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OAKLAND

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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Joe DeVries

SUBJECT: Cannabis Regulatory Commission
Biennial Report for 2011-12

DATE: February 13, 2013

City Administrator
Approval

Date

2/13/13

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Public Safety Committee accept this informational report from the Cannabis Regulatory Commission.

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 February 2006, a quorum of Committee members had been appointed and the first meeting of the Measure Z Community Oversight Committee took place on February 16, 2006. In an effort to more accurately reflect the work of the Committee, the members voted to change the name of the Committee to the "Cannabis Regulatory Commission" in 2012.

In accordance with Ordinance No. 12694 C.M.S., Section 1 (c), the Biennial Report for calendar years 2011 and 2012 is forwarded for City Council review.

For questions regarding this report, please contact Joe DeVries, Neighborhood Services Supervisor at (510)238-3083.

Respectfully submitted,

Joe DeVries

Prepared by: Joe DeVries
Neighborhood Services Supervisor
Neighborhood Services Division

Item: _____
Public Safety Committee
February 26, 2013

Oakland Cannabis Regulatory Commission

One Frank H. Ogawa Plaza
Oakland, CA 94612

February 26th, 2013

Public Safety Committee
Oakland City Council
Oakland, California

Leslie Bonett, Chair
Matt Hummel, Vice Chair
Dale Gieringer
Charles Mintz
Sierra Martinez
James Anthony
Marlon Hendrix
A. Kathryn Parker
Joe DeVries.

Dear Chairperson Gallo and Members of the Committee:

We are pleased to submit the Biennial Report of the Cannabis Regulatory Commission (Commission) for Calendar Years 2011 and 2012. The Commission decided to combine the two years' reports to provide a more comprehensive review in welcoming Oakland's new Council Members. Pursuant to City Council Ordinance No.12694 C.M.S., the Commission is charged to "(a) advise the City Council of concerns, issues regarding the lowest law enforcement [priority] policy for private adult cannabis offenses; (b) make recommendations to the Council regarding policy implementation; and (c) report annually to the Council on the implementation of Measure Z."

The Commission met ten times in 2011. In January 2011 all eleven seats were filled; however during the year there were several vacating members, including Jeff Baker (City Administrator), Joseph Villatoro (District 2), Wendy Hemdon (City Auditor), TC Everett (At Large), Keith Stephenson (District 7), and Richard Lee, Chairperson (District 3). Joe DeVries was the only new member (and staff) in 2011, appointed to the Commission by the City Administrator. At the end of 2011, the Commission had the six member minimum to make a quomm.

The Commission met eight times in 2012. In January 2012, Dhar Mann (District 6) vacated his seat, creating a lack of quomm and effectively cancelling the February and March meetings. The Mayor and Council Members' due diligence returned the Commission to a quorum in April. The newly appointed members are: Charles Mintz (District 2), Sierra Martinez (District 3), Marlon Hendrix (District 6), and A. Kathryn Parker (At Large). District 7 and City Auditor appointments have not been made since the 2011 vacancies. In April 2012, the Commission elected Chairperson Bonett and Vice Chair Hummel to a full two-year term.

During 2011 and 2012, the primary discussion and action items were as follows:

I. OPD Information Bulletin

At the direction of the City Council Public Safety Committee in March of 2011, the Commission collaborated closely with the Oakland Police Department (OPD) liaison Lt. Michael Poirier to develop an Information Bulletin for all Oakland Police Officers. This bulletin was approved by the Chief of Police and distributed to all sworn officers in September of 2011. Although the City Council had originally directed the Commission to create a Training Bulletin, after careful analysis by OPD and the Commission, it was decided that an Information Bulletin was a more appropriate training tool for officers.

The final Measure Z Enforcement Information Bulletin is included with this report as Attachment I.

