

TITLE 11

VOTER ADOPTED INITIATIVES*

Chapters:

- 11.04 The Hailey Medical Marijuana Act
- 11.08 The Hailey Lowest Police Priority Act
- 11.12 The Hailey Industrial Hemp Act

Chapter 11.04

The Hailey Medical Marijuana Act

11.04.010 Title. This short title of this initiative shall be and the initiative may be enacted as “The Hailey Medical Marijuana Act.”

11.04.020 Findings. The people of Hailey, Idaho find as follows:

WHEREAS the National Academy of Sciences’ Institute of Medicine concluded after reviewing relevant scientific literature including dozens of works documenting marijuana’s therapeutic value,¹ that there are some circumstances in which smoking marijuana is a legitimate medical treatment;² and,

WHEREAS a scientific survey conducted in 1990 by Harvard University researchers found that 54% of oncologists with an opinion favored the controlled medical availability of marijuana, and 44% had already suggested at least once that a patient obtain marijuana illegally;³ and,

WHEREAS tens of thousands of patients nationwide – people with AIDS, cancer, glaucoma, chronic pain, and multiple sclerosis – have found marijuana in its natural form to be therapeutically beneficial⁴ and are already using it with their doctors’ approval; and, WHEREAS numerous organizations have endorsed medical access to marijuana, including the AIDS Action Council, American Nurses Association, American Academy of HIV Medicine, American Bar Association, American Medical Student Association, American Preventive

¹ “The Medical Value of Marijuana and Related Substances,” Chapter 4 of the Institute of Medicine’s Marijuana and Medicine: Assessing the Science Base (Washington: National Academy Press, 1999), lists 198 references in its analysis of marijuana’s medical uses.

² From Principal Investigator Dr. John Benson’s opening remarks at the Institute of Medicine’s news conferences releasing the report Marijuana and Medicine: Assessing the Science Base (March 17, 1999).

³ R. Doblin and M. Kleiman, “Marijuana as Antiemetic Medicine,” Journal of Clinical Oncology 9 (1991): 1314-1319.

⁴ The therapeutic value of marijuana is supported by existing research and experience. For example, the following statement appeared in the American Medical Association’s “Council on Scientific Affairs Report 10 – Medicinal Marijuana,” adopted by the AMA House of Delegates on December 9, 1997:

*“Smoked marijuana was comparable to or more effective than oral THC, and considerably more effective than prochlorperazine or other previous antiemetics in reducing nausea and emesis.” (page 10)

*“Anecdotal, survey, and clinical data support the view that smoked marijuana and oral THC provide symptomatic relief in some patients with spasticity associated with multiple sclerosis (MS) or trauma.” (page 13)

*“Smoked marijuana may benefit individual patients suffering from intermittent or chronic pain.” (page 15)

Medical Association, American Public Health Association, California Academy of Family Physicians, California Legislative Council for Older Americans, California Medical Association, California Nurses Association, California-Pacific Society of Addiction Medicine, Florida Medical Association, Gray Panthers, Lymphoma Foundation of America, Multiple Sclerosis California Action Network, National Association for Public Health Policy, National Association of Attorneys General,, National Association of People with AIDS, National Black Police Association, National Women’s Health Network, New York State Nurses Association, Public Citizen, Virginia Nurses Association, Whitman-Walker Clinic (Washington, D.C.), Women of Reform Judaism; and,

WHEREAS a scientific survey conducted in 1995 by Belden & Russonello (a Washington, D.C.-based polling firm) indicated 79% of U.S. voters support the idea of “legaliz[ing] marijuana to relieve pain and for other medical uses if prescribed by a doctor;”⁵ and,

WHEREAS national public opinion polls conducted by ABC News, CBS News, the Family Research Council, and the Gallup Organization between 1997 and 1999 found substantial support for medical marijuana;⁶ and,

WHEREAS since 1996, medical marijuana initiatives received a majority of votes in every state in which they appeared on the ballot – Alaska, Arizona, California, Colorado, the District of Columbia, Maine, Nevada, Oregon, and Washington state;⁷ and,

