

Measure Z Committee

Regular Meeting

Thursday, October 20th, 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 September 15th, 2011.
- E. Reports for Discussion and Possible Action
 - 1. Review of the supplemental report to the Public Safety Committee (Attached)
 - 2. A continuation of the discussion of the City's Smoking Ordinance and the City's current enforcement procedures.
 - 3. An update regarding Committee Members terms of office, reappointment, and process regarding vacancies.
- 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

October 20th, 2011, 6:00 p.m.

Items for Discussion

Pending, No Specific Date

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

For Tracking Purposes

1. Election of Officers – March 2012

(Rev. 07-21-11)

Item: C
Measure Z
September 21st, 2011

Measure Z Committee

Regular Meeting

Thursday, September 15th, 2011, 6:00 p.m.

Draft Meeting Minutes

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

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
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DRAFT MINUTES

A. Roll Call and Determination of Quorum

Members Present: Chairperson Lee, Member Bonett, Member Hummel, Member Everett, Member Mann, Member Gieringer, Member DeVries.

Members Herndon, Stephenson, and Anthony were excused.

B. Open Forum / Public Comment

There were no public speakers.

C. Review of the Pending List

Joe DeVries noted that the review and revision of Measure Z Club regulations and fees was moved back to the pending list.

D. Approval of the Draft Minutes from the Measure Z Committee meeting of July 21st, 2011.

The July Meeting Minutes were approved by consent.

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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.

This item was tabled until the October Meeting.

2. Review and approval of the final draft information bulletin for OPD regarding Measure Z for the implementation of the Measure Z lowest law enforcement priority. (Draft Attached)

Lt. Poirier reviewed the draft Informational Bulletin and noted that he had added language about the existence of an Oversight Committee. Member Bonett noted that the bulletin was very short and asked what a typical bulletin's length was and if there should be direction to a website for more information. She also asked if the lowest law enforcement priority needed to be more clearly defined. Lt. Poirier stated that most bulletins are a page or less and he did not include a website address or a specific contact person. He also noted that the language surrounding lowest law enforcement was precisely what the committee had asked for—keeping it simple.

Joe DeVries noted that he will write an accompanying report to the City Council and that he will include in the report the concerns raised in the committee about the definition of private, Lt. Poirier's concern regarding a training versus informational bulletin. He noted that he will email this report to the committee and the committee will review the report at the October meeting.

Chairperson Lee made a motion to forward the Informational Bulletin to the Public Safety Committee. The motion passed unanimously.

3. A discussion regarding Committee Members terms of office, reappointment, and process regarding vacancies.

The Measure Z Oversight Committee bylaws were distributed and reviewed. Joe DeVries explained that by City Charter, all committee members are appointed by the Mayor in consultation with the City Council Members; they are not directly appointed by the Council. The members serve two year terms and are staggered so that only one half the members' terms expire at any given time. Also, if members' terms expire, a member may continue to serve for an additional year without reappointment.

Member Anthony asked last month if the Mayor's appointee changes when the Mayor changes and Joe DeVries clarified that when there is a change in administration, the member typically continues to serve out their term. However, every member's term is currently expired. Some members have already exceeded the one year holdover but all members are expired and there is one vacancy. The Committee needs to move forward and request committee members' reappointment by the Mayor and City Council; there is no term limit.

Member Bonett said she thought that each member needs to petition the Mayor and Council for their reappointment; possibly including a new resume. Joe DeVries suggested that the letters of reappointment and resumes all be submitted to him and he would coordinate the reappointment effort. Member Bonett noted that there is a vacancy in District 2.

Joe DeVries moved that committee members who wish to continue to serve, submit their resumes to him and he will prepare the resolution to move forward. Chairperson Lee seconded the motion and it passed unanimously.

It was clarified that the letter should be addressed to the Mayor and Councilmember but sent to Joe DeVries to be submitted in a packet.

F. Announcements

Chairperson Lee noted that the activist meeting will resume after this meeting at 1701 Broadway to discuss other state legislation.

