

ORDINANCE NO. **08 181** BILL NO. 335

**AN ORDINANCE ADDING A NEW ARTICLE TO THE HAWAI'I COUNTY CODE
(2005 EDITION, AS AMENDED)**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF HAWAI'I

SECTION 1: TITLE

This Article shall be known as the LOWEST LAW ENFORCEMENT PRIORITY OF CANNABIS ORDINANCE

SECTION 2: PURPOSE

The purpose of this Article is to;

- (a) Provide law enforcement more time and resources to focus on serious crimes.
- (b) Allow our court systems to run more efficiently;
- (c) Create space in our prisons to hold serious criminals;
- (d) Save taxpayers money and provide more funding for necessities such as education and health care.
- (e) Reduce the fear of prosecution and the stigma of criminality from non-violent citizens who harmlessly cultivate and/or use Cannabis for personal, medicinal, religious, and recreational purposes.

SECTION 3: FINDINGS

- (a) The Institute of Medicine has found that Cannabis (marijuana) has medicinal value and is not a gateway drug.
- (b) According to the U.S. Centers for Disease Control, the use of Cannabis (marijuana) directly results in 0 (zero) deaths per year.
- (c) According to the National Institute of Drug Abuse (NIDA), the marijuana eradication

program has not stopped Cannabis cultivation in the County of Hawai'i, rather the program has only decreased the availability of the plant, which increases its 'street' value, resulting in more crime.

- (d) The National Institute of Drug Abuse (NIDA) also reported that a large increase of the use of methamphetamine, crack cocaine, and other hard drugs was related to the marijuana eradication program's implementation.
- (e) According to public record, the 'mandatory program review' for the marijuana eradication program, required by Section 3-16 of the County Charter to be performed at least once every 4 years, has never been performed in the 30 years that the program has existed.
- (f) Law abiding adults are being arrested and imprisoned for nonviolent Cannabis offenses, clogging our court dockets, overcrowding our prisons, tying up valuable law enforcement resources and costing taxpayers hundreds of thousands of dollars in Hawai'i County alone each year.
- (g) The citizens of the Cities of Hailey, Idaho; Denver, Colorado; Seattle, Washington; Columbia, Missouri; Eureka Springs, Arkansas and Santa Barbara, Oakland, Santa Monica and Santa Cruz, in California, and the citizens of Missoula County, Montana, all voted for Cannabis (marijuana) to be placed as law enforcement's lowest priority within the past five years.

SECTION 4: DEFINITIONS

- (a) "Adult" means any individual who is 21 (twenty one) years of age or older.
- (b) "Adult personal use" means the use of Cannabis on private property by adults. It does not include:
 - (a) distribution or sale of Cannabis;
 - (b) distribution, sale, cultivation, or use of Cannabis on public property;
 - (c) driving under the influence; or
 - (d) the commercial trafficking of Cannabis, or the possession of amounts of Cannabis in excess of the amounts defined as being appropriate for adult personal use
- (b) "Marijuana", (as defined in the Hawai'i Revised Statutes of Chapter 712-1240) means Cannabis.
- (c) "Cannabis" means all parts of the Cannabis plant, whether growing or not; the seeds

thereof; the resin extracted from any part of the Cannabis plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin.

- (d) “Lowest Law Enforcement Priority” means a priority such that all law enforcement activities related to all offenses other than the possession or cultivation of Cannabis for adult personal use shall be a higher priority than all law enforcement activities related to the adult personal use of Cannabis. The Lowest Law Enforcement Priority regarding possession or cultivation of Cannabis shall apply to any single case involving 24 (twenty four) or fewer Cannabis plants at any stage of maturity or the equivalent in dried Cannabis, where the Cannabis was intended for adult personal use.
- (e) The “dried equivalent” of 24 or fewer Cannabis plants shall be presumed to be 24 (twenty four) or fewer ounces of usable Cannabis, excluding stems and other non active parts. A greater amount may also fall under the Lowest Law Enforcement Priority provisions described herein if such amount is shown by competent evidence to be no more than the dried equivalent of 24 plants.

