

Measure Z Committee

Regular Meeting

Thursday, July 16, 2009, 6:00 p.m.

Council Chambers, City Hall, One Frank H. Ogawa Plaza

AGENDA

Members:

Dale Gieringer	District 1	Keith Stephenson	District 7
Joseph E. Villatoro	District 2	Vacant	At Large
Richard Lee	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Cathi Bartice	City Auditor
Vacant	District 5	Bill Uber	City Administrator
Vacant	District 6		


Available on-line at: <http://www.oaklandnet.com/measurez>

AGENDA

- A. Roll Call and Determination of Quorum
- B. Open Forum / Public Comment
- C. Review of the Pending List
- D. Approval of the Draft Minutes from the meeting of the Measure Z Committee of June 18, 2009.
- E. Reports for Discussion and Possible Action
 1. Response from the Oakland / Alameda Coliseum re: Marijuana Use at the Facility
 2. Review of Proposed Legislation to “Regulate Control and Tax Cannabis Act of 2010”

(continued on reverse)

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Measure Z Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

 This meeting is wheelchair accessible. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Measure Z Commission, please contact the Office of the City Clerk (510) 238-3612. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility. In compliance with Oakland's policy for people with chemical sensitivities, please refrain from wearing strongly scented products to events.

Questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Measure Z Commission at (510) 238-3301.

3. Review of the City Administrator's Report and Ordinance Amending Ordinance No. 12694 C.M.S., "Ordinance Establishing the Procedures of the Community Oversight Committee Created by Measure Z, Entitled 'Oakland Cannabis Regulation and Revenue Ordinance' (Measure Z) and Providing the Terms and Responsibilities of the Committee Members" in Order to Stagger the Appointment Terms of Members to Odd and Even Years -- presented to the Public Safety Committee on June 23, 2009 and introduced at City Council on July 7, 2009.
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- F. Announcements

 - G. Adjournment

Measure Z Committee

July 16, 2009, 6:00 p.m.

Pending List and Proposed

Items for Discussion

Pending, No Specific Date

1. Information on marijuana arrests and citations, including data tables / matrix of marijuana offenses and arrests and other crime trends from the OPD (D. Gieringer / J. Anthony, rev. 1-15-09)
2. Establishment of guidelines for Measure Z club's to deal with the issue of fees to be paid by licensed Measure Z Clubs. (R. Lee / K. Stephenson) *rev. Aug 08*
3. Develop guidelines for future enforcement (D. Gieringer)
4. Draft a proposed Training Bulletin for OPD for Measure Z (modeled after the Medicinal Cannabis Training Bulletin) for the implementation of the Measure Z lowest law enforcement priority, including protocols for OFD/OPD interaction, re: encountering cultivation operations in the course of their duties (J. Anthony and K. Stephenson) *rev. Aug 08*
5. Invitation to local and national policy experts to submit draft local ordinances and draft statewide legalization programs (J. Anthony)
6. Recommend an Oakland policy position for transmittal to the State Legislature (J. Anthony)
7. Monitor, on an ongoing basis, "private, adult" marijuana offense arrests (J. Anthony)
8. A definition of "private" as it relates to cultivation in the law (R. Lee) *rev. Aug 08*
9. Annual Report from the Measure Z Committee to the Oakland City Council (D. Gieringer 7/20/06)
10. Review of Oakland compliance / non-compliance policies with the Drug Enforcement Agency (DEA) (R. Lee/D. Gieringer 9/20/07)
11. Discussion of "clear violations" of Measure Z (ex. People packaging personal use cannabis in their homes) as part of a dialog with OPD (invite public to share stories) (J. Anthony 12/20/07)
12. Review of environmental impacts of indoor / outdoor growing and possible regulations (J. Anthony 3/19/09)
13. Licensed cannabis smoking premises in the City of Oakland (D. Gieringer 3/19/09)
14. Report from the District Attorney – conviction statistics for CA Health & Safety Code section 11357 – misdemeanor arrests (L. Bonett 5/21/09)

For Tracking Purposes

1. Election of Officers – March 2010

(Rev. 7-16-09)

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Measure Z Committee

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Meeting Minutes

Thursday, June 18, 2009, 6:00 p.m.

Council Chambers, City Hall, One Frank H. Ogawa Plaza

Members:

Dale Gieringer	District 1	Keith Stephenson	District 7
Joseph E. Villatoro	District 2	Vacant	At Large
Richard Lee	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Cathi Bartice	City Auditor
Vacant	District 5	Bill Uber	City Administrator
Vacant	District 6		

MINUTES

A. Roll Call and determination of quorum

Members Present: C. Bartice, L. Bonett, D. Gieringer, R. Lee, K. Stephenson, B. Uber, J. Villatoro

Members Excused: J. Anthony

The meeting of June 18, 2009 was called to order at 6:10 p.m.

B. Open Forum / Public Comment

There were no Open Forum speakers.

C. Review of the Pending List

There were no changes to the Pending List.

D. Approval of Draft Minutes

The Minutes of the May 21, 2009 meeting were approved, by consensus.

E-1 Report for Discussion and Possible Action on Attendance and Vacancies

Ms. Bonett noted for the record that there “were at least 50 people present” in the audience. A show of hands showed that less than half were from Oakland.

