

10-15-2010

A City Club Report on Ballot Measure 74

City Club of Portland (Portland, Or.)

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Recommended Citation

City Club of Portland (Portland, Or.), "A City Club Report on Ballot Measure 74" (2010). *City Club of Portland*. 574.

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A City Club Report on Ballot Measure 74



City Club of Portland
Good citizens are the riches of a city

Supplement to the City Club of Portland Bulletin
Vol. 93, No. 18; October 15, 2010

STATE OF OREGON MEASURE 74:

Establishes medical marijuana supply system and assistance and research programs; allows limited selling of marijuana

Measure 74 creates a medical marijuana distribution system, based on licensed producers and nonprofit dispensaries that would sell medical marijuana to patients registered with Oregon's existing medical marijuana program. The new dispensary system would supplement, not replace, the current system; a patient would still be allowed to obtain medical marijuana directly by growing it or buying it from a patient-designated small grower. The measure contains initial limits for how many marijuana plants and how much usable marijuana cardholders may possess at any one time, but does not regulate total production within the state. Additionally, the measure allows the Department of Human Services (DHS) to change these limits in the rulemaking process.

Twelve years after Oregon voters approved the use of marijuana for medical purposes, it remains a controversial issue, often raising support or opposition based on its connection to attitudes about marijuana legalization. This report does not take a position on legalization of marijuana for recreational or other non-medical use. Rather, it takes the proposed system at face value and looks at the possible benefits and harms of the measure within the context that voters have authorized.

The primary professed benefit of Measure 74 is to improve patient access to medical marijuana, including access for low-income cardholders. Although some patients would benefit from the new system, your committee found that Measure 74 is too broadly written, leaving critical regulatory details to be determined by DHS in the rulemaking process or for other governmental authorities to address. Given the difficulties that weak regulations have caused in some other states with dispensaries, your committee is troubled by the measure's lack of regulatory clarity, which increases the likelihood of unintended and negative consequences. Specific areas of concern include: how to avoid overproduction and leakage into the illegal market, how to allocate regulatory authority between state and local jurisdictions, how local law enforcement agencies would recover their costs for enforcement, and how to ensure equal geographic access for patients across the state. The underfunding of enforcement could also lead to "de facto" legalization of marijuana without giving voters the chance for an open debate about legalization itself or an opportunity to create safeguards and allocate funding to mitigate any potential negative community impacts.

Your committee recommends a "NO" vote on Measure 74.

RECOMMENDATION ADOPTED

City Club membership will vote on this report on Friday, October 15, 2010. Until the membership vote, City Club of Portland does not have an official position on this report. The outcome of this vote will be reported in the City Club Bulletin dated October 29, 2010 and online at www.pdxcityclub.org.

INTRODUCTION

Ballot Measure 74 will appear on the ballot as follows:

ESTABLISHES MEDICAL MARIJUANA SUPPLY SYSTEM AND ASSISTANCE AND RESEARCH PROGRAMS; ALLOWS LIMITED SELLING OF MARIJUANA

RESULT OF "YES" VOTE: "Yes" vote establishes supply system, low income assistance program for medical marijuana cardholders; establishes research program; grants limited state regulation authority; allows limited marijuana sales.

RESULT OF "NO" VOTE: "No" vote retains current law without: supply or assistance programs for medical marijuana cardholders; or authorization for state organized scientific program; or medical marijuana sales.

SUMMARY: Current law allows specified individuals to become registered growers of medical marijuana by meeting criteria; does not allow marijuana sales or state assistance to cardholders in obtaining marijuana; limits growers to six mature plants and 24 ounces of usable marijuana for each cardholder; limits certain growers to growing for four cardholders; limits growers' reimbursements. Measure creates medical marijuana supply system composed of licensed dispensaries and producers. Establishes licensing guidelines. Producers and dispensaries can possess 24 plants and 96 ounces of marijuana. Allows limited sales (by expanding cost categories currently not reimbursable). Exempts dispensaries, dispensary employees, and producers from most marijuana criminal statutes. Establishes low income cardholders' assistance program. Allows state to conduct or fund research of cardholders' marijuana use. Retains grow registration system. Other provisions.

Estimate of Financial Impact

The measure will require estimated state expenditures between \$400,000 and \$600,000 each year beginning in 2012. These costs are to be paid only from program fees required by the measure. The exact amount by which the measure will increase state revenues cannot be determined. Potential additional state revenue could range from a minimum of \$400,000 to a maximum of between \$3 million and \$20 million in the first year. The amount of revenue will be affected by the number of dispensaries, number of participants, pricing, and costs of production. The measure has no direct effect on local government spending or revenues.

(The caption, question and summary were prepared by the attorney general and certified by the secretary of state.)

City Club's Board of Governors chartered this study to analyze Measure 74 and assist Club members and the public to better understand the implications of the measure and to recommend a "yes" or a "no" vote. The members of your committee were screened for conflicts of interest and public positions on the subject of the measure. The study was conducted during August and September 2010. Committee members interviewed proponents and opponents of the measure and reviewed relevant articles, studies and other materials.