WHEREAS on June 14, 2000, Governor Ben Cayetano of Hawaii signed into law the first medical marijuana bill enacted via a state legislature which permits the cultivation, possession, and use of medical marijuana; and,

WHEREAS on September 6, 1988, after reviewing all available medical data, the Drug Enforcement Administration’s chief administrative law judge, Francis L. Young, declared that marijuana is “one of the safest therapeutically active substances known” and recommended making marijuana available by prescription;⁸ and,

WHEREAS the federal penalty for possessing one marijuana cigarette – even for medical use – is up to one year in prison, and the penalty for growing one plant is up to five years;⁹ and,

WHEREAS the penalties are similar in most states, where medical marijuana users must live in fear of being arrested; and,

⁵ Belden & Russonello interviewed 1,001 registered voters, selected by a national random digit dial survey, on behalf of the American Civil Liberties Union, which released the results via its Department of Public Education on November 27, 1995.

⁶ ABC News/Discovery News (69% support medical marijuana, poll conducted May 27, 1997 by Chilton Research); CBS News (66% of Independent respondents, 64% of Democrat respondents, and 57% of Republican respondents support medical marijuana, poll reported in The New York Times, June 15, 1997); Family Research Council (74% support medical marijuana, poll conducted Spring 1997); Gallup (73% support medical marijuana, poll conducted March 19-21, 1999)

⁷ Alaska, Measure 8, Nov. 1998, received 58% of the vote; Arizona, Proposition 200, Nov. 1996, received 65% of the vote; Arizona, Proposition 300, Nov. 1998, rejected by 57% of the vote by rejecting Proposition 300, voters upheld the medical marijuana provision in 1996’s Proposition 200); California, Proposition 215, Nov. 1996, received 56% of the vote; Colorado, Amendment 20, Nov. 2000, received 54% of the vote; District of Columbia, Initiative 59, Nov. 1998, received 69% of the vote; Main, Question 2, Nov. 1999, received 61% of the vote; Nevada, Question 9, Nov. 2000, received 65% of the vote; Oregon, Measure 67, Nov. 1998, received 55% of the vote; Washington, Initiative 692, Nov. 1998, received 59% of the vote.

⁸ U.S. Department of Justice, Drug Enforcement Administration. “In the Matter of Marijuana Rescheduling Petition, Docket No. 86-22, Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and decision of Administrative Law Judge,” Francis L. Young, Administrative Law Judge, September 6, 1988.

⁹ Section 844(a) and Section 841(b)(1)(D), respectively, of Title 21, United States Code.

WHEREAS the present federal classification of marijuana¹⁰ and the resulting bureaucratic controls impede additional scientific research into marijuana's therapeutic potential,¹¹ thereby making it nearly impossible for the Food and Drug Administration to evaluate and approve marijuana through standard procedural channels; and,
WHEREAS seriously ill people should not be punished for acting in accordance with the opinion of their physicians in a bona fide attempt to relieve suffering; and,
WHEREAS the state of Idaho has no mandate under the Constitution to outlaw medical marijuana and would therefore be subordinate to the will of the people as expressed through the initiative process and guaranteed by Article One Section Two of the Idaho Constitution;
THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing the medical marijuana policy in the city.

11.04.030 Definition.

“Marijuana” as used in this initiative shall be as currently defined in Idaho Code 37-2701(s), and shall also include any other variety of marijuana not enumerated therein.