Ms. Bonett gave an overview of her efforts to contact the Councilmembers who do not currently have representatives on the Committee (At Large, District 5, District 6). She noted that Councilmember Kaplan (At Large) has a nominee going through the process for the Mayor to present the candidate for Council approval. The Chief of Staff for

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District 5 Councilmember, Vice Mayor De La Fuente, stated that their office has been looking for a new member but had not yet found anyone. Ms. Bonett said she did not get a response from Councilmember Brooks (District 6). Mr. Uber said he had recently spoken to a staff person for District 6 and that they mentioned Ms. Brooks had a candidate in mind.

Mr. Gieringer noted that he was in contact with the Oakland Alameda Coliseum about their smoking policy re: medicinal cannabis, and was awaiting a reply.

F. Announcements

1. City of Oakland Special Municipal Vote By Mail Election – July 21, 2009

Mr. Stephenson was noted as present at 6:18 pm.

A brief overview of Oakland's special mail-in election was presented. Mr. Gieringer also mentioned a couple of federal bills coming out, sponsored by Congressman B. Frank, and one from Congressman D. Rohrabacher; and another in Sacramento by Senator M. Leno

Mr. Lee welcomed the summer class of Oaksterdam University and mentioned a proposal for a Cannabis Tax for 2010.

Everyone was encouraged to go enjoy "Uptown Unveiled" after the meeting adjourned.

Mr. Uber noted that the Measure Z 2008 Annual Report would be presented as Item 9 at the Public Safety Committee on June 28, 2009. In addition, a report and proposed ordinance from the City Administrator to stagger (odd and even years) the start date for Measure Z Members would be presented as Item 10 that evening.

Ms. Bonett urged all Oakland voters in the audience to vote in favor of Measure F and mail in their ballot.

G. Adjournment

There being no further business, and upon the motion duly made, the Measure Z Committee adjourned the meeting at 6:30 p.m.

Staff to the Measure Z Committee

Date Adopted

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June 15, 2009

Mr. Mark Kaufman, General Manager
Oakland-Alameda County Coliseum Authority
7000 Coliseum Way
Oakland CA 94621-1918
FAX 510-562-4769

Dear Mr. Kaufman:

On behalf of the Oakland Measure Z marijuana policy oversight committee, I am writing to ascertain the Coliseum's policy regarding marijuana use in your facility.

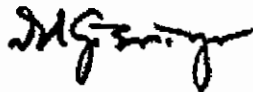
The Committee has heard complaints about Coliseum guards harassing customers over marijuana use in the smoking section of the facility. In one incident, a quadriplegic medical marijuana patient was detained for attempting to smoke his medicine at an A's game and told that he could only smoke tobacco. As you know, the use of medical marijuana is legal in California under Proposition 215, so it is difficult to see on what basis patients should be prohibited from using it in the smoking section. This is especially true in light of the substantial evidence that marijuana smoke is less harmful to the health of both users and bystanders than tobacco.

In another incident, an attendee at a music concert complained about being disturbed by private security guards who were trying to prevent marijuana smoking in nearby luxury box seats; she herself was not in the box nor was she disturbed by the marijuana, but rather by the guards blocking her view and disrupting the concert with the sound of their walkie-talkies.

We have heard testimony that Coliseum guards have a practice of routinely sweeping through the smoking section to prevent marijuana use. This would appear to be a questionable use of police resources that is out of line with the normal policy elsewhere in Oakland. Note that Oakland's Measure Z, adopted by 65% of the voters, directs police to "make investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority."

We would appreciate it if you could advise us as to the Coliseum's official policy regarding marijuana use, if any, and whether it has been revised in light of Measure Z and Proposition 215.

Sincerely,



Dale Gieringer,
Vice-chair, Measure Z Committee
3514 Dwight Way, Berkeley CA 94704
(510) 540-1066 / FAX (510) 849-3974

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MYLES LAW FIRM, INC.

June 18, 2009

Dale Gieringer
Measure Z Committee
3514 Dwight Way
Berkeley, CA 94704

Re: Compassionate Use Act of 1996 (Proposition 215)
Oakland Measure Z

Dear Mr. Gieringer:

Oakland Coliseum Joint Venture, LLC ("OCJV") forwarded your letter to Mr. Mark Kaufman, dated June 15, 2009, to this office for response. OCJV is the general manager of the Oracle Arena and the Oakland-Alameda County Coliseum, which is owned by a joint powers authority between the City of Oakland and the County of Alameda. In your letter, you ask for the Coliseum's official policy regarding marijuana use at the Coliseum complex, and whether it has been revised in light of Proposition 215, enacted as the Compassionate Use Act of 1996, or Oakland Measure Z.

Use of marijuana is prohibited at all areas of the Oakland-Alameda County Coliseum Complex, including the stadium, the arena and the adjoining parking facility.

Section 8.44.030(N) of the Oakland Municipal Code states that "No person shall smoke any combustible substance in the stadium or the arena." The Compassionate Use Act does not affect this prohibition. Health and Safety Code Section 11362.79(a) provides that nothing in the Act "shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana ... [i]n any place where smoking is prohibited by law."

