

# Measure Z Committee

"REGULAR MEETING"

Thursday, August 19, 2010, 6:00 p.m.  
City Council Chambers, City Hall, 3<sup>rd</sup> Floor  
Oakland, California 94612

## AGENDA

### Members:

Dale Gieringer	District 1	Keith Stephenson	District 7
Joseph E. Villatoro	District 2	TC Everett	At Large
Richard Lee	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Wendy Herndon	City Auditor
Matt Hummel	District 5	Jeff Baker	City Administrator
Dhar Mann	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, Measure Z Committee Meeting of June 17, 2010
- E. Reports for Discussion and Possible Action:
  - 1. Discussion: Definition of the word "private" as Utilized in the November 2, 2004, Ballot Initiative, Measure Z – "Oakland Cannabis Regulation."
- F. Announcements.
- G. Adjournment.

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OAKLAND

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.

ITEM C: REVIEW OF PENDING LIST

# *Measure Z Committee*

## Pending List and Proposed

August 19, 2010, 6:00 p.m.

Items for Discussion

### **Pending, No Specific Date**

1. 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*
2. Develop guidelines for future enforcement (D. Gieringer)
3. 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*
4. Monitor, on an ongoing basis, "private, adult" marijuana offense arrests (J. Anthony)
5. A definition of "private" as it relates to cultivation in the law (R. Lee) *rev. Aug 08*
6. Annual Report from the Measure Z Committee to the Oakland City Council (D. Gieringer 7/20/06)
7. Review of Oakland compliance / non-compliance policies with the Drug Enforcement Agency (DEA) (R. Lee/D. Gieringer 9/20/07)
8. 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)
9. Review of environmental impacts of indoor / outdoor growing and possible regulations (M. Hummel 11/19/09)
10. Licensed cannabis smoking premises in the City of Oakland (D. Gieringer 3/19/09)
11. Report from the District Attorney – conviction vs. arrest statistics for CA Health & Safety Code section 11357 – misdemeanor arrests (L. Bonett 5/21/09)

### **For Tracking Purposes**

1. Election of Officers – March 2012

(Rev. June 1, 2010)

ITEM D. APPROVAL OF DRAFT MINUTES,  
MEASURE Z COMMITTEE OF JUNE 17,  
2010

# Measure Z Committee

## Draft Meeting Minutes

Thursday, June 17, 2010, 6:00 p.m.

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

### Members:

Dale Gieringer	District 1	Keith Stephenson	District 7
Joseph E. Villatoro	District 2	TC Everett	At Large
Richard Lee	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Wendy Herndon	City Auditor
Matt Hummel	District 5	Jeff Baker	City Administrator
Dhar Mann	District 6		

## DRAFT MINUTES

### A. Roll Call and determination of quorum

*Members Present: Gieringer, Villatoro, Hummel, Mann, Everett, Bonett, Herndon, Baker and Chairperson Lee*

*Members Excused: Anthony, Stephenson*

*The June 17, 2010 meeting of the Measure Z Committee was called to order at 6:14 p.m., by Chairperson Lee.*

### B. Open Forum / Public Comment

*There were three speakers:*

**Jack Ellis**, Executive Director of Power and Truth, Inc. Thanked Oakland City Council and OPD for humanistic implementation of Measure Z. Thanked the Committee for its existence and expressed hope that Committee would continue doing its exemplary work. Modeling Measure Z policies re zoning and age limits after alcohol would be a good approach. The Committee may want to consider a provision for club membership that includes a "guest of members" status to preclude skewing of actual club membership.

**Eric Keller**, during last Measure Z Committee, the City Attorney discussed medicinal permits. Wondered if Measure Z Committee is involved in the upcoming dispensary licensing process.

[Chairperson Lee informed Mr. Keller that the Measure Z Committee is not involved with the medicinal marijuana licensing process.]

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**Jeff Jones**, Patient ID Center, Co-Proponent with the Control, Tax Cannabis Campaign. Regarding adult legalization in coming years, and opportunity for cultivation home permits; advocate exploring opportunities for news stories involved with home inspection of patient gardens, set-up some process with the City of Oakland to educate residents on electrical code compliance and potential fire hazards. The Committee may set up process whereby “third-party” could conduct inspections – real issue is increased public safety.

**C. Review of the Pending List:**

There were no changes to the pending list.

**D. Approval of Draft Minutes, Measure Z Committee Meeting of May 20, 2010.**

Member Gieringer requested the next meeting include an Agenda Item regarding number of Committee Meetings per year, preferable odd-numbered months only. The Minutes of May 20, 2010, were approved by consensus.