BACKGROUND

EXPLANATION OF MEASURE 74

Ballot Measure 74 is a citizen initiative that would allow for the establishment of nonprofit dispensaries that would sell medical marijuana to registered cardholders and registered caregivers. The measure aims to increase the availability of medical marijuana to registered users by allowing them the option to purchase the medication from a dispensary, rather than grow it themselves or obtain it directly from a grower, both of which may present hardships for some patients. Proponents and opponents of the measure agree that many patients experience difficulty obtaining legal marijuana. Illness, inability to travel to his or her designated grower, or crop failure may hinder access. The specific numbers of patients experiencing barriers to access are not available because Oregon's Department of Human Services (DHS) does not track patients' ability to obtain marijuana.

Table 1: Oregon Medical Marijuana Program Patients by Condition*

Condition	Number of Patients with Condition*
Severe pain	32,614
Persistent muscle spasms, including but not limited to those caused by multiple sclerosis	8,095
Nausea	5,160
Cancer	1,420
Seizures, including but not limited to epilepsy	962
Cachexia	781
HIV+/AIDS	589
Glaucoma	534
Agitation related to Alzheimer's disease	<50

Source: DHS, July 1, 2010

*A patient may have more than one condition.

In 1998, Oregonians legalized marijuana for medical use with the Oregon Medical Marijuana Act (OMMA), which was approved by nearly 55 percent of voters. The law allows marijuana use for some medical conditions with authorization by an attending physician and registration with the state (see Table 1). The Oregon Medical Marijuana

Program (OMMP) is administered by DHS. As of July 1, 2010, 36,380 patients and 18,676 registered caregivers had OMMP registry cards. There were 1,584 doctors with current medical marijuana patients under their care. Fourteen states (see Table 2) allow the use of medical marijuana. If Measure 74 passes, Oregon would be the seventh state to license dispensaries.

STATE AND FEDERAL MARIJUANA LAWS

California was the first state to legalize marijuana for medical use in 1996. Your committee reviewed the experiences other states have had with medical marijuana dispensaries and found that more recently passed dispensary laws include far more regulation than laws enacted in the first few years after 1996.¹ For example, California, which passed its law allowing nonprofit dispensaries (called "collectives") in 2004, has an unknown number of dispensaries, estimated to be in the thousands, and a loosely regulated, city-by-city system that Scott Kirkland, recently retired Police Chief of El Cerrito, said was "impossible" to regulate. By contrast, New Mexico, which in 2007 passed its medical marijuana law that allowed dispensaries, is heavily regulated; as of August 2010, only five dispensaries had been approved.

Table 2: State Medical Marijuana Laws

State	Year Medical Marijuana Adopted	Dispensaries
California	1996	Yes
Alaska	1998	No
Oregon	1998	No
Washington	1998	Yes
Maine	1999	Yes
Colorado	2000	Yes
Hawaii	2000	No
Nevada	2000	No
Montana	2004	No
Rhode Island	2006	Yes
New Mexico	2007	Yes
Vermont	2007	No
Michigan	2008	No
New Jersey	2010	No
District of Columbia	2010	No

Source: ProCon.org

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The United States government does not recognize any legitimate medical use of marijuana. Marijuana is classified as a Schedule I controlled substance. As such, possession and sales of marijuana are punishable by up to five years in prison and a fine up to \$250,000. In 2005, the U.S. Supreme Court ruled that the federal government has the right to regulate and criminalize marijuana, even for medical use, meaning that the Controlled Substances Act preempts state laws related to medi-

cal marijuana. Although the use of medical marijuana is prohibited, a 2002 federal court ruling, *Conant v. Walters*, protects prescribing physicians from prosecution. The Obama administration has expressed no interest in enforcing current federal marijuana laws against medical use in the states; however, there is no protection against enforcement of federal marijuana laws by future administrations.

Key Terms & Regulatory Limits

Cardholder: Patient who holds a registry identification card issued by DHS, which allows engaging in the medical use of marijuana.

Designated primary caregiver or “caregiver”: An individual who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person’s application for a registry identification card or in other written notification to DHS. At any time, the patient, primary caregiver and grower may possess in combination up to 24 ounces of usable medical marijuana and up to six mature plants for that patient.

Dispensary: A nonprofit entity, including the directors, employees or agents of such an entity, licensed to possess, produce, deliver, transport, supply and dispense useable medical marijuana and medical marijuana plants to registry identification cardholders and to other dispensaries. Initially, the measure would allow dispensaries to possess a total of 24 mature marijuana plants and 96 ounces of usable marijuana at any one time; DHS may change the initial limit.

Grower: A person responsible for a marijuana grow site. A grower may produce and possess marijuana for up to four patients or caregivers.