It was mentioned that the International Cannabis and Hemp Festival was a positive event with good press coverage. Member Hummel suggested that there be a Measure Z table at the next festival.

G. Adjournment

The meeting adjourned at 6:38pm.

expressed over the total number of arrests for marijuana offenses during the two years of data provided in the report. Staff was directed to work with the police department and the oversight committee to develop a training bulletin and return within 6 months with a thorough explanation of the arrest and citation data provided to determine whether the police department was in fact recognizing the lowest law enforcement provision of Measure Z.

KEY ISSUES AND IMPACTS

Oakland Police Department Training Bulletin:

Over the last 6 months members of the Oversight Committee met several times with Police Department personnel to discuss concerns over and develop a training bulletin. The first concern that was vetted was whether OPD should issue a Training Bulletin or an Informational Bulletin to its officers. It was an important decision because a Training Bulletin is a more extensive document that serves as a continuous training program and a stimulus for further classroom study. The information in a training bulletin also constitutes official departmental policy on the subject matter it covers and it requires that OPD train officers to act in a particular way. This would include items such as how to process evidence and fill out a report.

Conversely an Information Bulletin provides Department Personnel with information, notices, or announcements regarding topics of general interest. It does not require specific training but simply reminds officers what the current City and Departmental policy is and can be renewed without special training every two years. OPD staff felt that this type of training bulletin would be more appropriate in light of the totality of the circumstances at hand.

The conflict for OPD arises because although state law was recently amended to reduce the possession of less than an ounce of marijuana to a mere infraction (not punishable by arrest), it is still a violation of law. Irrespective of Measure Z and local policy private adult possession, use, cultivation, and distribution of (non-medical) marijuana are still illegal under state and federal law, and while the City's policy makes it a low law enforcement priority it does not make it lawful, and as a result formal training to exclude such activity as a crime would not be appropriate, because Officers must still respond to and investigate a complaint involving marijuana.

Marijuana offenses remain the department's lowest law enforcement policy and the bulletin will provide the officers with a reminder of City and Departmental policy without delineating specific actions required of officers while in the field including arrest, citation, or taking no action. If the department were to develop a Training Bulletin these options would have to be clearly delineated and implemented and would either run counter to the local ordinance or be in conflict with State or Federal Law. Hypothetically, since possession of less than an ounce of marijuana in California

is a citable offense, the existence of a specific Training Bulletin with extensive procedures could result in a net increase in arrests instead of a decrease.

These issues were discussed at length and it was decided that it would be more beneficial to produce an Informational Bulletin that reminds Officers of the City's low law enforcement priority regarding marijuana offenses, and that there is an Oversight Committee that monitors OPD that reports annually to the City Council. Committee members' hope is that this will give officers a framework to make decisions in the field that takes the policy and oversight into account. Attached to this report please find the Informational Bulletin provided to officers (*Attachment A*).

Review of OPD arrests for marijuana offenses:

During development of a training bulletin, the Oversight Committee also discussed the arrests reported by OPD for marijuana offenses cited in the annual report. OPD Personnel explained that because OPD is honoring the lowest law enforcement priority in regard to private offenses, the arrests made likely reflect possession with the intent to sell in public places which is still a priority for OPD. Additionally it was noted that the recent changes in state law, allowing for less than an ounce to be considered an infraction should cause a decline in arrests. The reduction of possession to a lower level offense took effect in January of 2011 whereas the arrests reported in the Measure Z annual report on March 22, 2011 covered the period of 2009-2010. It should also be noted that infractions are not tracked for uniform crime reporting data, so any infraction citations issued related to the possession of less than one ounce of marijuana will not appear in the annual report.

Currently the Police Department is reviewing a sampling of the arrests made that are reflected in the annual report to determine the percentage that involved sales, and/or were occurring in public places. This data will be brought back to the Oversight Committee for review at the October 20th meeting and a breakdown of the analysis is included as *Attachment B* to this report.