Health and Safety Code Section 11362.785(a) also provides that the Act does not "require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment." Since the Coliseum complex is a place of employment, the Act does not permit smoking medical marijuana at the Coliseum complex.

Finally, Health and Safety Code Section 11362.79(b) provides that the Act does not "authorize a qualified patient or person with an identification card to engage in the smoking

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June 18, 2009

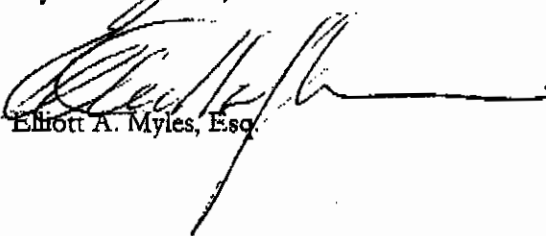
of medical marijuana ... [i]n or within 1,000 feet of the grounds of a ... recreation center ... , unless the medical use occurs within a residence." Since the Coliseum complex is a recreation center, the Act does not permit smoking medical marijuana within 1,000 feet of the Coliseum complex.

Prohibiting the use of marijuana at the Coliseum complex is also consistent with Oakland Measure Z. One of the stated purposes of Measure Z is "to keep drugs off the streets and away from children." The events scheduled at the Stadium and Arena, particularly professional sports events, are public affairs attended by children. Prohibiting the use of cannabis at the Coliseum complex therefore promotes Measure Z's stated purpose of keeping cannabis off the streets and away from children.

Another purpose of Measure Z is to make "investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority." However, this does not require revision of the Coliseum's policy on marijuana use, since the Coliseum complex is a public venue and any use of marijuana at the Coliseum complex would constitute a public adult cannabis offense, not a private one.

If you have any further questions, please do not hesitate to contact the undersigned.

Very truly yours,
Myles Law Firm, Inc.



Elliott A. Myles, Esq.

cc: OCJV

Item: E-1
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DRAFT 10.1 (with cultivation): TEXT – CLEAN
The Regulate, Control and Tax Cannabis Act of 2010

Section 1: Name

This Act shall be known as the “Regulate, Control and Tax Cannabis Act of 2010.”

Section 2: Findings and Purposes

This Act, adopted by the People of the State of California, makes the following Findings and Statement of Purpose:

1. California’s laws criminalizing cannabis (marijuana) have failed and need to be reformed.
2. When reforming our cannabis laws, we must protect:
 - a. Our children from exposure to cannabis.
 - b. The existing rights of patients to medical marijuana.
 - c. The right of local communities to control their own cannabis policies.
3. Therefore the People desire to enact a law with four sensible purposes to reform our cannabis laws:
 - a. Regulate cannabis like we do alcohol, to allow adults 21 years of age and older to consume and possess small amounts of cannabis.
 - b. Grant local control in California, giving local governments the power and option to tax and regulate the sale of cannabis.
 - c. Make cannabis available for scientific, medical, industrial and research purposes.
 - d. Permit California to fulfill the state’s obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety within the State.
4. At the same time the People wish to ensure:
 - a. That in any city or county that decides not to regulate and tax the sale of cannabis commercial growing buying and selling of cannabis there will remain illegal, though the right of individuals to possess and consume small amounts will remain protected.
 - b. Any city or county that decides to tax and regulate the growing, buying and selling of cannabis must create a strictly controlled legal system that is limited to adults 21 and over, and will strictly regulate cultivation, distribution and sales.

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5. The current market for illegal cannabis in California is estimated to be \$15 billion annually. Therefore taxing and regulating cannabis will generate billions of dollars in annual revenues for California to fund what Californians feel matters most: jobs, health care, schools and libraries, roads, and more.
6. Permitting adult consumption will free up police resources, enabling law enforcement to focus on violent criminals.
7. California spends millions in taxpayer dollars filling prisons with non-violent cannabis consumers, while paroling dangerous, violent criminals, putting our communities at risk. California will save the money that would have been spent on targeting, arresting, trying, convicting, and imprisoning non-violent cannabis consumers. The money saved can go towards arresting and imprisoning truly dangerous criminals, and towards other essential state needs.
8. Where cannabis is sold by licensed, safe, and legal businesses, street dealers will be put out of business, and their influence in and affects upon our communities will fade.

Section 3: Lawful Activities

Article 5 of Chapter 5 of Division 10 of the Health and Safety Code, commencing with section 11300 is added to read:

Section 11300: Personal Regulation and Controls

- (a) Notwithstanding any other provision of law, it is lawful and shall not be a public offense under California law for any person 21 years of age or older to:
 - (i) Personally possess, process, share, or transport not more than one ounce of cannabis, solely for that individual's personal consumption, and not for sale.
 - (ii) Cultivate on private property by the owner or lawful occupant, or other lawful residents or guests of the private property owner or lawful occupant, cannabis plants for personal consumption only, in an area of not more than twenty-five square feet (as for example, a square plot five feet by five feet) per private residence or, in the absence of any residence, the parcel. Cultivation on leased or rented property may be subject to approval from the owner of the property.

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Provided that, nothing in this section shall permit unlawful or unlicensed cultivation of cannabis on any public lands.

