

OFFICE OF THE CITY ADMINISTRATOR

CITY OF OAKLAND



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Office of the City Administrator
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April 24, 2007

Public Safety Committee
Oakland City Council
Oakland, California

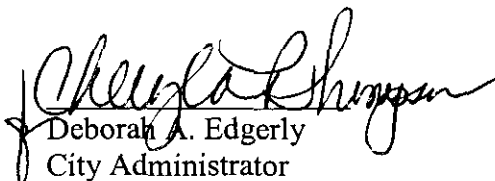
RE: Annual Report of the Measure Z Community Oversight Committee for 2006

Dear Chairperson Reid and Members of the Committee:

On November 2, 2004 the Oakland electorate passed ballot Measure Z, a voter initiative entitled "Oakland Cannabis Regulation and Revenue Ordinance". Measure Z became effective on December 7, 2004. In February 2006, a quorum of Committee members had been appointed and the first meeting of the Measure Z Community Oversight Committee took place on February 16th.

In accordance with Ordinance No. 12694 C.M.S., Section 1 (c), the first Annual Report of the Measure Z Committee is forwarded for Council's review.

Respectfully submitted,


Deborah A. Edgerly
City Administrator

Prepared by: William Roy Uber
Assistant to the City Administrator and
staff assigned to the Measure Z Committee
Office of the City Administrator

Measure Z Committee

Memorandum

TO: Deborah A. Edgerly, City Administrator
FROM: Dan Siegel, Chair, Measure Z Community Oversight Committee
DATE: April 24, 2007

RE: Annual Report of the Measure Z Community Oversight Committee

I am pleased to submit to you the Measure Z Community Oversight Committee's First Annual Report. The Committee requests that you refer this report to the City Council, via its Public Safety Committee, for discussion and placement on the agenda of a full meeting of the City Council.

The Measure Z Community Oversight Committee was created by the November 2, 2004 ballot initiative entitled, "Oakland Cannabis Regulation and Revenue Ordinance." City Council Ordinance No. 12694 C.M.S. established the Committee's procedures and the terms and the responsibilities of the Committee's members. The responsibility of the Committee is to "advise the City Council of concerns and issues regarding the lowest law enforcement 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."

Upon appointment of a majority of its members, the Committee began meeting in February 2006 and conducted five (5) regular meetings and one (1) Special Meeting during calendar year 2006. The Committee has received invaluable assistance and support from William Uber of the City Administrator's Office and Deputy City Attorney Izetta Jackson. A copy of the Committee's attendance report for 2006 is attached as *Exhibit A*.

One of the Committee's first items of business was the development of its Bylaws. A copy of the adopted Bylaws is attached as *Exhibit B*.

The Committee has held several meetings with Chief Wayne G. Tucker and other members of the Oakland Police Department. The Department's representatives provided the Committee with data concerning marijuana related arrests and its implementation of Measure Z's "lowest law enforcement priority policy" for offenses related to the possession of marijuana. The Committee commends the Department for its cooperative approach to the implementation of Measure Z. The Committee's responsibility for oversight of Measure Z implementation would be facilitated by the Police Department's development of regular statistical reports on arrests for cannabis-related offenses.

In November 2006, the Committee concluded its deliberations on proposed regulations regarding the private use, sale, and cultivation of cannabis, specifically the interpretation of the terms "private sales" and "private cultivation" as used in Measure Z. We believe that these

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Public Safety Comte.
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recommendations are consistent with the voters' intent in passing Measure Z and with current regulations regarding the sale and use of alcoholic beverages. We urge the Council to adopt these proposals, which reflect appropriate changes to City policy. A copy of the Committee's report on these proposed regulations is attached as *Exhibit C*.

Additionally, in November 2006, the Committee attempted to estimate the potential tax revenue and other economic benefits available to the City of Oakland from the taxation of medical cannabis. We estimate that sales tax revenues could easily reach \$5.0 million annually. The sales tax revenues from the sale of non medical cannabis would reach many times that figure. This report is presented for your information and the potential development of enabling legislation. It is attached as *Exhibit D*.

