

Measure Z Committee

Regular Meeting

Thursday, May 21, 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 March 19, 2009.
- E. Reports for Discussion and Possible Action
 - 1. Report from the Oakland Police Department on Marijuana Arrests in Oakland between January 1, 2003 – December 31, 2008
 - 2. Annual Report of the Measure Z Committee for 2008
 - 3. Continued Discussion on Oakland-Alameda Coliseum Regulations Regarding Medical Cannabis Patients Taking their Medications in Designated Smoking Areas and How Law Enforcement Handles Such Situations
- F. Announcements
- G. Adjournment

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.

Measure Z Committee

May 21, 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)

(Rev. 3-19-09)

Item: C
Measure Z
May 21, 2009

Measure Z Committee

DRAFT
Meeting Minutes

Thursday, May 21, 2009, 6:00 p.m.

Council Chambers, 3rd Floor, 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: J. Anthony, C. Bartice, L. Bonett, D. Gieringer, R. Lee, K. Stephenson, B. Uber, J. Villatoro

The meeting of March 19, 2009 was called to order at 6:07 p.m..

B. Open Forum / Public Comment

The following individuals spoke: Mr. J. Franz and Mr. M. Adams

C. Review of the Pending List

The Committee changed the word “compliance” to “cooperation” in Item 10 on the Pending List. The item now reads “Review of Oakland cooperation / non-cooperation policies with the Drug Enforcement Agency (DEA)”. The Annual Report (Item 9) was tentatively scheduled for the April meeting, and the Training Bulletin (Item 4) was tentatively scheduled for the May 21st meeting. A new item was added to the Pending List: “Review of environmental impacts of indoor / outdoor growing and possible regulations”.

Ms. Bonett recommended that staff place in the minutes a “head count” of audience members at meetings. Mr. Uber said that was not a standard part of meeting minutes and he did not plan to count attendees.

Vice Chair Gieringer directed that “it be recorded that there are 21 people in the audience.” Staff duly recorded the information.

Item: D
Measure Z
May 21, 2009

D. Approval of Draft Minutes

The Minutes of the February 26, 2009 meeting were approved, as amended (Item E-1, deleted a duplicate “Continued Discussion” in the title), on a motion by Mr. Villatoro, second by Ms. Bonett, and by consensus.

E-1 Discussion on Oakland-Alameda Coliseum Regulations Regarding Medical Cannabis Patients Taking their Medications in Designated Smoking Areas and How Law Enforcement Handles Such Situations

Mr. Uber gave a brief review of the report. Mr. R. Raiche, who brought this issue to the Committee at its Special Meeting on February 26, 2009, spoke and handed out part of a deposition from US District Court case no. C06-05915 MJJ, with certain passages underlined. Mr. Uber noted that nothing in the handout indicated a medicinal cannabis patient (which does not fall under the purview of Measure Z) had been arrested. Mr. Uber added that the Smoking Sections of the Coliseum could not in any way be considered as “private”.

Mr. Gieringer remarked that he has been remiss in not providing information he had on a patient being arrested and that he would produce it for the next meeting. The report was received, but continued to the next meeting.

The following individual spoke: Ms. J. Hopper.

E-2 Discussion on Measure Z Committee Member Oral Reports on Meeting with Their Appointing Authority, re: Club Guidelines and General Measure Z Related Topics

Mr. Anthony was unable to get together with Councilmember Quan. He noted that when he was appointed her major concern was to protect the permitted and regulated medical cannabis dispensaries and that the Measure Z Committee should not do anything to draw the attention of the federal authorities; and given the change in federal enforcement priorities of Attorney General Holder, with respect to state law, he would continue to attempt his attempts to contact Ms. Quan on her position.

Mr. Gieringer was unable to schedule time with Council President Brunner, but he did talk to one of her aides a couple of times. The aide stated Ms. Brunner was aware of the medical cannabis taxation proposal, but the aide had no additional information from the Councilmember on any other Measure Z related issues.

