

# *Cannabis Regulatory Commission (former Measure Z)*

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Thursday, October 18<sup>th</sup>, 2012, 6:00 p.m.

## Draft Meeting

### Minutes

Council Chambers, City Hall, One Frank H. Ogawa Plaza

#### **Members:**

Dale Gieringer	District 1	Vacant	District 7
Charles Mintz	District 2	A. Kathryn Parker	At Large
Sierra Martinez	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Vacant	City Auditor
Matt Hummel	District 5	Joe DeVries	City Administrator
Marlon Hendrix	District 6		

Available on-line at: <http://www.oaklandnet.com/measurez>

### AGENDA

#### A. Roll Call and Determination of Quorum

*The meeting was called to order at 6:05 pm; members Gieringer, Mintz, Martinez, Hendrix, Parker, DeVries, Hummel, and Chairperson Bonett were present. Member Anthony was excused.*

#### B. Open Forum / Public Comment

*There were no public speakers.*

#### C. Review of the Pending List

*Joe DeVries noted the changes made from last month and noted that he attempted to have the Alameda County District Attorney attend (item 6 on the list) and they declined the invitation. Member Parker noted that item 10 should be moved to the tracking list.*

#### D. Approval of the Draft Minutes from the Cannabis Regulatory Commission meeting of September 20<sup>th</sup>, 2012.

Persons may speak on any item appearing on the agenda; however a Speaker Card must be filled out and given to a representative of the Measure Z Commission. Multiple agenda items cannot be listed on one speaker card. If a speaker signs up to speak on multiple items listed on the agenda, the Chairperson may rule that the speaker be given an appropriate allocation of time to address all issues at one time (cumulative) before the items are called. All speakers will be allotted 3 minutes or less – unless the Chairperson allots additional time.

♿ This meeting is wheelchair accessible. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Measure Z Commission, please contact the Office of the City Clerk (510) 238-3612. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility. In compliance with Oakland's policy for people with chemical sensitivities, please refrain from wearing strongly scented products to events.

Questions or concerns regarding this agenda, or to review any agenda-related materials, please contact the Measure Z Commission at (510) 238-3301.

Item #   D    
Cannabis Regulatory Commission  
November 15<sup>th</sup>, 2012

*The minutes were approved with one minor typo change.*

E. Reports for Discussion and Possible Action

1. A discussion with a representative of the Alameda County Public Defender's Office regarding adjudication of Cannabis related cases from within the City of Oakland.

*Michael Wilson from the Alameda County Public Defender's Office presented to the commission. He has worked in that office for the past 12 years the majority of which he has worked with felony preliminary hearings and motions and is an Oakland/Berkeley area native.*

*His presentation was primarily anecdotal as he does not have quantitative data to use but instead based his presentation on his years of experience in that office. He also noted that the cases he is assigned are limited by the socio-economic class of clientele the Public Defender represents, he is not likely to represent a "king-pin" because they have the money to hire private counsel.*

*Measure Z addresses adult private marijuana use and primarily his office does NOT deal with Measure Z type cases. Generally he does not see OPD going after the private adult use of cannabis especially since most cases are now infractions, not felonies. His office does not handle infractions. Instead his focus is on how cannabis use does show up in his practice.*

*The primary type of offense he sees is cultivation and there are very few of those. Most cases that do come up appear to be because of accidental discovery by OPD; i.e.: he had a case where someone called OPD and when they arrived they observed a cannabis growing operation. That particular case centered on whether the cultivation was for medical purposes or not.*

*The next type they see is cases of possession, mostly felony possession for sale and invariably those cases have their origins from people in their cars or on the street, again, not private. The most likely time police end up in somebody's home is on another search warrant for parole or probation.*

*The amount of cannabis is less significant than other factors in determining if the person is charged with intent to sell. They use other indicia such as scales, baggies, and other evidence found at the time. Another factor that is not as significant as some may think is whether the person has a medical card with them—this doesn't necessarily stop the arrest or the charge but does ultimately help with their defense.*

*Other ways in which people get arrested and charged are during "Buy-Bust" operations and in those cases the evidence is usually very strong—the officer has video surveillance of them personally buying cannabis from the defendant.*

*The most common role marijuana plays in the public defender's caseload is as a reason for the police to conduct a search which uncovers other contraband. Typically a police officer's attention is drawn to someone because of the smell of cannabis or witnessing someone smoking cannabis in public and that leads to an interaction with the officer who then discovers either a warrant, other contraband such as a gun, and that is what the person is ultimately charged with. Once someone is charged with something like possession of a gun the charges for cannabis are rarely filed—they are simply reported on and the reason for the stop. According to some defendants, often cannabis also leads to an officer asking the suspect to provide them information about a more serious offense such as the location of a gun or who may be*

*involved in a major crime. Again, this is anecdotal information provided by defendants (since the public defender is not on the scene of an arrest there is no way to verify this.)*