- (iii) Possess on the premises where grown the living and harvested plants and results of any harvest and processing of plants lawfully cultivated pursuant to section 11300(a)(ii), for personal consumption.
 - (iv) Possess objects, items, tools, equipment, products and materials associated with activities permitted under this subsection.
- (b) “Personal consumption” shall include but is not limited to possession and consumption, in any form, of cannabis in a private dwelling, whether permanent or temporary, on private property, and shall include premises open to the public that have been lawfully licensed or permitted for the sale and/or on-premises consumption of cannabis by a local government pursuant to section 11301.
- (c) “Personal consumption” shall not include, and nothing in this Act shall permit cannabis:
- (I) possession for sale regardless of amount, except by a person who is licensed or permitted to do so under the terms of an ordinance adopted pursuant to section 11301;
 - (ii) consumption in public or in a public place;
 - (iii) consumption in any space while children are present;
 - (iv) consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator.

Section 11301: Commercial Regulations and Controls

Notwithstanding any other provision of state or local law, a local government may adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

- (a) cultivation, processing, distribution, the safe and secure transportation, sale and possession for sale of cannabis, but only by persons and in amounts lawfully licensed, permitted or authorized to do so;
- (b) retail sale of not more than one ounce per transaction, in a licensed and permitted premises, to persons 21 years or older, for personal consumption and not for resale;

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- (c) appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;
- (d) age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such permitted or licensed business, facility or premises are 21 years of age or older;
- (e) consumption of cannabis within licensed or permitted premises;
- (f) safe and secure transportation of cannabis from a facility licensed or permitted for cultivation or processing, to a premises licensed or permitted for sale or on-premises consumption of cannabis;
- (g) prohibit and punish through civil fines or other remedies the possession, sale, or possession for sale, of cannabis that was not obtained from a licensed or permitted place of sale, cultivation, processing and transportation;
- (h) appropriate limits on licensed or permitted premises for sale, or sale and on-premises consumption, of cannabis, including limits on zoning, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;
- (i) appropriate environmental and public health controls to ensure that any such permitted or licensed business, facility or premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;
- (j) appropriate controls to restrict public displays, or public consumption of cannabis;
- (k) appropriate controls, including civil fines and penalties, to prohibit and punish cultivation, processing, transportation, sale or consumption of cannabis that is not otherwise authorized by law;
- (l) appropriate zoning and land use controls on the location, size or other characteristics of any permitted or licensed facility to protect the public health and welfare;
- (m) appropriate taxes or fees pursuant to section 11302;
- (n) such larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under section 11300(a) for personal possession and

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cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons lawfully licensed or permitted under this section;

- (o) any other appropriate controls necessary for protection of the public health and welfare.

Section 11302: Imposition and Collection of Taxes and Fees

- (a) Any ordinance, regulation or other act adopted pursuant to section 11301 may include imposition of appropriate general, special or excise, transfer or transaction taxes, or fees, on any activity permitted or licensed pursuant to such enactment, in order to permit the local government to raise revenue, or to recoup any direct or indirect costs associated with the permitted or licensed activity, or the permitting or licensing scheme, including without limitation: administration; applications and issuance of licenses or permits; inspection of licensed or permitted premises; enforcement; law enforcement or public safety; law enforcement against unlicensed or unpermitted activities.
- (b) Any permitted or licensed business, facility, or premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties or other financial responsibility imposed on all or similarly situated businesses, facilities or premises, including without limitation income taxes business taxes, license fees and property taxes, without regard to or identification of the business or items or services sold.

Section 11303: Seizure

- (a) Notwithstanding sections 11470 and 11479 of the Health and Safety Code, no state or local law enforcement agency or official shall attempt, threaten or in fact seize or destroy any cannabis plant, seeds or cannabis that is lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used in compliance with this Act or any local government ordinance, law or regulation adopted pursuant to this Act.

Section 11304: Effect of Act and Definitions

- (a) This Act is expressly intended to limit the application and enforcement of state and local laws relating to possession, transportation, cultivation, consumption and sale of cannabis, including but not limited to the following, whether now existing or adopted in the future: Health and Safety Code sections 11014.5 and 11364.5 [relating to drug paraphernalia];

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11054 [relating to cannabis or tetrahydrocannabinols]; 11357 [relating to possession]; 11358 [relating to cultivation]; 11359 [possession for sale]; 11360 [relating to transportation and sales]; 11366 [relating to maintenance of places]; 11366.5 [relating to use of property]; 11370 [relating to punishment]; 11470 [relating to forfeiture]; 11479 [relating to seizure and destruction]; 11703 [relating to definitions regarding illegal substances]; 11705 [actions for use of illegal controlled substance]; Vehicle Code sections 23222 and 40000.15 [relating to possession].

