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May 24, 2016

To: City Council  
From: Phil Stenbeck, CFM, Planning Director  
Re: Marijuana update.

City staff have recently been contacted by our local marijuana dispensary owners and staff. The discussion included talk about how the US Federal government is considering changes to how Marijuana is scheduled by the DEA. Currently Marijuana is a Schedule I controlled substance and there are discussions about it being moved to Schedule II.

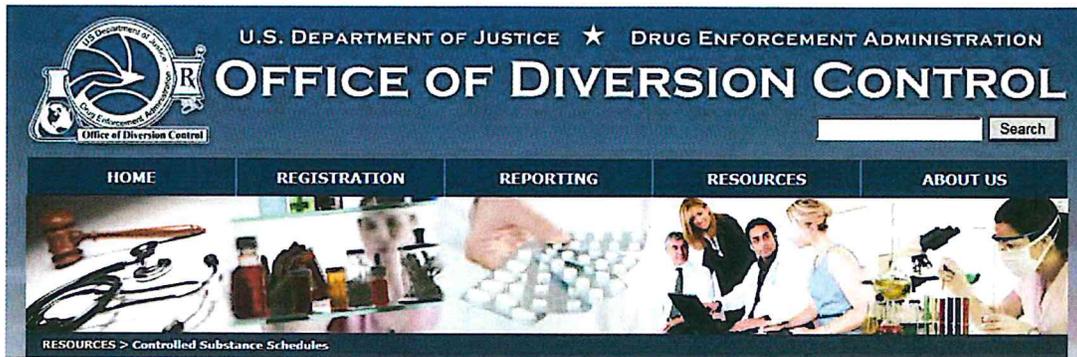
The DEA change being considered would move Marijuana from being completely illegal on the DEA Schedule I list (where it is listed with heroin and LSD) to Schedule II where it is listed with Cocaine, Vicodin and Ritalin and considered to have medical potential. Several recent news articles are attached to this staff report which give more detail on the situation. The news articles are attached as Exhibit A.

As you may recall, the City has developed Land Use Codes for both Medical and Recreational Marijuana. The City's Medical Marijuana Land Use Code is in place and has been effectively used.

The City's Recreational Marijuana Code is very similar to the Medical Marijuana Code but has been tied to Marijuana becoming legal by the Federal Government. The City passed an Ordinance which states that the City's Recreational Marijuana Land Use Code will go into effect when Marijuana is removed from the DEA's Schedule I list.

Staff is asking the City Council to confirm that the City's Recreational Marijuana Code will go into effect if Marijuana is removed from the Schedule I DEA controlled substance list.

The DEA Controlled Substance Schedule has 5 levels and is shown on the next page.



### Definition of Controlled Substance Schedules

Drugs and other substances that are considered controlled substances under the Controlled Substances Act (CSA) are divided into five schedules. An updated and complete list of the schedules is published annually in [Title 21 Code of Federal Regulations \(C.F.R.\) §§ 1308.11 through 1308.15](#). Substances are placed in their respective schedules based on whether they have a currently accepted medical use in treatment in the United States, their relative abuse potential, and likelihood of causing dependence when abused. Some examples of the drugs in each schedule are listed below.

#### Schedule I Controlled Substances

Substances in this schedule have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse.

Some examples of substances listed in Schedule I are: heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), peyote, methaqualone, and 3,4-methylenedioxymethamphetamine ("Ecstasy").

#### Schedule II/IIN Controlled Substances (2/2N)

Substances in this schedule have a high potential for abuse which may lead to severe psychological or physical dependence.

Examples of Schedule II narcotics include: hydromorphone (Dilaudid®), methadone (Dolophine®), meperidine (Demerol®), oxycodone (OxyContin®, Percocet®), and fentanyl (Sublimaze®, Duragesic®). Other Schedule II narcotics include: morphine, opium, codeine, and hydrocodone.

Examples of Schedule IIN stimulants include: amphetamine (Dexedrine®, Adderall®), methamphetamine (Desoxyn®), and methylphenidate (Ritalin®).

Other Schedule II substances include: amobarbital, glutethimide, and pentobarbital.