11.04.040 Purpose. The purpose of this initiative is:

1. To ensure that patients, for whom marijuana has been recommended by a physician, suffer no punishment or penalty for obtaining, possession, and/or using medicinal marijuana and/or marijuana paraphernalia used to consume medicinal marijuana, and to ensure that individuals are not arrested and suffer only a fine, and no other punishment or penalty, for the possession of less than 35 grams of marijuana and/or marijuana paraphernalia. This initiative shall be liberally construed for the accomplishment of these purposes.
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to authorize the use of marijuana for medical purposes.
3. To stimulate a communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

~~11.04.050 Use of Medical Marijuana. Seriously ill citizens have the right to obtain, possess, and use up to 35 grams of marijuana for medicinal purposes where that medical use is deemed appropriate and is recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, HIV, AIDS, chronic pain, glaucoma, arthritis, migraines, or any other serious condition for which marijuana provides relief. Patients who obtain and use marijuana for medicinal purposes upon the recommendation of a physician shall not be subject to any arrest, prosecution, punishment, or sanction; once a doctor's recommendation has been provided by the patient, any marijuana and/or marijuana paraphernalia charges against the patient shall be dismissed by the prosecuting attorney. Also, physicians who recommend marijuana for their patients shall not be subject to any arrest, prosecution, punishment or sanction. Local enforcement of state law shall be by~~

¹⁰ Section 812(c) of Title 21, United States Code.

¹¹ The U.s. Department of Health and Human Services (HHS) issued written guidelines for medical marijuana research, effective December 1, 1999. The guidelines drew criticism from a coalition of medical groups, scientists, members of Congress, celebrities, and concerned citizens. The coalition called the guidelines “too cumbersome” and urged their modification in a letter to HHS Secretary Donna Shalala, dated November 29, 1999. Signatories of the letter included 33 members of Congress, former Surgeon General Joycelyn Elders, and hundreds of patients, doctors, and medical organizations.

~~summons only. All such matters shall only be referred to the Municipal Prosecuting Attorney, and no other prosecuting attorney, and the Municipal Prosecuting Attorney shall not refer the matter to any other prosecutor, agency, or office, unless the individual is also charged with a non-related felony offense arising from the same set of facts and circumstances.~~

11.04.060 Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist ~~and other city officers~~, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include, but are not limited to, the following:

- a) Amendment of state code to allow for the use of medical marijuana by seriously ill patients;
- b) End any sanctions against physicians who prescribe or recommend medical marijuana to their patients;
- c) Grant local control to cities and counties to license and regulate the use of medical marijuana; and
- d) End the prosecution, arrest, investigation and imprisonment of seriously ill adults who use marijuana for medicinal purposes.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's medical marijuana laws.

11.04.070 Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation of the Hailey Medical Marijuana Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:
1 community member appointed by each member of the Hailey City Council,
1 community member appointed by the Mayor of Hailey
1 community member appointed by the Hailey Chief of Police,
1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensure timely implementation of this ordinance;
- b) Make recommendations to the Hailey City Council regarding appropriate regulations to carry out Section [11.04.050] above;
- c) Report regularly to the Council on the implementation of this ordinance.

The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes.

11.04.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Chapter 11.08

The Hailey Lowest Police Priority Act

11.08.010 Title. This short title of this initiative shall be and the initiative may be enacted as “The Hailey Lowest Police Priority Act.”

11.08.020 Findings. The people of Hailey, Idaho find as follows:

WHEREAS the federal government’s war on drugs has failed; and
WHEREAS Hailey should determine its marijuana polices locally, not hand them over to the federal Drug Enforcement Administration; and
WHEREAS each year Idaho spends millions of dollars enforcing marijuana laws, thereby filling local jails and prisons to capacity, and expending valuable law enforcement resources that would be better spent on fighting violent and serious crimes; and
WHEREAS decades of arresting millions of marijuana users have failed to control marijuana use or reduce its availability; and
WHEREAS medical and governmental studies have consistently found cannabis to be less dangerous than alcohol, tobacco and other already legal drugs; and
WHEREAS making adult marijuana offenses Hailey’s lowest law enforcement priority will reduce the city’s spending on law enforcement and punishment;
THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing that marijuana offenses by adults shall be the lowest police priority of the city.

11.08.030 Definitions.

“Marijuana” as used in this initiative shall be as currently defined in Idaho Code 37-2701(s), and shall also include any other variety of marijuana not enumerated therein.

