

# *Cannabis Regulatory Commission (former Measure Z)* Regular Meeting

Thursday, March 20<sup>th</sup>, 2014, 6:30 p.m.  
Council Chambers, City Hall, One Frank H. Ogawa Plaza

## AGENDA

### *Members:*

Dale Gieringer	District 1	Jacob Sassaman	District 7
Tyson Nagler	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Vacant	Mayor
James Anthony	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Marlon Hendrix	District 6		

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

### AGENDA

## Please Note New Meeting Time of 6:30PM

- A. Roll Call and Determination of Quorum
- B. Open Forum / Public Comment
- C. Review of the Pending List and Additions to Next Month's Agenda
- D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meetings of 2/20/14.
- E. Reports for Discussion and Possible Action
  - 1. A continuation of the discussion on the Police Operation on December 18<sup>th</sup>, 2013 on a "Measure Z" Club in North Oakland and on Sunny Spot Café on 17<sup>th</sup> Street in January.
  - 2. A continuation of the discussion of the report from the Cultivation Regulation Research Committee (see attached)
  - 3. A continuation of the discussion of Cannabis Cabaret Proposal
  - 4. A continuation of the discussion of horticultural waste associated with cannabis grows and how recycling it could benefit the City's Recycling Program
  - 5. A discussion on packaging for sales of cannabis and the impact on the environment.
  - 6. An update on current Ballot Measures or legislation being considered in CA.
- 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 Cannabis Regulatory 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 Cannabis Regulatory 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 special needs or sensitivities, please refrain from wearing strongly scented products to events.

For questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Cannabis Regulatory Commission at (510) 238-3301.

# *Cannabis Regulatory Commission (former Measure Z)*

## Pending List and Proposed

Thursday, March 20<sup>th</sup>, 2014 6:30 p.m.

Items for discussion

Pending, no specific date

1. Establishment of guidelines, regulations, and fees for Cannabis Clubs (Measure Z Clubs)
2. Report from the District Attorney- conviction versus arrest statistics for CA Health and Safety Code section 11357- misdemeanor arrests (L. Bonett October, 2012)
3. Extended Discussion regarding "direction" of the Cannabis Regulatory Commission
4. Tracking of ballot measures and/or passed legislation regarding cannabis reform in states outside of California.
5. A public education campaign regarding the private versus public use of cannabis. (July, 2012)
6. A discussion regarding the definition of "Private" in regard to cannabis offenses in the City of Oakland.

### For Tracking Purposes

1. Election of Officers (April)
2. Annual Report to the City Council (finalize in November/December)\* On tonight's agenda

(rev. 1-2014)

# *Cannabis Regulatory Commission (former Measure Z)*

Regular Meeting

Thursday, February 20<sup>th</sup>, 2014, 6:00 p.m.

## Meeting

### Minutes

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

#### **Members:**

Dale Gieringer	District 1	Jacob Sassaman	District 7
Tyson Nagler	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Vacant	Mayor
James Anthony	District 4	Amanda Reiman	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Marlon Hendrix	District 6		

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### AGENDA

#### A. Roll Call and Determination of Quorum

*Members Present: Hummel, Parker, Gieringer, Martinez, Reiman, Nagler, and DeVries*  
*Members absent: Anthony, Sassaman, and Hendrix.*

#### B. Open Forum / Public Comment

*Rob Raich spoke about the two recent cannabis dispensaries that were raided by OPD in the past two months. He feels that if the department is using officers that were paid for by the tax funded measure (Measure Y), that this tax money is being wasted and that the police should refrain from pursuing "Measure Z" Clubs.*

#### C. Review of the Pending List and Additions to Next Month's Agenda

*The Chair added a discussion on the raid of Sunnyspot to the agenda for next month and suggested it also be discussed this month if possible under item E1.*

*Also, item E5 was NOT supposed to be on this month's agenda but instead added to the pending list for next month.*

*Member Nagler asked that the Commission add an item regarding pending initiatives or legislation in CA regarding cannabis legalization. Member Reiman offered to bring this report/update back at next month's meeting.*

*Chairperson Hummel noted that item E4 will also be discussed next month.*

D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meetings of January 16<sup>th</sup>, 2014.

