

RESOLUTION NO. 2007-011
ADOPTING AMENDMENTS TO
MISSOULA COUNTY INITIATIVE NO. 2

WHEREAS, the Missoula County Voters approved Initiative No. 2 on November 6, 2006;

WHEREAS, amendments to Initiative No. 2 were proposed by the Missoula Law Enforcement Community;

WHEREAS, a Public Hearing was held on March 21, 2007; and

WHEREAS, it appears to be in the public interest to make certain amendments to Initiative No. 2;

NOW, THEREFORE, BE IT RESOLVED, that Initiative No. 2 be and the same is hereby amended as shown on the attached "Amendments to Missoula County Initiative No. MCSO 2006-02."

DATED March 21, 1007.

SIGNED this ___ day of May, 2007.

BOARD OF COUNTY COMMISSIONERS

Barbara Evans
Barbara Evans, Chairman
Missoula County Commissioners

Jean Curtiss
Jean Curtiss
Missoula County Commissioner

OPPOSED
Bill Carey
Missoula County Commissioners

ATTEST:
Vickie M Zeier
Clerk and Recorder

APPROVED AS TO FORM AND CONTENT:
Michael W. Schertel
Deputy County Attorney

Amendments to Missoula County Initiative No. MCSO2006-02

The Board of County Commissioners of the County of Missoula, Montana ordain:

Section 1: TITLE

A Resolution Amending the Initiative to Alter Law Enforcement Priorities and Make Adult **Misdemeanor Possession of Marijuana** Offenses the Lowest Law Enforcement Priority in Missoula County.

Section 2: PURPOSE

The purpose of this resolution is:

(1) To amend **Missoula County Initiative No. MCSO2006-02** so as to make investigations, citations, arrests, property seizures, and prosecutions for Adult **misdemeanor possession of** marijuana offenses Missoula County's lowest law enforcement priority; and

(2) To transmit notification of the enactment of both the initiative as adopted by the voters and as amended by the Board of County Commissioners to state and federal elected officials who represent Missoula County;

Section 3: FINDINGS

WHEREAS the voters of Missoula County adopted Missoula County Initiative No. MCSO2006-02 at the November 6, 2006 general election by a margin of approximately 54% in favor to 46% opposed;

WHEREAS the Missoula County Attorney, the Missoula County Sheriff, the Missoula City Chief of Police and the Mayor of the City of Missoula have recommended that the Board of County Commissioners amend such Initiative to make it only applicable to misdemeanor possession of marijuana-related offenses for numerous reasons;

WHEREAS not amending the Initiative as adopted by the voters will result in certain serious conflicts between law enforcement agencies in both Missoula County and other jurisdictions;

WHEREAS possession of felony amounts of marijuana is an offense which merits normal law enforcement priority; and

WHEREAS it is the intent of the voters of Missoula County that some change be made in making some adult marijuana-related offenses the lowest priority for law enforcement;



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THEREFORE the Board of County Commissioners of Missoula County does hereby enact the following resolution amending the Missoula County Initiative No. MCSO2006-02, establishing the marijuana policy of the county.

Section 4: DEFINITIONS

For the purposes of this resolution, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) "Adult" means an individual who is 18 years of age or older.
- (2) "Missoula County law enforcement officer" means a member of the Missoula County Sheriff's Department or any other county agency or department that engages in law enforcement activity.
- (3) "Lowest law enforcement priority" means a priority such that all law enforcement activities related to all offenses other than Adult misdemeanor possession of marijuana-related offenses should be a higher priority than all law enforcement activities related to adult misdemeanor possession of marijuana offenses, except for designated exceptions.
- (4) "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin.
- (5) "Misdemeanor possession" means possession of less than sixty (60) grams of marijuana.
- (6) "Marijuana related" offenses include Possession of Drug Paraphernalia defined as "objects used, intended for use or designed for use in the ingesting, inhaling or otherwise introducing of marijuana into the human body."