Mr. Villatoro was able to speak by telephone with Councilmember Kernighan. She spoke in favor of ballot proposal to increase the tax rate on medical cannabis. She also noted her general support for the work of the Measure Z Committee.

Mr. Stephenson was noted as present at 6:44 p.m.

Mr. Lee spoke with Councilmember Nadel and gave her a brief history of the Clubs. Mr. Lee said Ms. Nadel seemed to understand the issues and said it takes courage to move these discussions forward.

Ms. Bartice stated the City Auditor's Office declined to give feedback on her personal thoughts (regarding private, adult cannabis use, cultivation and sales).

Mr. Uber stated that he had a conversation with the City Administrator. Mr. Lindheim said his personal views didn't matter. However, he saw Mr. Uber's role as maintaining a cautionary / conservative stance on items being considered by the Measure Z Committee and left it to Mr. Uber's judgment on how he did that.

Ms. Bonett said she sent a letter to the liaison in the Mayor's Office, but she had not received a reply as of the meeting.

Mr. Stephenson contacted Mr. Reid's office via e-mail. He had not heard back from Mr. Reid or his staff as of the meeting.

The following individual spoke: Mr. R. LaChance.

Mr. Gieringer recommended that the Committee place an item on the Pending List regarding anti-smoking ordinances and state law and whether ventilated spaces can be made compliant to allow licensed cannabis smoking premises in Oakland. Mr. Gieringer and Mr. Anthony volunteered to work on the issue.

The following individuals spoke: Mr. A. Sotos, Ms. C. Bonaudi

E-3 Update from the Chair on Recent Actions at the "Lemon Drop," 1736 Telegraph Avenue

Mr. Anthony stated he did not know any more than what was relayed in the article. Mr. Lee noted that it was referred to as a "medical cannabis dispensary gone bad and not a Measure Z Club. He also noted that the current owner was not the same person and the original owner of the space.

F. Announcements

- 1. Pro-Con “Open Forum” articles, “Is it time to Legalize Marijuana?” San Francisco Chronicle, March 3, 2009**

Mr. Uber noted the Pro-Con article was just an FYI for Committee members.

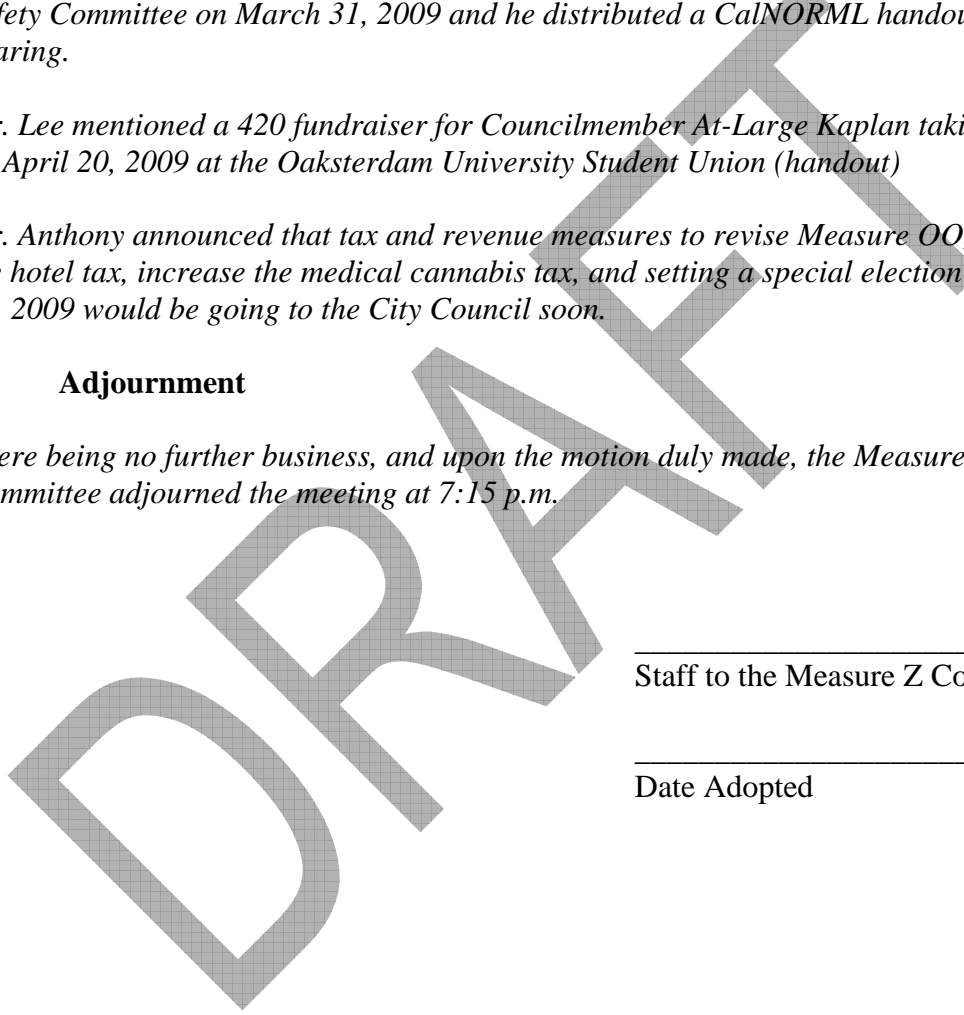
Mr. Gieringer noted that AB 390 was scheduled for a hearing before the Assembly Public Safety Committee on March 31, 2009 and he distributed a CalNORML handout on the hearing.

