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OFFICE OF THE CITY CLERK  
OAKLAND

CITY OF OAKLAND



2009 JUN 11 PM 4: 15

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Office of the City Administrator  
Dan Lindheim  
City Administrator

(510) 238-3301

June 23, 2009

Public Safety Committee  
Oakland City Council  
Oakland, California

Chairperson Reid and Members of the Committee:

**RE: Ordinance Amending Ordinance No. 12694 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" in Order to Stagger the Appointment Terms of Members to Odd and Even Years**

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During a review of the Measure Z Committee's Bylaws in October 2008, a majority vote of the Committee recommended three proposed changes to the Bylaws, each of which would require amending the Measure Z ordinance (Ordinance No. 12694 C.M.S.). The proposed changes adopted by the Measure Z Committee were:

1. Amend the definition of "quorum" (Ordinance No. 12694 C.M.S., Section 2.b. and Section 5) to be "a majority of 'appointed members' and to establish a "non-active" category of member as "one who has missed three (3) consecutive meetings", and that such "non-active" members shall not count toward the establishment of the "quorum."  
*(Bylaws Article VII – Rules and Procedures)*
2. Amend the ordinance to permit Committee members to directly, and as the "Measure Z Committee", using the words of the Measure Z ballot text (Section 4.c.), "... advocate for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use."  
*(Bylaws Article II - Purpose)*

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3. Amend Ordinance No. 12694 C.M.S., Section 2.c. in order to stagger the appointment date of members. Currently all members' two year terms expire on odd numbered years, commencing as of "the first day of August 2005". It was recommended that Members from Districts 1, 3, 5, 7 and the members appointed by the Mayor and the City Administrator be appointed in odd numbered years. Members from Districts 2, 4, 6, At Large, and the City Auditor's appointee would be appointed during even numbered years.  
(Bylaws Article IV – Membership)

The Committee submitted a draft of their proposed ordinance changes (*Attachment A*). **Note:** The City of Oakland Ordinance header, voting block, and attest block have been removed from the Committee's proposed language in order to avoid confusion with the ordinance being proposed by this office – which is to only enact proposal number 3, staggering the appointment date of members.

The Office of the City Administrator does not support enacting proposals number 1. and 2. for the following reasons:

1. Amend the definition of "quorum" (Ordinance No. 12694 C.M.S., Section 2.b. and Section 5) to be "a majority of 'appointed members' and to establish a "non-active" category of member as "one who has missed three (3) consecutive meetings", and that such "non-active" members shall not count toward the establishment of the "quorum."  
(Bylaws Article VII – Rules and Procedures)

Allowing decisions to be made by a majority of a minority is not standard procedure for Oakland's appointed, citizen-led Boards, Commissions, and Committees. Such a proposal could enable a faction or clique to make decisions that would not be adopted under majority rule.

Since the Committee began meeting in February 2006 (regular meeting are scheduled for the 3<sup>rd</sup> Thursday of each month), the Measure Z Committee met eight times in 2006 and 2007, and seven times in 2008; and never more than three of the 11 seats have been vacant at any one time. Though some of the cancelled meetings were due to a lack of quorum, other the meetings were cancelled at the request of the Chair – usually when no written materials had been received in time to meet Sunshine / Brown Act regulations. In addition, establishment of "active" and "non-active" categories adds a superfluous layer of bureaucracy.

Attainment of quorum is mainly a matter of Council members making timely appointments of concerned Oakland residents who have the time and interest in regularly attending Committee meetings. This office could direct the staff person assigned to the Committee to notify appointing authorities on a regular / recurring basis when a seat becomes vacant or when a seated member misses three meetings in a row. These notifications would be in addition to the Boards and Commissions Directory distributed by the Office of the City Clerk.