2. The City's Smoking Ordinance

The Commission discussed the city's Smoking Ordinance extensively throughout 2011 and 2012, concluding the city's Smoking Ordinance should be modified to accommodate the use of cannabis. Oakland's current smoking ordinance is unusually strict, prohibiting not only tobacco smoking, but also cannabis and any other flammable materials (including incense and candles) in restaurants, hotels, and other public facilities. Moreover, any on-site consumption of cannabis is banned in dispensaries. This has led cannabis-friendly organizations to avoid booking meetings, conventions, and other events in the City of Oakland, reducing potential revenue opportunities despite organizations' desire to come to Oakland. Other localities, such as San Francisco, Berkeley, Santa Monica, and Marin County, have passed various exceptions for medical cannabis in their smoking laws.

The Commission heard testimony from Serena Chen of the American Lung Association, a sponsor of Oakland's current Smoking Ordinance. She reported that more than half of all ALA complaints about second-hand smoke are about cannabis, often from residents living in multi-unit buildings with shared ventilation systems. Ms. Chen pointed to studies showing the greater danger of second-hand smoke is not cancer but heart disease and stroke from exposure to particulate matter in the air. She said vaporization eliminates this problem because there is no particulate matter in vapor. Member Gieringer noted that research shows cannabis does not cause cancer or emphysema to those who smoke it, unlike tobacco, and there is no evidence of harm from exposure to second-hand smoke. The Commission agrees it is important to protect the public from involuntary exposure to second-hand smoke. However, the Commission decided the potential benefits to the city outweigh perceived risks, and, it would be beneficial to the city to allow cannabis smoking in designated facilities with appropriate ventilation, as called for in Measure Z. At the October 2012 meeting the Commission voted to recommend the following to the City Council:

The city should modify its ordinance to allow the smoking of cannabis at the discretion of the property owner in designated rooms of hotels, restaurants, clubs, cannabis dispensaries and other facilities, so long as they are properly ventilated and do not pose objectionable odor hazards to neighbors.

The Commission discussed various alternatives ranging from simply removing any reference to cannabis from the current smoking ordinance to more elaborate permitting processes, such as a licensing system for entertainment venues or special events. However, the Commission choose not to make a specific recommendation to the city, instead offering the broad policy recommendation above.

3. Federal Actions Against Cannabis Dispensaries

In December 2011, the Commission submitted an addendum to its supplemental annual report to the Oakland Public Safety. In the addendum, the Commission asked the City Council to adopt a resolution condemning the federal actions against regulated cannabis dispensaries in California. The Commission presented this addendum to the Oakland Public Safety Committee at its December 13, 2011 meeting. The Public Safety Committee decided to discuss this matter in a closed session due to the sensitivity of such a request since the city intended to approve four new dispensary permits in the coming months and did not wish to provoke the federal government.

In the spring of 2012, the federal crackdown of regulated cannabis businesses made its way to Oakland with the federal raid of Oaksterdam University and Blue Sky Coffee Shop, a permitted dispensary. The Commission decided a resolution from the Oakland City Council was even more appropriate and necessary, so the Commission voted to draft suggested resolution language in the hopes that providing language would increase the likelihood such a resolution would make it to the City Council's agenda.

The Commission drafted such a resolution and finalized the language at its July 2012 meeting. Soon thereafter, several Commission members sent the language to the Council Members they represented for consideration. Although the City Council has not passed a resolution condemning the federal crackdown, the City Attorney filed a lawsuit at the direction of the City Council against the U.S. Department of Justice for its actions against Harborside Health Center, the largest licensed dispensary in Oakland and most recent known target of federal agencies in Oakland. The Commission strongly supports and applauds this action. The Commission members still strongly recommend that the City Council take further action and pass a resolution.

The draft resolution language is included in this report as Attachment 2.

4. OPD Compliance with the Lowest Law Enforcement Priority Provision of Measure Z

During the summer of 2012 OPD Lt. Mike Poirier presented OPD arrest rates for adult (and juvenile) cannabis offenses in calendar year 2011 to the Commission and compared that data with the data from prior years. A great deal of credit was given to Lt. Poirier for providing the Commission with extensive data that was not included in prior years, allowing the Commission to conduct a more thorough analysis of OPD's compliance with Measure Z. The Commission was able to view 2011 arrests by police beat, gender, race, and age (juvenile versus adult). The Commission also had the opportunity to review details of a small number of cultivation cases to better understand what circumstances ultimately led to an arrest and whether those circumstances were in compliance with Measure Z guidelines.

