

# *Measure Z Committee*

Regular Meeting

Thursday, July 21<sup>st</sup>, 2011, 6:00 p.m.

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

## **AGENDA**

### *Members:*

Dale Gieringer	District 1	Keith Stephenson	District 7
Vacant	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	Joe DeVries	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 from the Measure Z Committee meeting of June 16<sup>th</sup>, 2011.
- E. Reports for Discussion and Possible Action
  - 1. A continuation of the discussion of the City's Smoking Ordinance and the City's current enforcement procedures.
  - 2. Review of a draft informational bulletin for OPD regarding Measure Z for the implementation of the Measure Z lowest law enforcement priority.
  - 3. A definition of "private" as it relates to cultivation in the law
  - 4. A review and discussion of revised Measure Z Club regulations and fees.
- 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***

## **Pending List and Proposed**

July 21<sup>st</sup>, 2011, 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. Monitor, on an ongoing basis, "private, adult" marijuana offense arrests. (J. Anthony)
3. Annual Report from the Measure Z Committee to the Oakland City Council (last report, March 2011)
4. Review of Oakland compliance / non-compliance policies with the Drug Enforcement Agency (DEA) (R. Lee/D. Gieringer 9/20/07)
5. 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)
6. Review extent of OPD compliance with federal law regarding cannabis grows.
7. Licensed cannabis smoking premises in the City of Oakland (D. Gieringer 3/19/09)
8. Report from the District Attorney – conviction vs. arrest statistics for CA Health & Safety Code section 11357 – misdemeanor arrests (L. Bonett 5/21/09)
9. Extended discussion regarding "direction" of Measure Z Committee in 2011 and beyond.

### **For Tracking Purposes**

1. Election of Officers – March 2012

(Rev. 06-16-11)

# Measure Z Committee

**DRAFT**  
**Meeting Minutes**

Thursday, June 16th, 2011, 6:00 p.m.

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

## Members:

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

## MINUTES

### A. Roll Call and determination of quorum

*Members Present: D. Gieringer, R. Lee, J. Anthony, M. Hummel, TC Everett, L. Bonett, W. Herndon, J. DeVries*

*Members Excused: J. Anthony*

*Joe DeVries announced that Member Villatoro resigned as the District 2 representative on Tuesday June 14<sup>th</sup> and that the City Administrator has named Joe DeVries as the official voting member of the Measure Z Oversight Committee. However, Joe DeVries indicated that he hoped the committee would reach consensus without needing him to be the tie breaking vote.*

*The meeting of June 16<sup>th</sup>, 2011 was called to order at 6:10 p.m. Chairperson Lee noted there was a quorum.*

### B. Open Forum / Public Comment

*Judy Quea asked about Item 3 on the agenda. It discusses the use of the word private as it relates to cultivation, but she feels that Measure Z discusses private use not just cultivation. Chairperson Lee explained that in fact tonight the committee would just discuss cultivation.*

### C. Review of Pending List

*There were no changes made to the pending list.*

### D. Approval of Draft Minutes

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Member Bonett noted that her name was misspelled in the minutes and that Joe DeVries was not counted as present at the last meeting. Joe DeVries clarified that he was not yet an official member at the May meeting. Member Bonett also noted that there were 15 to 20 citizens present.

The minutes of the May meeting were approved by consensus.

**E-1 A continuation of the discussion of the City's Smoking Ordinance and whether there are conflicting regulations currently in place**

Member Everett had discussions with members of the Fire Department and those conversations led back to the City Administrator. The Fire Department does not deal with smoking regulations unless called out by another agency or a complaint from a neighbor; mostly the regulations are enforced by the City Administrator. The Fire Department could shut down the smoking rooms that exist in some venues but have not since they were in existence already and therefore grandfathered in. The club in particular was the bench and bar where a cigar room had existed since before they moved into that meeting.

Member Gieringer noted that the ordinance does not mention any grandfathering in of existing smoking rooms. Joe DeVries also spoke with the City Administrator's office and cited section 8.30.060 which clarifies that smoking may not take place within 25 feet of a non-smoking area but that Bars are exempted from the 25-foot rule. Since Bench and Bar's room is ventilated and smoke does not enter the non-smoking area, the City Administrator considers that an exempted area.

Member Gieringer noted that the policy seems to be enforced inconsistently, and it may be time for a subcommittee to make a recommendation that the law be modified. Member DeVries noted that last summer's modification to the cannabis ordinance left the on-site consumption regulations to the discretion of the City Administrator. The ordinance may be brought back to the Public Safety Committee in July.

Member Bonett asked if the current smoking ordinance defines smoking and Member Everett and Gieringer both responded that the ordinance not only defines "weed" very loosely but also forbids the lighting of any combustible item which could include candles and incense.

Member Gieringer made a motion that the Committee recommend to the City Council that the City regulations allow properly ventilated on-site consumption of cannabis at licensed cannabis dispensaries.

Member Everett seconded the motion and it passed unanimously. Member DeVries will pass the recommendation on to the City Council and will inform the Oversight Committee as to the date the item will appear at the Public Safety Committee. However, the item will

come back to the committee when Member Everett obtains more information from the City Administrator's Office on current enforcement.