- (b) This Act is not intended to affect the application or enforcement of state laws relating to public health and safety or protection of children and others, including but not limited to: Health and Safety Code sections 11357 [relating to possession on school grounds]; 11361 [relating to minors]; 11379.6 [relating to chemical production]; 11532 [relating to loitering to commit a crime or acts not authorized by law]; Vehicle Code section 23152 [relating to driving while under the influence]; Penal Code section 272 [relating to contributing to the delinquency of a minor]; nor any law prohibiting use of controlled substances in the workplace or by specific persons whose jobs involve public safety.
- (c) This Act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in dangerous activities like driving, or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive.
- (d) Nothing in this Act shall be construed or interpreted to permit interstate or international transportation of cannabis.
- (e) No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act.
- (f) Persons accused of violating this Act may, in any criminal proceeding, raise an affirmative defense that the cannabis is reasonably related to his or her personal use.
- (g) Definitions

For purposes of this Act:

- (I) "Marijuana" and "cannabis" are interchangeable terms and mean all parts of the plant Genus Cannabis, whether growing or not; the resin extracted from any part

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of the plant; concentrated cannabis; edible products containing same; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, or resin.

- (ii) “One ounce” means 28.5 grams.
- (iii) For purposes of section 11300(a)(ii) “cannabis plant” means all parts of a living Cannabis Sativa L. plant.
- (iv) In determining whether an amount of cannabis is or is not in excess of the amounts permitted by this Act, the following shall apply:
 - (a) only the amount of the cannabis in an edible cannabis product shall be included.
 - (b) living and harvested cannabis plants shall be assessed by square footage, not by weight in determining the amounts set forth in section 11300(a),
 - (c) where the cannabis is grown and harvested pursuant to section 11300(a)(iii), only the weight of the dried cannabis flowers and leaves shall be included, in determining the amounts set forth in section 11300(a).

Section 4: Prohibition on Furnishing Marijuana to Minors

Section 11361 of the Health and Safety Code is amended to read:

Prohibition on Furnishing Marijuana to Minors

(a) Every person 18 years of age or over who hires, employs, or uses a minor in lawfully or unlawfully transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

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(c) Every person 21 years of age or over who furnishes, administers, or gives, or offers to furnish, administer or give, any marijuana to a person aged 18 years or older, but younger than 21 years of age, shall be punished by imprisonment in the county jail for a period of up to six months and be fined up to \$1,000 for each offense.

(d) In addition to the penalties above, any person who is licensed or permitted to perform any act pursuant to Section 11301, who while so licensed or permitted, furnishes, administers, gives or sells, or offers to furnish, administer, give or sell, any marijuana to any person younger than 21 years of age shall not be permitted to own, operate, be employed by, assist or enter any facility, business, entity or premises licensed or permitted pursuant to Section 11301 for a period of one year.

Section 5: Amendment

Pursuant to Article 2, section 10(c) of the California Constitution, this Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide General election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act. Furthermore, the limitations herein on consumption, cultivation and possession and other acts are minimum thresholds and the Legislature may adopt more expansive limits.

Section 6: Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.



2009 JUN 11 PM 4:15

CITY HALL • 1 FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Office of the City Administrator
Dan Lindheim
City Administrator

(510) 238-3301

June 23, 2009

Public Safety Committee
Oakland City Council
Oakland, California

Chairperson Reid and Members of the Committee:

RE: Ordinance Amending Ordinance No. 12694 C.M.S., "Ordinance Establishing the Procedures of the Community Oversight Committee Created by Measure Z, Entitled 'Oakland Cannabis Regulation and Revenue Ordinance' (Measure Z) and Providing the Terms and Responsibilities of the Committee Members" in Order to Stagger the Appointment Terms of Members to Odd and Even Years

During a review of the Measure Z Committee's Bylaws in October 2008, a majority vote of the Committee recommended three proposed changes to the Bylaws, each of which would require amending the Measure Z ordinance (Ordinance No. 12694 C.M.S.). The proposed changes adopted by the Measure Z Committee were:

1. Amend the definition of "quorum" (Ordinance No. 12694 C.M.S., Section 2.b. and Section 5) to be "a majority of 'appointed members' and to establish a "non-active" category of member as "one who has missed three (3) consecutive meetings", and that such "non-active" members shall not count toward the establishment of the "quorum."
(Bylaws Article VII – Rules and Procedures)
2. Amend the ordinance to permit Committee members to directly, and as the "Measure Z Committee", using the words of the Measure Z ballot text (Section 4.c.), "... advocate for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use."
(Bylaws Article II - Purpose)

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3. Amend Ordinance No. 12694 C.M.S., Section 2.c. in order to stagger the appointment date of members. Currently all members' two year terms expire on odd numbered years, commencing as of "the first day of August 2005". It was recommended that Members from Districts 1, 3, 5, 7 and the members appointed by the Mayor and the City Administrator be appointed in odd numbered years. Members from Districts 2, 4, 6, At Large, and the City Auditor's appointee would be appointed during even numbered years. (*Bylaws Article IV – Membership*)

The Committee submitted a draft of their proposed ordinance changes (*Attachment A*). **Note:** The City of Oakland Ordinance header, voting block, and attest block have been removed from the Committee's proposed language in order to avoid confusion with the ordinance being proposed by this office – which is to only enact proposal number 3, staggering the appointment date of members.