In October 2012, Michael Wilson, a representative from the Alameda County Public Defender's Office, spoke before the Commission about his work and experiences defending cannabis arrestees. This gave the Commission a better understanding of how cannabis arrests are adjudicated in Alameda County and whether Measure Z has had an impact on that process. The presentation did not contain any quantitative data on arrests and case disposition; however, the representative was able to give the Commission valuable insight regarding the role cannabis offenses play in criminal cases in Alameda County. Generally speaking, "private adult" cannabis offenses rarely cross the desk of the Public Defender, and the few cases that do often have several other factors involved in the case's disposition. Cannabis does play a significant role in providing probable cause (most times in public places such as a street corner or vehicle) for officers to further engage a suspect, often resulting in a search of property or person. The Public Defender often sees cases for more serious crimes where public cannabis use was the initial reason for police contact.

The Commission reached the following conclusions about OPD's compliance with Measure Z:

1. The number of arrests for cannabis offenses dropped dramatically in 2011; however, the reduction in the number of Police Officers, the increase in violent crime, and the implementation of SB 1449 in January 2011 (which made possessing less than an ounce of cannabis an infraction) may be the real causes of this decline. Arrests are generally for offenses that occurred in public and therefore not protected under Measure Z. The cases examined in a private setting were precipitated by other extenuating circumstances, such as

an active search warrant, initial police contact for a separate violation, or multiple complaints about the activity taking place. This leads the Commission to believe that OPD is abiding by the provisions of Measure Z.

2. The arrests are generally equally spread across the city's 35 police beats, with the exception of the International Boulevard Corridor below High Street where a higher concentration of arrests took place. This led some Commission members to suggest a public education campaign about private versus public cannabis use in that area could benefit residents in avoiding unnecessarily negative contact with law enforcement.
3. Overwhelmingly, cannabis arrests are of persons of color. Of the 452 persons arrested for cannabis offenses in 2011, 74.5% were African American, 13% were Hispanic, 3.7% were Asian American, .4% were Native American, and only 5.0% were Caucasian.

In July 2012, Lt. Poirier introduced Lt. Blair Alexander to the Commission as his replacement. The Commission is very happy with the work of OPD, was especially pleased with Lt. Poirier's work, and looks forward to continuing this positive relationship with Lt. Alexander.

The memo from OPD providing total arrest rates for 2005-2011 is included in this report as Attachment 3.

5. City's Definition of Private as it Pertains to Cannabis

Members of the Commission continue to raise concerns and questions regarding the legal interpretation of the term "private" as contained in the adopted Measure's text. This question impacted both the Information Bulletin and OPD's implementation of the lowest law enforcement policy. The Commission members disagree with the City Attorney's Office's 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.

The intent of the initiative was to remove cannabis sales from residential neighborhoods to lessen the negative impact of an activity that should be conducted only in commercial areas. However, because the initiative did not clearly define private nor did it clearly state the intent of the initiative was to move cannabis sales from residential neighborhoods to commercial districts, the City Attorney recommended the city continue to use the accepted definition of private, referring to residential dwellings and other spaces not open to the public. This disagreement has repeatedly slowed the work of the Commission, so the Commission requested the City Attorney and City Council review and reconsider this legal opinion, with direct input from members of the Commission, in its follow-up report to the Public Safety Committee in late 2011.

The City Attorney's response to this item in 2011 is included in this report as Attachment 4.

6. Bylaw and Name Change to Cannabis Regulatory Commission

Due to the fact that Measure Z passed in 2004 and there are many new voters and residents of Oakland in the eight years since, the Commission changed its name from the Measure Z Oversight Committee to the Cannabis Regulatory Commission. This name more accurately reflects the work of the Commission.