**E. Reports for Discussion and Possible Action:**

1. Final Document: Measure Z Club Cannabis Fees

*After preliminary discussion by Committee Members, the consensus is the Measure Z Club Cannabis Fee Guideline document should go back to the Sub-Committee for review and completion. Chairperson Lee, Member Everett and Member Hummel will work on the document.*

There was one speaker on this Item:

**Bruce Frank:** Suggested fee system based on building occupancy levels or square footage of building rather than number of club members.

**Motion:** Motion by Chairperson Lee to send document to Sub-Committee for review and completion. Second by Member Gieringer.

**Action:** Motion approved by consensus.

2. Measure Z Club Permit Payment Protocol.

*At the request of the Chairperson, this Item was tabled for an upcoming Measure Z Committee.*

3. Discussion: Definition of the word “private” re the Measure Z Initiative.

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*(At the request of the Oakland City Attorney, Item E-3 was re-scheduled to the next Measure Z Committee Meeting.)*

Member Gieringer proffered an analysis of the language within the Measure Z Initiative, to wit: In review of the attached City Attorney memorandum, (December 13, 2005) there appears to be a gap or loop-hole. The opinion contains the following statement:

“In the impartial legal analysis, the City Attorney stated that private cannabis offenses are not defined in the statute and that the term “presumably refers to marijuana use, cultivation, sale possession, distribution that occurs in a private place, such as an adult’s home. Nothing in the ballot initiative itself or in the ballot materials or City Attorney’s impartial legal analysis would alert the voters that the intent of the measure was to apply the lowest law enforcement priority policy to commercial settings, such as cafes and restaurants or liquor or other retail establishments...”

Member Gieringer suggests there is a space between a “private place” i.e., a private home and a “commercial setting” such as a café or restaurant – i.e., a “private place” not in a private home, that is, a “private club.” A “private club” is not a “commercial club” where the latter is open to the general public, the former is not.

4. Cultivation Permit Regulation: Draft of Model Ordinance

There were five speakers on this Item:

**Bruce Franks:** Regarding cultivation, the amounts of medicines required may increase if commercial grows are allowed and there are limits placed on personal growers.

**Christine Wagner:** Requested an update on the draft commercial model ordinance.

**Jeff Jones:** Urged Committee to consider partnership with City of Oakland to develop protocol for electrical code inspection that is self supporting, perhaps performed by a neutral third party to ensure public safety concerns regarding potential fire hazards are addressed.

**Jack Ellis:** Suggests permitting clubs to grow for themselves based on membership totals. Such an approach would create a safe place for small growers to produce.

**Alex Campbell:** There are hundreds is not thousands of growers in Oakland, California and the City should get on board and tax the potential revenue stream.

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Chairperson Lee informed Committee that Item was placed on Agenda to generate discussion and possible lend assistance to the medicinal marijuana community given there is enormous experience in the Measure Z community in crafting legislation regarding commercial growth.

Member Everett asked that given the impending 2010 Initiative, how will the City, State or any other entity decide how much an individual may grow?

Chairperson Lee responded that Tax Cannabis 2010 Initiative provides that personal growth is limited to 25 square feet per parcel or residence (5 feet by 5 feet), for personal consumption only. All sales and commercial cultivation is licensed and permitted by local authorities; cities and counties. Sales are prohibited unless licensed by local authorities.

Member Hummel stated the “small growers,” the folks who sustained Measure Z’s efforts over the years, fear being pushed out of the business altogether with the licensing of large commercial grown. There should be a way for small growers to cultivate up to 1,000 square feet and allow for large commercial growers.

Chairperson Lee asked for volunteers to work on the commercial grow issue. Members Everett and Hummel volunteered. The first sub-committee meeting will occur on June 30, 2010, 6:30 p.m., Oaksterdam University, 1915 Broadway, Oakland.

**F. Announcements.**

Member Mann announced the availability of assistance with electrical code inspections conducted a private company that employs structural engineers and architects. There is a one-hour free visit. For additional information contact I-Grow.

Chairperson Lee announced a planned birthday party for Jeff Jones on Saturday, June 19<sup>th</sup> and a fundraiser for the 2010 Initiative, 7:00 p.m., Oaksterdam University, Student Union, 1915 Broadway, Oakland.

**G. Adjournment.** *There being no further business, and upon the motion duly made, the Measure Z Committee adjourned at 7:20 p.m.*

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Staff to the Measure Z Committee

Item: \_\_\_\_\_  
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ITEM E-1:

DISCUSSION MATERIALS:

- (1) MEASURE Z BALLOT  
INITIATIVE, NOVEMBER 2004
- (2) OPINION OF OAKLAND CITY  
ATTORNEY, DECEMBER 13,  
2005 RE DEFINITION OF  
“PRIVATE ADULT CANNABIS  
OFFENSES” UNDER BALLOT  
MEASURE Z

This is an archive of a past election.