Marijuana grow site: A location registered with the state where patients, caregivers or growers may produce marijuana for cardholders.

Patient: A person with a debilitating medical condition (identified in Table 1) who has received authorization from an attending physician and registered with the state to use medical marijuana. At any time, the patient, primary caregiver and grower may possess in combination up to 24 ounces of usable medical marijuana and up to six mature plants for that patient.

Producer: A person or entity licensed to produce medical marijuana and medical marijuana plants for dispensaries. Initially, the measure would allow producers to possess a total of 24 mature marijuana plants and 96 ounces of usable marijuana at any one time; DHS may change the initial limit.

Registry identification card: A document issued by DHS that identifies a person authorized to engage in the medical use of marijuana. Currently, patients, caregivers and growers hold registry identification cards. Under Measure 74, producers, dispensaries and their directors, agents and employees, would hold registry identification cards.

ARGUMENTS PRO AND CON

ARGUMENTS ADVANCED IN FAVOR OF MEASURE 74

Proponents of Measure 74 made the following arguments in support of the measure:

- Provides consistent, regulated access to legal medical marijuana for registered cardholders and their caregivers.
- Improves quality control because medical marijuana would be subject to regulation, which could address potency labeling; reduce contaminants such as pesticides and molds; subject workers to criminal background checks; and impose penalties for violations.
- Assists low-income and needy cardholders in obtaining medical marijuana.
- Formalizes the currently ad hoc system by adding oversight and regulation. Regulates who can participate in the industry; diminishes illegal activity by excluding recent violent/theft felons and minors.
- Funds scientific research on the efficacy and safety of medical marijuana by allowing program fees to be used.
- Increases state revenues from licensing fees and creates jobs. Provides economic opportunities for marijuana and related food and specialty products.
- Moves the medical marijuana industry from the illegal underground economy to the legal, regulated economy.

ARGUMENTS ADVANCED AGAINST MEASURE 74

Opponents of Measure 74 made the following arguments in opposition to the measure:

- Leads to higher rates of illegal marijuana use. The measure will not stop the underground market for marijuana and may increase it.
- Increases crime related to dispensaries including violent crimes and illegal marijuana sales.
- Provides no funds for local law enforcement agencies to enforce dispensary laws, resulting in virtual legalization; does not provide any program revenues to mitigate possible social impacts to communities.
- Ballot measure language is ambiguous and contradictory. It does not provide adequate language for legal structure, designation of authority for program operation, or enforcement.
- Marijuana dispensaries are illegal under federal laws, which classify marijuana as a Schedule I controlled substance and carry penalties for possession and sale of marijuana.
- May result in higher prices for patients unable to grow their own medical marijuana by adding administrative overhead costs and allowing profits for marijuana producers.

DISCUSSION

Your committee received conflicting testimony and little hard evidence on the issue of medical marijuana dispensaries. We had some difficulty obtaining information from state officials who did not want to be perceived as taking a position on Measure 74. For instance, the Oregon Attorney General's Office declined to comment. However, we obtained information from petitioners, local law enforcement officials, drug experts, treatment and addiction specialists, and representatives of advocacy organizations, both for and against the measure. Additionally, we reviewed newspaper articles, journal articles, books and policy papers on medical marijuana and dispensaries. The information and resulting issues we found fell into broad categories, including patient experience, legal and regulatory issues, impact on communities and public health, and potential economic impacts. Ultimately, ambiguities in the language of the measure itself, as well as the lack of a demonstrated need, weighed heavily on our recommendation.



PATIENT EXPERIENCE

Medical marijuana alleviates suffering for many patients. It often substitutes for other pain medications, such as opiates, that are more physically addictive and have more dangerous side effects. However, due to potential legal ramifications and inconsistencies in dosage and quality, many doctors consider marijuana a drug of last resort.

Researchers estimate that marijuana contains more than 400 different chemicals, the most well-known of which is tetrahydrocannabinol, or THC, the psychoactive component of marijuana. Other cannabinoids (CBDs) in marijuana may turn out to be the most helpful, as promising

new research focuses on the human cannabinoid system and how different marijuana components affect it. Medical marijuana patients who do not want to smoke may seek relief by using marijuana in inhalers, salves and edibles. Additionally, the United States Food and Drug Administration has approved Marinol, a prescription pain drug composed of 100 percent THC, though some studies indicate it is not always as effective as the complete plant. Similarly, some pharmaceutical companies have developed prescription drugs created from CBDs, such as Sativex, a mouth spray for multiple sclerosis patients, not yet available in the United States.

In Oregon, DHS does not survey patient experience within the OMMP. As such, your committee could not obtain specific and reliable quantitative information about how well the program is working for patients and how extensive the need is for this measure. The points below reflect the arguments by proponents and opponents of the measure. Patients' concerns fall into three general categories: accessibility of medical marijuana; its cost; and its quality, including consistency, efficacy, safety and product choice.