7. Establishment of Measure Z Club Licensing Guidelines and Fees

In the spring of 2011, the Commission drafted guidelines for licensed cannabis dispensaries (adult, non-medical) in anticipation of changes in state law. These guidelines can be considered as a framework if changes under state or federal law were to occur.

8. Pending List

At the end of Calendar Year 2012, the following priority items were on the Pending List for 2013:

1. Establishment of guidelines, regulations, and fees for Cannabis Clubs (Measure Z Clubs);
2. Monitoring of OPD compliance with Measure Z guidelines and cooperation with federal agencies;
3. Recommendation to the City Council to modify the smoking ordinance and license cannabis smoking facilities in the City of Oakland;
4. Report from the District Attorney- conviction versus arrest statistics for CA Health and Safety Code section 11357- misdemeanor arrests;
5. Extended Discussion regarding “direction” of the Cannabis Regulatory Commission;
6. Tracking of ballot measures and/or passed legislation regarding cannabis reform in states outside of California; and
7. A public education campaign regarding the private versus public use of cannabis.

The Commission remains committed to the decriminalization of adult cannabis use, including legal medical cannabis, and will continue to submit recommendations to the Oakland City Council to advance the implementation of Measure Z as approved by Oakland voters in 2004.

Respectfully Submitted,

Leslie Bonett, Chairperson

Cannabis Regulatory Commission

(formerly Measure Z Community Oversight Committee)



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.

RESOLUTION CONDEMNING
THE FEDERAL CRACKDOWN
ON REGULATED CANNABIS BUSINESSES

WHEREAS, Oakland has maintained a well-regulated, taxed cannabis distribution system since 2004 and expanded the number of licensed dispensaries from four to eight this year; and

WHEREAS, on November 5, 1996, the voters of California passed Proposition 215, the Compassionate Use Act of 1996, by a YES vote of 55.7 percent, and the residents of Oakland votes YES for Proposition 215 by an overwhelming 79.3 percent; and

WHEREAS, 65.20 percent of Oakland voters overwhelmingly supported the well-regulated distribution of cannabis through the passage of Measure Z in 2004; and

WHEREAS, 65.77 percent of Oakland voters overwhelmingly supported the taxation of cannabis dispensaries through the passage of Measure F in 2009; and

WHEREAS, 56.32 percent of Alameda County voters supported the end of cannabis prohibition through their support of State Proposition 19 in 2010; and

WHEREAS, during each meeting the City Council passes a resolution renewing the declaration of a local public health emergency with respect to safe, affordable access to medical cannabis in the city of Oakland; and

WHEREAS, the closure of Oakland's well-regulated cannabis dispensaries would increase the level of unregulated, illegal sales of cannabis throughout Oakland's already crime-impacted neighborhoods; and

WHEREAS, In the 2010-2011 tax year, Oakland received \$1.4 million dollars in tax revenue from the four licensed marijuana dispensaries in the city, and, if these businesses were forced to close, the City of Oakland would lose this revenue during desperate budget times; and

WHEREAS, if these businesses were forced to close, it would increase profits going to dangerous drug trafficking organizations that don't pay city taxes; and

WHEREAS, Oakland's dispensaries employ hundreds of workers who would lose their jobs if these businesses were closed, forcing them to rely on state unemployment benefits rather than contributing to the local economy; and

WHEREAS, the Federal Government's actions in an effort to close these businesses are in direct conflict with memos issued by the U.S. Attorney General in 2009; and

WHEREAS, the April 2, 2012 raid of Oakland's Oaksterdam University targeted prominent community leader Richard Lee and attempted to close a trade school and stifle education; and

WHEREAS, the Federal Government's activities appear politically motivated since it has focused on leaders in the cannabis dispensing industry, including Oakland's Harborside Health Center, Oakland University, and Coffeeshop Blue Sky; the Marin Alliance for Medical Marijuana, which was the oldest storefront dispensary in the state until it was forced to close in 2011; and the Berkeley Patients Group, causing a chilling effect of political retribution through the judicial system; and