See <http://www.smartvoter.org/ca/alm/> for current information.



League of Women Voters of California Education Fund

Alameda County, CA

November 2, 2004 Election

## Measure Z

### Marijuana Law Enforcement City of Oakland

87,201 / **65.2% Yes** votes ..... 46,563 / **34.8% No** votes

See Also: [Index of all Measures](#)

Results as of Dec 15 1:28pm, 100.0% of Precincts Reporting (257/257)

Information shown below: [Summary](#) | [Fiscal Impact](#) | [Impartial Analysis](#) | [Arguments](#) | [Full Text](#)

*Shall the ordinance requiring the City of Oakland (1) to make law enforcement related to private adult cannabis (marijuana) use, distribution, sale, cultivation and possession, the City's lowest law enforcement priority; (2) to lobby to legalize, tax and regulate cannabis for adult private use, distribution, sale, cultivation and possession; (3) to license, tax and regulate cannabis sales if California law is amended to allow such actions; and (4) to create a committee to oversee the ordinance's implementation, be adopted?*

#### Summary Prepared by City Attorney:

Title: Cannabis Regulation - An Ordinance that Would Require that the City (1) Establish a System to License, Tax and Regulate Cannabis (Marijuana) Sales As Soon as Possible under California Law; (2) Create a Committee to Oversee the Ordinance's Implementation and Disbursement of Revenue from Licensing and Taxation of Businesses that Sell Cannabis; (3) Adopt Law Enforcement Policies Related to Cannabis; and (4) Advocate for Changes in Laws to Support Implementation and Goals of the Ordinance

Summary: This proposed ordinance would require that the City of Oakland establish a system to license, tax and regulate cannabis for adult use as soon as possible under California law and adopt regulations regarding licensing and taxation of businesses that sell cannabis. The proposed ordinance makes investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority.

The proposed ordinance would require that the City create an eleven (11) member committee to oversee the implementation of the ordinance. The Committee's responsibilities include (1)

#### News and Analysis

##### Oakland Tribune

- [Measure Z would ease pot use laws: Supporters hope Oakland initiative would set a precedent for state](#) - October 18, 2004

#### Suggest a link related to Measure Z

Links to sources outside of Smart Voter are provided for information only and do not imply endorsement.

ensuring timely implementation of the ordinance's provisions and (2) overseeing disbursement of revenues generated from licensing, regulation and taxation of licensed cannabis businesses to ensure that revenues are spent on City services such as schools, libraries and youth programs.

The ordinance also requires that the City advocate for changes in state and other laws that would allow taxation and regulation of cannabis and end prosecution, arrest, investigation and imprisonment for adult, private cannabis offenses.

s/JOHN RUSSO City Attorney

### **Fiscal Impact from City Auditor:**

#### **SUMMARY**

This measure authorizes the City of Oakland to submit to the voters a ballot measure that would require the City to:

1. make law enforcement related to private adult cannabis (marijuana) use the lowest law enforcement priority;
2. lobby to legalize, tax and regulate cannabis (marijuana) for adult private use, distribution, sale, cultivation and possession;
3. license, tax and regulate cannabis (marijuana) sales if California law is amended to allow and authorize such actions; and
4. create a Community Committee to oversee the ordinance's implementation. The "lowest law enforcement priority" provision shall not apply to minors. The Community Oversight Committee (to insure the timely implementation of the Oakland Cannabis Regulation) shall be composed of members appointed by the City Council, the Mayor, the City Auditor, and the City Manager. The committee's responsibilities shall include implementation of the Lowest Law Enforcement Priority policy; making recommendations; monitoring the disbursement of funds generated by the cannabis revenue; and reporting annually to the Council on the implementation of this ordinance. The ordinance does not contain a specific provision to finance the costs of performing annual audits.

#### **FISCAL IMPACT**

The City of Oakland has not prepared an estimate related to changing enforcement priorities based on the passage of this measure. Therefore it is difficult to render an opinion with insufficient data.

s/ROLAND E. SMITH, CPA, CFS City Auditor

### **Impartial Analysis from City Attorney**

This voter initiative would make private adult cannabis (marijuana) offenses the City of Oakland's lowest law enforcement priority (€6); require the City to lobby to eliminate criminal penalties for private adult cannabis offenses (€8) and license, tax and regulate cannabis businesses if State of California laws are amended to allow such actions (€5); and create an oversight committee (€7).

Two of the Measure's Provisions are Unconstitutional

Sections 5 and 8 of this measure are unconstitutional and therefore unenforceable. Section 5 requires that the City of Oakland license, tax and regulate the sale of cannabis for adult use if state law is amended to permit such actions. Section 8 requires that the City of Oakland lobby for changes in laws to (1) eliminate criminal penalties for private adult cannabis use, distribution, sale, cultivation and possession and (2) allow cities and counties to license, regulate and tax cannabis businesses.