“Adult” means an individual who is 18 years of age or older

“Hailey law enforcement officer” means a member of the Hailey Police Department or any other city agency or department that engages in law enforcement activity.

“Lowest law enforcement priority” means a priority such that all law enforcement activities related to all offenses other than adult, personal-use marijuana offenses shall be a higher priority than all law enforcement activities related to marijuana offenses, where the marijuana was intended for adult personal use, other than the exceptions designated in this chapter.

11.08.040 Purpose. The purpose of this initiative is:

1. To make investigations, citations, arrests, property seizures, and prosecutions for adult marijuana offenses, where the marijuana was intended for adult personal use, the City of Hailey’s lowest enforcement priority; and
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to decriminalize the use of marijuana by adults.
3. To stimulate communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

11.08.050 Lowest Police Priority. ~~Hailey law enforcement officers shall make law enforcement activity relating to marijuana offenses, where the marijuana was intended for adult personal use, their lowest law enforcement priority. Law enforcement activities relating to marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of adult marijuana offenses.~~

~~This lowest law enforcement priority policy shall not apply to use of marijuana on public property or driving under the influence.~~

~~The lowest law enforcement priority policy shall apply to cooperating with state or federal agents to arrest, cite, investigate, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.~~

~~Hailey law enforcement officers shall not accept or renew deputization or commissioning by a federal law enforcement agency if such deputization or commissioning will include investigating, citing, arresting, or seizing property from adults for marijuana offenses included in the lowest law enforcement priority policy.~~

~~Hailey shall not accept any federal funding that would be used to investigate, cite, arrest, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.~~

11.08.060 Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist ~~and other city officers~~, for changes to state law (and other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a) Allow for municipalities to set their own criminal penalties for marijuana use;
- b) Decriminalize generally the use of marijuana by adults;
- c) Enforcement of existing laws by summons only.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters' express and official desire for legislative change to the state's marijuana laws.

11.08.070 Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation of the Hailey Lowest Police Priority Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:

- 1 community member appointed by each member of the Hailey City Council,
- 1 community member appointed by the Mayor of Hailey,
- 1 community member appointed by the Chief of Police,
- 1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensuring timely implementation of this chapter, with the cooperation of the Hailey Police Department and any other Hailey law enforcement agencies in providing needed data;
- b) Receiving any grievances from individuals who believe they were subjected to law enforcement activity contrary to the lowest law enforcement priority policy;
- c) Designing a supplemental report form for Hailey law enforcement officers to use to report all adult marijuana arrests, citations, and property seizure and all instances of officers assisting in state or federal arrests, citations, and property seizures for any adult marijuana offenses. The

supplemental report form shall be designed with the goal of allowing the committee to ascertain whether the lowest law enforcement priority policy was followed;

d) Requesting additional information from any Hailey law enforcement officer who engaged in law enforcement activity relating to one or more marijuana offenses under circumstances which appear to violate the lowest law enforcement priority policy. An officer's decision not to provide additional information may be grounds for discipline; and

e) Submitting written reports semiannually to the Hailey City Council on the implementation of this ordinance, with the first report being issued nine months after the enactment of this chapter. These reports shall include, but not necessarily be limited to: the number of all arrests, citations, property seizures, and prosecutions for marijuana offenses in Hailey; the breakdown of arrests and citations by race, age, specific charge, and classification as infraction, misdemeanor, or felony; any instances of law enforcement activity that the committee believes violated the lowest law enforcement priority policy; and the estimated time and money spent by the city on law enforcement and punishment for adult marijuana offenses.

Hailey law enforcement officers shall submit to the committee a supplemental report within two weeks after each adult marijuana arrest, citation, or property seizure or instance of assisting in a state or federal arrest, citation or property seizure for any adult marijuana offense in Hailey.

The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes.

11.08.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Chapter 11.12

The Hailey Industrial Hemp Act

11.12.010. Title This short title of this initiative shall be and the initiative may be enacted as "The Hailey Industrial Hemp Act."