WHEREAS, the City of Oakland does not have the necessary police resources to address an increase in illegal, unregulated cannabis sales while also addressing the violent crimes that Oakland is plagued with currently; now, therefore, be it

RESOLVED: that the City directs the Police Department to not assist with, participate in, or otherwise provide personnel during any federal action against Oakland's current licensed cannabis dispensaries complying with local regulations; and, be it

FURTHER RESOLVED: that the Council will issue a letter of condemnation to the U.S. Attorney General, Eric Holder; the U.S. Attorney for the Northern District of California, Melinda Haag; and President Obama similar to letters that have been submitted by the California Attorney General, the Mayor of Fairfax, and the San Francisco Board of Supervisors; and, be it

FURTHER RESOLVED: that the Council encourages the Mayor to also write a letter to the U.S. Attorney General, Eric Holder; the U.S. Attorney for the Northern District of California, Melinda Haag; and President Obama similar to the letter the Council will issue and those that have been submitted by the California Attorney General, the Mayor of Fairfax, and the San Francisco Board of Supervisors.

CITY OF OAKLAND

MEMORANDUM

To: Measure Z Committee
From: Oakland Police Department
Date: 13 Jun 12

Subject: Police Department Activities Related to Arrests for Criminal
Marijuana Offenses for 2011

The Oakland Police Department maintains a policy stating that the investigation, citation and arrest for private cannabis offenses is the lowest law enforcement priority. On 6 Sep 11, the Oakland Police Department published an Information Bulletin which was developed with input from the Measure Z Committee. The Information Bulletin reminded all Oakland Police Department Personnel as to the intent of Measure Z.

In 2011, the Oakland Police Department arrested/cited 2,120 persons for drug related offenses. Of those persons, only 107 were arrested/cited for possession of less than one ounce of marijuana (11357(b) HS). Of the total, only 5 persons were arrested/cited for possession of more than an ounce of marijuana (11375(c) HS). The majority of persons arrested/cited for cannabis possession were in a public place and often are the result of specific complaints or investigations into other criminal activity.

Criminal Marijuana Arrest Statistics for Calendar Years 2005 – 2011:

Arrest Type	2005	2006	2007	2008	2009	2010	2011
Possession of Marijuana for Sale - § 11359 HS	377	311	508	618	571	517	275
Cultivation of Marijuana - § 11358 HS	4	9	13	29	37	58	8
Sales/Transportation of Marijuana - § 11360 HS	201	111	115	164	128	136	29

Item: E-1
Measure Z
June 21, 2012

City of Oakland Overall Crime Statistics:

In 2011, the City of Oakland experienced an overall 7% increase in Part One crimes. See attachment for details of individual crime statistics.

Michael Poirier
Lieutenant of Police

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

December 9, 2011

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Via email

Public Safety Committee
Oakland, California

Re: Measure Z Committee Recommendation

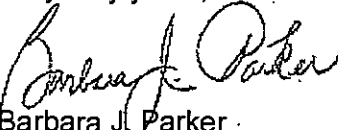
Dear Chairperson Kernighan and Members of the Public Safety Committee:

The City Attorney's Office has reviewed the recommendations of the Measure Z Committee regarding the City Attorney's legal opinion issued on December 13, 2005, which provided a legal interpretation of the meaning of the term "private" as used in the voter-approved Measure Z statute setting forth the policy for police to engage in low enforcement of "private adult cannabis offenses." That interpretation is consistent with the City Attorney's impartial ballot analysis of Measure Z.

The 2005 opinion defined the term "private" as including 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. The Measure Z Committee would like the Council's low enforcement policy to apply to a broader range of locations at which adult cannabis offenses occur, including at private clubs and commercial establishments generally open to the public.

Because Measure Z is a voter approved initiative, the City Attorney advises that the only course of action for the Measure Z Committee is to submit a new voter initiative amending or clarifying the original initiative to include a broader range of locations subject to the policy.

Very truly yours,


Barbara J. Parker
City Attorney

cc: City Council
Deanna Santana, City Administrator
Joe DeVries

ITEM 4
Public Safety Committee
December 13, 2011