Finally, to start the New Year, the Committee is deliberating on Guidelines for Measure Z Clubs and Private Cannabis Sales. We urge the Council to review this report and to enact appropriate enabling legislation. The final, adopted report will be forwarded under separate cover.

We appreciate the opportunity to serve the City as members of the Committee and look forward to working with the Mayor and Council to implement the letter and the spirit of Measure Z.

Sincerely,

Measure Z Committee

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Measure Z Committee – 2006 Attendance

Representing	Committee Member	19 Jan	16 Feb	16 Mar	20 Apr	18 May	15 Jun	20 Jul	17 Aug	21 Sep	19 Oct	9 Nov	16 Nov	21 Dec
District 1	Dale Gieringer		Z	Z	Z	Z		Z		Z	Z	Z		
District 2	Joseph E. Villatoro		Z	a	Z	a		Z		a	a	a		
District 3	Richard Lee		Z	Z	Z	Z		Z		Z	Z	Z		
District 4	James Anthony		Z	Z	Z	Z		Z		Z	Z	Z		
District 5	Svea O'Banion		Z	Z	Z	Z		Z		e	e	e		
District 6	Daniel Siegel		Z	Z	Z	Z		e		e	Z	Z		
District 7	Keith Stephenson		Z	Z	e	Z		Z		e	e	Z		
At Large	Franklin Rose		Z	Z	e	Z		Z		Z	a	Z		
Administrator	Niccolo De Luca		Z	Z	Z	Z		Z		Z	Z	Z		
Auditor	Arthur Goins		a	a	a	a			Retired and moved out of Oakland					
Auditor	Kenneth Pratt		Not appointed till November 6, 2006									Z		
Mayor	William M. Baldwin		Z	Z	Z	Z			Member resigned.					

KEY	
Z	Present
e	Excused
a	Absent

NOTES:

January 2006 – No meeting. A quorum of members had not been appointed

June, August, November, and December 2006 – Meetings cancelled.

September and October 2006 – No meeting conducted due to lack of quorum.

November 9 was a Special Meeting.

Adopted: March 16, 2006

**BYLAWS OF THE COMMUNITY OVERSIGHT COMMITTEE
CREATED BY NOVEMBER 2, 2004 BALLOT INITIATIVE MEASURE Z,
ENTITLED
"OAKLAND CANNABIS REGULATION AND REVENUE ORDINANCE"**

**ARTICLE I
NAME**

The name of this organization is the Measure Z Community Oversight Committee

**ARTICLE II
PURPOSE**

It is the purpose of the Measure Z Community Oversight Committee (hereinafter referred to as the "Measure Z Committee"), created by Measure Z, to oversee implementation of the Lowest Law Enforcement Priority Policy and ensure timely implementation of Measure Z by:

- a. advising the City Council of concerns, issues regarding the lowest law enforcement policy for private adult cannabis offenses;
- b. making recommendations to the City Council regarding the policy implementation; and
- c. reporting annually to the City Council on the implementation of Measure Z.

**ARTICLE III
FUNCTIONS**

As provided by City Council Ordinance No. 12694 C.M.S., which established the procedures of the Committee and provides the terms and responsibilities of the Committee members, the Committee will advise the City Council of concerns and issues regarding the lowest law enforcement policy for private adult cannabis offenses, make recommendations to the City Council regarding the policy implementation, and report annually to the City Council on the implementation of Measure Z.

The Measure Z Committee will work with other boards, commissions and City staff, as appropriate to encourage coordination of City efforts. With respect to Measure Z related functions or responsibilities of another board, commission or department of the City, the Measure Z Committee will provide assistance and advice to such board, commission or department upon request.

**ARTICLE IV
MEMBERSHIP**

Measure Z created an eleven member, advisory Community Oversight Committee that includes one community member appointed by each City Councilmember, one community member appointed by the Mayor, one representative appointed by the City Auditor, and one representative appointed by the City Administrator. Committee members must reside in the City of Oakland at the time of appointment and throughout the term and should have the appropriate skills and expertise to carry out the duties of the Committee.

Each member shall be appointed to a term of two (2) years, with each term commencing on the first day of August of odd numbered years, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms. If a member has not been reappointed or replaced upon the expiration of his or her appointed term, that member may remain in hold-over status for up to one (1) year, but may be replaced by the appointing authority at any time during the hold-over period.