11.12.020 Findings. The people of Hailey, Idaho find as follows:

WHEREAS industrial hemp can be differentiated from marijuana; and

WHEREAS industrial hemp contains virtually no narcotic or intoxicating properties; and

WHEREAS the reasons for criminalizing the cultivation of industrial hemp appear to be politically motivated with no basis in reason or logic; and

WHEREAS industrial hemp can be used to make a variety of useful products; and

WHEREAS Idaho farmers should have the right to grow industrial hemp; and

WHEREAS in 1996 the Idaho Farm Bureau voted in favor of granting Idaho farmers the right to grow industrial hemp; and

WHEREAS industrial hemp has a long and rich history in the United States as a valuable crop;

THEREFORE the people of the City of Hailey do hereby enact the following ordinance establishing the industrial hemp policy of the city.

11.12.030 Definitions.

“Industrial hemp” means any hemp or hemp product containing one percent or less THC.

11.12.040 Purpose. The purpose of this initiative is:

1. To establish an official policy of the city that is favorable to the growing of industrial hemp.
2. To issue an official declaration advocating changes in Idaho State law, county ordinance, or any other applicable laws to legalize the growth and cultivation of industrial hemp.
3. To stimulate communitywide debate on a public policy issue of great importance.
4. To establish a community panel to oversee the implementation of this initiative.

11.12.050 Official Policy. It shall be the official policy of the City of Hailey that the growth and cultivation of industrial hemp is a positive and beneficial farming activity, and that the legalization of such activity by the state and federal government is favored.

11.12.060 Advocacy for Legislative Reform. The City of Hailey is hereby instructed to advocate by official public declaration and through its lobbyist ~~and other city officers~~, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated should include, but are not limited to, the following:

- a) Allow for the legalization of industrial hemp by the State of Idaho;
- b) Allow each county or city to decide their own policies with regards to the farming of industrial hemp.

Additionally, the enactment of this initiative by the voters of the city shall constitute said voters’ express and official desire for legislative change to the state’s industrial hemp laws.

11.12.070 Community Oversight Committee. Upon enactment of this initiative, a Community Oversight Committee shall be appointed to oversee the implementation and enforcement of the Hailey Industrial Hemp Act. The Committee shall hold regular public meetings and shall solicit input and testimony from members of the public. The Committee will be composed of:

- 1 community member appointed by each member of the Hailey City Council,
- 1 community member appointed by the Mayor of Hailey
- 1 community member appointed by the Hailey Chief of Police,
- 1 representative of the Liberty Lobby of Idaho.

Responsibilities of the seven member Committee shall include:

- a) Ensure timely implementation of this ordinance;
- b) Make recommendations to the Hailey City Council regarding appropriate policy decisions to carry out Section [11.12.050] above;
- c) Report regularly to the Council on the implementation of this ordinance;

d) Any other duty that the Committee deems to be in the best interest of effectuating this initiative.

The Committee shall have the power to promulgate rules and regulations not inconsistent with this initiative to govern its own conduct and public meetings. In the event that the voters of the City of Hailey adopt more than one initiative relating to cannabis law reform that contains a provision for a Community Oversight Committee, the committees shall be consolidated for all purposes. In the event that this initiative is the only cannabis or hemp related proposal adopted by the voters, the committee shall not be formed.

11.12.080 Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

*On November 6, 2007 and May 27, 2008, the voters of Hailey adopted three initiatives: The Hailey Medical Marijuana Act, The Hailey Lowest Police Priority Act and The Hailey Industrial Hemp Act. These three initiatives have been codified in Title 11 of the Hailey Municipal Code. In *Davis v. City of Hailey*, Blaine County Case No. CV-2008-0366 (the Honorable Robert Elgee presiding), the district court ruled that the language stricken in Sections 11.04.050, 11.04.060, 11.08.050, 11.08.060 and 11.12.060 was void.