Measure Z Committee concerns

Members of the Oversight Committee continue to raise concerns and questions regarding the legal interpretation of the term "private" as contained in the adopted Measure's text. This question impacts both the Information Bulletin and OPD's implementation of the lowest law enforcement policy. The Committee members disagree with the City Attorney's Office (OCA) interpretation of the definition of "private" in regards to Measure Z. In 2005 the City Attorney's Office made recommendations to the City Council that were accepted, adopted, and passed in Resolution No. 79647 C.M.S. which defines "private" as referring only to a residential setting, specifically excluding places such as clubs, cabarets, and other commercial establishments.

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Proponents of Measure Z, many of whom are on the Oversight Committee, assert that the intent of the initiative was to remove marijuana sales and cultivation from residential neighborhoods to lessen the negative impact of this activity that should be conducted only in commercial areas. However, the City Attorney's opinion and recommendation to Council was that because the language of the initiative did not clearly state that the intent of the initiative was to allow for private clubs or businesses, in commercial settings that are generally open to the public, to participate in the sales and distribution of marijuana, that the interpretation was left to the city. This disagreement has repeatedly slowed the work of the Oversight Committee to the point where the committee is requesting that the City Attorney and City Council review and reconsider this legal opinion with direct input from members of the Oversight Committee.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

Social Equity: Measure Z and our low law enforcement policy are consistent with policies designed to promote social equity and reduce criminalization for marijuana related offenses.

DISABILITY AND SENIOR CITIZEN ACCESS

The Measure Z Oversight Committee operates in compliance with the American with Disabilities Act (ADA) and Older Americans Act. Meetings take place in the City Council Chambers and are accessible. Seniors and people with disabilities are represented on the committee.

RECOMMENDATION(S) AND RATIONALE

The information bulletin attached to this report was approved by the Chief of Police and distributed to officers in September. The committee members will continue to monitor OPD enforcement of marijuana laws and provide a report during its next scheduled annual report. Committee members are interested in seeing what impact, if any; the change in state law will have on the number marijuana related arrests in Oakland.

The Oversight Committee has requested that Staff report that they recommend that the City Attorney's Office be directed to meet with the committee and review the definition of private as it relates to Measure Z. The City Attorney's analysis of Measure Z and definition of private was adopted by the City Council in 2005 before the Measure Z Oversight Committee was established

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and therefore was done with no input from the committee. It is the belief of the committee members that reopening this subject area could change the City Attorney's official opinion and aid in eliminating barriers and inconsistencies in the implementation of the law.

Staff recommends that the committee accept this report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council accept this information report.

Respectfully submitted,

Joe DeVries, Neighborhood Services Supervisor
Neighborhood Services Division

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:

Office of the City Administrator

Item: _____
Public Safety Committee
October 25, 2011



INFORMATION BULLETIN

OAKLAND POLICE DEPARTMENT

Date: 6 Sep 11

"Information Bulletins shall be used to set forth information, notices, or announcements regarding topics of general interest. Such bulletins shall not constitute official policy. Information Bulletins expire two years from the date of publication unless revised, canceled, or superseded sooner. Members shall retain them until expiration."

MEASURE Z ENFORCEMENT

On 7 Dec 04, Measure Z, a voter initiative entitled Oakland Cannabis Regulation and Revenue Ordinance, became effective. In short, Measure Z states that the City of Oakland shall make law enforcement related to the private adult cannabis (marijuana) use, distribution, sale, cultivation and possession, the City's lowest law enforcement priority. Measure Z established an oversight committee which annually reviews the Departments compliance with the Measure.

Measure Z did not change state or federal law, both of which prohibit non-medical cannabis use. The Oakland Police Department maintains the right to continue law enforcement activities related to private adult cannabis offenses. The lowest law enforcement priority does not apply to possession, distribution or consumption of cannabis on streets or other public places or distribution of cannabis to minors.

Medicinal marijuana is not addressed in Measure Z – the use of medicinal marijuana is outlined in TB III-W, Medical Marijuana.

In 2005, the Office of the City Attorney defined private adult cannabis offenses that are covered by the lowest law enforcement policy as those that occur on private property and in a setting that is not in public. "Private" does not include commercial settings such as cafes, markets, retail outlets, cabarets or on City owned or leased property. The City Council amended the ordinance to include this definition.

