

OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND

Frequently Asked Questions (FAQs)

Regarding the 2004 Oakland Cannabis Regulation and Revenue Ordinance (“Measure Z”), and the Authority and Duties of the Cannabis Regulatory Commission

Issued: April 17, 2019

Revised:

Issued by: Barbara J. Parker, Oakland City Attorney



I. INTRODUCTION

On November 2, 2004, Oakland voters passed Measure Z, an initiative entitled the “Oakland Cannabis Regulation and Revenue Ordinance.” The ordinance enacted a City law that established a City policy making the investigation, citation, and arrest for “private adult cannabis offenses” Oakland’s “lowest law enforcement priority.” Measure Z also created an eleven member Community Oversight Committee to oversee implementation of the Private Adult Cannabis Offenses Policy. The Community Oversight Committee later, informally, changed its name to the “Cannabis Regulatory Commission” (“the Commission”).¹

Measure Z grants the Commission advisory power to make *recommendations* to the City Council regarding the licensure, taxation, and regulation of cannabis for adult use. Authority over the disbursement of adult use cannabis sales tax revenue, issuance of commercial cannabis activity permits, and regulation of the advertising of cannabis products rests with the City Administrator and City Council.

This memorandum answers frequently asked questions regarding the Commission’s authority and duties. This memorandum provides general information and does not constitute legal advice. The FAQs provide general information and do not cover all issues or circumstances that might apply to a particular fact situation.

For more information please refer to Measure Z, Oakland Municipal Code Chapters 5.80 and 5.81, any applicable City regulations, and Proposition 64. You also may contact Assistant to the City Administrator Greg Minor at gminor@oakland.gov.

¹ Measure Z identifies the commission as the “Community Oversight Committee”. Therefore, a voter initiative amending Measure Z is required to formally change the name of the commission.

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II. FREQUENTLY ASKED QUESTIONS REGARDING MEASURE Z AND THE AUTHORITY AND DUTIES OF THE CANNABIS REGULATORY COMMISSION

1. Is Measure Z a City Charter amendment or an ordinance?

Answer: Measure Z is an ordinance. Ordinances cannot conflict with Oakland's City Charter ("Charter") because the Charter is the supreme law of the City. Accordingly, ordinances must be consistent with the Charter. Ordinances that include provisions that conflict with the Charter are unenforceable.

2. What is the legal effect of Measure Z?

Answer: Measure Z is a City law that makes the investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority, and establishes a Community Oversight Committee, now known as the "Cannabis Regulatory Commission" to oversee the implementation of the lowest law enforcement priority policy and to make recommendations to the City Council regarding the licensure, taxation, and regulation of cannabis for adult use.

3. What are "Private Adult Cannabis Offenses"?

Answer: Measure Z does not define "Private Adult Cannabis Offenses." In 2005, the Council passed Resolution Number 79647 C.M.S. ("Resolution 79647")² which defines "Private Adult Cannabis Offenses" as follows:

The use, sale, distribution, preparation and/or cultivation of cannabis in settings that are not private, including markets, stores, cabarets, establishments selling alcoholic beverages, cafes and restaurants, retail outlets, stores and other commercial establishments.

² Prior to passage of Measure Z, the City's existing lowest law enforcement policy applied to medical cannabis only. Resolution 79647 aligned this existing City policy with Measure Z by declaring that private adult cannabis offenses, whether medical or for adult use, shall be the City's lowest law enforcement priority.

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Resolution 79647 also states that “Private Adult Cannabis Offenses” does not mean:

The use, sale, distribution, preparation, and/or cultivation of cannabis on City owned or leased property; regardless whether or not the property is rented or leased by private parties for a private purpose such as a party, meeting, or other activity.

4. What is the function of the Cannabis Regulatory Commission?

Answer: Pursuant to Measure Z, the functions of the Commission are to:

- Ensure timely implementation of Measure Z;
- Oversee the implementation of lowest law enforcement priority policy;
- Make recommendations to the Council regarding implementation of the “lowest law enforcement policy”;
- Make recommendations to the City Council regarding implementation of City licenses, taxes, and regulations for adult use of cannabis; and
- Report annually to the Council on the implementation of Measure Z.