Mr. Lee mentioned a 420 fundraiser for Councilmember At-Large Kaplan taking place on April 20, 2009 at the Oaksterdam University Student Union (handout)

Mr. Anthony announced that tax and revenue measures to revise Measure OO, change the hotel tax, increase the medical cannabis tax, and setting a special election for July 21, 2009 would be going to the City Council soon.

G. Adjournment

There being no further business, and upon the motion duly made, the Measure Z Committee adjourned the meeting at 7:15 p.m.



Staff to the Measure Z Committee

Date Adopted

CITY OF OAKLAND

MEMORANDUM

To: Measure Z Committee
From: Oakland Police Department
Date: May 21, 2009

Subj: **Police Department Activities Related to Arrests for Criminal Marijuana Offenses for 2008**

The majority of arrests for possession for sale and sales of marijuana are made at 'street level' and are often the result of citizen complaints or Neighborhood Crime Prevention Council (NCPC) priorities. While the Oakland Police Department sets a lowest level priority on enforcement of possession of marijuana for private, personal use, it spends significant resources on open air drug markets which impact the safety of entire neighborhoods. The Oakland Police Department is committed to Community Policing and takes direction from the community as to what issues are the priorities within their neighborhoods; open air drug markets are often made a priority for the Department.

There was a 27% rise in all criminal marijuana arrests made in 2008. Several factors may have attributed to the rise in arrests;

- The Oakland Police Department achieved (and exceeded) full staffing of 803 authorized officers in 2008. The Department has more officers than at anytime in the City's history. Problem Solving Officers have been assigned to all Community Policing Beats. This staffing level allows officers more time to spend on projects and NCPC priorities.
- The current state of cocaine distribution in the Bay Area is of significant interest to law enforcement. Due to efforts in Mexico and the United States cocaine has had a steep increase in price and many sources of supply have been disrupted. Persons formerly involved in cocaine sales have reverted to marijuana sales as they have been 'priced out' of the market or cannot obtain a supply.
- Numerous marijuana cultivation arrests occur when the Department is notified by citizens of illegal growing operations. Many are discovered by 'accident' when officers respond to reports of fires or break-ins at a growing operation. An interesting trend has developed in Northern California due to plummeting house prices. Several persons arrested for illegally growing marijuana purchased foreclosed homes just to operate a growing operation.

Though all "grows" not covered by medicinal cannabis rules can be considered illegal, the police department views them as also falling under the low priority

Item: ___E-1___
Measure Z
May 21, 2009

policy and does not spend time on small personal grows. However, low priority does not mean “never.”