Sampling of Oakland Police Department Arrests for Marijuana Offenses in 2010

The Measure Z Oversight Committee asked the Oakland Police Department to provide a sampling of cases that involved an arrest for marijuana related offenses and to further review whether those cases complied with the law enforcement policy established by Measure Z. Below is a table reflecting the circumstances in 25 of those cases. The location reflects only the block on which the arrest occurred, not the actual address.

Date of Arrest	Location	Summary
2 Jan 10	6200 Avenal	Suspicious vehicle on street, Possession of Marijuana for sale, secondary charge of possession of cocaine for sale
3 Jan 10	6800 San Leandro	Vehicle stop, parolee had multiple baggies of marijuana and currency indicative of possession for sale
31 Jan 10	1200 Mandela	Vehicle stop, subject had multiple baggies of marijuana and currency indicative of possession for sale
3 Feb 10	3300 International	Probation search of theft suspect/gang member. Marijuana and currency located.
12 Feb 10	800 Mead	During buy/bust operation suspect found in possession of rock cocaine and 23 baggies of marijuana – amount/packaging indicative possess for sale.
18 Feb 10	2200 108 th Ave	Search warrant at residence involved in illegal marijuana sales. Large amount of marijuana and packaging located
22 Feb 10	3200 MacArthur	Driver of vehicle involved in vehicle pursuit, after driver crashed and taken into custody, 40 baggies of marijuana located
24 Feb 10.	1200 89 th Avenue	Surveillance of residence and observations of illegal narcotic/marijuana sales led to search warrant. Search revealed marijuana packaged for sale, a firearm and pit bulls being mistreated
31 Mar 10	3500 64 th Avenue	Suspect sold marijuana to undercover officer, found in possession of more marijuana and currency.
5 May 10	2200 E. 25 th Street	Officer dispatched to juveniles gambling in street, one located with 7 baggies of marijuana and amount indicative possess for sales.
8 May 10	5900 MacArthur	Suspect sold marijuana to undercover officer, found in possession of more marijuana and currency

15 May 10	1400 15 th Street	Officer investigating disturbance finds suspect with loaded pistol and 6 baggies of marijuana in public
15 May 10	3000 School Street	High narcotic sales area, officers conduct probation search on suspect and find marijuana and currency in amount/packaging indicative of possession for street sales
17 May 10	4600 Bond Street	Ex-Felon in possession of loaded pistol also in possession of marijuana – amount/packaging indicative for street sales
23 May 10	1300 MacArthur	Vehicle stop for mechanical violation, suspect found in possession of marijuana and currency indicative of street sales
24 May 10	2400 E. 21 st Street	Suspect reckless driving and involved in collision, vehicle contained large amount of marijuana
29 May 10	1900 Broadway	Vehicle code violation led to discovery of ounce of marijuana packaged for street sales
31 May 10	7300 Halliday	Suspicious vehicle parked on street, driver contacted and on probation for weapons violation. Probation search led to discovery of currency and marijuana in amounts indicative of street sales
2 Jun 10	7600 Bancroft	Suspect involved in vehicle pursuit, threw out 42 baggies of marijuana during pursuit
6 Jun 10	1400 81 st Avenue	Suspect burglarized residence which was being used to grow marijuana. Subjects stole marijuana, arrested for burglary and possess marijuana (which they just stole) for sale
6 Jun 10	1900 88 th Avenue	Suspect stopped for vehicle code violation and found to be in possession of 8 baggies of marijuana and currency
8 Jun 10	7100 International	Suspect loitering in front of liquor store, on probation for narcotics, probation search revealed narcotics and 13 baggies of marijuana
9 Jun 10	1100 71 st Avenue	Suspect sold marijuana to undercover officer and found in possession of additional marijuana
17 Jun 10	2700 13 th Avenue	Suspect sold marijuana to undercover officer and found in possession of additional marijuana
1 Jul 10	2000 Broadway	Downtown “safety ambassador” contacted suspect who was found to have been ‘tagging’. Suspect found in possession of 13 baggies of marijuana