Section 5: LOWEST LAW ENFORCEMENT AND PROSECUTORIAL PRIORITY

- (1) Missoula County law enforcement officers are encouraged to make law enforcement activity relating to Adult misdemeanor possession of marijuana offenses their lowest law enforcement priority. Law enforcement activities relating to Adult misdemeanor possession of marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of Adult misdemeanor possession of marijuana offenses.
- (2) The Missoula County public prosecutors are encouraged to make prosecution of Adult misdemeanor possession of marijuana offenses their lowest prosecutorial priority.
- (3) This lowest law enforcement and prosecutorial priority policy may not apply to the following:



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(a) distribution or sale of marijuana to minors; possession, use, distribution, sale, or cultivation of marijuana by minors; distribution, sale, cultivation, or use of marijuana on public property; or driving under the influence of marijuana;

(b) marijuana offenses on private property, if the person in lawful possession of the private property requests police intervention; and

(c) distribution or sale of marijuana within 500 feet of any school ordinarily attended by children under 18 years of age.

(4) Missoula County law enforcement officers and other county employees should not accept formal 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 misdemeanor possession of marijuana offenses included in the lowest law enforcement priority policy. Missoula County law enforcement officers who are already deputized or commissioned by a federal agency ~~may~~ **should** not accept renewal of formal 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 misdemeanor possession of marijuana offenses included in the lowest law enforcement priority policy.

(5) The lowest law enforcement and prosecutorial priority policy includes cooperating with state or federal agents to arrest, cite, investigate, prosecute, or seize property from Adults for violations of misdemeanor possession of marijuana laws.

(6) It is recommended that Missoula County not accept any funds from any source, organization or individual, including federal funds or state funds, to the extent that such funds would be used to or are conditioned upon a requirement that the County of Missoula investigate, cite, arrest, prosecute, or seize property from Adults for misdemeanor possession of marijuana offenses included in the lowest law enforcement priority policy.

(7) Any new, amended, or renewed county contract with a law enforcement agency should reflect the priorities and reporting requirements outlined in this initiative, urging the agency and its agents to abide by the same lowest law enforcement priority policy and reporting requirements in Missoula County that are advocated for county law enforcement officers under this initiative.

Section 6: COMMUNITY OVERSIGHT

(1) A Community Oversight Committee shall be appointed to oversee the implementation of this resolution. The committee shall be formed and begin meeting within 100 days of the enactment of the initiative, even if some of its members have not been appointed. The committee will be composed of three county residents, one harm reduction advocate, two criminal defense attorneys, one civil liberties advocate, one medical marijuana patient, and one drug abuse and prevention counselor, each of whom shall be appointed by the



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County Commission. If any committee member can no longer serve on the committee, the County Commission shall appoint a replacement committee member. Members of the committee shall serve as unpaid volunteers.

(2) Responsibilities of the committee shall include:

(a) Meeting at least quarterly, or more frequently as necessary;

(b) Ensuring timely implementation of this resolution, with the cooperation of the Missoula County Sheriff's Department and County Attorney in providing data needed to assess compliance;

(c) Collecting any grievances from individuals who believe they were arrested, cited, investigated, subjected to property seizures, or subjected to other law enforcement activity contrary to the spirit of the lowest law enforcement priority policy;

(d) Designing a supplemental report form by no later than seven months after the enactment of this initiative, which Missoula County law enforcement officers and prosecutors shall be encouraged to use to report all Adult marijuana arrests, citations, property seizures, prosecutions and instances of assisting in state or federal arrests, citations, property seizures and prosecutions for any Adult marijuana offense. The supplemental report form shall be designed to elicit sufficient details about each incident and the circumstances surrounding each incident for the committee to determine whether the Missoula County law enforcement officer's or officers' actions were consistent with the lowest law enforcement priority policy. The report shall request only such information that is not inconsistent with Montana law restricting dissemination of public criminal justice information (MCA §§44-5-301, et seq.) The form shall have questions that include but are not limited to:

(i) the time and date of the arrest, citation, or property seizure;

(ii) the location of the arrest, citation, or property seizure, including whether it was on public or private property;

(iii) how the officer came to encounter the marijuana, and whether the investigation began for a reason other than a possible marijuana violation; and

(iv) the race and age of the person who was arrested or cited or had his or her property seized.