A vacancy on the Measure Z Committee will exist whenever a member dies, resigns, ceases to reside in Oakland, or is removed.

Committee members serve at the pleasure of their appointing authority.

**ARTICLE V
OFFICERS**

The members shall elect a chairperson and a vice chairperson who shall serve for a two (2) year term. Upon conclusion of their two (2) year term of office, office holders shall be barred from standing for the same office for the succeeding four (4) years, unless two-thirds (2/3) of the total Measure Z Committee's membership (8 affirmative votes) vote to override the term limit.

**ARTICLE VI
MEETINGS**

The Measure Z Committee shall meet in City Hall, at an established date and time suitable for its purpose. Six members of the Committee shall constitute a quorum for the purpose of conducting meetings. Other meetings scheduled for a time or place different from that established for regular meetings shall be designated special meetings. All meetings shall be held in accordance with the Ralph M. Brown Act (Government Code

Adopted: March 16, 2006

section 54950 et seq.) and the City of Oakland Sunshine Ordinance (Oakland Municipal Code Chapter 2.20.)

**ARTICLE VII
RULES AND PROCEDURES**

The Measure Z Committee, in consultation with the City Administrator, shall establish rules and procedures for the conduct of its business by a majority vote of the members present; provided that a quorum for the conduct of business is six members. Voting shall be required for the adoption of any motion or resolution. The business of the Committee shall be conducted, in so far as it is practicable, in accordance with parliamentary rules contained in *Robert's Rules of Order Newly Revised*, as it may be amended from time to time, except as modified by these bylaws and in compliance with the state open meeting laws (Brown Act, Government Code section 54590 et seq.) and local sunshine ordinance (Oakland Municipal Code Chapter 2.20).

**ARTICLE VIII
REPORTS AND RECOMMENDATIONS**

The Measure Z Committee shall make reports, findings and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council.

However, recommendations from the Measure Z Committee shall be carefully and fully considered by the City Administrator before they are presented to the Council. If the City Administrator rejects its recommendation(s), the Measure Z Committee may submit the recommendation(s) to the City Council for consideration, as appropriate.

**ARTICLE IX
STAFF**

The City Administrator, or a designee, may provide the Measure Z Committee with staff assistance and a representative of the City Attorney's Office will attend committee meetings as appropriate.

Adopted: March 16, 2006

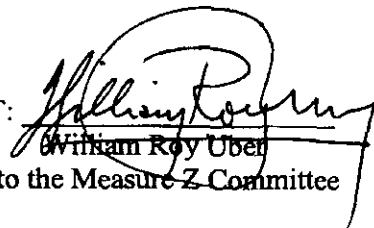
**ARTICLE X
COMMITTEES**

The Measure Z Committee may not create any Standing Committees for the purpose of delegating any of the Committee's decision-making or duties, but may form ad hoc committees as needed to examine study, review matters/issues and present their analyses, proposals, findings, recommendations to the Committee for its consideration and action.

**ARTICLE XI
AMENDMENTS OF BYLAWS**

Bylaws may be amended, or new Bylaws adopted, at any regularly scheduled meeting of the Measure Z Committee provided that notice of the proposed action shall have been sent to each member of the Measure Z Committee at least fifteen (15) days before said meeting. A two-thirds (2/3) vote of the total Measure Z Committee's membership (8 affirmative votes) shall be required to amend and/or adopt new Bylaws. The Measure Z Committee may amend without permission of the City Council, Office of the City Administrator, or Oakland Police Department only those provisions of these Bylaws that do not give the Committee powers that are reserved for the City Council/City of Oakland, Office of the City Administrator, or Oakland Police Department.

ATTEST:



William Roy Uber
Staff to the Measure Z Committee

September 21, 2006
City of Oakland
Measure Z Committee
Ad Hoc Committee on "private adult cannabis offenses"
Report and Recommendations

The Measure Z ad hoc committee on "private adult cannabis offenses" recommends that the Measure Z committee send the following recommendations to the City Council, the Mayor, the Mayor-elect, and to the relevant agency heads (including OCA, CAO, OPD, CEDA):

Measure Z Committee
Report and Recommendations
on "private adult cannabis offenses"

The Measure Z committee makes the following recommendations regarding implementation of the "private adult cannabis offenses as the lowest police priority" policy for Oakland. The recommendations are meant to serve as guidance for staff in developing both an OPD General Order (GO) and appropriate land use regulations.