These provisions are unconstitutional because they do not enact a law. Neither the lobbying provision, nor the requirement that the City pass legislation that would regulate and tax cannabis businesses, if state law is amended, enacts a law.

The initiative power may be exercised only to adopt or reject laws. Cal. Const. Art. 11, Section 8; American Federation of Labor v. Eu, 36 Cal. 3d 687, 708 (1984) (invalidating an initiative that required state legislature to ask Congress to change federal law); Marblehead v. City of San Clemente, 226 Cal.App.3d 1504, 1509, 1510 (1991) (court struck down an initiative that directed City Council to amend the General Plan rather than amending the General Plan directly); Fishman v. City of Palo Alto, 86 Cal.App.3d 506, 509 (1978).

The City must Comply with the Other Provisions of the Measure if it Passes If this initiative passes, the City must (1) make investigation, citation and arrest of private adult cannabis offenses (e.g. use, distribution, sale, cultivation and possession of cannabis for medical and non-medical purposes) its lowest law enforcement priority; and (2) create an eleven member (11) oversight committee to "oversee" the ordinance's implementation.

Passage of this Measure will not Change California and Federal Law Both of which Prohibit Non-Medical Cannabis Use

Private adult cannabis offenses would remain unlawful if this

measure passes; both California and federal law prohibit non-medical use, possession, cultivation, distribution of cannabis. The City would continue to have the power to enforce laws prohibiting non-medical use, possession, cultivation, distribution and sale of cannabis, although the enforcement would be its lowest law enforcement priority.

The terms "lowest law enforcement priority" and "private adult cannabis offenses" are not defined in the measure. The common sense meaning of "lowest law enforcement priority" would require that the City make all other law enforcement priorities a higher priority. "Private adult cannabis offenses" presumably refers to marijuana use, cultivation, sale, possession, distribution that occurs in a private place, such as an adult's home. Nothing in this measure would limit the City's power to arrest, cite and investigate individuals for such activity so long as the enforcement action is consistent with the lowest law enforcement priority policy.

s/JOHN RUSSO City Attorney

#### **Arguments For Measure Z**

The federal government's war on drugs has been costly, ineffective, and unjust. Criminalizing cannabis (marijuana) has unfairly imprisoned thousands of non-violent offenders, including a disproportionate number of people of color.

Measure Z allows Oakland police to focus their time and resources on fighting violent crime and reducing the murder rate, instead of wasting their time on adult nonviolent marijuana offenses.

Every year California spends \$150 million to arrest, prosecute and imprison marijuana offenders. It makes more economic sense to raise money by taxing and regulating the adult use of marijuana, instead of spending money to criminalize it.

Revenue raised will help pay for vital city services like schools, libraries, and health care. Furthermore, allowing marijuana to be sold by licensed businesses will get drug dealers off the streets and break their hold on our neighborhoods.

Measure Z makes it easier for medical patients to buy medical marijuana from licensed Oakland

#### **Arguments Against Measure Z**

Marijuana growers, distributors and advocates from outside Oakland are spending hundreds of thousands of dollars on politicians and consultants to pass this Initiative. Why? Because, if passed, this Initiative would force the City of Oakland to spend your TAX DOLLARS to lobby for statewide legalization of RECREATIONAL MARIJUANA USE.

It would require Oakland government to appoint and staff a committee to study how to sell and distribute marijuana.

The Initiative would make Oakland the only California City that doesn't enforce against marijuana production, distribution and sales. Taxpayers would bear the health and safety costs of an unregulated mega-marketplace for marijuana buyers and sellers from all over the State.

This Initiative DOES NOT relate to medical marijuana, and threatens Oakland's medical marijuana program already in effect.

This Initiative DOES NOT allow Oakland to tax or regulate marijuana sales until the state

businesses. Patients deserve safe, secure and affordable access to medicine. While we can't change federal law, we can instruct our local police not to arrest or harass marijuana users. Measure Z controls marijuana sales; it does not legalize sales on the streets, near schools or to minors. It does not promote marijuana use, or allow broadcast or billboard advertising.

