

2011 OCT 13 PM 2:28

TO: Office of the City Administrator
ATTN: Deama J. Santana
FROM: Joe DeVries
DATE: October 25, 2011

RE: Supplemental Informational Report to the Annual Report of the Measure Z
Cannabis Oversight Committee for Calendar Years 2009-10.

SUMMARY

At the March 22, 2011 Public Safety Committee staff delivered the Annual Report of the Measure Z Cannabis Oversight Committee for calendar years 2009-11. Staff was directed by the PSC members to return with a supplemental report regarding the following two items: 1) The status of the development of a Training Bulletin for Oakland Police Department (OPD) regarding the low law enforcement priority provision of Measure Z; and 2) A response to concerns expressed over the total number of arrests for marijuana offenses during the two years of data provided in the report.

FISCAL IMPACT

There are no fiscal impacts associated with this informational report.

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 and required the establishment of an oversight committee. City Council Ordinance No. 12694 C.M.S. established the Committee's procedures, and the terms and responsibilities of the Committee's members. The Committee is tasked with advising "the City Council of concerns and issues regarding the lowest law enforcement policy for private adult cannabis offenses, making recommendations to the City Council regarding policy implementation, and reporting annually to the City Council on the implementation of Measure Z."

On March 22, 2011 the 2009- 2010 Annual Report was presented to the Public Safety Committee.

Staff was directed by the PSC members to return with a supplemental report regarding the following two items: 1) The status of the development of a Training Bulletin for OPD regarding the low law enforcement priority provision of Measure Z; and 2) A response to concerns

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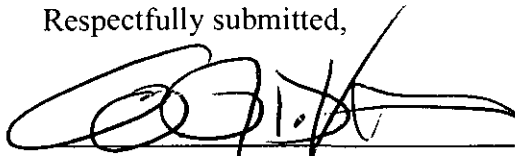
and therefore was done with no input from the committee. It is the belief of the committee members that reopening this subject area could change the City Attorney's official opinion and aid in eliminating barriers and inconsistencies in the implementation of the law.

Staff recommends that the committee accept this report.

ACTION REQUESTED OF THE CITY COUNCIL

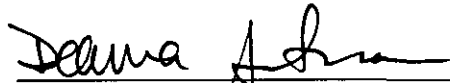
Staff requests that the City Council accept this information report.

Respectfully submitted,



Joe DeVries, Neighborhood Services Supervisor
Neighborhood Services Division

APPROVED AND FORWARDED TO THE
PUBLIC SAFETY COMMITTEE:


Office of the City Administrator



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