The recommendations are in response to the City Council's initial definition of "private" in this context as being restricted to residences. The Measure Z committee has received complaints from citizens that sales should not be permitted in private residences, but rather should be confined to private clubs outside of residential areas. Thus, the ad hoc committee has take a use-based approach to defining "private" in three different contexts: use, sales, and cultivation.

1) With regard to private adult use (consumption and possession, not sales):

To regulate public marijuana use, Oakland should follow the scheme of regulation of alcoholic beverages in public codified in Oakland Municipal Code 9.08.180 (A), as follows.

No person shall consume marijuana: (1) on any public street, sidewalk, alley, highway, city park, city recreation area, city open space or playground; or (2) within fifty (50) feet of any public street, sidewalk, alley, highway, city park, city recreation area, city open space, or playground while on private property open to public view without the express

permission of the owner, his or her agent, or the person in lawful possession thereof.

Notwithstanding other sections of the OMC (e.g., OMC 1.28.010), violations of this section are not to be considered or prosecuted as misdemeanors nor shall they be subject to any administrative penalty in excess of \$100. Penalties for violation of this section are not to exceed those prescribed by state law.

2) With regard to private adult sales:

To regulate sales, and to prohibit nuisance associated with sales in residential neighborhoods, and to preserve the integrity of Oakland's specially permitted Medical Marijuana Dispensaries (MMDs), Oakland should establish a land use regulation scheme to allow for private membership clubs (with the option of onsite consumption if ventilation is adequate), not associated with any MMDs, outside of, and reasonably buffered from, residential neighborhoods and schools.

3) With regard to private adult cultivation:

To regulate cultivation and to distinguish between cultivation for personal and for commercial purposes, and to prohibit nuisance associated with cultivation, and to preserve the integrity of the General Plan and the Planning Code, Oakland should regulate private adult cultivation as follows.

A. Allow personal cultivation of not more than a 10' by 10' canopy, indoors or outdoors, in residential neighborhoods provided there is no associated nuisance in fact, unless prohibited by the terms of the lease, if any.

B. Allow indoor or outdoor commercial cultivation in conformance with the specific provisions of the General Plan and the Planning Code regarding any commercial agricultural use and subject to permitting. Non-conforming commercial cultivation is not protected under Measure Z.

Revenue & Taxes from Oakland's Cannabis Economy
Report to Measure Z Oversight Committee
By Dale Gieringer & Richard Lee - Nov. 6th, 2006

Revenues from Medical Cannabis Dispensaries (MCDs). Table 1 shows the gross revenues reported by Oakland's medical cannabis dispensaries to the city's business tax office for the past three fiscal years.

Table 1 – Gross revenues reported by Oakland MCDs

Fiscal Year	Revenues	Business Tax (0.12%)	Est. Sales Tax @ 8.75%
2004	\$26,161,538.78	\$31,393	\$2,289,134
2005	\$16,422,722.05	19,707	1,436,938
2006	\$ 5,461,824.14	6,533	477,910

The city has experienced a dramatic dropoff in revenues and taxes from MCDs since FY 2004. This can be attributed to the closure of most of the MCDs under the city's dispensary regulation ordinance, which reduced their number from seven to four in the summer of 2004 (i.e., at the beginning of FY 2005). A more dramatic dropoff occurred in FY 2006, when licensing problems forced the closure of two more MCDs, including the largest one, Compassionate Caregivers. Since the end of FY 2006, the city has licensed another two, bringing the total back to four.

