Blogs
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California Land Use & Development Law Report

California Cities and Counties Can “Just Say No” to Medical Marijuana Dispensaries

The California Supreme Court has unanimously upheld a local ban on medical marijuana dispensaries, holding the ban was not preempted by state statutes governing medical marijuana. The decision does not come as a surprise, given that state court of appeal decisions consistently have upheld local land use regulation of dispensaries. In *City of Riverside v. Inland Empire Patients Health and Wellness Center*, the court considered Riverside zoning ordinances declaring that a "prohibited use" of land within the city includes a medical marijuana dispensary, as well as any use that is prohibited by federal or state law. The ordinances provide these prohibited uses may be abated as a public nuisance. Under this authority, the city filed suit to shutter a medical marijuana distribution facility within its borders. In upholding an injunction against operation of the facility, the supreme court rejected a claim the city's total ban was preempted by state law. The court reasoned California's medical marijuana statutes represent "but incremental steps" toward liberalizing access to marijuana by qualified patients, as those narrowly-drawn statutes merely exempt specified conduct from sanctions under state criminal and nuisance laws. They neither expressly nor impliedly limit a local jurisdiction's constitutional police power to regulate the use of its land. In support of its ruling on the preemption issue, the court noted that because local interests may vary, it may not be reasonable to expect every jurisdiction to allow medical marijuana dispensaries. Cities and counties, therefore, need not accommodate them. The court's decision did not focus on the interplay between California state law and the federal Controlled Substances Act, which bars marijuana possession, distribution, and manufacture in most circumstances. *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, S198638 (May 6, 2013)

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