It is unclear how many OMMP patients face difficulties accessing medical marijuana. Under the current system, patients must grow their own medical marijuana or designate a caregiver to provide it for them at cost. Undoubtedly some patients cannot grow their own, due to logistical, physical, or skills-related barriers. Others are perhaps unable to find qualified growers. Proponents suggest that the underground market is the only resort for these patients. However, because DHS does not track patients' ability to access medical marijuana, both proponents and opponents can only speculate or employ anecdotal evidence to illustrate how widespread this problem is. Proponents often place the number in the "many thousands" or estimate that "about half" of the current patients cannot access medical marijuana.² While opponents have not prominently disputed such figures, it is not currently possible to verify the figures provided by proponents. DHS does track actual complaints, recording only 39 in 2009. Twenty-one of these were from patients and were primarily concerned with caregivers or growers who did not deliver the marijuana to the patient.³

Access to medical marijuana would likely improve for some medical marijuana patients, but it is unclear how many would use dispensaries. Measure 74 requires DHS to create rules regarding permis-

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sible locations for dispensaries. It does not state whether local jurisdictions may regulate, tax or ban dispensaries. Therefore, access may not improve for some patients. However, patients would still be able to use the current system, which allows them to grow their own marijuana or designate a producer.

The cost of medical marijuana may be higher at dispensaries.

A prominent supporter of medical marijuana, the Stormy Ray Cardholders' Foundation, notably opposed Measure 74, believing it will harm the ability of medical marijuana patients to access marijuana in a cost-effective way. Patients who grow marijuana themselves or through a friend in a home garden are currently estimated to incur costs of about \$40-60 per ounce.⁴ The Stormy Ray Foundation has published materials, provided to your committee, opposing Measure 74, in part, because of fears that it would increase the price due to dispensaries' overhead costs and surcharges and greater control in the hands of profit-minded producers.⁵

The low-income provisions of the bill may counteract potential cost increases for some patients.

Thirty-nine percent of current OMMP patients qualify as "low income," in that OMMP has provided them a discounted medical marijuana card. Because DHS does not keep statistics on access and availability, it is nearly impossible to determine how many patients are currently unable to obtain medical marijuana because of cost. Some opponents of Measure 74 have suggested that there would not be enough funding from program fees to supply medical marijuana for all the low-income patients that would be eligible. Your committee could not verify this claim.

Dispensaries would likely provide a safer, higher quality and greater variety of medical marijuana.

Proponents of Measure 74 argue that a state-regulated, market-driven marijuana dispensary system would increase the safety and quality of available marijuana. They claim that marijuana would be free of, or labeled for, pesticides, molds and other contaminants. If Oregon dispensaries are similar to some of those which have opened in California, such as Harborside in Oakland, patients may benefit from considerable choice as to potency, quality, cost and variety. Patients may be able to acquire medical marijuana in different forms, includ-

ing salves, lotions, tinctures and edibles. However, the Measure does not require dispensaries to stock any particular number of types, potencies or varieties of marijuana.

▶ Based on the testimony your committee received, it is unclear whether a significant access problem actually exists and whether Measure 74 would resolve OMMP problems relating to access, cost and quality.

"...[I]t is unclear whether a significant access problem actually exists and whether Measure 74 would resolve OMMP problems relating to access, cost and quality."

LEGAL AND REGULATORY ISSUES

Measure 74 has significant consequences for a broad array of public issues vital for Oregon, including crime, public health, the economy and federalism. The Measure purports to expand opportunities for the production and dispensing of a medicinal drug that is regarded by the federal government as illegal for any purpose. The illegal use and related law enforcement efforts connected to marijuana constitute an important national issue, involving billions of dollars per year and hundreds of thousands of lives disrupted by substance abuse, crime and incarceration. Any law or measure touching upon such enormous and seemingly insoluble policy problems must be comprehensive and well crafted. Measure 74, however, fails to address many of the most serious foreseeable problems that might arise. Specifically:

Measure 74 does not provide adequate safeguards for prohibiting persons with criminal intent from participating in the new marijuana supply system. The Measure states that so long as an applicant pays a small initial fee, has not recently been convicted of a violent or theft felony, and provides other basic information, the applicant shall be issued a producer or dispensary license. Section 3 (2) states that the provisions of this act "do not allow any selling of marijuana." Yet the Measure provides little or no guidance as to how DHS or any other agency should enforce such a provision. Further, the Measure authorizes dispensary employees to possess, produce, deliver, transport, supply and dispense medical marijuana. For a \$10 fee, the measure requires DHS to issue registry identification cards to dispensary employees, which authorizes those cardholders to possess medical marijuana. The Measure does not set limits on the number of employees a dispensary may hire, resulting in the possibility that any Oregon resident

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with a clear criminal background who wishes to possess marijuana legally could do so by becoming an employee of a dispensary.

Measure 74 is too vague and delegates too much authority to the rulemaking process.