Marijuana Arrest Statistics for Calendar Years 2003 – 2008 *

Arrest Type	2003	2004	2005	2006	2007	2008
Possession of Marijuana for Sale - § 11359 HS	297	198	377	311	508	618
Cultivation of Marijuana - § 11358 HS	8	20	4	9	13	29
Sales/Transportation of Marijuana - § 11360 HS	118	226	201	111	115	164

* NOTE: These arrest totals are for adults only. Juvenile arrest totals are not available.

The above numbers are for arrests considered by the Department to be criminal marijuana offenses.

Per OPD policy, review and approval by the Watch Commander was required prior to the arrest of anyone who alleged medical marijuana, but who possessed questionable or no documentation.

Private adult cannabis use is not a priority for the Oakland Police Department. On occasion, adult cannabis issues come to the City’s attention pursuant to complaints or violations of other laws, such as sale of illegal substances, responses to burglar alarms, etc. At such times, the Department uses its discretion and, when in doubt, officers are encouraged to call for a supervisor to respond to the scene to make a determination.

Howard Jordan
Chief of Police

Measure Z Committee

**One Frank H. Ogawa Plaza
Oakland, CA 94612**

*James Anthony, Chair
Dale Gieringer, Vice Chair
Cathi Bartice
Leslie Bonett
Richard Lee
Keith Stephenson
Bill Uber
Joseph E. Villatoro*

May 21, 2009

Public Safety Committee
Oakland City Council
Oakland, California

Chairperson Reid and Members of the Committee:

I am pleased to submit to you the Third Annual Report of the Measure Z Community Oversight Committee. The responsibility of the Committee, under City Council Ordinance No. 12694 C.M.S is to “advise the City Council of concerns and issues regarding the lowest law enforcement [priority] policy for private adult cannabis offenses, make recommendations to the City Council regarding policy implementation, and report annually to the City Council on the implementation of Measure Z.”

The Committee met 7 times in 2008, once less than in 2007.

The Committee’s Annual Report for 2007 was forwarded to the City Administrator on October 14, 2008, who then presented it to the Public Safety Committee the same day.

The Committee began 2008 with its “Sub-committee Report on Guidelines for Measure Z Clubs/Private Sales,” by Committee Member Richard Lee, a guide for the regulation and taxation of Measure Z clubs. In March, the Committee created an ad hoc sub-committee composed of Committee Members Mr. Lee, Ms. Bonett, and Ms. Bartice to further develop the Guidelines. The final draft included Committee Member Mr. Villatoro as co-author and addressed the following issues: public nuisance, membership limits, sales per visit limit, onsite consumption, zoning, food service within clubs, alcohol and drug policy, sales tax, Oakland business taxes, and taxes at the state and federal level. The Committee approved a motion to forward it to the City Administrator with a recommendation to forward the report to the Public Safety Committee for review.

In April, the Committee met with Assistant Chief of Police Howard Jordan and Lieutenant Darren Allison to discuss an OPD report on marijuana arrests in Oakland between January 1, 2003 and December 31, 2007. After AC Jordan gave an overview and perspective on the numbers, the Committee made suggestions and asked additional questions. When asked if the City’s lowest priority policy helped OPD focus on violent crimes, AC Jordan answered affirmatively. He added that OPD is currently updating officer Training Bulletin III-W, concerning medical cannabis. It was later resolved that Committee Member Mr. Uber would work with OPD staff to draft a Measure Z Training Bulletin for OPD and the Committee would have the opportunity to review the draft.

Item: E-2
Measure Z
May 21, 2009

One Frank H. Ogawa Plaza
Oakland, CA 94612

The Committee voted unanimously to send a letter to Representative Barbara Lee, urging her to support federal legislation authorizing state and local governments to regulate marijuana lawfully. Shortly after, Rep. Lee co-sponsored the Act to Remove Federal Penalties for the Personal Use of Marijuana by Responsible Adults (HR 5843).