SECTION 5: LOWEST LAW ENFORCEMENT PRIORITY POLICY RELATING TO THE ADULT PERSONAL US OF CANNABIS

- (a) The cultivation, possession and use for adult personal use of Cannabis shall be the Lowest Law Enforcement Priority for law enforcement agencies in the county of Hawaii.
- (b) The County of Hawaii’s County Council, the Police Commissioner, the Chief of Police and all associated law enforcement staff, deputies, officers and any attorney prosecuting on behalf of the County of Hawaii shall make law enforcement activity relating to Cannabis offenses, where the Cannabis was intended for adult personal use, their Lowest Law Enforcement Priority. Law enforcement activities relating to Cannabis offenses include but are not limited to the prosecution of Cannabis offenses involving only the adult personal use of Cannabis;
- (c) Neither the Chief of Police, the Police Commissioner, nor any attorney prosecuting on behalf of the County of Hawai`i, nor any associated law enforcement staff, deputies, nor officers shall seek, accept or renew any formal or informal deputization or commissioning by a federal law enforcement agency for the purpose of investigating, citing, or arresting adults, nor for searching or seizing property from adults for Cannabis offenses subject to the Lowest Law Enforcement Priority of Cannabis where such activities would be in violation of that policy, nor shall such authorities exercise such powers that may be ancillary to deputization or commissioning for another purpose.
- (d) The Hawaii County Council shall not authorize the acceptance or the issuing of any funding that is intended be used to investigate, cite, arrest, prosecute, search or seize property from adults for Cannabis offenses in a manner inconsistent with the

county's Lowest Law Enforcement Priority policy.

SECTION 6: COUNTY PROSECUTING ATTORNEYS

To the full extent allowed by the Constitution of the State of Hawaii, the people, through their county government, request that neither the County Prosecuting Attorney nor any attorney prosecuting on behalf of the County of Hawaii shall prosecute any violations of the sections of Chapter 712-1240 of the Hawai'i Revised Statutes regarding possession or cultivation of Cannabis in a manner inconsistent with The Lowest Law Enforcement Priority, as described in Section 4 and 5 of this article; in cases where the amount possessed or grown is less than 24 (twenty four) plants or the dried equivalent, possession for adult personal use shall be presumed.

SECTION 7: EXPENDITURE OF FUNDS FOR CANNABIS ENFORCEMENT

- (a) Neither the Hawaii County Council, nor the Police Commissioner, nor the Chief of Police, nor any attorneys prosecuting on behalf of the County of Hawaii, nor any associated law enforcement staff, deputies, or officers shall spend or authorize the expenditure of any public funds for the investigation, arrest, or prosecution of any person, nor for the search or seizure of any property in a manner inconsistent with the Lowest Law Enforcement Priority as defined in Section 4 and 5 of this article.
- (b) The Hawaii County Council shall not support the acceptance of any funds for the marijuana eradication program.

SECTION 8: COMMUNITY OVERSIGHT

The Hawaii County Council shall ensure the timely implementation of this chapter by working with the Chief of Police and/or the Police Commissioner to;

- (a) provide for procedures to receive grievances from individuals who believe that they were subjected to law enforcement activity contrary to the Lowest Law Enforcement Priority of Cannabis, which is described in Sections 4 and 5 of this Article;
- (b) publish a report semi-annually on the implementation of this chapter every first

day of June and every first day of December, from this day forward, with the first report being issued June 1, 2009. These reports shall include but not be limited to: the number of all arrests, citations, property seizures, and prosecutions for all Cannabis offenses in the county of Hawaii, the number of complaints regarding marijuana eradication over-flights; the breakdown of all Cannabis arrests and citations by race, age, specific charge, and classification as infraction, misdemeanor, or felony, the estimated time and money spent by the County on law enforcement and punishment for adult Cannabis offenses, and any instances of officers or deputies assisting in state or federal enforcement of adult Cannabis offenses. These reports shall be published with the cooperation of the County of Hawaii's Prosecuting Attorney, the Chief of Police, and all associated law enforcement staff in providing needed data.