#### Schedule III/IIIN Controlled Substances (3/3N)

Substances in this schedule have a potential for abuse less than substances in Schedules I or II and abuse may lead to moderate or low physical dependence or high psychological dependence.

Examples of Schedule III narcotics include: products containing not more than 90 milligrams of codeine per dosage unit (Tylenol with Codeine®), and buprenorphine (Suboxone®).

Examples of Schedule IIIN non-narcotics include: benzphetamine (Didrex®), phendimetrazine, ketamine, and anabolic steroids such as Depo®-Testosterone.

#### Schedule IV Controlled Substances

Substances in this schedule have a low potential for abuse relative to substances in Schedule III.

Examples of Schedule IV substances include: alprazolam (Xanax®), carisoprodol (Soma®), clonazepam (Klonopin®), clorazepate (Tranxene®), diazepam (Valium®), lorazepam (Ativan®), midazolam (Versed®), temazepam (Restoril®), and triazolam (Halcion®).

#### Schedule V Controlled Substances

Substances in this schedule have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics.

Examples of Schedule V substances include: cough preparations containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams (Robitussin AC®, Phenergan with Codeine®), and ezogabine.

In reading the DEA Controlled Substance Schedule, it appears to staff that changing Marijuana from Schedule I where it is completely illegal to Schedule II where it appears with drugs that are deemed to potentially have some medical value and drugs that require a prescription is consistent with the City's Medical Marijuana Code but does not necessarily correlate with the City's Recreational Marijuana Code.

So, staff is asking the City Council to confirm that the City's Recreational Marijuana Code will go into effect if Marijuana is removed from the DEA's Schedule I Controlled Substance List.

## Exhibit A - Recent news report information.



Editor: Douglas A. Berman  
Moritz College of Law

### Marijuana Law, Policy & Reform

A Member of the Law Professor Blogs Network

Find a Doctor Near You

Opioid dependence treatment in the privacy of a doctor's office



Friday, April 15, 2016

## "Marijuana Could Soon Be Rescheduled As A Less Dangerous Drug By The DEA, So Why Aren't Cannabis Proponents Excited?"

By Douglas A. Berman

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The title of this post is the headline of [this astute new international Business Times article](#), and here are excerpts:

After decades of intransigence on the issue, the Drug Enforcement Administration may finally recommend removing marijuana from the list of the country's most dangerous drugs. That list was created as part of the Controlled Substances Act (CSA) of 1970, which consolidated all federal drug laws into a single comprehensive measure and defined marijuana as a Schedule I controlled substance alongside heroin, LSD and other drugs that the government says have no medical value and the highest potential for abuse. That meant marijuana was saddled with the strictest possible restrictions and penalties.

Ever since then, marijuana activists have been fighting to remove cannabis from that category. In 1972, the National Organization for the Reform of Marijuana Laws (NORML) petitioned the DEA to instead place marijuana in Schedule II of the CSA, alongside cocaine, meth and other drugs considered dangerous but with medical potential. Twenty-two years and multiple courtroom battles later, the DEA had a final decision: Marijuana would remain a Schedule I substance.

The DEA has rejected two other marijuana rescheduling petitions since then, but now there's a glimmer of hope among activists that change could finally be in the works. As first reported last week by the Huffington Post, in a recent letter to a group of Democratic senators, the DEA referenced a 2011 petition to reschedule cannabis to Schedule II, noting, "DEA understands the widespread interest in the prompt resolution to these petitions and hopes to release its determination in the first half of 2016." While there's a good chance this determination will be no different than in the past, the country's rapidly shifting cannabis landscape — with 23 states plus Washington, D.C., having legalized medical marijuana (and Pennsylvania poised to do so) — makes some people think the DEA could be ready to concede that cannabis has medicinal value.

But instead of being cause for celebration, the news has met with largely subdued reaction from marijuana activists and business owners. "Symbolically, one could say that would be a victory because you'd have for the first time the federal government acknowledging that cannabis does in fact have some therapeutic utility," said NORML deputy director Paul Armentano. "But that by and large would be the extent of it. By moving marijuana from Schedule I to II, the federal government would still be putting forward the intellectual dishonesty that cannabis has a high potential for abuse and needs to be regulated accordingly."



