




Office of the City Manager

CONSENT CALENDAR

January 15, 2008

To:  Honorable Mayor and Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Pamyla Means, MMC, City Clerk

Subject: Resubmission of Medical Marijuana Ballot Measure (Measure R) from 2004

RECOMMENDATION

Direct the resubmission of the Patient's Access to Medical Cannabis Act (Measure R from 2004) to the voters on the November 4, 2008 General Municipal Election ballot as directed by court order, and direct the City Attorney to submit the original 2004 title and impartial analysis.

FISCAL IMPACTS OF RECOMMENDATION

Funds in the amount of \$365,415 are budgeted within the City Clerk Department budget for the conduct of the November 4, 2008 General Municipal Election (Budget Code 010-2101-410) however, the cost of submitting this measure to the voters will be borne entirely by the County of Alameda.

CURRENT SITUATION AND ITS EFFECTS

The Patient's Access to Medical Cannabis Act of 2004 was a City of Berkeley citizen initiative that was submitted to the voters at the November 2004 election. The measure was narrowly defeated and through a recount, it was discovered that some of the ballot records from the DRE voting machines had not been retained. The ensuing court case, *Americans for Safe Access v. County of Alameda*, resulted in an order to resubmit the measure to the voters of Berkeley at the next regular general municipal election.

Due to changes in the Berkeley Municipal Code since 2004, the judge ordered the text and title of the measure to be revised and the original analysis to be resubmitted. In addition, new ballot arguments for and against the measure will be filed in the normal course of the November 2008 election schedule.

CONTACT PERSON

Pamyla Means, MMC, City Clerk, 981-6909

Attachments:

- 1: Revised text of measure from City Attorney
- 2: Order from Superior Court
- 3: Impartial Analysis from 2004

**TEXT OF INITIATIVE ORDINANCE**

**THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008**

The People of the City of Berkeley do hereby enact as follows:

**THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008**

**SECTION 1 TITLE**

This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008.

**SECTION 2 FINDINGS AND DECLARATIONS**

The People of the City of Berkeley find all of the following to be true:

A. We strongly support the right of seriously ill patients to use medical cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) by local, state, or federal law enforcement.

C. There is a need in our community for safe and affordable access to medical cannabis.

D. In the absence of meaningful state regulation, it is necessary for local governments to adopt policies and guidelines for the purpose of facilitating safe access and protecting patients.

E. The provision of medical cannabis should occur in a safe and orderly manner in order to protect patients and the community. In the absence of clear guidelines, there has been a lack of consistency in the permitting and regulation of medical cannabis dispensing.

F. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.

G. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a patient. Berkeley's arbitrarily- low cultivation limits place undue burdens on local patients, and therefore require revision based on patient's needs.

H. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution.

**SECTION 3                    AMENDMENTS TO BERKELEY MUNICIPAL CODE CHAPTER  
12.26**

Chapter 12.26 of the Berkeley Municipal Code is hereby amended to read:

**Section 12.26.010        Purposes.**

The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home. The Compassionate Use Act is the state law removing state law penalties for qualified patients, and primary care givers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

A. To help ensure that seriously ill Berkeley residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician who has determined that the patient's health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. To help ensure that qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatment with the recommendation or approval of a physician are not subject to criminal prosecution or sanction.

C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of medical cannabis to patients whose medical doctors approve or recommend medical cannabis to treat a serious illness or condition.

D. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

**Section 12.26.030    Definitions.**

A. "Cannabis" shall have the same meaning as the definition of "Marijuana" provided in California Health and Safety Code Section 11018 at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section 11018, "marijuana means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other

## Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

B. "Qualified patient" shall mean a person who has a written or oral recommendation or approval from a licensed medical doctor to use cannabis for medical purposes.

C. "Primary caregiver" shall mean the individual person or persons designated by a qualified patient, provided that said individual person or persons has consistently assumed responsibility for the housing, health, or safety of the qualified patient.

D. "Medical cannabis collective" shall mean a cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients, the purpose of which is to provide education, referral, or network services to qualified patients, and to facilitate or assist in the cultivation and manufacture or acquisition of medical cannabis for qualified patients.

