



CITY OF OAKLAND



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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

June 14, 2005

(510) 238-3601
FAX: (510) 238-6500
TTY/TDD: (510) 238-3254
(510) 238-3815

HONORABLE PUBLIC SAFETY COMMITTEE
Oakland, California

Re: Report Regarding Ballot Measure Z – A Voter Initiative Entitled “Oakland Cannabis Regulation and Revenue Ordinance,” Summarizing City’s Obligations Under The Measure And Recommending That Council (1) Adopt An Ordinance Establishing Terms And Responsibilities Of Members Of The Oversight Committee Created By Measure Z And (2) 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

This report summarizes the City’s obligations under Measure Z, a voter initiative entitled “Oakland Cannabis Regulation and Revenue Ordinance” that Oakland voters passed in 2004. The City Attorney’s Office recommends 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 private adult cannabis (marijuana) offenses are the City’s lowest law enforcement priority.

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. (A copy of the impartial legal analysis is attached to this report.)

Key Issues and Impacts

I. What Measure Z Does

Measure Z requires that the City immediately make law enforcement related to "private" adult cannabis (marijuana) "offenses" the City's lowest law enforcement priority (Section 4(b)); and creates an eleven member Community Oversight Committee to oversee the implementation of the lowest law enforcement priority policy (Section 7(b)).

II. What Measure Z Does not Do - City Has no Duty to Comply with the Lobbying or the Regulation and Taxation Provisions of Measure Z

Measure Z also purports to mandate that the City (1) lobby to eliminate criminal penalties for private adult cannabis offenses (Section 8) and (2) license, tax and regulate cannabis business if the California laws are amended to allow taxation (Section 5). But the City has no obligation to comply with these provisions because they are unconstitutional and therefore unenforceable. The City Attorney's impartial legal analysis of Measure Z, published in the voter pamphlet, advised voters that these provisions are unconstitutional and unenforceable because they do not enact a law (California Constitution, Article II, Section 8).

III. Impact of Measure Z

Private adult cannabis offenses already are not a priority for the Oakland Police Department ("OPD"). Enforcement action against private adult cannabis offenses is not identified in the Council's priorities. OPD has not established a strike force or special detail to address these types of offenses. OPD addresses these types of offenses when they come to OPD's attention due to complaints or violations of other laws (e.g., smoking ordinance, or nuisance activity).

Because Measure Z does not and could not change state or federal law, both of which prohibit non-medical cannabis use, the OPD has the right to continue law enforcement activities related to private adult cannabis offenses. However, OPD must make law enforcement activities for these types of offenses its lowest priority.

The lowest law enforcement priority policy applies only to *private* adult cannabis offenses. Private offenses would not include commercial activities, such as the use, sale, distribution, cultivation, etc., in commercial settings such as cafes and restaurants. Therefore, Measure Z has no impact on law enforcement activities related to cannabis use, sale, distribution, cultivation, etc., in commercial or 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).)

IV. Role of the Community Oversight Committee

Measure Z establishes an eleven (11) member Community Oversight Committee to “oversee” Measure Z’s implementation (Section 7(b).)¹ The Committee is composed of one community member appointed by each Councilmember, one member appointed by the Mayor, one representative of the City Manager (Administrator), and one representative of the City Auditor.

The Committee will serve in an advisory capacity to apprise the Council of issues and concerns regarding the lowest law enforcement policy priority to ensure timely implementation of Measure Z, and make recommendations/proposals to the Council regarding the implementation of lowest law enforcement priority policy for private adult cannabis offenses.

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.

¹ Section 7 provides in pertinent part: “Responsibilities of the Committee [Community Oversight Committee] shall: a) ensure timely implementation of the ordinance and b) oversee the implementation of the Lowest Law Enforcement Priority policy.”

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.

Council Should Adopt an Ordinance Setting the Terms and Responsibilities of Members of the Community Oversight Committee: City Council should adopt the ordinance that is attached to this report. The ordinance sets the terms for members of the Committee and provides the procedures and responsibilities of the Committee members.

The Council should make the following policy decisions prior to introducing the ordinance:

- Set the term for committee members. This Office recommends that the terms commence on August 1, 2005.
- Decide whether committee members will serve at the pleasure of the appointing authority or be removable only for cause in accordance with the provisions of City Charter section 601. The Charter provides that members may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council.
- Decide whether committee members must be Oakland residents at time of appointment and throughout their terms. The current language includes a residency requirement.