The Drug War has failed. It's time for a new approach. That's why community groups, elected officials, educators, religious leaders, and doctors all agree: Measure Z is the right thing to do. Measure Z is endorsed by the Metropolitan Greater Oakland Democratic Club, the Family Council on Drug Awareness, the Center on Juvenile and Criminal Justice, California Superior Court Judge James P. Gray, and many others. Please join us in voting YES ON MEASURE Z. For more information, please visit <http://www.YesonZ.org>.

s/NATE MILEY Alameda County Supervisor,  
District 4

s/DR. FRANK LUCIDO, MD Family Practice  
Physician

s/DAN SIEGEL Oakland School Board Member

s/THE REV. HAROLD MAYBERRY Minister,  
First African Methodist Episcopal (FAME)  
Church of Oakland

s/DESLEY BROOKS Oakland City  
Councilmember, District 6

#### **Rebuttal to Arguments For**

Measure Z does nothing to stop the federal government's war on drugs. Instead, it will weaken Oakland's ability to keep the peace in neighborhoods where desperate young men lose their lives over drug sales.

Measure Z does not help the occasional pot smoker. California law governs marijuana use and already treats mere possession of marijuana like a parking ticket.

government legalizes marijuana sales for recreational use. That won't happen anytime soon! Oakland cannot afford this Initiative given the City's many unfunded priorities, such as violence prevention and fixing potholes. This Initiative provides NO RESOURCES for enforcement against sales to teenagers and children and NO MONEY to pay for treatment of smoking-related illnesses.

This Initiative threatens Oakland's carefully implemented medical marijuana program. Under this program, the City of Oakland has licensed nonprofit organizations to dispense quality and safe medicinal marijuana to those with health needs.

If passed, this reckless measure would flood our streets with unsafe and unregulated marijuana. It would invite unwelcomed attention from federal prosecutors who are eager to make an example of Oakland by shutting down our medical marijuana providers.

**THE CITY ATTORNEY SAYS THIS INITIATIVE IS UNCONSTITUTIONAL AND ILLEGAL.**

Don't put Oakland's medical marijuana patients, safety and tax dollars at risk for a reckless campaign to benefit marijuana growers and distributors! VOTE NO ON MEASURE Z.

s/DANNYWAN Oakland City Councilmember

s/DAVID KAKISHIBA School Board Director

s/ROBERT L. JACKSON Bishop "Bob" Jackson  
Acts Full Gospel Church

s/Fran MATARRESE Community Leader

s/ELLEN WYRICK PARKINSON West Oakland  
Community Leader.

#### **Rebuttal to Arguments Against**

REBUTTAL TO ARGUMENT AGAINST MEASURE Z If the opponents of Measure Z really want to help medical marijuana patients,

Measure Z offers nothing to keep our young people out of prison. It just floods our streets with more drugs and invites federal and state law enforcement to increase arrests of our young people

Measure Z is outside interests and marijuana marketers using Oakland for social experimentation. The top three donors to this measure are from New York, San Francisco, and Washington D.C., and they've already shelled out more than \$70,000!

Oakland already suffers from people coming from the suburbs to buy their drugs here. Yet, Oakland won't see a dime from marijuana sales because a city cannot legalize marijuana or tax it.

It would have been much fairer to start Measure Z in Beverly Hills where young people of color are not being gunned down in street corner drug disputes \_ disputes that include marijuana as well as crack and heroin. Few dealers specialize in one drug.

This measure won't help medical marijuana patients. Oakland already ensures that there are several well managed facilities that offer medical marijuana.

Don't start this social experiment in Oakland. It is unconstitutional and will cost Oakland in lives and dollars. Vote NO on Measure Z.

s/JOSEPH J. HARABURDA President & CEO  
Oakland Metropolitan Chamber of Commerce

s/LARRY E. REID Councilmember, District 7

they should listen to those patients and the doctors who treat them and support Measure Z.

Opponents claim the city provides for medical patients; but the fact is Oakland has SHUT DOWN most of our medical marijuana dispensaries, forcing patients onto the streets. Measure Z makes it easier for patients to have safe access to medical marijuana. That's why patients and doctors support Measure Z.

Measure Z is a citizen initiative signed by 23,000 Oakland voters. It's a sensible approach that makes private adult marijuana offenses the lowest police priority for Oakland, as it is in Seattle. According to the Seattle Times "despite predictions of naysayers, there is no evidence of widespread public pot consumption as a result of the measure."

Measure Z controls marijuana sales; it does not legalize sales on the streets, near schools or to minors. It does not promote marijuana use, or allow broadcast or billboard advertising. Opponents claim Measure Z could cost the city money; in fact it raises money for vital city services by allowing for the taxed and regulated sale of marijuana.

People who fear reform often lay claims of unconstitutionality. They said that about the California medical marijuana initiative, Prop 215, but the initiative passed and took effect. Citizens have a constitutional right to voice their opinions.