## (Marijuana Update May 2016 Memo)

Such responses suggest it's not just the DEA that's shifting its position on federal marijuana laws. Marijuana proponents' stance on federal cannabis rules are evolving, too. As the movement racks up one legal victory after another with little federal acknowledgement, there's a growing belief that the cannabis crusade doesn't have to settle for marijuana's move to Schedule II, for which it has long lobbied. Some even worry that such a rescheduling could in fact limit or derail a thriving industry.

A handful of drugs have been rescheduled like this before. Marinol, a synthetic version of marijuana's psychoactive components, was moved from Schedule I to Schedule II, and then to Schedule III in the 1980s and '90s. But rescheduling is rare. According to John Hudak, deputy director of the Brookings Institution's Center for Effective Public Management, the DEA has rescheduled substances 39 times since the CSA was ratified 46 years ago, and only five of those instances involved moving a drug from Schedule I to II. Many drug policy experts aren't optimistic that marijuana will soon be the sixth instance of this happening. After all, the DEA bases such decisions on existing marijuana research — research that has long been severely limited thanks in part to restrictions related to marijuana's Schedule I status. Even if the DEA recommends rescheduling marijuana in the next few months, the change wouldn't happen overnight; it would instead trigger a lengthy rulemaking process. "Even if the DEA comes out in July and says, 'We are moving from I to II,' it would still take about a year for that to happen," said Hudak. But if rescheduling does occur, some marijuana activists say there would be major repercussions. By acknowledging marijuana has medical use and placing it in the same category not just as cocaine but also Vicodin and Ritalin, the government would be signaling that times have changed. "This stands to be a legacy-defining move for Obama if his administration makes the right decision here," said Tom Angell, founder of the cannabis advocacy group Marijuana Majority. "It would send a strong message to states that do not yet have medical marijuana laws on the books and a strong message to governments around the world that the U.S. government is now on board [with marijuana policy reform]."

The move wouldn't just be symbolic. Moving marijuana to Schedule II would remove some of the logistical hurdles and academic taboos limiting cannabis research. It would also eliminate several of the bureaucratic hassles plaguing marijuana markets around the country because of the drug's Schedule I status, such as confusion over whether publications with marijuana ads can be sent through the mail.

But as many marijuana supporters point out, shifting cannabis to Schedule II would not solve the biggest problems facing the nascent marijuana industry. Many unique barriers for marijuana research would still remain, such as the fact that all cannabis for such studies has to be obtained, via a lengthy and complicated approval process, from a single marijuana grow at the University of Mississippi that's administered by the National Institute on Drug Abuse (NIDA). "The big issue is Ole Miss' marijuana monopoly, and this wouldn't fix that at all," said drug-policy expert Mark Kleiman, a professor of public policy at the New York University Marron Institute of Urban Management.

## (Marijuana Update May 2016 Memo)

Then there's the fact that the biggest headaches afflicting marijuana businesses, such as a lack of banking services and sky-high tax rates thanks to IRS section 280E, which prohibits drug dealers from deducting the costs of selling illicit substances, are due to laws that cover drugs in both Schedules I and II of the CSA. "Moving it to Schedule II really doesn't accomplish a lot, and frankly it is not scientifically supportable," said Taylor West, deputy director of the National Cannabis Industry Association. "From a business perspective, it is unclear [if] it would have any impact on the banking situation, and it is specifically clear it would not have any impact on the 280E situation."

Some marijuana advocates go further, worrying moving marijuana to Schedule II could actually make things worse. Could rescheduling open the door to Big Pharma moving in and taking over the industry? Or could it force all marijuana to be sold by prescription in pharmacies, doing away with the dispensary and recreational marijuana shop markets spreading across the country? "I think a risk that this creates is that it enables DEA to become more directly involved in the control of the current medical cannabis industry," said Eric Sterling, executive director of the Criminal Justice Policy Foundation. "And that many of the features of the current medical cannabis industry that the public appreciates and values could be lost or destroyed. The DEA would be able to write regulations of the production and processing and distribution of medical cannabis, and they could be quite onerous."