**E-2 Draft of a training bulletin for OPD for Measure Z (modeled after the Medicinal Cannabis Training Bulleting) 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.**

*Lt. Mike Poirier spoke before the committee and explained the parameters he must use to write a training bulletin which is a long and arduous process versus writing an informational bulletin. He cited the 2010 Medical Marijuana Training Bulletin as an example that took two years to write.*

*Training Bulletins serve as a continuous training program and a stimulus for further study. The information in a training bulletin also constitutes official departmental policy on the subject matter. It requires that OPD train officers to do something in a particular way.*

*An Information Bulletin provides Department Personnel with information, notices, or announcements regarding topics of general interest. It does not require specific training.*

*Lt. Poirier wanted clarification as to what a bulletin is telling officers to do. His understanding is that there is one basic portion of Measure Z that officers need to know: that private consumption, cultivation, possession of Marijuana is the lowest law enforcement priority. In a training bulletin it would tell officers specifically what to do in a situation where they encounter marijuana, including how to process evidence, fill out a report, etc.*

*Member Everett asked if the Lowest Law Enforcement provision is the policy of OPD and Lt. Poirier clarified it is a local law and officers are required to follow all federal, state, and local laws. Chairperson Lee pointed out that what "private" means has not been well established. The committee and the police may have a different interpretation of the provision.*

*Member Everett pointed out there is a discrepancy between federal and local law. Chairperson Lee stated that there has been adjudication regarding how police enforce conflicting jurisdictional law. Lt. Poirier pointed out that this confusion makes it difficult for officers to make quick decisions in the field.*

*Lt. Poirier asked the committee if he develops a training bulletin, what would it tell an officer to do faced with the situation where the officer is in someone's home, and they are in possession of Marijuana, what should they do, or more to the point, what would the bulletin tell them to do. If he trains people how to arrest people for that it may actually*

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cause an increase in enforcement or arrests. OPD is not aggressively pursuing private cannabis arrests.

Member Herndon asked what the difference in the dissemination of a training and information bulleting. Lt. Poirier explained that all officers have a date by which they need to acknowledge that they have read and understand the bulletin.

Member Everett asked what would happen if she were in her house exercising her Measure Z rights and a neighbor calls the police and complains. What would the officer do? Lt. Poirier asked what the committee would want an officer to do. Member Herndon stated that she felt there should be a very explicit if we want consistency. That would constitute a training bulletin.

Lt. Poirier stated that the department is not aggressively enforcing marijuana laws and that the arrest statistics bear that out. Member DeVries stated that the bigger question than an officer finding a small amount of marijuana on your coffee table is an officer coming across large marijuana grows. Medical patients can grow as many as 72 plants which can catch the attention of neighbors and may generate a complaint and in that situation, the penalties under state law are far greater than those for possession of less than an ounce. He asked how a bulletin would address this type of situation.

Chairperson Lee noted that the committee is debating whether to ask for a training versus information bulletin and even though the bulletin may not provide everything the committee wants, it is a good step in reminding OPD what the intent of Measure Z actually is.

Lt. Poirier said that an information bulletin is a helpful reminder as to the policy. He cited the example of an informational bulletin that was issued about traffic stops after the tragedy in 2009 when officers were shot and killed during a routine traffic stop. Although every officer is familiar with how to make a traffic stop, the reminder was an important tool to raise awareness of issues related to traffic stops.

Member Herndon stated that if there is no training associated with a bulletin, she is concerned that the bulletin will not be effective. An actual training ensures greater compliance than merely reading a published bulletin.

Member Hummel asked if there was a difference in each type of bulletin as to providing an officer more protection in terms of how they enforce the guidelines of Measure Z. Lt. Poirier stated there really wouldn't be any difference in regard to officers complying with Measure Z, the goal really is to provide officers with what Measure Z's intent is. Member Gieringer asked if new officers would be exposed to the bulletin as part of their training. Lt. Poirier clarified that all officers, new and old, are required to be aware of and familiar with all bulletins, manuals, and procedures that the department publishes.

He also stated that all information bulletins have a two year review date and all Training Bulletins have a three year review date to ensure they are up to date.

Chairperson made a motion that the committee ask Lt. Poirier draft an Information Bulletin for the committee to review for approval and recommendation to the City Council Public Safety Committee.

Member Bonett stated that the way it is phrased she feels the committee really should recommend a Training Bulletin.

Member Gieringer seconded the motion and a roll call vote was taken.

Members Lee, Bonett, Gieringer, and Hummel voted yes. Members Everett and Herndon voted No, and Member DeVries abstained. The motion passed.

**E-3 A definition of “private” as it relates to cultivation in the law**

This item was tabled until next month awaiting information from Member Everett.

**E-4 A review and discussion of revised Measure Z Club regulations and fees**

This item was tabled until next month awaiting information from Chairperson Lee.

**F. Announcements**

Chairperson Lee announced there will be a big street festival over Labor Day in the Fox Theater/ Frank Ogawa Plaza area sponsored by the International Cannabis and Hemp Expo. Also there is a Hemp festival in San Francisco this weekend and there will be a gathering at the Oaksterdam Student Union tonight at 7:30.

**G. Adjournment**

There being no further business, and upon the motion duly made, the Measure Z Committee adjourned the meeting at 7:25 p.m.

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Staff to the Measure Z Committee

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Date Adopted

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