The Drug War has failed. It's time for a new approach. That's why doctors, nurses, and patients agree: Yes on Z.

s/MARTHA KUHL California Nurses  
Association

s/DON PERATA California State Senator,  
District 9

s/DR. MIKE ALCALAY, MD HIV Education  
and Prevention Project of Alameda County

s/JANE JACKSON Medical Marijuana Patient;

Founder, Mayor's Commission on Persons with Disabilities; Member, Oakland Medical Marijuana Task Force

s/STEPHANIE SHERER Americans for Safe Access

### Full Text of Measure Z

WHEREAS, the City Council does hereby submit to the qualified electors of the City of Oakland the aforesaid proposed initiative ballot measure to be voted upon at the General Municipal Election consolidated with the Statewide General Election to be held on Tuesday, November 2, 2004, now therefore be it

RESOLVED: that the proposed initiative ballot measure text shall read as follows:

#### Section 1: TITLE

Oakland Cannabis Regulation and Revenue Ordinance

#### Section 2: FINDINGS

The people of Oakland, California find as follows:

WHEREAS it is a goal of the people of Oakland to keep drugs off the streets and away from children, and to eliminate street dealing and violent crime; and

WHEREAS each year California spends over \$150 million enforcing cannabis (marijuana) laws, expending valuable law enforcement resources that would be better spent on fighting violent and serious crimes; and

WHEREAS medical and governmental studies have consistently found cannabis to be less dangerous than alcohol, tobacco and other drugs; and

WHEREAS otherwise law-abiding adults are being arrested or imprisoned for nonviolent cannabis offenses, clogging our courts and jails; and

WHEREAS controlling and regulating cannabis so that it is only sold by licensed businesses would undermine the hold of street dealers on our neighborhoods; and

WHEREAS in the face of the severe state and local budget crisis, the revenues from taxing and licensing cannabis would help fund vital Oakland city services; and

WHEREAS the current laws against cannabis have needlessly harmed patients who need it for medical purposes, and impeded the development of hemp for fiber, oil, and other industrial purposes; and

WHEREAS it is the hope of the people of Oakland that there will be state and federal law reform that will eliminate the problems and costs caused by cannabis prohibition;

THEREFORE the people of the City of Oakland do hereby enact the following ordinance establishing the cannabis policy of the city.

### Section 3: DEFINITION

"Cannabis" - Means "marijuana" as currently defined in California Health & Safety Code Section 11018.

### Section 4: PURPOSE

The purpose of this ordinance is:

- a) To direct the City of Oakland to tax and regulate the sale of cannabis for adult use, so as to keep it off the streets and away from children and to raise revenue for the city, as soon as possible under state law.
- b) To direct the Oakland Police Department to make investigation, citation, and arrest for private adult cannabis offenses the lowest law enforcement priority, effective immediately upon the passage of this ordinance.
- c) To advocate for changes in state law (and at other levels as necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.

### Section 5: REGULATION

The City of Oakland shall establish a system to license, tax and regulate cannabis for adult use as soon as possible under California law. At that time, the City Council shall promulgate regulations that include, but are not limited to, the following provisions consistent with California law:

- a) The sale and distribution to minors will be strictly prohibited;
- b) The city shall establish a licensing system for cannabis businesses, with regulations to assure good business practices, compliance with health and safety standards, access for persons with disabilities, and nuisance abatement;
- c) Minors shall not be permitted in areas where cannabis is sold, nor shall minors be employed by licensed cannabis businesses;
- d) No business licensed to sell cannabis will be located within 600 feet of a school;
- e) Cannabis businesses shall be required to pay taxes and licensing fees;
- f) The public advertising of cannabis through television, radio or billboards will be prohibited; and
- g) Onsite consumption shall be licensed so as to keep cannabis off the streets and away from children, subject to reasonable air quality standards.

### Section 6: LOWEST LAW ENFORCEMENT PRIORITY

- a) The Oakland Police Department shall make investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority.
- b) This "lowest law enforcement priority" policy shall not apply to distribution of cannabis to minors, distribution or consumption of cannabis on streets or other public places, or motor vehicle violations.

#### Section 7: COMMUNITY OVERSIGHT COMMITTEE

A Community Oversight Committee shall be appointed to oversee the implementation of the Oakland Cannabis Regulation and Revenue Ordinance. The Committee will be composed of:

- 1 community member appointed by each member of the Oakland City Council,
- 1 community member appointed by the Mayor of Oakland,
- 1 representative of the Oakland City Auditor,
- 1 representative of the Oakland City Manager.

Responsibilities of the Committee shall include:

- a) Ensure timely implementation of this ordinance
- b) Oversee the implementation of the Lowest Law Enforcement Priority policy;
- c) Make recommendations to the Oakland City Council regarding appropriate regulations, in accordance with Section 5 above;
- d) Oversee the disbursement of revenues generated through the sale of cannabis by licensed cannabis businesses to assure that funds go to vital city services such as schools, libraries and youth programs; and
- e) Report annually to the Council on implementation of this ordinance.