Others believe such fears are unfounded. "I think if Big Pharma really wanted marijuana to be a huge part of its product line, you would have seen it push the government long ago to consider rescheduling," said Hudak at the Brookings Institution. Hudak also doesn't expect to see the federal government dismantling the current marijuana industry. "The state systems are so large, economically and in terms of the people who are served, and they have become entrenched. And frankly, it would be a tremendous enforcement action by the U.S. government to shut them all down, and it would likely be beyond the enforcement resources of the U.S. government right now."

Thursday, April 7, 2016

### "3 Reasons to Doubt the DEA Will Agree to Reclassify Marijuana This Year"

By Douglas A. Berman

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The title of this post is the headline of [this valuable new piece by Jacob Sullum at Reason](#) which provides some needed context (and justified pessimism) in light of some press headlines suggesting DEA may be on the verge of reclassifying marijuana. Here is how the piece starts and ends and its main insights in between (with links from the original):

In a [memo](#) it sent to members of Congress on Monday, the Drug Enforcement Administration (DEA) says it hopes to announce by the end of June whether it has decided that marijuana no longer belongs in Schedule I of the Controlled Substances Act (CSA), the law's most restrictive category. The memo, first [noted](#) yesterday by *Washington Post* drug policy blogger Christopher Ingraham, has generated headlines such as "[The DEA Will Soon Decide Whether it Will Reschedule Marijuana](#)" and "[DEA May Downgrade Marijuana From Schedule 1 Drug](#)." Here are three reasons I think those headlines are misleading:

**1. The DEA has a history of foot dragging in response to rescheduling petitions.** This is the fourth time the DEA has responded to a petition asking it to reclassify marijuana. It [rejected](#) the first three petitions from six to 16 years after they were filed. The fourth petition, filed in 2009 by New Mexico medical marijuana activist Bryan Krumm, and the fifth petition, filed in 2011 by Christine Gregoire, then the governor of Washington, and Lincoln Chafee, then the governor of Rhode Island, are still pending....

(Marijuana Update May 2016 Memo)

**2. Agreeing to reschedule marijuana would require a major change in how the DEA interprets the CSA.**

Schedule I is supposedly reserved for drugs with a high abuse potential that have "no currently accepted medical use" and cannot be used safely, even under a doctor's supervision. It is doubtful that marijuana meets any of those criteria, let alone all three. But the DEA has always insisted that marijuana cannot be moved until its medical usefulness has been confirmed by the kind of expensive, large-scale clinical studies that the Food and Drug Administration demands before approving a new medicine. While such studies have been conducted with marijuana's main active ingredient (which is how [Marinol](#), a capsule containing synthetic THC, was approved by the FDA in 1985), they have not been conducted with the whole plant...

**3. The Obama administration says marijuana will be reclassified only if Congress decides to do so.** "What is and isn't a Schedule I narcotic is a job for Congress," President Obama [told](#) CNN's Jake Tapper in 2014. "It's not something by ourselves that we start changing." Last January, White House Press Secretary Josh Earnest [reiterated](#) that Obama had no interest in administratively rescheduling marijuana: "There are some in the Democratic Party who have urged the president to take this kind of action. The president's response was, 'If you feel so strongly about it, and you believe there is so much public support for what it is that you're advocating, then why don't you pass legislation about it, and we'll see what happens.'"

Eric Holder, Obama's attorney general until last year — and therefore the official directly charged with deciding how controlled substances should be classified, a task that he, like his predecessors, delegated to the DEA — took the same line. Even when Holder [said](#), 10 months after leaving the Justice Department, that marijuana "ought to be rescheduled," he added that "Congress needs to do that."

Although Gary Johnson is [optimistic](#) that the administration will change course this year, I see no reason to think the DEA's answer to the two most recent rescheduling petitions will be any different from its answer to the first three.

April 7, 2016 in [Federal Marijuana Laws, Policies and Practices](#), [History of Marijuana Laws in the United States](#), [Medical Marijuana Commentary and Debate](#), [Who decides](#) | [Permalink](#) | [Comments \(0\)](#)