(e) Requesting the presence at a committee meeting of any Missoula County 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. A Missoula County law enforcement officer's decision not to attend the committee meeting shall not be grounds for discipline;



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- (f) Submitting written reports semi-annually to the Missoula County Commission on implementation of this resolution. The first report shall be at the first Missoula County Commission meeting after 12 months after the enactment of this resolution. The reports shall include but not be limited to:
- (i) the number of arrests, citations, investigations, property seizures, and instances of assistance to federal and state agencies or actors for Adult marijuana offenses by Missoula County law enforcement officers in Missoula County and the nature of these offenses;
 - (ii) the number of prosecutions for Adult marijuana offenses in Missoula County and the nature of these offenses;
 - (iii) information confirming whether Missoula County has participated in any other marijuana-related law enforcement activities with the state or federal government;
 - (iv) the estimated amount of time and money spent by Missoula County on law enforcement for Adult marijuana offenses, including but not limited to investigating, citing, arresting, and prosecuting Adult marijuana offenders, and on punishing Adult marijuana offenders with jail, imprisonment, probation, parole, and supervised release;
 - (v) all instances of arrests, citations, investigations, property seizures, and officers assisting in marijuana prosecutions or federal marijuana investigations and other activities that the committee believes violated the spirit of the lowest law enforcement priority policy; and
 - (vi) other information the committee deems necessary.
- (3) (a) The Missoula County Sheriff's Department and any other county agency whose agents have enforced any marijuana laws during the year prior to the report's filing may submit to the committee a written report on all Adult marijuana arrests, Adult marijuana citations, property seizures related to adult marijuana offenses, destruction of marijuana, and prosecutions for Adult marijuana offenses, including prosecutions undertaken by the Missoula County Attorney's Office. The report may be submitted on a semi-annual basis beginning seven months after the enactment of this initiative. These reports should include:
- (i) the number of infraction, misdemeanor, and felony arrests, citations, and prosecutions for Adult marijuana offenses;
 - (ii) the number of arrests, citations, and prosecutions for Adult marijuana offenses, categorized by the specific charge;
 - (iii) the locations of the arrests and citations; and
 - (iv) the breakdown of arrests and citations by race and age.



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(b) Within five business days after each arrest, citation, or property seizure for an Adult marijuana offense, each arresting or citing officer and each officer making a property seizure is urged to submit to the committee a supplemental report. Within five business days after any state or federal arrest, citation, or property seizure for an Adult marijuana offense that a Missoula County law enforcement officer assisted with, each Missoula County law enforcement officer who assisted is urged to submit to the committee a supplemental report. Such reports shall be public records to the extent permitted by state law.

(c) If any arrest, citation, or property seizure for an Adult marijuana offense occurs before the committee has designed the supplemental form, the arresting or citing officer or the officer making a property seizure is encouraged to provide to the committee a written report containing the information discussed in part (2)(d) of section 6.

Section 7: NOTIFICATION OF FEDERAL AND STATE OFFICIALS

Beginning three months after the enactment of the initiative, the county clerk shall execute a mandatory and ministerial duty of sending letters on an annual basis to county voters' U.S. representative, both of Montana's U.S. senators, Missoula County voters' state senators and House members in the Montana State Legislature, the governor of Montana, and the president of the United States. This letter shall state that "The citizens of Missoula County have passed an initiative which was subsequently amended by the Board of County Commissioners to make misdemeanor possession of marijuana offenses the lowest law enforcement priority, to set up a citizens committee to monitor the effects of this policy, and to request that the federal and Montana state governments do the same." This duty shall be carried out annually until state and federal laws are changed accordingly.

Section 8: ENFORCEABILITY

All sections of this resolution that apply to Missoula County law enforcement officials are permissive. County law enforcement officials are encouraged to respect the provisions of this resolution, and to fully implement the procedures in this resolution designed to make Adult misdemeanor possession of marijuana offenses the lowest law enforcement priority in Missoula County and to cooperate with the Community Oversight Committee's work including the production of an annual report on the resolution's implementation.

Section 9: SEVERABILITY

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