#### Section 8: ADVOCACY FOR LEGISLATIVE REFORM

The City of Oakland shall advocate, through its lobbyist and other city officers, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include:

- a) Allow for taxation and regulation of cannabis for adults;
- b) Grant local control to cities and counties to license and regulate cannabis businesses, and collect appropriate fees and/or taxes; and
- c) End the prosecution, arrest, investigation and imprisonment for adult, private cannabis offenses.

#### Section 9: SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

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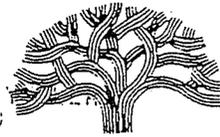
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2005 DEC -2 AM 9:39

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney  
John A. Russo  
City Attorney  
Barbara J. Parker  
Chief Assistant City Attorney

December 13, 2005

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HONORABLE PUBLIC SAFETY COMMITTEE  
Oakland, California

Re: Report Providing a Definition of "Private Adult Cannabis Offenses" Under Ballot Measure Z – A Voter Initiative Entitled "Oakland Cannabis Regulation and Revenue Ordinance," and Recommending that Council Amend Resolution No. 78331 which Declared the City's Low Priority Policy Related to Medical Cannabis to Clarify that Private Adult Cannabis (Marijuana) Offenses are the City's Lowest Law Enforcement Priority

Dear Chairperson Reid and Members of the Public Safety Committee:

### Summary

The City Attorney previously recommended that the Council

- (1) adopt an ordinance providing the qualifications, terms, procedure to remove and responsibilities of members of the Community Oversight Committee that Measure Z created; and
- (2) amend Resolution No. 78331 "Declaring a Low Police Priority related to Medical Marijuana Consistent with Oakland Municipal Code Section 5.80 and Senate Bill 420" to clarify that the City lowest law enforcement priority is private adult cannabis (marijuana) offenses.

As we discussed in the prior report, "private adult cannabis offenses" are not a priority for City of Oakland law enforcement activities. Private adult cannabis offenses 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. However, because the City's low priority policy currently addresses only medical cannabis, we recommended that the City amend its low priority resolution to clarify that its policy is consistent with Measure Z.

On July 19, 2004, the City Council adopted an ordinance that established the qualifications, terms, procedure to remove, and responsibilities of members of the Community Oversight Committee. However, the Public Safety tabled action on the amendment to the low

police priority Resolution and requested a definition of the term "private adult cannabis offenses". The Rules Committee subsequently tabled the item and it was placed on the Public Safety Committee's pending list.

This report defines what constitutes a "private adult cannabis offense" for purposes of the application of Measure Z's lowest law enforcement policy priority and requests that the Council amend the resolution to clarify that the City's lowest law enforcement priority is private adult cannabis (marijuana) offenses.

Although Measure Z makes such offenses the City's lowest law enforcement priority, non-medical use, cultivation, distribution, sale of cannabis continue to violate state and federal laws.

### Fiscal Impact

Some staff resources will be dedicated to providing support for the Community Oversight Committee. A representative of the City Attorney's Office will provide legal advice and attend Committee meetings, as needed.

### Background

On November 2, 2004 the Oakland electorate passed ballot Measure Z, a voter initiative entitled "Oakland Cannabis Regulation and Revenue Ordinance". Measure Z became effective on December 7, 2004. In the impartial legal analysis that was published in the voter pamphlet, the City Attorney advised voters that the lobbying and the regulation and taxation provisions of Measure Z are unconstitutional and therefore unenforceable.

Prior to the passage of Measure Z, the City's low law enforcement policy resolution applied only to medical cannabis. The resolution was consistent with (i) the City's policies enunciated in various resolutions that the Council passed beginning in the early 1990's, (ii) Proposition 215 (the Compassionate Use Act) and (iii) Senate Bill 420 (clarifying the scope of Proposition 215 and authorizing the City to regulate medical cannabis cooperatives consisting of patients and primary caregivers who meet the requirements of Proposition 215):

### Key Issues and Impacts

Because Measure Z did not and could not change state or federal law, both of which prohibit non-medical cannabis use, the Oakland Police Department ("OPD") and the City have the right to continue law enforcement activities related to "private adult cannabis offenses". Further, the City's ordinances, including but not limited to, smoking prohibitions and health and safety ordinances (e.g. fire and building codes) also remain in full force and effect and the City is entitled to enforce its laws.

Measure Z requires only that the City make law enforcement activities related to "private adult cannabis offenses" its lowest priority. This means that the City's other law enforcement priorities must be higher priorities than its law enforcement priority for "private adult cannabis offenses".