E. "Medical cannabis dispensary" shall mean any person or entity that dispenses, cultivates, stores or uses medical cannabis except where such cultivation, storage or use is by a patient or that patient's caregiver, incidental to residential use by such patient, and for the sole use of the patient who resides there. (Ord. 6826-NS § 1 (part), 2004; Ord. 6620-NS § 1, 2001)

### **Section 12.26.040 Medical cannabis collectives.**

A. Pooling of Resources Recognized. The City of Berkeley recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical activities necessary to cultivate cannabis for personal medical use. Accordingly, this section recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of acquiring or cultivating and manufacturing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

B. Restriction on Membership. Membership in a medical cannabis collective must be restricted to qualified patients and their primary caregivers. However, primary caregivers shall not be allowed to obtain cannabis for their own personal use. In addition, a primary caregiver cannot be a member of a medical cannabis collective, unless the primary caregiver's qualified patient is also a member.

C. Restriction on Distribution to Non-Members. Medical cannabis collectives and each member thereof, shall not sell, barter, give away, or otherwise distribute cannabis to non-members of the medical cannabis collective.

D. Amount of Dried Cannabis and Plants. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.

~~D. Amount of Dried Cannabis and Plants. The limits on quantity of dried medical~~

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~~cannabis and cannabis plants set forth in this chapter for qualified patients are not increased by membership in a medical cannabis collective. Medical cannabis collectives are subject to the same quantity limits on possession of dried medical cannabis and limits on the number of cannabis plants that are set forth in this chapter, multiplied by the number of qualified patients in the collective, but are also subject to maximum cap amounts set forth below. Thus, if a medical cannabis collective has five qualified patients, then the total amount of dried medical cannabis that the medical cannabis collective can possess is 7.5 pounds of cannabis cultivated indoors or 12.5 pounds of cannabis cultivated outdoors, minus the amount of dried medical cannabis that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot possess more than 12.5 pounds of dried cannabis at any one time, regardless of the number of members. Similarly, if a medical cannabis collective has five qualified patients, then the total amount of cannabis plants that the medical cannabis collective can possess is 50 in compliance with Section 12.26.040(E) of this chapter, minus the number of cannabis plants that each qualified patient and/or his or her primary caregiver possesses individually. In addition, a medical cannabis collective cannot cultivate more than 50 cannabis plants at any one time, regardless of the number of members.~~

E. ~~Size of Visible Cannabis Gardens.~~ The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

~~F. Size of Indoor Cannabis Gardens That Are Not Visible.~~ A medical cannabis collective can cultivate 10 cannabis plants per qualified patient up to a maximum of 50 cannabis plants total at one time, provided however, that no more than 10 of those plants are planted outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property. Nothing in this chapter shall be construed as creating an exemption for the cultivator or cultivators of any such cannabis garden from complying with any permit or other requirements imposed by local law that may be applicable. (Ord. 6620-NS § 1, 2001)

F. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; or (2) cultivate or possess any quantity of cannabis for non-medical purposes. (Ord. 6620-NS § 1, 2001)

### **Section 12.26.050 Availability in pharmacies.**

To encourage the standardization of medical cannabis, the City of Berkeley urges the federal government to reschedule cannabis so that it may be made available to

## Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004

qualified patients through legally licensed pharmacies and urges the state government to urge the federal government to do so as well. (Ord. 6620-NS § 1, 2001)

### **Section 12.26.060 Quality control encouraged.**

The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis collectives to consult the available cannabis cultivation literature to ensure that the medical cannabis lawfully cultivated under state law is free of undesired toxins or molds. The City of Berkeley cautions that natural molding from improper storage, certain soils for indoor growing, foreign materials that unintentionally becomes lodged in cultivated cannabis, and pesticides, can all potentially render the medical cannabis totally unsafe for consumption. Collectives are encouraged to use their best effort to determine whether or not cannabis is organically grown. (Ord. 6620-NS § 1, 2001)

### **Section 12.26.070 Permissible quantities of medical cannabis.**

The Compassionate Use Act allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient's "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient's personal medical need.

A. Cultivation of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all cultivation of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said cultivation is conducted solely for the personal medical purposes of Qualified Patients. Such lawful cultivation may include the cultivation and possession of both female and male plants at all stages of growth, clones, seedlings, and seeds, and related cultivation equipment and supplies. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may cultivate individually or collectively.

B. Possession of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all possession of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said possession is undertaken solely for the personal medical purposes of Qualified Patients. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may possess individually or collectively.

C. Property and Equipment. The rental, leasing, or providing of equipment or space utilized for cultivation, processing, or storage of medical cannabis in accordance with this Section shall be deemed lawful.

D. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of cannabis may create a risk of theft. Accordingly, any Medical Cannabis Collective that cultivates cannabis plants outdoors (excluding secure rooftops, balconies, or other locations that are not visible from other buildings or land) or in a place that is visible with the naked eye from other public or private property, may cultivate no more than ten such visible plants at one time on a single parcel of property.

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~~The Compassionate Use Act allows qualified patients or their primary caregivers to possess or cultivate medical cannabis for the qualified patient's "personal medical purposes." While each qualified patient will have different needs regarding appropriate personal medical use, this section seeks to standardize the maximum allowable amounts of medical cannabis that qualified patients and their primary caregivers can possess or cultivate under state law, in the absence of a medical doctor's authorization to possess or cultivate a greater amount of cannabis as a result of the patient's particular illness or health condition.~~

~~—A. Dried Cannabis Cultivated Indoors. Qualified patients who cultivate cannabis indoors may possess up to 1.5 pounds of dried cannabis for personal medical use. This 1.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 1.5 pounds for that qualified patient.~~

~~—B. Indoor Cannabis Plants. In addition, qualified patients may also possess up to 10 cannabis plants for personal medical use. This 10 cannabis plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 cannabis plants for that qualified patient.~~

~~—C. Dried Cannabis Cultivated Outdoors. Qualified patients who cultivate cannabis outdoors may possess up to 2.5 pounds of dried cannabis for personal medical use. This 2.5 pound allotment may be possessed by the qualified patient, or may be held in trust by the qualified patient and his or her primary caregiver(s), but the total amount of dried cannabis possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 2.5 pounds for that qualified patient.~~

~~—D. Outdoor Cannabis Plants. In addition, qualified patients who cultivate cannabis outdoors may also possess up to 10 cannabis plants, for personal medical use, provided that such cultivation meets the guidelines set forth in Section 12.24.040(E) of this chapter. This 10 plant allotment may be possessed by the qualified patient, or may be held in trust by the qualified patients' primary caregiver(s), but the total amount of plants possessed by the qualified patient and his or her primary caregiver(s) shall not exceed 10 plants for that qualified patient. (Ord. 6620-NS § 1, 2001)~~

### **Section 12.26.080 Transportation of medical cannabis.**

A qualified patient or a primary caregiver of a qualified patient may transport medical cannabis within the City of Berkeley to the extent that the quantity transported and the method, timing, and distance of the transportation are reasonably related to the qualified patient's current medical need at the time of transport. (Ord. 6620-NS § 1, 2001)

### **Section 12.26.090 Medical cannabis paraphernalia.**

A qualified patient and the primary caregiver of a qualified patient may possess paraphernalia that the qualified patient needs to smoke or otherwise consume medical cannabis. (Ord. 6620-NS § 1, 2001)

**Section 12.26.100 Police procedures and training.**

A. Within six months of the date that this chapter becomes effective, the training materials handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

B. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

C. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if they are in compliance with the provisions of this chapter.

D. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or medical cannabis collective, but are otherwise in compliance with the provisions of this chapter, will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim to be a qualified patient, primary caregiver, or medical cannabis collective is credible; and (3) proof of status as a qualified patient, primary caregiver, or medical cannabis collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 6620-NS § 1, 2001)

**Section 12.26.110 Peer Review Committee.**

The purpose of this Section is to ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. Peer Review Committee. The Medical Cannabis Collectives and dispensaries in operation at the time this Chapter becomes effective shall each designate no more than two spokespeople to serve on a peer review committee that shall meet at least one time each month for the purpose of overseeing the operation of Medical Cannabis Collectives and dispensaries and ensuring their compliance with operational and safety standards published annually by the committee.

B. New Dispensaries. The peer review committee shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The peer review committee shall certify that the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. New Members on the Peer Review Committee. Upon commencing lawful operation in Berkeley, each new Medical Cannabis Collective or dispensary shall designate no more than two spokespeople to serve on the peer review committee.

D. Operational Oversight. The peer review committee will monitor the compliance of all Medical Cannabis Collectives or dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis

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Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be removed from membership on the peer review committee and shall be deemed in violation of this Chapter and referred to the City for appropriate action.

E. Immunity. Individuals operating Medical Cannabis Collectives or dispensaries represented on the peer review committee shall be deputized by the City of Berkeley as Drug Control Officers for the purpose of providing immunity under the provisions of Section 885(d) of Title 21 of the United States Code.