The measure delegates to DHS almost exclusive authority for promulgating and implementing administrative rules, including the amount of marijuana that may be produced and possessed. The measure requires DHS to issue producer and dispensary licenses to qualified applicants without limit. However, it fails to specify what, if any, regulations might be established to control the volume of marijuana produced or the potential leakage of excess marijuana into the illegal market. As was noted by the Measure 74 Citizens' Initiative Review panel, proponents of the measure are saying "trust us" before rules are made."

Legalization subterfuge? Opponents have suggested that Measure 74 is intentionally drafted vaguely because marijuana activists wish to achieve a de facto legalization. We could not verify this claim. However, your committee believes that any such back-door effort to legalize marijuana, in contrast to open debate, would be unfair to voters.

Measure 74 fails to address jurisdictional issues.

While the Measure contains some provisions usually addressed by local zoning ordinances, such as the distance of dispensaries from schools, it does not provide for implementation or regulation of the Measure by cities or counties. It remains unclear whether cities or counties would have any jurisdiction over the application of this law at all, despite what appears to be strong local interest in its administration.

Loosening regulations is easier than tightening them. Your committee has investigated the recent experience with dispensaries in other states. We are particularly interested in the attempts of the early adopters, such as California and Colorado, to pull back and more tightly regulate after beginning with lenient regulation. We heard testimony that the cities in California that

began with the strictest regulations are having the fewest problems, and that other cities are now pushing for tighter controls — a fact that your committee considers some of the best evidence that dispensaries can come with social costs. Colorado, which has 100,000 marijuana dispensaries, passed two amendments to its law this year, SB10-109 and HB-1284, to allow greater local

control and to attempt to remove cartels from the industry. The new laws require a dispensary to grow 70 percent of the marijuana it sells; permit only doctors who are in good standing and allowed to prescribe other controlled medications to issue marijuana recommendations; forbid doctors to operate from a facility that also sells marijuana; and limit outside investments in dispensary businesses. We see that passing these changes was painful and

difficult, with lobbyists opposing tighter regulations and threatening expensive legal challenges. Your committee believes the more cautious approach being adopted in states like New Mexico and Rhode Island, where the number of dispensaries is initially being set very low, would be a safer approach for Oregon to follow, allowing easier enforcement and the ability to expand the program later, if necessary, rather than attempt to rein it in.

Measure 74's wording is ambiguous. A 2008 City Club research study entitled "Making the Initiative Work for Oregon" found that Oregon's initiative system "is on balance a negative for the state" because of the often

vague, conflicting and incomplete wording in citizen ballot measures. The Club's report concluded that "poorly drafted measures produce unintended consequences, such as higher than anticipated costs to taxpayers as well as litigation to resolve

ambiguities, inconsistencies and overlooked contingent circumstances." Your committee is mindful of that report and the dangers of unintended consequences of poorly drafted measures. Your committee finds Measure 74 to be too poorly drafted to recommend passage.

► It is largely because of the above regulatory issues and findings that your committee is recommending a no vote on this measure.

"...[Measure 74] fails to specify what, if any, regulations might be established to control the volume of marijuana produced or the potential leakage of excess marijuana into the illegal market."

"Your committee finds Measure 74 to be too poorly drafted to recommend passage."

**POTENTIAL IMPACT:
CRIME AND COMMUNITY**

We could find no studies from other states researching the effects of dispensaries on communities where they are located. Since illegal marijuana use already exists, it is hard to quantify the impact of dispensaries. Some law enforcement officials believe that the “war on drugs” is a failure and that legalizing, taxing and regulating marijuana would be a better solution. However, most of the law enforcement officials with whom we spoke oppose this dispensary measure because they believe it would increase abuse of the OMMP. They noted that the current OMMP is heavily abused and that this measure would make the system impossible to enforce and would increase illegal activity. Opponents cannot prove this would occur, but they provided evidence of current abuse. Proponents accuse opponents of fear mongering, in part due to the lack of hard evidence that exists on the topic. Your committee reviewed numerous sources relied upon by both sides and found them to be inconsistent and incomplete. However, the primary arguments include the following:

“...[M]any large illegal grow operations found by law enforcement involve individuals who are OMMP cardholders or caregivers.”

Measure 74 may increase illegal use of marijuana.