*Of course the Public Defender has no data on how often Oaklanders interact with OPD around cannabis; they only get the cases where the person's liberty is at stake.*

*Chairperson Bonett asked if anyone had public comment. There were none but the commission members had several clarifying questions. There were several questions about how cannabis is used as probable cause to search a car or pursue further action. For example, Vice Chair Hummel was curious about officers' claims they could smell cannabis and whether this is legitimate. The Public Defender noted that this questioning always comes up in the courtroom. He noted that sometimes during those court hearings, he can smell the cannabis sitting in the evidence folder across the room from him.*

*Chairperson Bonett asked about the difference between juvenile and adult cases. Possession by minors is treated differently and anecdotally appears to be prosecuted more than adult cases. His belief is this is due to an effort to keep juveniles out of the system early by treating their crimes more seriously. The same conduct by an adult may be viewed less seriously than this conduct is viewed when done by a juvenile.*

*Cecile Bernardi, a member of the public, approached the podium and asked if when a defendant had a joint behind their ear, how would the officer show they "knew" it was cannabis. Mr. Wilson noted that each case is different but that question is an example of what the Public Defender asks in the course of the trial.*

2. A discussion regarding a recommendation that Oakland adopt an ordinance to permit smoking of Cannabis in accordance with Measure Z.

*Member Gieringer summarized the work of the committee regarding the smoking ordinance and pointed out that the commission never officially voted to make a recommendation to the City Council and he would like the commission to do so tonight. He presented a brief write up included below explaining his reasoning:*

*I wish to present a motion that the CRC recommend to the City Council that Oakland amend its anti-smoking ordinance to allow the smoking of cannabis in properly ventilated spaces, in accordance with Measure Z, Section 5(g):*

*Onsite consumption shall be licensed so as to keep cannabis off the streets and away from children, subject to reasonable air quality standards.*

*Under Oakland's current ordinance, it is illegal for restaurants, hotels, clubs and other facilities, public or private, including medical cannabis dispensaries, to permit cannabis smoking on site, regardless of the property owner's wishes. This deprives the city of revenues from organizations that would like to book cannabis-friendly events in the city.*

*The city's anti-smoking ordinance is too broad in defining smoking to include not only tobacco (as under state law), but also all other combustible substances, including marijuana, incense, candles, etc. Unlike tobacco, there is no evidence that second-hand exposure to marijuana smoking poses any health hazard. Indeed, studies by UCLA Prof. Dr. Donald Tashkin and others have found that even chronic,*

*first-hand marijuana smoking poses no risk to the user of respiratory cancers or chronic obstructive lung disease.*

*The city should accordingly modify its ordinance to allow the smoking of marijuana 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. One option would be for the city to license such spaces, contingent on an inspection for ventilation. Alternatively, the city could simply modify its current smoking ordinance so as to exclude marijuana and other herbs, incense, candles, etc., from the definition of smoking.*

*Member Parker voiced her concern that “employee rights” were often cited by the American Lung Association in support of anti-smoking laws and she feels that this points to a need to address workers’ rights within whatever the commission proposes. Member Gieringer felt that the modified ordinance could be crafted to take workers’ rights into account. Chairperson Bonett wanted to remove the question of incense and candles from the proposal to as not confuse/muddle the issue. Joe DeVries agreed that the commission doesn’t want the council to sidebar about incense and candles. He also believes the Commission doesn’t need to iron out the details of the smoking ordinance, but really just needs to take a strong official position that the council should modify the ordinance and let them iron out the details.*

*Member Parker asked about the typical process by which the commission makes a recommendation to the council. Joe DeVries clarified the process for members and suggested a well written annual report with strong recommendations made the most sense.*

*Ultimately the Commission voted to recommend to the City Council that **“The city should modify its ordinance to allow the smoking of marijuana 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.”***

3. A continued discussion of the biennial Report to the City Council.

*Chairperson Bonett provided a draft to the committee that Joe DeVries can use as a guide to expand upon or add necessary details. He will bring a more thorough draft back to the committee in November. Member Hummel asked if the report could use the word “cannabis” consistently throughout the document as opposed to sometimes referring to “marijuana.” He also wanted clarification regarding the term “Medical Marijuana” and suggested the report only refer to cannabis and dropping the word medical. The commission agreed with that sentiment.*

4. A follow-up discussion regarding Committee Members terms of office, reappointment, and process regarding vacancies.

*Joe DeVries stated that he needed to follow up with the City Clerk and Mayor’s Offices as to whether the members appointed right before the end of their term technically need to be reappointed.*

F. Announcements

*Chairperson Bonett noted there were 9 audience members. She also praised the Oakland Civil Liberties Alliance for their endorsements in the East Bay Express.*

*Member Gieringer passed out post cards for the upcoming CA NORML conference which commemorates 100 years of cannabis prohibition in CA.*

G. Adjournment

*The meeting adjourned at 7:30.*