The Office of the City Administrator does not support enacting proposals number 1. and 2. for the following reasons:

1. Amend the definition of "quorum" (Ordinance No. 12694 C.M.S., Section 2.b. and Section 5) to be "a majority of 'appointed members' and to establish a "non-active" category of member as "one who has missed three (3) consecutive meetings", and that such "non-active" members shall not count toward the establishment of the "quorum." (*Bylaws Article VII – Rules and Procedures*)

Allowing decisions to be made by a majority of a minority is not standard procedure for Oakland's appointed, citizen-led Boards, Commissions, and Committees. Such a proposal could enable a faction or clique to make decisions that would not be adopted under majority rule.

Since the Committee began meeting in February 2006 (regular meeting are scheduled for the 3rd Thursday of each month), the Measure Z Committee met eight times in 2006 and 2007, and seven times in 2008; and never more than three of the 11 seats have been vacant at any one time. Though some of the cancelled meetings were due to a lack of quorum, other the meetings were cancelled at the request of the Chair – usually when no written materials had been received in time to meet Sunshine / Brown Act regulations. In addition, establishment of "active" and "non-active" categories adds a superfluous layer of bureaucracy.

Attainment of quorum is mainly a matter of Council members making timely appointments of concerned Oakland residents who have the time and interest in regularly attending Committee meetings. This office could direct the staff person assigned to the Committee to notify appointing authorities on a regular / recurring basis when a seat becomes vacant or when a seated member misses three meetings in a row. These notifications would be in addition to the Boards and Commissions Directory distributed by the Office of the City Clerk.

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2. Amend the ordinance to permit Committee members to directly, and as the “Measure Z Committee”, using the words of the Measure Z ballot text (Section 4.c.), “. . . advocate for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.” (Bylaws Article II - Purpose)

A review of legislation and documentation¹ regarding Measure Z shows that the Council clearly established the Measure Z Community Oversight Committee to be an *advisory* body that makes recommendations to the City Council regarding policy implementation of the “Oakland Cannabis Regulation and Revenue Ordinance” (Measure Z).

In addition, the City Attorney’s Office opined, in a Memorandum to the Measure Z Committee, October 23, 2008 (Item E-1.a.), that while:

“The Measure Z Committee is authorized to “oversee the implementation” of the law that the voters passed. It would appear that both the Measure Z Committee and the City Council, in authorizing activities of the Committee, are limited by the provisions of the voter enacted law. Accordingly, the Committee probably has no “oversight” authority over the issues targeted for the ordinance amendment. Specifically, the Committee has no oversight authority regarding issues such as “the taxation and regulation of cannabis” or the elimination of “criminal penalties for private, adult cannabis use”.

It is true that Measure Z addressed the license, tax and regulated sale of cannabis for adult use (Section 5, Measure Z) as well as lobbying to eliminate criminal penalties for private adult cannabis use (Section 8, Measure Z). However, both section 5 and section 8 of Measure Z were declared unconstitutional and unenforceable because “they do not enact a law” and “[t]he initiative power can be exercised only to adopt or reject laws” (Citations omitted: “City Attorney’s Impartial Analysis of Measure Z” published with the Measure Z ballot measure and available to voters at the time of the election.). Accordingly, sections 5 and 8 were not part of the law enacted by the voters as Measure Z. Therefore, they are not subject matter for the oversight of the Measure Z Committee.”

¹ In preparing of this report, the following documents were reviewed: (a) City of Oakland Charter, Article IV – City Officers, and VI – Administrative Organization, Section 601 – Boards and Commissions; (b) County of Alameda Sample Ballot and Voter Information Pamphlet, General Election of Tuesday, November 2, 2004; (c) City of Oakland Ordinance No. 12694 C.M.S.: Ordinance Establishing the Procedures of the Community Oversight Committee Created by Measure Z, Entitled “Oakland Cannabis Regulation and Revenue Ordinance” (Measure Z) and Providing the Terms and Responsibilities of the Committee Members; (d) City of Oakland, Boards & Commissions Directory, January 2008 (Introduction and Letter from the City Clerk)

Nothing in the rules and regulations governing the Measure Z Committee prevents individual members of the committee from acting as advocates as private citizens or as members of other organizations which permit members to do direct lobbying, however these activities should not be directly identified with members' participation on the Measure Z Committee.

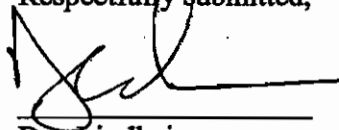
3. Amend Ordinance No. 12694 C.M.S., Section 2.c. in order to stagger the appointment date of members. Currently all members' two year terms expire on odd numbered years, commencing as of "the first day of August 2005". It was recommended that Members from Districts 1, 3, 5, 7 and the members appointed by the Mayor and the City Administrator be appointed in odd numbered years. Members from Districts 2, 4, 6, At Large, and the City Auditor's appointee would be appointed during even numbered years. (*Bylaws Article IV – Membership*)

This is a positive proposal that will make biennial re-appointments less onerous, by not having all 11 seats become vacant on the same date. **Note:** Any appointment(s) to fill vacancies at times other than end-of-term shall only be for the unexpired portion of the vacated term.

RECOMMENDATIONS

Accept this report and adopt the ordinance amending Ordinance No. 12694 C.M.S. to stagger the appointment dates of members.