SECTION 9: NOTIFICATION OF LOCAL, STATE, AND FEDERAL OFFICIALS

After the enactment of this Article, the County Clerk shall send letters on an annual basis (every June 1st of each year) to the Mayor of the County of Hawaii, the County of Hawaii voters' Congressional Delegation, Hawaii's U.S. senators, the County of Hawaii voters' representatives in the Hawaii State Legislature, the Governor of Hawaii, and the President of the United States. This letter shall state; "The citizens of the County of Hawaii have passed an initiative to make Cannabis offenses the Lowest Law Enforcement Priority, where the Cannabis is intended for adult personal use, and request that the federal and state branches of government remove criminal penalties for the cultivation, possession and use of Cannabis for adult personal use; the citizens also request that Cannabis policies here within the county of Hawaii be dealt with from our local law enforcement only." The letters may also state, be it the will of the County Council; that according to the 3 year study performed by the National Institute on Drug Abuse, more people used methamphetamine as a result of the marijuana eradication program; they may also express that methamphetamine is a growing problem in our community and more help would be appreciated in that area, and that the first action that would help in that area would be to end the marijuana eradication program.

This duty shall be carried out until state and federal laws are changed accordingly.


SECTION 10: STATUTORY AND CONSTITUTIONAL INTERPRETATION

All provisions in this article shall only be implemented to the full extent that the Constitution of the State of Hawai'i and the Hawai'i Revised Statutes allows, and in the event, and only in the event, that a court of competent jurisdiction determines that any provision in any section of this article may not be directed by voter initiative or by action of the County Council, then that specific mandatory provision only shall be deemed advisory and expression of the will of the people that the provision shall be implemented into law by whichever government branch or official who has the power to implement it, and that the Hawai'i County Council shall take all actions within their power to work with those branches of government to express the will of the people and encourage, support, and request the implementation of those provisions.

SECTION 11: SEVERABILITY

In the event, and only in the event, that a court of competent jurisdiction should find one or more of the sections, or parts of the sections of this Article illegal, or any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of the Article and the application of such provisions to other persons or circumstances shall not be affected thereby.

INTRODUCED BY:


COUNCIL MEMBER, COUNTY OF HAWAII

Kona, Hawai'i

Date of Introduction: August 13, 2008

Date of 1st Reading: N/A

Date of 2nd Reading: N/A

Date of 3rd Reading: N/A

Effective Date: November 4, 2008

REFERENCE Comm: 1348.3

THE OFFICE OF THE COUNTY CLERK

COUNTY OF HAWAI'I

In the Matter of)
A Proposed Initiative Amendment to the)
Hawai'i County Code)
_____)

CERTIFICATE OF RESULTS

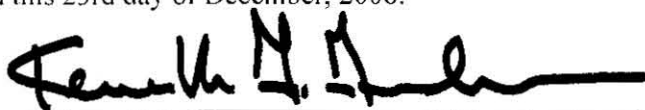
CERTIFICATE OF RESULTS

In compliance with section 11-156, Hawai'i Revised Statutes, I, KENNETH G. GOODENOW, County Clerk, County of Hawai'i, in the capacity of the chief election officer of the County pursuant to section 3-6(b)(3) of the Hawai'i County Charter, do hereby certify that the proposed initiative to amend the Hawai'i County Code was submitted to the voters of the County of Hawai'i on November, 4, 2008. I hereby further certify that the proposed initiative amendment was duly approved by a majority of voters voting on said initiative amendment:

Proposal 1 Should the Hawai'i County Code be amended to add a new article that would be titled and known as the "Lowest Law Enforcement Priority of Cannabis Ordinance", which would: direct the county to make law enforcement related to Cannabis (marijuana) offenses, when the Cannabis is only intended for adult personal use, their lowest law enforcement priority; define "adult personal use" to include the use of Cannabis on private property only by persons twenty one years of age or older; prevent county law enforcement officials from accepting deputization or commissions from a federal law enforcement agency for purposes of investigating, citing, or arresting citizens or searching or seizing their property if doing so is inconsistent with the lowest law enforcement priority of Cannabis ordinance; prohibit the Hawai'i County Council from authorizing the acceptance of or issuing funding to be used to investigate, cite, arrest, prosecute, search or seize property from adults when doing so would be inconsistent with the lowest law enforcement priority for Cannabis policy; and direct the County Council not to support the acceptance of any funds for the marijuana eradication program?