The city has been collecting business tax from MCDs at the rate of 1.2 mils on gross revenues. Most, but not all, MCDs are currently paying sales tax, as the taxability of medical marijuana is still in dispute before the Board of Equalization. The amount of sales tax from cannabis business is estimated in Table 1 by assuming that revenues are equal to sales and applying the 8.75% sales tax rate. Although actual tax returns from Oakland's MCD's are not available, more detailed figures have been released concerning an MCD in Modesto that was recently raided by the DEA, California Healthcare Collective, Inc. At the time of the raid, CHC was paying \$93,000 per quarter in federal IRS taxes, \$25,000 per quarter in state payroll taxes, and \$50-60,000 per month in sales taxes. This amounts to annual sales tax payments of over \$600,000 per year, more than that collected in FY 2006 from Oakland MCDs, even though Oakland is twice as populous.

While the revenues in Table 1 are indicative of the general scale of medical cannabis business in Oakland, they should not be interpreted too literally. First, a substantial portion of revenues were not reported due to accounting difficulties posed by the continuing illegality of marijuana commerce under federal law. In particular, cultivation remains in the underground cash economy. Growers rarely have business licenses or file taxes on their full income, and they aren't issued IRS 1099 forms reporting their sales. Hence wholesale cannabis commerce is by and large not accurately accounted for. While accounting standards have been improving since passage of the MCD ordinance, they are still far from satisfactory.

Secondly, the reported revenues reflect a substantial amount of out-of-Oakland business due to the fact that Compassionate Caregivers, while headquartered in Oakland,

operated six outlets elsewhere in the state during FY 2004; five of these were closed in May- June, 2005, but a San Francisco outlet continued to operate even after CC's Oakland facility was closed in Sept. 2005. Thus revenues reported by CC reflect a sizable amount of out-of-Oakland sales.

Potential Size of Oakland's Medical Cannabis Market

While the accuracy of the revenue figures in Table 1 is difficult to gauge, it's useful to compare them to the estimated size of the medical cannabis market in Oakland. This can be deduced by estimating (1) the number of MCD customers in Oakland and (2) the average marijuana consumption per customer.

(1) Oakland customer base: Current estimates of the number of medical cannabis patients in California range from 150,000 to 350,000, based on data from patient registries and doctors specializing in cannabis medicine [1]. This corresponds to 1,750 – 4,100 patients scaled to Oakland's population. This is consistent with figures from the Oakland Cannabis Buyers' Cooperative ID card program, which reports about 3,400 total Oakland registrants, of whom about 1,700 are currently active. Their count is incomplete because not all Oakland patients have OCBC cards.

The actual customer base for Oakland's MCDs extends beyond the city limits. Oakland is a center for patients from Alameda and Contra Costa counties, which have a combined population of over two million. MCDs report that at least 75% of their customers come from outside Oakland proper. A rough estimate of the effective customer base from greater Oakland might therefore be four times that from the city proper, i.e. around 7,000 – 16,000 patients.

(2) Average medical cannabis consumption and expenditures. Based on interviews with MCDs, patients and doctors, mean cannabis consumption ranges around one pound per patient per year, corresponding to one gram or one or two cigarettes per day. Typical retail prices are about \$45 per one-eighth ounce = \$12.50/gram = \$5,800/pound.

At one pound per patient, it follows that Oakland patients consume about \$10 - \$23 million of cannabis per year. Consumption by the greater Oakland customer base would be four times higher, around \$40 – \$92 million. Of course, these customers do not necessarily buy all or even most of their medicine from Oakland facilities. Still, these figures provide a rough gauge of the potential of Oakland's medical cannabis market. The total California medical cannabis market can be estimated at \$870 million - \$2 billion. If sold in the retail market, sales tax revenues would come to \$3.5 - \$8 million in greater Oakland, and \$70 - \$160 million in the entire state,

(3) Non-medical cannabis. The medical market is only a fraction of the total cannabis market. Some 1.6 million Californians have smoked marijuana within the past 30 days, according to the most recent survey from the National Household Drug Abuse. On average, their consumption is less than for the medical population, many being only occasional users. Adjusting for this fact, total consumption of marijuana in California

can be reasonably estimated at around 1 million pounds per year, or \$5.8 billion (see appendix). Scaled to Oakland's population, this is \$68 million; including the wider customer base from outside the city, the total is \$272 million. Corresponding sales tax revenues would be \$6 - \$24 million for Oakland, or \$460 million for the whole state.

Employment: MCDs in Oakland typically employ around 15 to 20 persons. Before being closed, Compassionate Caregivers reported some 100 employees on its payroll.