### **Section 12.26.120 Emergency Distribution.**

The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption.

### **Section 12.26.130 Medical cannabis dispensary.**

No more than three medical cannabis dispensaries shall be located within the limits of the City of Berkeley. No such dispensary shall be located within a 1000 foot range of another such dispensary, nor within 1000 feet of a public elementary, middle or high school. Any dispensary existing at the time this ordinance becomes effective, may continue at its current location, notwithstanding its violation of the de-concentration requirements of this section. The City Manager may issue regulations to implement this section. (Ord. 6826-NS § 2 (part), 2004)

### **Section 12.26.140 Compliance with all applicable laws.**

Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 6826-NS § 2 (part), 2004)

## **SECTION 4 PERMITTING OF DISPENSARIES**

Sections 23C.16.060 and 23E.16.070 shall be added to the Berkeley Zoning Code as follows:

### **Section 23C.16.060 Medical Cannabis Residential Cultivation**

No Use Permit shall be required for qualified patients to cultivate medical cannabis in their residence or on their residential property.

### **Section 23E.16.070 Medical Cannabis Collectives**

As proper regulation is crucial to the safety of our community, medical cannabis collectives that operate dispensaries from which medical cannabis is dispensed to members shall be issued a Zoning Certificate for as long as it complies with Chapter

**Ballot Measure R: Patient's Access to Medical Cannabis Act of 2004**

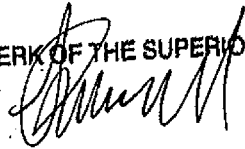
12.26. This section does not apply in districts where retail sales uses are prohibited. Zoning Certificates for medical cannabis dispensaries shall be issued without undue delay and following normal and expedient consideration of the permit application.

**SECTION 5 SEVERABILITY**

If any provision of this initiative, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this initiative that can be given without the invalid provision or application; and to this end, the provisions or applications of this initiative are severable.

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 26 2007

CLERK OF THE SUPERIOR COURT  
By  Deputy

RECEIVED  
NOV 29 2007  
CITY ATTORNEY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

AMERICANS FOR SAFE ACCESS,  
JAMES BLAIR, MICHAEL L.  
GOODBAR, and DONALD O. TOLBERT,

Petitioners,

vs.

COUNTY OF ALAMEDA, BRADLEY  
CLARK, Registrar of Voters for the  
County of Alameda, and the  
CITY OF BERKELEY,

Respondents.

RG04192053

FURTHER ORDER RE:  
PETITIONERS' MOTION FOR  
SANCTIONS

The Motion of Petitioners Americans for Safe Access, James Blair, Michael L. Goodbar, and Donald O. Tolbert ("Petitioners") for Sanctions came on regularly for a continued hearing on May 4, 2007, in Department 31 of this Court, the Honorable Winifred Y. Smith presiding. The motion was continued for further hearing to July 13, 2007, and came on for hearing at that time in Department 116 of this Court, Judge Smith again presiding. The motion was continued for further briefing to November 14, 2007.

At the November 13, 2007 hearing, Petitioners appeared by counsel Gregory Luke and Michael Strumwasser of Strumwasser & Woocher, LLP. Respondents County of Alameda and Dave MacDonald (“the County”) appeared by counsel Jimmie Johnson of Bell, McAndrews & Hiltachk, and Nancy Fenton of the Alameda County Counsel’s office. Respondent City of Berkeley appeared by Zach Cowan.

The Court, in its order of September 25, 2007, ruled on the merits of the motion but invited further briefing on two additional issues: 1. the amount of attorneys’ fees and costs to be awarded as monetary sanctions; and 2. the text of Measure R as it will appear on the November 4, 2008 ballot. The Court further GRANTS the relief sought in the Motion, as set forth herein.

I. TEXT OF MEASURE R TO BE PLACED ON THE NOVEMBER 4, 2008 BALLOT

As to the question of how the text of Measure R shall appear on the ballot, the Court ORDERS that the text that shall appear on the ballot shall be as follows:

1. The identical “Title” as it appeared on the November 2, 2004 ballot (*see* City of Berkeley’s Response to Order Granting Sanctions, filed October 18, 2007, (“City’s Response”) at Exh. 1.), except to the extent that the year 2004 is listed, in which case it shall be changed to the year 2008;

2. The City Attorney’s Analysis as it appeared on the November 2, 2004 ballot (*see* City’s Response at Exh. 3.);

3. The text of the proposed changes that comprised Measure R as originally presented on the November 2, 2004 ballot as those changes would affect the current Berkeley Municipal Code, Chapter 12.26, except to the extent that the year 2004 is listed, in which case it shall be changed to the year 2008. (See City's Response at Exh. 8.)