Voters voting "FOR"	35,689
Voters voting "AGAINST"	25,940

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the County of Hawai'i, State of Hawai'i to be affixed this 23rd day of December, 2008.


KENNETH G. GOODENOW, Clerk
County of Hawai'i

OFFICE OF THE COUNTY CLERK
County of Hawai'i
Kona, Hawai'i

RECEIVED
Time 3pm By J. Torres
Date 12/31/08
County Council

Introduced By: Bob Jacobson
Date Introduced: August 13, 2008
First Reading: N/A
Published: N/A

REMARKS: August 13, 2008: The motion
for approval of Bill 335 failed due
to the respective "no" votes.
November 4, 2008: Submitted to the
voters of the County of Hawai'i.

Certificate of Results:

Second Reading: December 23, 2008
To Mayor: December 23, 2008
Returned: December 31, 2008
Effective: November 4, 2008
Published: January 19, 2009

REMARKS: November 4, 2008: The
proposed initiative amendment was
submitted to the voters of the County
and duly approved by the majority of
the voters.

ROLL CALL VOTE				
	AYES	NOES	ABS	EX
Ford		X		
Higa		X		
Hoffmann		X		
Ikedda		X		
Jacobson		X		
Naeole		X		
Pilago		X		
Yagong		X		
Yoshimoto		X		
	0	9	0	0

CERTIFICATE OF RESULTS
Please see "Exhibit I" (attached)

I DO HEREBY CERTIFY that the foregoing BILL was adopted by the County Council published as indicated above.

APPROVED AS TO
FORM AND LEGALITY:

DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date _____



COUNCIL CHAIRPERSON



COUNTY CLERK

Bill No.: 335
Reference: C-1348.3/Waived-PWIRC
Ord No.: 08 181

Approved/Disapproved this _____ day

of _____

MAYOR, COUNTY OF HAWAII

CERTIFICATE OF RESULTS

Proposal 1 Should the Hawai'i County Code be amended to add a new article that would be titled and known as the "Lowest Law Enforcement Priority of Cannabis Ordinance", which would: direct the county to make law enforcement related to Cannabis (marijuana) offenses, when the Cannabis is only intended for adult personal use, their lowest law enforcement priority; define "adult personal use" to include the use of Cannabis on private property only by persons twenty one years of age or older; prevent county law enforcement officials from accepting deputization or commissions from a federal law enforcement agency for purposes of investigating, citing, or arresting citizens or searching or seizing their property if doing so is inconsistent with the lowest law enforcement priority of Cannabis ordinance; prohibit the Hawai'i County Council from authorizing the acceptance of or issuing funding to be used to investigate, cite, arrest, prosecute, search or seize property from adults when doing so would be inconsistent with the lowest law enforcement priority for Cannabis policy; and direct the County Council not to support the acceptance of any funds for the marijuana eradication program?

Voters voting "FOR"	35,689
Voters voting "AGAINST"	25,940

"Exhibit 1"

Ordinance Number 08-181

I hereby certify that the following Ordinance was submitted to the voters of the County and duly approved by the majority of the voters on November 4, 2008, as listed below:

Ordinance 08-181 (Bill 335): An Ordinance Adding a New Article to the Hawai'i County Code (2005 Edition, as Amended).

Voters voting "For":	35,689
Voters voting "Against":	25,940

A handwritten signature in black ink, appearing to read 'K. G. Goodenow', followed by a long horizontal line.

Kenneth G. Goodenow
County Clerk

(Hawai'i Tribune-Herald: January 19, 2009)
(West Hawai'i Today: January 19, 2009)