Oakland also hosts a number of spin-off industries catering to the cannabis market: edible manufacturers (bakers and candymakers); grow stores; vaporizers and other paraphernalia; medical cannabis clinics; ID card validation (OCBC), and a gift shop and newspaper. Employment in these businesses probably amounts to several score jobs.

This does not count employment in cultivation. We estimate that it requires about 20 persons to grow 100 pounds/month, enough to supply 1,200 patients. It follows that 120 - 260 persons are currently engaged in supplying the greater Oakland patient base. Of course, not all of these jobs are local, much of Oakland's supply being imported from elsewhere in the state.

Conclusions:

- (1) The medical cannabis business has the potential to contribute tens of millions of dollars per year to the Oakland economy. Reported revenues from MCDs have been as high as \$26 million and could potentially range as high as \$62 million.
- (2) Revenues reported by Oakland's MCDs declined 80% to \$5 million in the wake of enactment of the ordinance limiting their operations.
- (3) Sales tax payments by Oakland MCD's could potentially range as high as \$5 million, but were less than \$500,000 in FY 2006.
- (4) The non-medical "adult use" market could yield three to six times as much, ranging up to \$272 million in revenues and \$24 million in sales taxes for Oakland.
- (5) A substantial portion of the cannabis economy remains off the books. This is especially true of the cultivation industry, which is virtually entirely underground in the cash economy.
- (6) Oakland's MCD's currently provide jobs for nearly 100 workers, half as many as before the MCD ordinance. Hundreds more are engaged in off-the-books underground cultivation operations to supply the MCDs.

SOURCES

[1] Estimate of 150,000 by Dale Gieringer, based on extrapolation from Oregon's patient registry (2005) <http://canorml.org/prop/cbcsurvey2.html>. Estimate of 350,000 by Fred Gardner extrapolated from survey of California cannabis specialists with 146,000 patients. "Medical Marijuana in California, 1996-2006," by Dr. Tod Mikuriya, Jeffrey Hergenrather, Philip A. Denney, Frank H. Lucido, Marian Fry, David Bearman, Tom O'Connell, Robert Sullivan, William Eidelman, Helen Nunberg, and William Courtney: in *O'Shaughnessy's*, Autumn 2006 (forthcoming). See "10 Years of Legalized Medical Pot in California: Dr. Mikuriya's Observations," *Counterpunch*, Nov. 4th 2006, <http://counterpunch.org/gardner11042006.html>.

Appendix: Marijuana Consumption in California

Over 1.6 million Californians have smoked marijuana within the past 30 days, according to the most recent National Household Survey on Drug Abuse [1], which found 5.6% of all Americans over age 12 are current marijuana users. Insofar as these figures are based on self-reporting of illicit activity, they are undoubtedly on the low side.

According to the survey, one-third of this population, or 530,000 Californians, are daily users.

The bulk of consumption is accounted for by "regular" users, who consume marijuana at least several times per week. Included is a small minority of very heavy smokers (10 or more joints per day), who push the average consumption figures upwards. According to a British survey by the Independent Drug Monitoring Unit [2], "regular" users average 2 oz of cannabis per month or about 2 grams per day (a gram yields one or two joints). The population of regular users is somewhat larger than that of daily users. Assuming 600,000 - 700,000 "regular users" in California averaging 2 grams per day, consumption by this group accounts for 1.2 to 1.4 million grams per day. Assuming the remaining 1 million monthly users average one joint every 10 days, this adds another 100,000 grams per day. Total marijuana consumption by Californians may therefore be reasonably estimated at 1.3 to 1.5 million grams per day, or about 1 to 1.2 million pounds per year.

Sources:

[1] Office of Applied Statistics, SAMHSA (DHHS): National Household Survey on Drug Abuse: <http://www.oas.samhsa.gov/nhsda.htm>

[2] M. Atha and S. Blanchard, "Self-reported drug consumption patterns and attitudes towards drugs among 1333 regular cannabis users," Published by the Independent Drug Monitoring Unit 1997. Cited in Leslie Iversen, *The Science of Marijuana*, Oxford Press. 2000, pp. 217-9.