Measure Z does not define "private adult cannabis offenses" or "public places". The rules of statutory construction require interpretation of a statute solely based on the language of the statute if the language of the statute is clear and unambiguous.

The meaning of "private" is not clear in this context and the statute is utterly silent on that issue. Although the ordinance makes a policy declaration that the lowest law enforcement priority policy will **not** apply to distribution to minors, distribution or consumption on streets or other public places or motor vehicles, it does not define what constitutes a "public place" or provide that all circumstances other than the ones expressly excluded are "private".

When the statutory language is unclear, as here, the language shall be interpreted in accordance with the voters' intent as discerned from the ballot materials, including but not limited to the City Attorney's analysis in the ballot book. The drafters' intent is not relevant to the interpretation.

In the impartial legal analysis, the City Attorney stated that private adult cannabis offenses are not defined in the statute and that the term "presumably refers to marijuana use, cultivation, sale, possession, distribution that occurs in a private place, such as an adult's home." Nothing in the ballot initiative itself or in the ballot materials or City Attorney's impartial legal analysis would alert the voters that the intent of the measure was to apply the lowest law enforcement priority policy to commercial settings, such as cafes and restaurants or liquor or other retail establishments, or to activities on publicly owned property, such as City property even if such property is rented or leased by a private party for a private purpose such as a meeting, recreational or other activity.

Accordingly, "private adult cannabis offenses" that are covered by the lowest law enforcement policy include adult cannabis offenses (i.e. violations of the law) that occur on private property and in a setting that is not public, such as an adult's home. "Private adult cannabis offenses" do not include offenses such as use, cultivation, sale, possession, distribution that occurs in commercial settings such as cafes, markets, stores, restaurants, retail outlets, liquor stores, cabarets, establishments selling alcoholic beverages. Nor do "private adult cannabis offenses" include offenses that occur on City-owned or leased property whether or not the City property is rented or leased for a private purpose such as a meeting, party, recreational or other activity; otherwise the City would be a party to unlawful activities and subject to claims that the City violated or conspired to violate or aided and abetted violations of state and federal and perhaps local laws by permitting "adult cannabis offenses" on City property.

In summary, the lowest law enforcement priority policy regarding adult cannabis offenses does not apply to commercial settings, to City-owned or leased property or to other settings that are not private. Measure Z expressly provides that the lowest law enforcement priority policy "shall not apply to distribution of cannabis to minors, distribution or consumption on streets or other public places, or motor vehicle violations." (Section 6(b).)

### Sustainable Opportunities

Economic – Measure Z may cause economic impacts; however, at this time it is not

possible to identify the impacts, if any.

Environmental – At this time this Office can't determine whether Measure Z will cause any environmental impacts.

Social Equity – At this time the City Attorney's Office is not aware of any social equity impacts or opportunities that Measure Z may bring.

Disability and Senior Access

Measure Z does not affect disability or senior access.

Recommendation and Rationale

To assure that the City's policies and procedures are consistent with Measure Z, we recommend that the Council take the following actions:

*Council Should Amend City's Low Priority Policy Resolution:* City Council should amend its low priority policy resolution to clarify that private adult cannabis offenses are not a priority of the City or that such offenses are the City's lowest law enforcement priority. The low priority policy resolution currently states that the City's low priority policy regarding cannabis applies only to specific types of *medical* cannabis activities.

The amendment would provide:

**“RESOLVED**, that notwithstanding any other provision of this resolution, in accordance with Measure Z, a voter initiative entitled “Oakland Cannabis Regulation and Revenue Ordinance”, which the Oakland electorate passed on November 2, 2004 and which initiative became effective on December 7, 2004, private adult cannabis (marijuana) offenses are the City's lowest law enforcement priority; and be it further

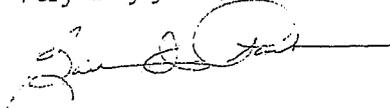
**RESOLVED**, private adult cannabis offenses do not include the use, sale, distribution, preparation and/or cultivation in settings that are not private, including but not limited to markets, stores, cabarets, establishments selling alcoholic beverages, cafes and restaurants, retail outlets, stores and other commercial establishments; nor do private adult cannabis offenses include use, sale, distribution, preparation and/or cultivation on City owned or leased property whether or not the property is rented or leased by private parties for a private purpose such as a party, meeting or other activity; and be it further

**RESOLVED**, no activities related to cannabis other than those described in this resolution shall be a low priority for the City of Oakland”

Action Requested of Council

The City Attorney's Office requests that Council pass the attached Resolution which amends the Council's low priority resolution to clarify that private adult cannabis offenses are the City's lowest law enforcement priority.

Very truly yours,



 JOHN RUSSO  
City Attorney

Assigned Attorney:  
Barbara J. Parker