*Member Parker noted two substantive changes: on page three, Ellen Komp's name was misspelled, and under item 3 in the third paragraph she would add that member Gieringer said that this proposal would be separate from the Smoking Ordinance (not amending it).*

*The minutes were approved with these amendments.*

E. Reports for Discussion and Possible Action

1. A report and discussion on the Police Operation on December 18<sup>th</sup>, 2013 on a "Measure Z" Club in North Oakland

*Joe DeVries read an email from Deputy City Administrator (attached) that explained what happened with the business in North Oakland. The business was distributing cannabis to non-medical individuals and enforcement was pursued.*

*Member Gieringer wants to know why this club was the focus of OPD. Joe DeVries acknowledged that they were in fact PSOs or Problem Solving Officers who generally respond to neighborhood complaints. Therefore, if they received complaints about this location, they would be compelled to respond.*

*Member Martinez noted that it would be helpful to understand how the raid was initiated especially since OPD has indicated cannabis offenses are their lowest priority. He asked that staff do the research and report back next month.*

*The Commission also discussed the raid at Sunny Spot Café on 17<sup>th</sup> Street that occurred in January. Joe DeVries noted that this location had definitely received complaints, including from a mother whose teenager had purchased cannabis there and that the Deputy City Administrator was aware of and supported the police action.*

*Chairperson Hummel indicated the raid was inadvertent, based on two officers who walked in to buy coffee and became suspicious.*

*A member of the public, and apparently the owner of Sunny Spot (no name was given) addressed the commission, and she suggested that the raid was inadvertent. However she noted that Sgt. Vierra was on the scene and indicated there were several complaints about the location.*

*Rob Raich also spoke on this item. He claims that OPD is soliciting complaints about Sunny Spot by canvassing the street and asking about problems at the location. He suggests a cease and desist order by the City Council to the police department in regard to these raids.*

*The group discussed the idea of a cease and desist order but needed more information before moving forward with one. It was suggested the group obtain the search warrant for both locations/incidents.*

*The group agreed to continue this discussion at the next meeting with a specific question: Is OPD conducting investigations without complaints?*

2. A continuation of the discussion of the report from the Cultivation Regulation Research Committee

*Member Reiman noted that she passed along the draft regulations to Council Member McElhaney's Office for review but otherwise the item was continued to next month.*

3. A continuation of the discussion of Cannabis Cabaret Proposal

*Member Reiman met with Staff at Council member McElhaney's Office about the idea of licensing on-site consumption. They will meet again next week after the Council Member reviews the proposal. Also, Member Reiman met with staff to Council Member Kaplan. The suggestion is that Commission Members discuss the issue with Public Safety Committee Members individually and then discuss it openly when the annual report comes to the Public Safety Committee.*

*There were two public speaker on the item:*

*Cecile Bernaudi commented that Oakland has special unique areas such as Chinatown, the Lake, etc. and it would be nice to have an area that represents Oakland's history regarding cannabis reform.*

*Jacqueline Patterson commented that OPD consistently states they don't want to spend resources on marijuana yet they continue to do so. She went on to note that the City Attorney definition of private disallows commercial development of private cannabis distribution. Therefore, a cease and desist letter toward OPD would be a waste of time; instead the focus should be on the City Attorney since it is their ruling that has created the problem.*

4. A discussion of horticultural waste associated with cannabis grows and how recycling it could benefit the City's Recycling Program

*Chairperson Hummel introduced this item and has been in contact with Alameda County's Hazardous Waste Manager and they are willing to take any household hazardous waste such as pesticides and fertilizers at any time their drop off centers are open. They also suggested contacting the Alameda County Agricultural Department to discuss waste from larger commercial grows.*

*Member Reiman noted that a big part of the 2016 cannabis political discussion is the environmental aspect so she sees this as a beneficial conversation to have now in preparation for the future.*

*Member Parker asked about how to address plant waste—the parts of the cannabis plant that aren't used; is there a safe way to dispose of it without attracting law enforcement's attention?*

5. A discussion on packaging for sales of cannabis and the impact on the environment.

*This item was continued to next month.*

#### E. Announcements

*Chairperson Hummel announced he wants to start a non-profit that can address many of the issues discussed by the Commission to provide an opportunity to enhance the commission's work.*

*Member Parker announced that: 15 members of the public attended the meeting, there is a vacancy on the commission and interested people should contact us, and March 1<sup>st</sup> is the Western Conference of Students for Sensible Drug Policy taking place at Hastings School of Law and both she and Member Reiman are speaking at the event.*

#### G. Adjournment

*The meeting adjourned at 8:05pm.*

## MEDICAL CANNABIS CULTIVATION FACILITY ORDINANCE

### Section 1. TITLE

This ordinance shall be known as the MEDICAL CANNABIS CULTIVATION FACILITY ORDINANCE.

### Section 2. FINDINGS

- A. [\_\_\_\_\_].
- B. [\_\_\_\_\_].
- C. [Etc.].

### Section 3. PURPOSE

The purpose of this ordinance is [\_\_\_\_\_].

