctional Peace Officers Association cash. CCPOA stayed out of the fray on 19, as did many of the formerly anti-reform and deep-pocketed Indian tribes. Some police chiefs and narcotics officers groups gave tens of thousands to fight 19, and the California Beer and Beverage Distributors gave \$10 grand, but no one seemed willing to spend significant amounts fighting legalization.

### Why Did Prop. 19 Lose?

Message discipline is tight in the Yes on 19 camp. No one sounds discouraged, even after their electoral defeat. All parties say they will remain unified, this time from the start, in a likely 2012 redo, when the youth vote they are sure can push them over the top is more likely to come out for the presidential race. Richard Lee cautions that he is not in a position to sink the same amount of money into this cause again. But NORML's Allen St. Pierre says one of Prop. 19's great long-term victories was that it uncovered "more young millionaires committed to marijuana law reform"—such as former Facebook president Sean Parker, who gave the campaign \$100,000—"and we are interacting with them in their ascendancy, not in their doddering retirement years."

But it's hard to know how to do better if you aren't sure why you failed. I found no consensus among pro-19 forces regarding what went wrong. Some are sure that more money early on, more TV ads, and/or more mailers would have made a decisive difference, but that the timing and the messaging were otherwise fine. Most 19ers saw their campaign as an attempt to get an already existing mass of pro-legalization citizens to vote, as opposed to changing anti-legalization voters' minds. Steve Fox of the Marijuana Policy Project thinks that that attitude is dead wrong, and that more sales work on the essential harmlessness of pot needs to be done to ensure enough of a margin of victory. The UFCW's Dan Rush says the next initiative should include a statewide tax and regulatory scheme. *Firedoglake's* Michael Whitney thinks the campaign has to put more effort into "building the kind of grassroots infrastructure and volunteer network needed to sustain turnout." (More than one 19er thought that such efforts in Los Angeles especially, where

the initiative lost, could have won it for them statewide.) Ethan Nadelmann of the Drug Policy Alliance wants to lose the initiative's language that would forbid employers from discriminating against or punishing an employee for using pot if it didn't actually impair job performance, which the California Chamber of Commerce and several newspapers cited as a reason to oppose Prop. 19.

Almost everyone agrees that if a benefactor wants to drop \$1 million on the campaign the next time round, he should do it *before* absentee ballots have been cast. (Instead, around a third of the campaign's money came in only in the last two weeks.) And while debates at in-person events and in the papers are all well and good, legalizers need to reach the mass of people whose main exposure to political thought is on TV. That means more TV ads (like one the pro-19 camp launched at the last minute) with police officers explaining that legal pot will mean more, not less, law and order.

Public support for pot legalization continues to rise. According to Gallup, since 1995, before the dawn of the medical pot era, support for marijuana legalization has risen nationally from 25 percent to 46 percent. And as of Gallup's October 2010 poll, in states west of Texas 58 percent of those polled support the change that Prop. 19 tried to make.

Still, the reform movement has not yet managed to sell legalization to otherwise libertarian-minded folk as a logical part of constitutional, limited government. A CNN Election Day exit poll in California found that 61 percent of those who think government is doing too much nonetheless opposed Prop. 19, as did 53 percent of those "angry" at the federal government and 63 percent of Tea Party supporters.

Even more surprising, a post-election Greenberg Research poll financed by Prop. 19 supporters found that 31 percent of California voters who believe pot should be legal nonetheless cast their ballots against the measure. That suggests many voters objected to this particular proposition, rather than legalization in general. The initiative, with its many provisions designed to pre-empt opposition, offered multiple targets for opponents to shoot at.

One point of contention, stressed heavily by the anti-19 campaign, was the local option, which gave local jurisdictions leeway to establish their own regulations and taxes for the cultivation and sale of marijuana. According to opponents, this system would have created "a jumbled legal nightmare," as anti-19 spokesman Roger Salazar put it, even though California, like most of America, already deals with many controversial matters, from

booze to gambling to gun possession, with a variety of local restrictions rather than one statewide rule.

One aspect of Prop. 19 that bothered both anti-pot activists and pro-legalization libertarians was the provision restricting pot-related job discrimination. Anti-pot propagandists envisioned a wave of stoned school bus drivers zipping off bridges and zonked nurses passing out over patient's beds, while libertarians argued that it was an unnecessary intrusion into employment contracts.

It's also possible that many voters felt the issue was less pressing after Gov. Arnold Schwarzenegger, a month before Election Day, signed S.B. 1449, a measure that reduced possession of less than an ounce of marijuana from a misdemeanor to an infraction, similar to a traffic violation. Schwarzenegger's move killed a great selling point for 19 proponents: Why burden so many tens of thousands of people a year with a searchable criminal record and get them embedded in a criminal justice system that could eventually lead to prison, just for dope? While it was already true that almost no one went to jail or prison in California for mere use or small possession, 1449 lowered the legal difficulties facing pot users even further.

Still, 1449 does not solve the problems of crime and corruption associated with black market sales of pot. And, as co-chair of the Prop. 19 legal committee Hanna Dershowitz points out, by eliminating court costs for the system, under 1449 the incentive for cops to waste lots of time targeting young minorities might be even higher. Dope law enforcement is now a pure cash cow, so even under 1449 police attention will still be mistargeted to harassing pot smokers. (And with a targeted class that won't always be able to pay fines on time, even the new system could lead to real criminal consequences.)

But in truth, as Ethan Nadelmann says, "we have no hard evidence whatsoever that any one of the provisions helped or hurt and no really good evidence about whether any particular message helped or hurt." Several legalization advocates suspect the voting was swayed more by general uneasiness with sudden, far-reaching change, and that when they have a second chance to think about legalization, they'll come around.

### What They're Fighting For

All this talk of messaging, coalition building, and conventional electioneering is itself a sign that the politics of repealing prohibition underwent a significant shift during the Prop. 19 campaign. Outright legalization is now on the table in several states, with measures likely to reach the 2012 ballot in at least California, Colorado, and Nevada.

Activists hope as many as half a dozen states may end up in play. California Assemblyman Tom Ammiano (D-San Francisco) has a legislative take on legalization ready to roll out again in 2011 as well (last year an earlier version became the first such bill in American history to get out of committee in the Assembly), though politicians are clearly more scared of legalization than are voters.

Although he is still a dark-horse candidate for the Republican presidential nomination, former New Mexico Gov. Gary Johnson, as the first major politician in America to make legalization a big part of his message, could turn up the volume on the national conversation if he gets anywhere in the primaries. So could Rep. Ron Paul (R-Texas) if he runs.

But even with all this hopeful talk, there is a darker side to the politics of pot, as I was reminded at an election night party where I ran into Stephanie Landa. Landa is a sweet, gentle woman who spent three years in federal prison for running a San Francisco marijuana growing operation that, with the full knowledge of local law enforcement officials, served the city's medical market. When I first met her in November 2009, she was being forced to live in a grim halfway house with unpleasant, nutty neighbors. Her every move was monitored. She was legally prohibited from seeing the father of her child, since he was also arrested in the federal bust that sent her to prison.

Landa, a heroine and a martyr within the medical marijuana community, knows it well and understands its concerns. But for Landa, determining the right thing to do when it came to Prop. 19 did not require complicated guesses about how Attorney General Eric Holder might enforce federal law in California, or how counties would regulate and tax cannabis, or who might come out ahead in a legal marijuana market. As she put it, "I just don't want anybody to go to prison anymore."

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