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2. Amend the ordinance to permit Committee members to directly, and as the “Measure Z Committee”, using the words of the Measure Z ballot text (Section 4.c.), “. . . advocate for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.” (Bylaws Article II - Purpose)

A review of legislation and documentation<sup>1</sup> regarding Measure Z shows that the Council clearly established the Measure Z Community Oversight Committee to be an *advisory* body that makes recommendations to the City Council regarding policy implementation of the “Oakland Cannabis Regulation and Revenue Ordinance” (Measure Z).

In addition, the City Attorney’s Office opined, in a Memorandum to the Measure Z Committee, October 23, 2008 (Item E-1.a.), that while:

“The Measure Z Committee is authorized to “oversee the implementation” of the law that the voters passed. It would appear that both the Measure Z Committee and the City Council, in authorizing activities of the Committee, are limited by the provisions of the voter enacted law. Accordingly, the Committee probably has no “oversight” authority over the issues targeted for the ordinance amendment. Specifically, the Committee has no oversight authority regarding issues such as “the taxation and regulation of cannabis” or the elimination of “criminal penalties for private, adult cannabis use”.

It is true that Measure Z addressed the license, tax and regulated sale of cannabis for adult use (Section 5, Measure Z) as well as lobbying to eliminate criminal penalties for private adult cannabis use (Section 8, Measure Z). However, both section 5 and section 8 of Measure Z were declared unconstitutional and unenforceable because “they do not enact a law” and “[t]he initiative power can be exercised only to adopt or reject laws” (Citations omitted: “City Attorney’s Impartial Analysis of Measure Z” published with the Measure Z ballot measure and available to voters at the time of the election.). Accordingly, sections 5 and 8 were not part of the law enacted by the voters as Measure Z. Therefore, they are not subject matter for the oversight of the Measure Z Committee.”

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<sup>1</sup> In preparing of this report, the following documents were reviewed: (a) City of Oakland Charter, Article IV – City Officers, and VI – Administrative Organization, Section 601 – Boards and Commissions; (b) County of Alameda Sample Ballot and Voter Information Pamphlet, General Election of Tuesday, November 2, 2004; (c) City of Oakland Ordinance No. 12694 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; (d) City of Oakland, Boards & Commissions Directory, January 2008 (Introduction and Letter from the City Clerk)

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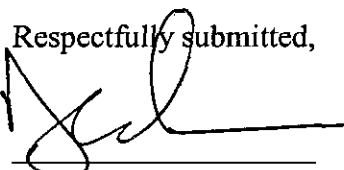
Nothing in the rules and regulations governing the Measure Z Committee prevents individual members of the committee from acting as advocates as private citizens or as members of other organizations which permit members to do direct lobbying, however these activities should not be directly identified with members' participation on the Measure Z Committee.

3. Amend Ordinance No. 12694 C.M.S., Section 2.c. in order to stagger the appointment date of members. Currently all members' two year terms expire on odd numbered years, commencing as of "the first day of August 2005". It was recommended that Members from Districts 1, 3, 5, 7 and the members appointed by the Mayor and the City Administrator be appointed in odd numbered years. Members from Districts 2, 4, 6, At Large, and the City Auditor's appointee would be appointed during even numbered years. (*Bylaws Article IV – Membership*)

This is a positive proposal that will make biennial re-appointments less onerous, by not having all 11 seats become vacant on the same date. **Note:** Any appointment(s) to fill vacancies at times other than end-of-term shall only be for the unexpired portion of the vacated term.

### RECOMMENDATIONS

Accept this report and adopt the ordinance amending Ordinance No. 12694 C.M.S. to stagger the appointment dates of members.

Respectfully submitted,  


Dan Lindheim  
City Administrator

Prepared by: Bill Uber  
Assistant to the City Administrator

Attachment A: Measure Z draft amendment to Ord. No. 12694 C.M.S.