### Section 4. MEDICAL CANNABIS CULTIVATION FACILITIES

Chapter 5.83 is added to the Oakland Municipal Code, to read:

#### Chapter 5.83 - MEDICAL CANNABIS CULTIVATION FACILITIES

##### 5.83.010 - Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

- A. "Cannabis" or "Marijuana" shall have the same definition as California Health and Safety Code section 11018, as amended from time to time.
- B. "City Administrator" means the City Administrator of the City of Oakland or his or her designee.
- C. "Cottage Garden" means a facility used for cultivating medical cannabis in a cultivation area between 201 and 1,500 square feet within one parcel of land.
- D. "Cultivation Area" means the actual area in use for the entire cultivation process of cannabis plants (including seedling production, vegetation, and maturation), such that, for example, two trays used for maturation, each measuring ten square feet and stacked vertically on top of each other shall be counted as 20 square feet of cultivation

area.

E. "Medical cannabis" means cannabis in compliance with Health and Safety Code sections 11362.5 or 11362.7 *et seq.*, as amended from time to time.

F. "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

G. "Personal Garden" means any facility or residence used for cultivating medical cannabis in a cultivation area of up to 200 square feet within one parcel of land..

H. "Primary caregiver" shall have the same definition as in California Health and Safety Code section 11362.7, as amended from time to time..

I. "Qualified patient" means a patient who is entitled to the protections of California Health and Safety Code section 11362.5.

J. "Tier One Garden" means a facility used for cultivating medical cannabis in a cultivation area between 1,501 and 2,500 square feet within one parcel of land.

K. "Tier Two Garden" means a facility used for cultivating medical cannabis in a cultivation area between 2,501 and 6,000 square feet within one parcel of land.

L. "Third Party Inspector" means an individual, or affiliated group of individuals, certified by the City Administrator to conduct inspections of gardens, as provided in this chapter.

#### **5.83.020 - Operating Standards.**

Cottage, Tier One, and Tier Two gardens shall operate in compliance with operating standards including: not emitting odors, having all electrical work performed by licensed electricians, complying with all applicable building and fire codes, ensuring that all construction work requiring city permits is performed pursuant to acquiring such permits, implementing adequate security measures, being located on appropriately zoned parcels, and paying applicable taxes and fees. Operating standards for Personal Gardens in residential areas are specified in Section "Operating Standards for Personal Gardens"

#### **5.83.030 - Location Requirements.**

Tier Two Gardens may be located only in industrial or agricultural zones. Tier One Gardens may be located only in commercial, industrial, or agricultural zones. Cottage Gardens may be located only in mixed-use residential, commercial, industrial,

or agricultural zones. Personal Gardens may be located in all zones.

**5.83.040 - Inspections.**

A. The operator of every Cottage, Tier One, and Tier Two Garden shall obtain and pay for an annual inspection by a Third Party Inspector, to verify the garden complies with all operating standards and other requirements of this chapter, including ensuring that all taxes have been paid.

B. A Third Party Inspector is authorized to examine the books, papers, tax returns, and records of any Cottage, Tier One, or Tier Two Garden for the purpose of ensuring compliance with operating standards and other requirements of this chapter, including confirming that all taxes have been paid.

C. The operator of every Cottage, Tier One, and Tier Two Garden shall furnish to a Third Party Inspector the means, facilities, and opportunity for making such examinations and investigations as are necessary to ensure compliance with operating standards and other requirements of this chapter, including confirming that all taxes have been paid.

D. If a Third Party Inspector concludes a garden fails to comply with one or more of the operating standards or other requirements of this chapter, including the payment of all taxes and fees, the Inspector shall notify the garden's operator in writing, and the operator will have 60 days to comply with the relevant operating standards or requirements or pay the tax due. The Third Party Inspector who found any lack of compliance shall conduct another inspection within 60 days, and if the garden again fails to comply, the Inspector shall notify the City Administrator, who shall be authorized to take action to ensure compliance or cessation of operations at the garden.

E. The operator of every Cottage, Tier One, and Tier Two Garden shall permit the City Administrator, his or her designee, or other appropriate subordinate, including police, fire, or zoning inspectors, to enter the property only during the business hours of 9 AM to 6 PM for the purpose of examining the location to confirm compliance with this chapter.