Most of the witnesses your committee interviewed believe that implementation of a dispensary system would increase illegal use of marijuana in two areas. First, dispensaries and producers might sell marijuana that exceeds their statutorily limited quantities to the underground market, thus increasing the supply of illegal marijuana. Mark McDonnell of the Multnomah County District Attorney’s office noted that many large illegal grow operations found by law enforcement involve individuals who are OMMP cardholders or caregivers.⁶ In fact, about 31 percent of marijuana investigations in 2008 and 2009 in several Oregon counties involved OMMP cardholders possessing or growing more marijuana than statutorily permitted (in Polk County it was 85 percent) and that 18 percent of illegal grow sites reported to the Department of Justice involve OMMP cardholders.⁷ This data suggests that some growers may be compensating themselves through the illegal market. Second, individuals without legitimate medical needs may attempt to obtain registry cards to purchase medical marijuana from dispensaries, thus increasing illegal use of marijuana.⁸ Proponents stated that any system

involving regulated substances is subject to abuse.⁹ Additionally, treatment specialists in Oregon who are in favor of the measure argue that a more significant area of concern is the exponential increase in prescription drug abuse, which is caused by similar “leakage” into the underground market.¹⁰

Potential for increased marijuana use among

teens. National data shows a decade of decreased teen marijuana through 2008, including for states with medical marijuana laws, but with a slight uptick in 2009.¹¹ The lead researcher for the “Monitoring the Future” study, an annual study by the University of Michigan conducted since 1975, notes that “the upward trending of the past two or three years stands in stark contrast to the steady decline that preceded it for nearly a decade.”¹² Marijuana use among Oregon teens also decreased through 2008,

but less so than in other states.

The full results of Oregon’s annual Healthy Teen study have not been released for 2010, but preliminary results show an increase in marijuana use, especially among eleventh-grade girls.¹³ The Colorado County Sheriff’s Association argues that dispensaries raise availability and so-

cial acceptance, while lowering perceived risk and street prices, all of which are tied to increased use.¹⁴ A Colorado resident reported that the dispensaries within a few blocks of her house employ typical marketing strategies, which include offering “happy hour” specials and various “Strains of the Day.”¹⁵ Exposing youth to such messages could make marijuana seem safer and more acceptable. However, your committee is unable to state definitively whether teen use would increase or decrease with the passage of this measure.



Marijuana grow site in conformity with state law

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Dispensaries may increase crime. Measure 74 opponents argue that dispensaries have been accompanied by an increase in both violent and non-violent crimes. Witnesses cited increases in armed robbery, assault, murder and vandalism related to dispensaries, though it is unclear if a causal relationship exists.¹⁶ They attributed these increases to the money-making potential of selling marijuana on the underground market and large amounts of cash associated with trafficking. In California, decreases in state spending on public safety have made it difficult for law enforcement agencies to police the dispensary system effectively, which may also add to increased crime.

“...Measure 74 does not allow sufficient control over the dispensary system to address concerns about potential increases in illegal use, abuse of the system and increased crime.”

Dispensaries may increase other social problems. Increased production and increased availability of marijuana through the proposed dispensary system may lead to increased public health problems, including dependence, workplace safety problems and driving under the influence (DUI). Oregon law enforcement officials are particularly concerned about increased DUIs if this measure passes, which California has also experienced. Whereas an alcohol DUI can be verified easily by a breathalyzer, no similarly conclusive non-invasive tests exist to enable DUI marijuana convictions. Further, about ten percent of marijuana users, medical or recreational, will develop dependence.¹⁷ Though research shows that marijuana has few physical withdrawal symptoms, it is psychologically habituating. Your committee received testimony that admissions to drug treatment programs for marijuana use have increased in California since medical marijuana laws went into effect.¹⁸

Best practices could mitigate concerns. Proponents suggest that adopting best practice security measures would mitigate the risk of increased crime; they argue that dispensaries' security systems actually reduce nearby crime, although your committee found a lack of reliable evidence to support this argument. Additionally, maintaining strict oversight and quickly responding to regulatory violations can help prevent abuse and accompanying negative effects.¹⁹ However, while Measure 74 requires DHS to establish minimum requirements for dispensary security plans, it does not discuss best practices for security provisions, or the time frame, such as 30 or 60 days, for addressing regulatory violations. By contrast,

Washington State's medical marijuana law directs its Department of Health to consult medical and scientific literature, experts and the public, and to review the best practices of other states and report to its Legislature

on patients' access to an adequate, safe, consistent and secure source of medical marijuana.²⁰

▶ Ultimately, your committee finds that Measure 74 does not allow sufficient control over the dispensary system to address concerns about potential increases in illegal use, abuse of the system and increased crime.

POTENTIAL IMPACT: ECONOMIC

Proponents of Measure 74 assert that medical marijuana will be good for Oregon's economy by increasing jobs. Some states have bolstered state coffers through medical marijuana fees, but Measure 74 does not allow any program fees to be used by the General Fund. Your committee also found that indirect local costs may be a significant economic consequence.

Program revenues. DHS would administer the program through the collection of licensing fees and taxes. The measure sets initial licensing fees at \$2,000 per dispensary and \$1,000 per producer. Additionally, DHS would collect 10 percent of gross revenue from dispensaries and producers.²¹ The Oregon Department of Administrative Services estimates that fees will generate \$20.2 million in revenue in the first year rising to \$40 million in the fourth year. The measure specifies that "system revenues shall be used to fund" five specific things: system costs, registry costs, the scientific research program (which is optional), the low-income program and "other department programs." It is unclear what programs could be included. Also, the measure's language implies that only these items may be funded, in which case no revenues could go to the General Fund.