Respectfully submitted,



Dan Lindheim
City Administrator

Prepared by: Bill Uber
Assistant to the City Administrator

Attachment A: Measure Z draft amendment to Ord. No. 12694 C.M.S.

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F

Measure Z Committee:

**ORDINANCE AMENDING ORDINANCE NO. 12694 C.M.S.,
"ORDINANCE ESTABLISHING THE PROCEDURES OF THE
COMMUNITY OVERSIGHT COMMITTEE CREATED BY MEASURE Z,
ENTITLED "OAKLAND CANNABIS REGULATION AND REVENUE
ORDINANCE" (MEASURE Z) AND PROVIDING THE TERMS AND
RESPONSIBILITIES OF THE COMMITTEE MEMBERS"**

WHEREAS, on November 2, 2004, the voters of the City of Oakland enacted the Oakland Cannabis Regulation and Revenue Ordinance, a voter initiative commonly referred to as Measure Z; and

WHEREAS, Measure Z became effective on December 7, 2004; and

WHEREAS, Measure Z makes the investigation, citation and arrest for private adult cannabis (marijuana) offenses (e.g. use distribution, sale, cultivation and possession of cannabis for medical and non-medical purposes) the City of Oakland's lowest law enforcement priority; and

WHEREAS, Measure Z also created an eleven member advisory Community Oversight Committee, appointed to two year terms commencing with the first day of August 2005, to oversee the ordinance's implementation and provided that the committee shall include one community member appointed by each City Councilmember, one community member appointed by the Mayor, one representative appointed by the Oakland City Auditor and one representative appointed by the City Administrator;

WHEREAS, the members of the Committee are requesting amendments to the original ordinance in order to (a) make attainment of a quorum less restrictive, (b) stagger the terms of member appointments, and (c) advocate and lobby directly with local, state and federal officials; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Ordinance No. 12694 C.M.S. is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the original ordinance not cited or not shown in underscoring or strike-through type are not changed.

Section 1. It shall be the function and duty of the Community Oversight Committee to oversee implementation of the Lowest Law Enforcement Priority Policy and ensure timely implementation of Measure Z by:

a. advising the Council of concerns, issues regarding the lowest law enforcement policy for private adult cannabis offenses;

- b. making recommendations to the Council regarding the policy implementation; and
- c. reporting annually to the Council on the implementation of Measure Z.
- d. advocating and lobbying elected officials for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.

Section 2.

a. The Committee shall consist of eleven (11) members. The Mayor shall appoint one community member. Each Councilmember shall appoint one community member. The Committee also shall include one representative of the City Administrator and one representative of the City Auditor. Members must reside in the City of Oakland at time of their appointment and for the duration of their term and should have the appropriate skills and expertise to carry out the duties of the Committee.

b. ~~Six members shall constitute a quorum.~~ A quorum shall be defined as "a majority of appointed members currently in an "active" status, provided the number of active appointed members meet or exceeds six."

c. An "active" member is a current appointed member who has not missed three (3) or more consecutive meetings. Appointed members missing three (3) or more consecutive meetings shall be considered non-active and the staff assigned to the Committee by the City Administrator, or designee, shall notify the appointing authority in writing of the absences. A member shall regain "active" status by attending a meeting of the Measure Z Committee.

d. The members shall be appointed to terms of two years, said term to commence upon the first day of August 2009 in odd numbered years for members appointed by Councilmembers in Districts 3, 7, and the representatives from the Mayor and City Administrator beginning in 2009; and in even numbered years for members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor, beginning in 2010, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms.

e. For the year beginning the first day of August 2009 only, members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor shall be appointed to a one (1) year term, providing they do not vacate their position or are not reappointed by their appointing authority.

Section 3.

- a. A vacancy on the Community Oversight Committee will exist whenever a member dies, resigns, ceases to reside in Oakland or is removed.
- b. Committee members shall serve at the pleasure of their appointing authority.

Section 4. The members shall elect a chairperson and a vice chairperson, who shall serve for a one year term. The Community Oversight Committee shall meet at City Hall, and at an established date and time suitable for its purpose. Such meetings shall be designated regular meetings. All meetings shall be held in accordance with the state and municipal open meeting laws (Brown Act and Sunshine Ordinance).

Section 5. The Community Oversight Committee, in consultation with the City Administrator, shall establish rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution. The Community Oversight Committee may make reports, and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council. Recommendations from the Community Oversight Committee shall be carefully and fully considered by the City Administrator before they are presented to the Council. However, if the City Administrator rejects the Committee's recommendation(s), the Committee may submit recommendations to the Council for consideration, as appropriate.

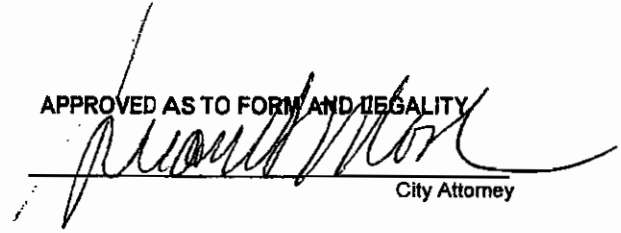
Section 6. The City Administrator, or a designee, may provide the Community Oversight Committee with staff assistance and a representative of the City Attorney's Office shall attend the committee meetings as appropriate.