**5.83.050 - Third Party Inspectors.**

A. Every Cottage, Tier One, and Tier Two Garden shall, at its expense, select a qualified Third Party Inspector from a list that shall be established and maintained by the City Administrator and who shall be certified to conduct inspections required by this chapter. Nothing herein shall limit the ability of city employees to enter a garden to conduct inspections or compliance checks authorized by this chapter. The City Administrator shall determine the criteria for establishing the list of Third Party Inspectors and may request any information the City Administrator reasonably deems related to verification of the qualifications of any Third Party Inspector or applicant to be a Third Party Inspector. The Third Party Inspector shall submit a detailed written report to the City Administrator regarding each of the items inspected and whether or not each of those items could be verified, including recommendations for improvements to the garden. A copy of such written report shall be provided to the garden, and shall be displayed at the site of the garden. If the Third Party Inspector is unable to verify each of the items set forth subsection (B), the garden will not be in compliance with the requirements of this chapter.

B. The Third Party Inspector, as authorized by the City Administrator, shall inspect all of the following in order to verify:

1. The identity of all the individual(s) operating the garden and the nature of their involvement with the garden.
2. That exterior signage makes no reference to the garden.
3. The location(s) at the site of the garden where medical cannabis is to be cultivated, processed, or stored.
4. That the cultivation area does not exceed that allowable for the garden's category.
5. The source of power, the number and wattage of lights and other electrical devices, and any indicia of substandard electrical conditions.
6. The size of the electrical service or system, the total demand to be placed on the system by all proposed uses at the site, and that no power is being obtained illegally.
7. That from a public right-of-way or a publicly traveled private road, there is no exterior evidence of medical cannabis cultivation occurring at the property.
8. That occupants of neighboring parcels will not be subject to objectionable odors.

9 That all locations where medical cannabis is cultivated, processed, or stored are secured sufficiently to prevent unauthorized entry.

10. That all fuel and waste products are used, stored, and contained in a safe manner.

11. That no water used at the site is being obtained illegally.

12. That measures have been taken to prevent contaminated runoff or discharge into any creek, lake, estuary, bay, or sewer.

13. That a copy of the previous inspection report, if any, is displayed.

14. That the operator of the garden has obtained a valid business license from the city.

15. That the operator of the garden has obtained a valid Seller's Permit from the Board of Equalization if it plans to sell or has sold directly to qualified patients or primary caregivers.

16. That the operator of the garden is a collective or cooperative or is otherwise in compliance with state law, and that the number of patients it serves or expects to serve is consistent with the amount of cannabis produced or expected to be produced at the garden.

17. That the operator of the garden has done all of the following or has procedures and systems in place sufficient to ensure that it does all of the following:

a. Comply with all local, state, and federal requirements relating to the payment of taxes, including but not limited to business taxes, sales taxes, franchise taxes, income taxes, payroll taxes, unemployment insurance, and workers' compensation.

b. Maintain records of the amount of medical cannabis produced.

c. Track and record all distribution of medical cannabis.

d. Prevent the diversion of medical cannabis to persons who are not qualified patients or primary caregivers.

18. That the garden is located on an appropriately zoned parcel.

19. That the garden complies with all applicable building and fire codes.

20. That all construction work and improvements at the site of the garden requiring permits were performed pursuant to acquiring such permits.

#### **5.83.060 – Operating Standards for Personal Gardens.**

Cultivation of medical cannabis in Personal Gardens shall be in conformance with the following standards:

- A. The residential facility shall remain at all times a residence with legal and functioning cooking, sleeping, and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property.
- B. Cultivation of medical cannabis in residential zones shall occur only in a secure location at a residence occupied by a qualified patient or primary caregiver.
- C. If required by the building or fire code, the wall(s) adjacent to the indoor cultivation area shall be constructed with Type X fire resistant drywall.
- D. The cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 natural ventilation or section 402.3 mechanical ventilation (or its equivalent(s)).
- E. The cultivation area shall not adversely affect the health or safety of persons at the residence or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products, or wastes.
- F. All high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to high amperage electrical equipment (exceeding six amps) used in the cultivation of medical cannabis is prohibited.
- G. Any electrical rewiring or remodeling shall first require an electrical permit from the City.
- H. From a public right-of-way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

#### **5.83.070 - Prohibited Operations.**

All cultivation facilities larger than 0 square feet of cultivation area that are not inspected by a Third Party Inspector and found to be in compliance with the

requirements of this chapter are expressly prohibited.

**5.83.080 - Appeals.**

Notwithstanding Chapter 5.02, any decision pursuant to this chapter by the City Administrator or his or her designee must be reasonable, and there shall be a right of appeal to the City Council.

**5.83.090 - Liability.**

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this document shall not become a personal liability of any public officer or employee of the City.

**Section 5. SEVERABILITY**

This ordinance shall be enforced to the full extent of the authority of the City of Oakland. If any section, subsection, paragraph, sentence, or word of this ordinance is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this initiative, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences, and words of this initiative shall be deemed severable.