5. Does the Commission have authority to oversee the disbursement of revenues generated by cannabis businesses?

Answer: No. The City Charter grants the City Council the authority to determine the City’s budget and allocate and disburse revenues. As we explained in the answer to Question No. 1, the City Charter is the supreme law of the City. Measure Z is an ordinance and cannot override or conflict with the City Charter. Accordingly, although Measure Z provides that one of the Commission’s responsibilities is to “[o]versee the disbursement of revenues generated through the sale of cannabis by licensed cannabis businesses to assure that funds go to vital city services such as schools, libraries and youth programs”, it cannot grant the Commission authority to “supervise”, “administer”, “direct” or “control” the disbursement of cannabis business revenues.³ The Measure Z provision conflicts with the City

³ Google’s online dictionary defines “oversee” as “supervise (a person or work), especially in an official capacity” and lists synonyms as “supervise, superintend . . . , administer, direct, guide, control, . . . rule, command.”

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Council's budget authority and duties under the Charter.⁴ Therefore, the Measure Z provision purportedly granting the Commission the authority to oversee distribution of cannabis revenues is invalid.

6. Can the Charter be amended to authorize the Commission to oversee the disbursement of revenue generated by sale of cannabis?

Answer: Yes. The Charter can be amended by a voter-approved ballot measure that would authorize the Commission to oversee the disbursement of revenue generated by the sale of cannabis. The City Council or a citizen, through the ballot initiative process, can place such a measure on the ballot for voters to decide.

7. Can the City Council amend Measure Z by adopting an ordinance to grant the Commission additional powers and duties?

Answer: No. The voters passed Measure Z, not the City Council. An ordinance adopted by voter approval of a ballot measure may be amended only by a subsequent voter-approved ballot measure unless the original measure includes a provision that expressly authorizes the City Council to amend the ordinance. Measure Z has no such provision. Accordingly, the City Council cannot adopt an ordinance expanding and/or altering the Commission's authority.

8. Does the Commission have authority to oversee the regulation of cannabis product advertising?

Answer: No. At the time Measure Z was adopted the City Council had not adopted any legislation to license, tax, advertise or otherwise regulate the legal use of recreational (adult) cannabis. Therefore, the Measure Z provision requiring the City to establish a system to license, tax, and regulate cannabis advertising⁵ required that the Council enact legislation *in the future*. California Constitution, Article 2, Section 8, authorizes voters to use the initiative power to adopt new laws or to reject or modify existing laws. Therefore, the Measure Z provision purporting to require that the City Council

⁴ Charter Section 801 requires that the City Council "adopt by resolution a budget of proposed expenditures and appropriations necessary . . . for the ensuing year." Charter Section 806 provides that "[a]ll monies received by the City shall be deposited in the City Treasury, and no monies shall be disbursed from the treasury without the approval of the City Administrator or of another officer duly authorized by him/her", and that "[n]o expenditure of City funds shall be made except for the purposes and in the manner specified by an appropriation of the Council . . ."

⁵ Measure Z, Section 5(f).

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adopt new laws in the future is not within the ambit of the constitutional initiative power and is not valid.

9. May the Commission issue Cannabis activity permits?

Answer: No. Charter Section 207 provides that the Council “shall be vested with all powers of legislation in municipal affairs.” The City Council has adopted operation and permitting regulations for Cannabis businesses as set forth in Oakland Municipal Code Chapters 5.80 and 5.81. Charter Section 500 provides that the “City Administrator . . . shall be the chief administrative officer of the City”, and Charter Section 504 provides that the “City Administrator shall have the power and it shall be his duty . . . (a) [t]o execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the city.” Therefore, only the City Administrator may enforce Cannabis regulations and issue cannabis activity permits and other permits.

10. Does Measure Z require that the City engage in advocacy for changes in state law?

Answer: No. Although Measure Z contains such a provision,⁶ as we explained in our answer to Question No. 8, above, it is invalid under California Constitution, Article 2, Section 8, to use the initiative process to require enactment of future laws. The initiative power can be used only to adopt a law or reject or modify an existing law. Because this provision requires the City to *advocate* for new laws, it is not within the ambit of the constitutional initiative power and is not valid.

⁶ Measure Z, Section 4(d).