Council Members Should Appoint Oversight Committee Members: City Council members should promptly submit to the City Clerk the names of their appointees to the Community Oversight Committee.

Action Requested of Council

The City Attorney's Office requests that (1) 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; (2) Council adopt the attached ordinance which sets the terms and duties of the Community Oversight Committee and provides the procedure for removal committee members; and (3) Council members, the Mayor, the City Auditor and the City Administrator promptly submit to the City Clerk the names of their appointees to the Community Oversight Committee that Measure Z created.

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With respect to the ordinance, this Office seeks direction from Council regarding (i) the length of terms for committee members, (ii) including an Oakland residency requirement for Committee members and (iii) the removal procedure.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John Russo', written in a cursive style.

JOHN RUSSO
City Attorney

Assigned Attorney:
Barbara J. Parker

INTRODUCED BY COUNCILMEMBER _____

ORDINANCE No. _____ C.M.S.

Ordinance Establishing the Procedures of the Community Oversight Committee Created by Measure Z, entitled "Oakland Cannabis Regulation and Revenue Ordinance" (Measure Z) and Providing the Terms and Responsibilities of the Committee Members

WHEREAS, on November 2, 2004, the voters of the City of Oakland enacted the Oakland Cannabis Regulation and Revenue Ordinance, a voter initiative commonly referred to as Measure Z; and

WHEREAS, Measure Z became effective on December 7, 2004; and

WHEREAS, Measure Z makes the investigation, citation and arrest for private adult cannabis (marijuana) offenses (e.g. use distribution, sale, cultivation and possession of cannabis for medical and non-medical purposes) the City of Oakland's lowest law enforcement priority; and

WHEREAS, Measure Z also creates an eleven member, advisory Community Oversight Committee to oversee the ordinance's implementation and provides that the committee shall include one community member appointed by each City Councilmember, one community member appointed by the Mayor, one representative appointed by the Oakland City Auditor and one representative appointed by the City Administrator; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. It shall be the function and duty of the Community Oversight Committee to oversee implementation of the Lowest Law Enforcement Priority Policy and ensure timely implementation of Measure Z by:

- a. advising the Council of concerns, issues regarding the lowest law enforcement policy for private adult cannabis offenses;
 - b. making recommendations to the Council regarding the policy implementation;
- and
- c. reporting annually to the Council on the implementation of Measure Z.

Section 2.

- a. The Committee shall consist of eleven (11) members. The Mayor shall appoint

one community member. Each Councilmember shall appoint one community member. The Committee also shall include one representative of the City Administrator and one representative of the City Auditor. Members must reside in the City of Oakland at time of their appointment and for the duration of their term and should have the appropriate skills and expertise to carry out the duties of the Committee.

b. Six members shall constitute a quorum.

c. The members shall be appointed to terms of ? years, said term to commence upon the first day of August 2005, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms.

Section 3.

a. A vacancy on the Community Oversight Committee will exist whenever a member dies, resigns, or is removed.

b. **Alternative No. 1:** A member may be removed pursuant to Section 601 of the City Charter; provided however that any member will be ineligible to serve on the Committee if s/he ceases to reside in Oakland and shall automatically be removed from the Committee; removal shall be effective on the date that City provides written notice of removal to the member . Each member of the Committee has an affirmative duty to advise the City if s/he ceases to reside in Oakland. Among other things, conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, or absence from three (3) consecutive regular meetings except on account of illness or when absent from the City by permission of the Committee, shall constitute cause for removal.

OR

Alternative No. 2: Committee members shall serve at the pleasure of their appointing authority.

Section 4. The members shall elect a chairperson and a vice chairperson, who shall serve for a one year term. The Community Oversight Committee shall meet at City Hall, and at an established date and time suitable for its purpose. Such meetings shall be designated regular meetings. All meetings shall be held in accordance with the state and municipal open meeting laws (Brown Act and Sunshine Ordinance).

Section 5. The Community Oversight Committee, in consultation with the City Administrator, shall establish rules and procedures for the conduct of its business by a majority vote of the members present. Voting shall be required for the adoption of any motion or resolution. The Community Oversight Committee may make reports, and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council. Recommendations from the Community Oversight Committee shall be carefully and fully considered by the City Administrator before they are presented to the Council. However, if the City Administrator rejects the Committee's recommendation(s), the Committee may submit recommendations to the Council for

consideration, as appropriate.