Producers, profits and prices. Currently, the OMMP forbids a grower from profiting. Cardholders can reimburse growers for supply costs and utilities necessary to grow marijuana, but not labor or time.²² Under Measure 74, producers would be for-profit businesses compensated for the "costs associated with the production of the medical marijuana and medical marijuana plants."²³

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A dispensary, which must be nonprofit, can be owned by or affiliated with a producer and vice versa.²⁴ Producers motivated by the ability to retain profits could establish affiliated dispensaries to sell marijuana and could retain profits as producers and not as dispensaries. DHS would have to decide how many producer licenses it would issue and what quantity of marijuana producers would be allowed to produce. These would be the two largest factors affecting the supply of marijuana — its market price and the profits to producers. State officials estimate that the patient's price per ounce at dispensaries would be \$113.50, dropping to \$100 per ounce after four years.²⁵ Patients using the current system pay \$40 to \$60 per ounce if they have marijuana grown at cost. This compares to the black market price of \$200 to \$500 per ounce, depending on quality, purity and local market conditions.²⁶

Low-income subsidy. The measure requires DHS to use revenue generated from dispensaries and producers to establish a program to assist low-income cardholders in obtaining marijuana.²⁷ The current system requires that cardholders never pay more than the cost of supplies and utilities for marijuana and cardholders can grow their own marijuana. Therefore, in order to provide further assistance to low-income cardholders, the program would either need to assist with the cost of supplies and utilities for growing marijuana, require that dispensaries reduce their prices for low-income cardholders, or assist low-income cardholders with paying standard dispensary prices, thereby providing an indirect subsidy to dispensaries and producers. It is unclear, however, if OMMP would have sufficient revenue to meet the needs of all low-income cardholders. Currently, 39 percent (14,040 patients) qualify as low-income.

A separate system for one drug. Your committee finds it odd that Oregon would be creating an entire distribution and subsidy system for one medication, simply because federal drug policy does not allow use of the normal health care and pharmacy systems to distribute marijuana. Were the federal government to reclassify marijuana a Schedule II drug, thus allowing pharmacies to provide it, Oregon would have invested unnecessarily in a separate dispensary system.

Effect on employment. Proponents of Measure 74 argue that its passage would lead to an additional 3,500 jobs in Oregon in related businesses. The Fiscal Impact Statement estimate assumed that 100 dispensaries would open the first year, rising to 250 after four years,

with seven producers per dispensary and an average of 6.5 employees each. These estimates would result in 4,500 jobs the first year rising to 11,375 after four years. Your committee could not obtain additional estimates on jobs resulting from related businesses.

Costs to state and local government. The measure requires that all program fees cover the costs of implementation and administration and that no revenue would be taken from or given to the state's General Fund. Measure 74 would require estimated DHS expenditures between \$400,000 and \$922,621 in the first year, rising to an estimated \$1.8 million in the fourth year.²⁸ Although the measure has no direct effect on local government spending, opponents argue that the measure carries high indirect costs to state and local governments as they attempt to enforce the law and address any increased crime, accidents, fires, workplace safety incidents or drug dependence associated with the existence of dispensaries.²⁹ The measure does not include any funds for local law enforcement agencies to enforce the provisions of the measure.³⁰



CONCLUSIONS

- Oregon medical marijuana registry cardholders should have safe, legal access to medical marijuana.
- Proposed nonprofit dispensaries may be a welcome relief for medical marijuana cardholders who have difficulty obtaining legal marijuana, especially if quality control and product choice increase.
- The language and provisions of Measure 74 are vague, inconsistent or silent about important aspects of administration, oversight, accountability and control, raising the serious possibility of negative and unintended outcomes.
- This measure may result in increased availability of marijuana in the non-medical, illegal market, due to the proliferation of producers.
- The fees provided by Measure 74, although substantial, are limited to very specific uses in support of the program. The measure does not provide additional funds for state and local law enforcement agencies, drug treatment or educational programs.
- Your committee finds Measure 74 too loosely drafted to recommend passage.

RECOMMENDATION

Your committee recommends a “NO” vote on Measure 74.