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## Measure Z Committee:

**ORDINANCE AMENDING ORDINANCE NO. 12694 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 created an eleven member advisory Community Oversight Committee, appointed to two year terms commencing with the first day of August 2005, to oversee the ordinance's implementation and provided 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; and

**WHEREAS**, the members of the Committee are requesting amendments to the original ordinance in order to (a) make attainment of a quorum less restrictive, (b) stagger the terms of member appointments, and (c) advocate and lobby directly with local, state and federal officials; now therefore

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

Ordinance No. 12694 C.M.S. is hereby amended to read as follows; additions are indicated by underscoring and deletions are indicated by strike through type; portions of the original ordinance not cited or not shown in underscoring or strike-through type are not changed.

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.
- d. advocating and lobbying elected officials for changes in state law (and at other levels necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.

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.~~ A quorum shall be defined as "a majority of appointed members currently in an "active" status, provided the number of active appointed members meet or exceeds six."

c. An "active" member is a current, appointed member who has not missed three (3) or more consecutive meetings. Appointed members missing three (3) or more consecutive meetings shall be considered non-active and the staff assigned to the Committee by the City Administrator, or designee, shall notify the appointing authority in writing of the absences. A member shall regain "active" status by attending a meeting of the Measure Z Committee.

d. The members shall be appointed to terms of two years, said term to commence upon the first day of August, 2005 in odd numbered years for members appointed by Councilmembers in Districts 1, 3, 7, and the representatives from the Mayor and City Administrator, beginning in 2009; and in even numbered years for members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor, beginning in 2010, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms.

e. For the year beginning the first day of August 2009 only, members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor shall be appointed to a one (1) year term, providing they do not vacate their position or are not reappointed by their appointing authority.

Section 3.

- a. A vacancy on the Community Oversight Committee will exist whenever a member dies, resigns, ceases to reside in Oakland or is removed.
- b. 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.

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FILED  
INTRODUCED BY COUNCIL MEMBER  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

City Attorney

2009 JUN 11 PM 6:15

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

**ORDINANCE AMENDING ORDINANCE NO. 12694 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" IN ORDER TO  
STAGGER THE APPOINTMENT TERMS OF MEMBERS TO ODD AND  
EVEN YEARS**

**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 created an eleven member, advisory Community Oversight Committee, appointed to two year terms commencing with the first day of August 2005, to oversee the ordinance's implementation and provided 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; and

**WHEREAS**, staggering the appointment term of member, whereby odd numbered Council Districts, Mayor, and City Administrator appointments shall be made in odd numbered years and even numbered City Council Districts, the At Large and City Auditor appointments shall be made in even years; now, therefore

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

**SECTION 1.** Ordinance No. 12694 C.M.S. is hereby amended to read as follows: additions are indicated by underscoring and deletions are indicated by ~~strike through type~~; portions of the original ordinance not cited or not shown in underscoring or ~~strike through type~~ are not changed and remain in full force and effect.



**Ordinance 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.

**Ordinance 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 two years, said term to commence upon the first day of August ~~2005~~ in odd numbered years for members appointed by Councilmembers in Districts 1, 3, 5, 7, and the representatives from the Mayor and City Administrator, beginning in 2009; and in even numbered years for members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor, beginning in 2010, except that an appointment to fill a vacancy shall be for the unexpired term only. Members may be reappointed to subsequent terms.

d. For the year beginning the first day of August 2009 only, members appointed by Councilmembers in Districts 2, 4, 6, At Large, and the representative from the City Auditor shall be appointed to a one (1) year term, providing they do not vacate their position or are not reappointed by their appointing authority.

**Ordinance Section 3.**

a. A vacancy on the Community Oversight Committee will exist whenever a member dies, resigns, ceases to reside in Oakland or is removed.

b. Committee members shall serve at the pleasure of their appointing authority.

**Ordinance 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).

**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.

**Ordinance 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.

**Ordinance 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.

**SECTION 2. SEVERABILITY:** If any article, section, subsection, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions which shall remain in full force and effect.

**SECTION 3. EFFECTIVE DATE:** This ordinance shall become effective immediately upon final adoption of it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

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

DATE OF ATTESTATION: \_\_\_\_\_