Section 6. The City Administrator, or a designee, may provide the Community Oversight Committee with staff assistance and a representative of the City Attorney's Office shall attend the committee meetings as appropriate.

Section 7. The Community Oversight Committee may not create any Standing Committees for the purpose of delegating any of the Committee's decision-making or duties, but may form ad hoc committees as needed.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons, City Clerk
and Clerk of the Council of the
City of Oakland, California

05 JUN -2 AM 9:57

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBERS _____

A Resolution Amending Resolution No. 78331 “Declaring A Low Police Priority Related To Medical Marijuana Consistent With Oakland Municipal Code Section 5.80 And Senate Bill 420; And Rescinding Resolution No. 72516 Declaring Investigation And Arrest Of Individuals Involved With Medical Marijuana A Low Priority Policy” To Add, In Accordance With Measure Z, A Voter Initiative Entitled “Oakland Cannabis Regulation and Revenue Ordinance,” That Private Adult Cannabis Offenses Shall Be The City’s Lowest Law Enforcement Priority

WHEREAS, on March 12, 1996, the Oakland City Council passed Resolution No. 72516 C.M.S. supporting the activities of the Oakland Cannabis Buyer’s Club and declaring that the investigation and arrest of individuals involved with the medical use and distribution, processing, cultivation and purchasing of marijuana shall be a low priority for the City of Oakland; and

WHEREAS, the Compassionate Use Act was approved by the voters in November of 1996 and enacted without establishing guidelines or protocols for local jurisdictions; and

WHEREAS, lacking guidelines or protocols from the State, the Oakland City Council, adopted Ordinance No. 12076 C.M.S. on July 28, 1998 establishing a City of Oakland Medical Marijuana Distribution Program, and

WHEREAS, the California State Legislature recently adopted SB 420 to clarify the scope of the application of the Compassionate Use Act, establish protocols and promote uniform and consistent application among all local jurisdictions in the state to enhance the access of patients and caregivers to medical marijuana; and

WHEREAS, Senate Bill 420 allows cities and local governing bodies to develop laws and regulations consistent with state law; and

WHEREAS, the Oakland City Council desires to amend its medical cannabis policies to clearly define which individuals, collectives, and/or dispensaries involved with the medical use of marijuana are subject to the City of Oakland’s low police priority policy consistent with the provisions of SB 420 and Oakland Municipal Code Section 5.80; now therefore be it

RESOLVED, that the Oakland City Council hereby rescinds Resolution No. 72516 C.M.S. for the sole purpose of defining which individuals, collectives or dispensaries involved with the medical use of marijuana are subject to the City’s low police priority policy consistent with Oakland Municipal Code Section 5.80 and Senate Bill 420 and continues its support of the Oakland Cannabis Buyers Club; and be it further

RESOLVED, that the City Council hereby declares that it shall be the policy of the City of Oakland that the detention, investigation and arrest and any other law enforcement activities of the following are a low priority for the City of Oakland:

- (1) qualified patients who possess, purchase, cultivate, and/or use no more than the maximum amounts of medical cannabis specified in City Policy;
- (2) primary care givers of qualified patients who purchase, possess, cultivate for and/or provide to such qualified patients no more than the maximum amounts of medical cannabis specified in City Policy;
- (3) medical cannabis collectives who meet the requirements of Senate Bill 420 and Oakland Municipal Code (“OMC”) Chapter 5.80 and are comprised of no more than three qualified patients and their primary care givers;
- (4) a dispensary as defined in OMC Chapter 5.80, entitled An Ordinance Amending Title V of the Oakland Municipal Code Entitled business Licenses and Regulations to Include Chapter 5.80 Pertaining to Cannabis Dispensary Permitting”, that holds a current, valid permit issued by the City and is operating in compliance with such permit and other entities authorized by OMC Chapter 5.80 such hospitals and research facilities; and
- (5) entities authorized pursuant to Oakland Municipal Code Chapter 8.46.030; and be it further

RESOLVED, that 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, no activities related to cannabis other than those described in this resolution shall be a low priority for the City of Oakland; and be it further

RESOLVED, that no use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code and such use shall not be entitled to claim legal nonconforming status.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES –BROOKS, BRUNNER, CHANG, DE LA FUENTE, KERNIGHAN, NADEL, QUAN, REID,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
La Tonda Simmons, City Clerk
and Clerk of the Council
Of the City of Oakland, California