



2005 DEC -2 AM 9:39

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HONORABLE PUBLIC SAFETY COMMITTEE
Oakland, California

Re: Report Providing a Definition of "Private Adult Cannabis Offenses" Under Ballot Measure Z – A Voter Initiative Entitled "Oakland Cannabis Regulation and Revenue Ordinance," and Recommending that Council 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

The City Attorney previously recommended 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 the City lowest law enforcement priority is private adult cannabis (marijuana) offenses.

As we discussed in the prior report, "private adult cannabis offenses" are not a priority for City of Oakland law enforcement activities. Private adult cannabis offenses come to the City's attention pursuant to complaints or violations of other laws, such as sale of illegal substances, responses to burglar alarms, etc. However, because the City's low priority policy currently addresses only medical cannabis, we recommended that the City amend its low priority resolution to clarify that its policy is consistent with Measure Z.

On July 19, 2004, the City Council adopted an ordinance that established the qualifications, terms, procedure to remove, and responsibilities of members of the Community Oversight Committee. However, the Public Safety tabled action on the amendment to the low

police priority Resolution and requested a definition of the term “private adult cannabis offenses”. The Rules Committee subsequently tabled the item and it was placed on the Public Safety Committee’s pending list.

This report defines what constitutes a “private adult cannabis offense” for purposes of the application of Measure Z’s lowest law enforcement policy priority and requests that the Council amend the resolution to clarify that the City’s lowest law enforcement priority is private adult cannabis (marijuana) offenses.

Although Measure Z makes such offenses the City’s lowest law enforcement priority, non-medical use, cultivation, distribution, sale of cannabis continue to violate state and federal laws.

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.

Prior to the passage of Measure Z, the City’s low law enforcement policy resolution applied only to medical cannabis. The resolution was consistent with (i) the City’s policies enunciated in various resolutions that the Council passed beginning in the early 1990’s, (ii) Proposition 215 (the Compassionate Use Act) and (iii) Senate Bill 420 (clarifying the scope of Proposition 215 and authorizing the City to regulate medical cannabis cooperatives consisting of patients and primary caregivers who meet the requirements of Proposition 215).

Key Issues and Impacts

Because Measure Z did not and could not change state or federal law, both of which prohibit non-medical cannabis use, the Oakland Police Department (“OPD”) and the City have the right to continue law enforcement activities related to “private adult cannabis offenses”. Further, the City’s ordinances, including but not limited to, smoking prohibitions and health and safety ordinances (e.g. fire and building codes) also remain in full force and effect and the City is entitled to enforce its laws.

Measure Z requires only that the City make law enforcement activities related to “private adult cannabis offenses” its lowest priority. This means that the City’s other law enforcement priorities must be higher priorities than its law enforcement priority for “private adult cannabis offenses”.

Measure Z does not define “private adult cannabis offenses” or “public places”. The rules of statutory construction require interpretation of a statute solely based on the language of the statute if the language of the statute is clear and unambiguous.

The meaning of “private” is not clear in this context and the statute is utterly silent on that issue. Although the ordinance makes a policy declaration that the lowest law enforcement priority policy will **not** apply to distribution to minors, distribution or consumption on streets or other public places or motor vehicles, it does not define what constitutes a “public place” or provide that all circumstances other than the ones expressly excluded are “private”.

When the statutory language is unclear, as here, the language shall be interpreted in accordance with the voters’ intent as discerned from the ballot materials, including but not limited to the City Attorney’s analysis in the ballot book. The drafters’ intent is not relevant to the interpretation.

In the impartial legal analysis, the City Attorney stated that private adult cannabis offenses are not defined in the statute and that the term “presumably refers to marijuana use, cultivation, sale, possession, distribution that occurs in a private place, such as an adult’s home.” Nothing in the ballot initiative itself or in the ballot materials or City Attorney’s impartial legal analysis would alert the voters that the intent of the measure was to apply the lowest law enforcement priority policy to commercial settings, such as cafes and restaurants or liquor or other retail establishments, or to activities on publicly owned property, such as City property even if such property is rented or leased by a private party for a private purpose such as a meeting, recreational or other activity.

Accordingly, “private adult cannabis offenses” that are covered by the lowest law enforcement policy include adult cannabis offenses (i.e. violations of the law) that occur on private property and in a setting that is not public, such as an adult’s home. “Private adult cannabis offenses” do not include offenses such as use, cultivation, sale, possession, distribution that occurs in commercial settings such as cafes, markets, stores, restaurants, retail outlets, liquor stores, cabarets, establishments selling alcoholic beverages. Nor do “private adult cannabis offenses” include offenses that occur on City-owned or leased property whether or not the City property is rented or leased for a private purpose such as a meeting, party, recreational or other activity; otherwise the City would be a party to unlawful activities and subject to claims that the City violated or conspired to violate or aided and abetted violations of state and federal and perhaps local laws by permitting “adult cannabis offenses” on City property.

In summary, the lowest law enforcement priority policy regarding adult cannabis offenses does not apply to commercial settings, to City-owned or leased property or to 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).)

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.

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.

The amendment would provide:

“RESOLVED, that notwithstanding any other provision of this resolution, 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

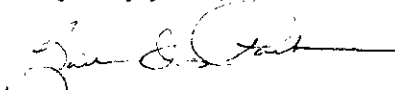
RESOLVED, private adult cannabis offenses do not include the use, sale, distribution, preparation and/or cultivation in settings that are not private, including but not limited to markets, stores, cabarets, establishments selling alcoholic beverages, cafes and restaurants, retail outlets, stores and other commercial establishments; nor do private adult cannabis offenses include use, sale, distribution, preparation and/or cultivation on City owned or leased property whether or not the property is rented or leased by private parties for a private purpose such as a party, meeting or other activity; 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”

Action Requested of Council

The City Attorney's Office requests that 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.

Very truly yours,



 JOHN RUSSO
City Attorney

Assigned Attorney:
Barbara J. Parker

OAKLAND CITY COUNCIL OFFICE OF THE CITY CLERK
2008

RESOLUTION NO. _____ C.M.S.
2008 DEC -2 AM 9:39

INTRODUCED BY COUNCILMEMBER _____



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 that 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 hold 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 as hospitals and research facilities; and
- (5) entities authorized pursuant to OMC Chapter 8.46.030; and be it further

RESOLVED, that notwithstanding any other provision of this resolution, 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, private adult cannabis offenses do not include the use, sale, distribution, preparation and/or cultivation in settings that are not private, including but not limited to markets, stores, cabarets, establishments selling alcoholic beverages, cafes and restaurants, retail outlets, stores and other commercial establishments; nor do private adult cannabis offenses include use, sale, distribution, preparation and/or cultivation on City owned or leased property whether or not the property is rented or leased by private parties for a private purpose such as a party, meeting or other activity; 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 that purports to have distributed marijuana prior to the enactment of Chapter 5.80 shall be deemed to have been 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, _____, 2005

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