

Measure Z Committee

Adopted Minutes

Thursday, August 19, 2010, 6:00 p.m.

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

Members:

Dale Gieringer	District 1	Keith Stephenson	District 7
Joseph E. Villatoro	District 2	TC Everett	At Large
Richard Lee	District 3	Leslie Bonett	Mayor
James Anthony	District 4	Wendy Herndon	City Auditor
Matt Hummel	District 5	Jeff Baker	City Administrator
Dhar Mann	District 6		

MINUTES

A. Roll Call and determination of quorum

Members Present: J. Anthony, J. Baker, TC Everett, D. Gieringer, W. Herndon, M. Hummel, D. Mann, K. Stephenson, J. Villatoro and Chairperson Lee

Members Excused: Member Bonett (Excused Absence)

The meeting of August 19, 2009 was called to order at 6:09 p.m.

B. Open Forum / Public Comment

There were no speakers on this Item.

C. Review of the Pending List

Member Gieringer requested a discussion of “Bi-Monthly Meetings.”

Chairperson requested a discussion of Guidelines, Fees and Overall Regulation of Measure Z Clubs.

D. Approval of Draft Minutes

Chairperson Lee pointed out a correction on Page 1, Open Forum, Speaker Eric Keller made reference to the “City Council Meeting” not the “Measure Z Committee” re medicinal dispensary permits. Change noted.

Member Gieringer provided the correct spelling of “Jack Perrious” name, noted in the Minutes as “Jack Ellis.” Change noted.

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There were no public speakers on this Item.

The Minutes of the June 17, 2010 meeting were approved, by consensus.

E. Discussion: Definition of the word “private” as Utilized in the November 2, 2004, Ballot Initiative, Measure Z – “Oakland Cannabis Regulation.”

Susan Mosk, Office of the City Attorney, provided the report.

While the Initiative process is generally good, there often are problems within the language of the Initiative itself. For instance if an Initiative is placed on the ballot to eliminate all taxes, regardless of the signatures gathered and subsequent votes, the Initiative would be deemed unconstitutional. When the Measure Z Initiative was presented to our office in 2005, we took the posture the Court would take – that is, undertake the legal analysis to ascertain the “plain meaning of the word” in its context in the Initiative. If you look at the actual ordinance, it states

“Measure Z: Shall the ordinance requiring the City of Oakland (1) to make law enforcement related to private adult cannabis (marijuana) use, distribution, sale, cultivation and possession, the City lowest law enforcement priority; (2) to lobby to legalize, tax and regulate cannabis for adult private use, distribution, sale, cultivation and possession; (3) to license, tax and regulate cannabis sales if California law is amended to allow such actions; and (4) to create a committee to oversee the ordinance’s implementation, be adopted?”

What a Court would do is look at the word “private” and how the term is used in the text. “Private adult use” is pretty clear - (it refers to an action by a person over 18 years of age); “Private use, distribution, sale, cultivation and possession” all refer to “conduct.” No where in the Initiative is the word “private” used to modify a “place.” It consistently modifies “conduct,” “use” or “offenses, i.e., “Private cannabis use, distribution, sale, cultivation and possession.” “Private adult “offenses” can and will come to the attention of the police. “Private offenses” must occur someplace that is not public, not open to the public – so we used the example of “in your home.” Our office still stands behind this interpretation – “private” as used in the Initiative refers to “conduct.” Others have argued that the word “private,” as used in the Initiative refers to a “place” – like Costco, a private club with a membership fee or like the “Safeway Club,” or any club that charges the public admission to get in. “Private” as a “place” can only mean a location where you may exclude any members except those you invite. In each of the above examples, any member can pay fees and obtain admittance.

Member Gieringer noted that commas and conjunctions used to modify private use “marijuana” in the Initiative – a thing, i.e., marijuana use, marijuana distribution,

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marijuana sale, marijuana cultivation. Where you have a list of nouns with a preceding adjective as in private use, private distribution and private sales, the adjective applies to each of the nouns, e.g., English men, women and children – English men, English women and English children. That’s the way the language works. There are private places other than a home. One can lease a building or room in a building for “private” use. This alternative, a place outside of one’s home that is “private,” was not considered nor is reflected in the City Attorney’s interpretation.

Member Anthony noted the City Attorney’s comments are merely an invitation for the Measure Z Committee’s to sue. The City Attorney’s Office is not counsel to this Initiative-mandated Committee and it is unclear whether the Committee is bound by the City Attorney’s opinion.

The following persons spoke on this Item:

Rick Mora: If you follow the logic in the City Attorney’s opinion, it suggests by use of the term “occurs in a private place, such as an adult’s home.” Use of the term, “such as” implies there are other possibilities of a private place.

F. Announcements

Chairperson Lee announced the regular East Bay Activist’s Meeting at the Oaksterdam University Student Union, 1915 Broadway. Pizza and soft drink are served. There was a big Rolling Stone article on Proposition 19 this week. The Teamsters just endorsed the Initiative this week.

G. Adjournment

There being no further business, and upon the motion duly made, the Measure Z Committee was adjourned.

Staff to the Measure Z Committee

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