Section 7. The Community Oversight Committee may not create any Standing Committees for the purpose of delegating any of the Committee's decision-making or duties, but may form ad hoc committees as needed.

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FILED
INTRODUCED BY COUNCIL MEMBER
OAKLAND

APPROVED AS TO FORM AND LEGALITY



City Attorney

2009 JUN 11 PM 4:15

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

**ORDINANCE AMENDING ORDINANCE NO. 12694 C.M.S.,
"ORDINANCE ESTABLISHING THE PROCEDURES OF THE
COMMUNITY OVERSIGHT COMMITTEE CREATED BY MEASURE Z,
ENTITLED 'OAKLAND CANNABIS REGULATION AND REVENUE
ORDINANCE' (MEASURE Z) AND PROVIDING THE TERMS AND
RESPONSIBILITIES OF THE COMMITTEE MEMBERS" IN ORDER TO
STAGGER THE APPOINTMENT TERMS OF MEMBERS TO ODD AND
EVEN YEARS**

WHEREAS, on November 2, 2004, the voters of the City of Oakland enacted the Oakland Cannabis Regulation and Revenue Ordinance, a voter initiative commonly referred to as Measure Z; and

WHEREAS, Measure Z became effective on December 7, 2004; and

WHEREAS, Measure Z makes the investigation, citation and arrest for private adult cannabis (marijuana) offenses (e.g. use distribution, sale, cultivation and possession of cannabis for medical and non-medical purposes) the City of Oakland's lowest law enforcement priority; and

WHEREAS, Measure Z also created an eleven member, advisory Community Oversight Committee, appointed to two year terms commencing with the first day of August 2005, to oversee the ordinance's implementation and provided that the committee shall include one community member appointed by each City Councilmember, one community member appointed by the Mayor, one representative appointed by the Oakland City Auditor and one representative appointed by the City Administrator; and

WHEREAS, staggering the appointment term of member, whereby odd numbered Council Districts, Mayor, and City Administrator appointments shall be made in odd numbered years and even numbered City Council Districts, the At Large and City Auditor appointments shall be made in even years; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Ordinance No. 12694 C.M.S. is hereby amended to read as follows: additions are indicated by underscoring and deletions are indicated by ~~strike through~~ type; portions of the original ordinance not cited or not shown in underscoring or ~~strike through~~ type are not changed and remain in full force and effect.

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Ordinance Section 1. It shall be the function and duty of the Community Oversight Committee to oversee implementation of the Lowest Law Enforcement Priority Policy and ensure timely implementation of Measure Z by:

- a. advising the Council of concerns, issues regarding the lowest law enforcement policy for private adult cannabis offenses;
- b. making recommendations to the Council regarding the policy implementation; and
- c. reporting annually to the Council on the implementation of Measure Z.

Ordinance Section 2.

a. The Committee shall consist of eleven (11) members. The Mayor shall appoint one community member. Each Councilmember shall appoint one community member. The Committee also shall include one representative of the City Administrator and one representative of the City Auditor. Members must reside in the City of Oakland at time of their appointment and for the duration of their term and should have the appropriate skills and expertise to carry out the duties of the Committee.

b. Six members shall constitute a quorum.

c. The members shall be appointed to terms of two years, said term to commence upon the first day of August 2005 in odd numbered years for members appointed by Councilmembers in Districts 1, 3, 5, 7, and the representatives from the Mayor and City Administrator, beginning in 2009; and in even numbered years for members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor, beginning in 2010, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms.

d. For the year beginning the first day of August 2009 only, members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor shall be appointed to a one (1) year term, providing they do not vacate their position or are not reappointed by their appointing authority.

Ordinance Section 3.

a. A vacancy on the Community Oversight Committee will exist whenever a member dies, resigns, ceases to reside in Oakland or is removed.

b. Committee members shall serve at the pleasure of their appointing authority.

Ordinance Section 4. The members shall elect a chairperson and a vice chairperson, who shall serve for a one year term. The Community Oversight Committee shall meet at City Hall, and at an established date and time suitable for its purpose. Such meetings shall be designated regular meetings. All meetings shall be held in accordance with the state and municipal open meeting laws (Brown Act and Sunshine Ordinance).

Ordinance Section 5. The Community Oversight Committee, in consultation with the City Administrator, shall establish rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution. The Community Oversight Committee may make reports, and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council. Recommendations from the Community Oversight Committee shall be carefully and fully considered by the City Administrator before they are presented to the Council. However, if the City Administrator rejects the Committee's recommendation(s), the Committee may submit recommendations to the Council for consideration, as appropriate.

Ordinance Section 6. The City Administrator, or a designee, may provide the Community Oversight Committee with staff assistance and a representative of the City Attorney's Office shall attend the committee meetings as appropriate.

Ordinance Section 7. The Community Oversight Committee may not create any Standing Committees for the purpose of delegating any of the Committee's decision-making or duties, but may form ad hoc committees as needed.

SECTION 2. SEVERABILITY: If any article, section, subsection, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

SECTION 3. EFFECTIVE DATE: This ordinance shall become effective immediately upon final adoption of it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

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ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____