

**CITY OF BERKELEY MEASURE JJ**

**JJ** MEASURE JJ: Shall the City’s ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives?

**YES**

**NO**

Financial Implications: Possible increase in law enforcement costs and possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.

**CITY ATTORNEY’S IMPARTIAL ANALYSIS OF MEASURE JJ**  
**PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008**

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 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.

s/ZACH COWAN

Acting Berkeley City Attorney