The Committee voted unanimously to receive “A Report Clarifying the Advisory/Advocacy Nature of the Measure Z Community Oversight Committee,” by Mr. Uber, which found the Committee to be an advisory body, whose scope does not include participating in direct lobbying and advocacy actions, but that only makes recommendations to the City Council via the City Administrator regarding policy implementation of the Oakland Cannabis Regulation and Revenue Ordinance (a.k.a. Measure Z).

The Committee voted unanimously to send the draft 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,” to the City Administrator for forwarding to the City Council with the proposals: (a) amend the definition of “quorum,” (b) add a “Non-Active Member” category, (c) amend member 2-year terms to stagger appointment dates to odd/even years, and (d) amend the function and duties of the Committee to include advocating and lobbying elected officials on cannabis-related issues.

At the end of the year the following items (among others) were on the Pending List:

- 1) Draft a proposed Training Bulletin for OPD for Measure Z for the implementation (modeled after the Medical Cannabis Training Bulletin) of the Measure Z lowest law enforcement priority, including protocols for OPD/OFD interaction, re: encountering cultivation operations in the course of their duties
- 2) Discussion of “clear violations” of Measure Z (ex. People packaging personal use cannabis in their homes) as part of a dialog with OPD (invite the public to share stories)
- 3) Develop guidelines for future enforcement
- 4) Establishment of guidelines for Measure Z club’s to deal with the issue of fees to be paid by licensed Measure Z clubs

To date the Committee remains frustrated in its attempts to recommend policies to implement the will of the voters in passing Measure Z by 65%—none of the Committee’s recommendations have even been heard, let alone acted on, by the City Council.

To: Measure Z Committee
From: Bill Uber, Measure Z Committee Member
Date: March 19, 2009

Subj: Oakland-Alameda Coliseum Regulations Regarding Medical Cannabis Patients Taking their Medications in Designated Smoking Areas and How Law Enforcement Handles Such Situations

The Committee requested a written response to complaints received of the arrest/citation of medical cannabis patients in designated smoking areas of the Oakland-Alameda Coliseum complex, made by a Public Speaker at both the January 15th and the Special February 26, 2009 meetings of the Measure Z Committee.

None of the issues raised by the Speaker fall under the purview of the Measure Z Committee. Though the person(s) allegedly involved mostly likely were adults, they were **patients using medicinal cannabis** (a topic that, when it comes up, the City Attorney has repeatedly urged the Committee to use caution in discussing) – which is covered by state law enacted with the passage of Proposition 215, the Compassionate Use Act. Also, the Coliseum is a **public venue**, not a private use issue. Patients taking their medicine in certain public places are covered under SB 420 [which was added as Article 2.5 (commencing with Sect. 11362.7) to Ch. 6, of Div. 10 of the Health & Safety code, effective January 2, 2004].

I contacted the Oakland Police Department and requested them to check their records for such incidents. Captain Ed Tracey responded:

Acting Lt. Paich and Sgt. Espinoza have researched this and did not locate any arrests in "designated areas" or involving citizens with cannabis cards. We did make plenty of other arrests involving people smoking pot in "non-designated" areas such as the parking lots, general seating and in other areas of the coliseum. This can be validated with all of our arrest logs generated from each Raider home game.

I also asked him to check with the Sheriff's Office and Coliseum security to see if they have any records - - they say they have no records of such incidents and have had no complaints filed.

I would recommend that the Speaker raise his concerns as follows:

Complaints regarding the provision of services to patrons with disabilities at the Oakland-Alameda Coliseum complex should be directed to: ADA Coordinator at (510) 569-2121, TTY (510)383-4619. For policy issues, contact the Oakland-Alameda County Coliseum Authority, phone: 510.383.4802, or write to them at: 7000 Coliseum Way, Oakland, CA 94621-1918

To file a complaint against a police officer, contact:

Citizens Police Review Board - - 510.238.3159 or the Oakland Police Department, Internal Affairs Division - - 510.238.3161.

Item: E-3
Measure Z
May 21, 2009