Respectfully submitted,

Craig Beebe
Jeremiah Centrella
Carol Ford
Alan Mela
Sonia Montalbano
Elia Popovich
Kurt Wehbring
Richard York
Shannon Grzybowski, lead writer
Joanne Kahn, chair

Ruth Radford, research adviser
Tony Iaccarino, research and policy director

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WITNESSES

Leland Berger, Attorney

Sandee Burbank, Executive Director, Mothers Against Misuse and Abuse

Richard Drandoff, Co-Founder and Executive Director, ChangePoint

Mimi Bushman, Director, Oregon Employer Drug-Free Initiative

Erik Fisher, Sergeant, Oregon State Police

Grant Higginson, Administrator, Office of Community Health & Health Planning, Oregon Health Authority

Katy King, Government Relations Manager, Public Health Division, Oregon Health Authority

Scott Kirkland, Former Police Chief, El Cerrito, California

Melvin Kohn, Director and State Health Officer, Public Health Division, Oregon Department of Human Services

Craig Litwin, Political Consultant, CannBe; Former Mayor, Sebastopol, California

Madeline Martinez, Executive Director, Oregon NORML

Brendan McCarthy, Government Affairs Attorney, Portland General Electric

Mark G. McDonnell, Senior Deputy District Attorney, Multnomah County

Mark Miller, Former Director, University of Oregon Drug Information Center

Tom Parker, Communications Director, Oregon Partnership

John Sajo, Director, Voter Power

Gary Schnabel, Executive Director, Oregon State Board of Pharmacy

Jerry Wade, Secretary, Stormy Ray Cardholders' Foundation

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CITATIONS

- 1 Jeff Brady, "State Medical Marijuana Laws Are Getting Stricter," NPR News, June 7, 2010.
- 2 Testimony of John Sajo, Director, Voter Power, August 16, 2010; and Mark Miller, Education Director, Mothers Against Misuse and Abuse and former Director of Drug Policy Program at the University of Oregon, August 19, 2010.
- 3 Letter from Tawana C. Nichols, Program Manager, Oregon Medical Marijuana Program, June 15, 2010.
- 4 Sarah Jacoby, "What One Original Medical Marijuana Supporter Thinks of Measure 74," Willamette Week, August 10, 2010.
- 5 Testimony of Jerry Wade, Secretary, Stormy Ray Cardholders' Foundation, August 30, 2010.
- 6 Testimony of Mark McDonnell, Senior Deputy District Attorney, Multnomah County, August 31, 2010.
- 7 Phone interview with Erik Fisher, Sergeant, Oregon State Police, September 1, 2010.
- 8 Testimony of Tom Bergin before the Measure 74 Citizen's Initiative Review Panel, Healthy Democracy Oregon, August 17, 2010.
- 9 Mark Miller, Education Director, Mothers Against Misuse and Abuse and former Director of Drug Policy Program at the University of Oregon, August 19, 2010.
- 10 Testimony of Richard Drandoff, Executive Director, Change Point Addiction Treatment Center, August 19, 2010.
- 11 Karen O'Keefe, et al., "Marijuana Use by Young People: The Impact of State Medical Marijuana Laws," Marijuana Policy Project, June 2008.
- 12 Lloyd Johnston, quoted in "Teen Marijuana Use Tilts Up, While Some Drugs Decline in Use," University of Michigan press release, December 14, 2009.
- 13 Interview with Geralyn Brennan, Addictions and Mental Health Division, Oregon Department of Human Services, based on preliminary results of 2010 Healthy Teens study.
- 14 Colorado Drug Investigator's Association (CDIA), Medical Marijuana Distribution Centers, Questions and Answers, June 7, 2010.
- 15 Testimony of Karmen Hanson, National Conference of State Legislatures, before Measure 74 Citizen Initiative Review Panel, Healthy Democracy Oregon, August 18, 2010.
- 16 Testimony of Scott Kirkland, retired Chief of Police, El Cerrito, California; and member of the California Police Chief Marijuana Task Force, August 12, 2010. The organization maintains a website with a section devoted to the medical marijuana dispensary issue. Documents on the website contain statements that the organization lacks sufficient information to determine if the increased problems with marijuana are actually related to dispensaries.
- 17 "Information on Addiction and Recovery for Individuals and Families, addictionsandrecovery.org.
- 18 Testimony of Scott Kirkland, retired Chief of Police, El Cerrito, California; and member of the California Police Chief Marijuana Task Force, August 12, 2010.
- 19 Testimony of Craig Litwin, former Mayor and City Councilman, Sebastopol, California, August 12, 2010.
- 20 Patient Access to Medical Marijuana in Washington State, Washington State Department of Health, July 2008

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- 21 Text of Measure 74, Section 3(9).
- 22 ORS 475.304(7).
- 23 Text of Measure 74, Section 3(4)(b)(A).
- 24 Text of Measure 74, Section 1(7).
- 25 Financial Estimate Committee, "Fiscal Impact Statement" for Measure 74.
- 26 Drandoff testimony, August 19, 2010.
- 27 Text of Measure 74, Section 4.
- 28 Introduction to Measure 74.
- 29 Testimony of Scott Kirkland, retired Chief of Police, El Cerrito, California; and member of the California Police Chief Marijuana Task Force.
- 30 Kelly Freels, Senior Budget Analyst, Oregon Department of Administrative Services.

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The mission of City Club is to inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship.

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Report design by Susan K. Shepperd

City Club of Portland

901 SW Washington St.
Portland, OR 97205
503-228-7231 • 503-228-8840 fax
info@pdxcityclub.org • www.pdxcityclub.org