The Court does not agree that any change is necessary or appropriate to the Title or City Attorney's Analysis. However, the text of the Measure must be presented as it would alter the current Berkeley Municipal Code in order to avoid presenting the voters inaccurate information.

The arguments for and against the Measure, including the rebuttals to those arguments, should be presented to the City and/or Registrar within the normal times set by the Elections Code for the November 4, 2008 election.

## II. ATTORNEYS' FEES AND COSTS

On the issue of attorneys' fees and costs to be awarded as sanctions, the Court has considered both sides' arguments and evidence, and exercised its own judgment as to what amount of fees and costs is reasonable. Petitioners are entitled to the entire amount of costs and fees sought in connection with the trip to Plano, Texas to observe the attempt to download the data from the DRE machines. The Court concludes that Petitioners are entitled to \$65,000.00 in attorneys' fees for their work on the instant motion. The Court does not find the costs sought in connection with the motion to be proper. (Cf. CCP 1033.5.) Further, the Court

finds that the amount sought by Petitioners included some duplicative or inessential work.

Thus, the Court ORDERS Defendants to pay to Petitioners and their counsel monetary sanctions award of \$11,037.33 for the Texas trip, \$65,000.00 in attorneys' fees incurred in connection with the motion, for a total of \$76,037.33.

This is in addition to the costs of the recount already awarded to Petitioners in the Court's September 25, 2007 order.

IT IS SO ORDERED.

DATED: \_\_\_\_\_



Winifred Y. Smith

Judge of the Superior Court

CITY ATTORNEY'S ANALYSIS

**THE PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2004**

This measure would amend the Berkeley Municipal Code to have the following material effects:

1. The ordinance would eliminate the existing limits on the amount of medical marijuana a qualified patient or primary caregiver can possess and cultivate, which are currently 2.5 pounds of dried cannabis (if grown outdoors) or 1.5 pounds of dried cannabis (if grown indoors), and up to 10 cannabis plants (indoors or outdoors) at any one time, unless a medical doctor authorizes the patient to possess or cultivate more. The amendment retains but modifies the current limit of 10 **outdoor** cannabis plants on a single parcel, to only count plants that are visible from other property.
2. The ordinance would eliminate the existing limits of 12.5 pounds of dried cannabis and 50 cannabis plants that a collective composed of qualified patients and primary caregivers can possess, and provide instead that such a collective may possess a reasonable quantity of dried cannabis and cannabis plants to meet the medical needs of patient members as long as no more cannabis is accumulated than is necessary to meet such needs.
3. The ordinance would establish a Peer Review Committee composed to certify that any new cannabis collective or dispensary has a strategy to meet safety and operational compliance standards established by the Peer Review Committee, and to refer dispensaries found to be in willful or ongoing violation of the standards to the City for action. No such committee is currently required by law.
4. The ordinance would require the City to deputize individuals operating collectives or dispensaries, who are on the Peer Review Committee, as "Drug Control Officers" for the purpose of providing them with immunity under federal law 21 U.S.C. Section 885(d), and reasonably accommodate the provision of medical cannabis to patients and their primary caregivers within 30 days if access to cannabis is interrupted by federal law enforcement activity. There is no similar obligation imposed by current law.
5. The ordinance would provide that qualified patients may cultivate medical cannabis in their residence or on their property in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, without securing a use permit. This is declaratory of existing law.
6. The ordinance would establish that medical cannabis dispensaries in compliance with BMC Chapter 12.26 governing medical cannabis protocols, as amended by this initiative, would be permitted as of right, without the need for a public hearing to secure a use permit, as a Retail Sales Use under the City's existing zoning ordinance, BMC Title 23, in districts where such uses are otherwise

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permitted. Under current law such uses would be subject to a use permit and thus require a public hearing.

### Financial Implications

Uncertain possible increase in law enforcement costs if the additional marijuana permitted result in robberies of dispensaries or requires other law enforcement response. Uncertain limited cost savings as a result of changing the permit requirement for medical marijuana dispensaries from a use permit requiring a public hearing to a zoning permit issued as a matter of right if the dispensary otherwise meets zoning standards.