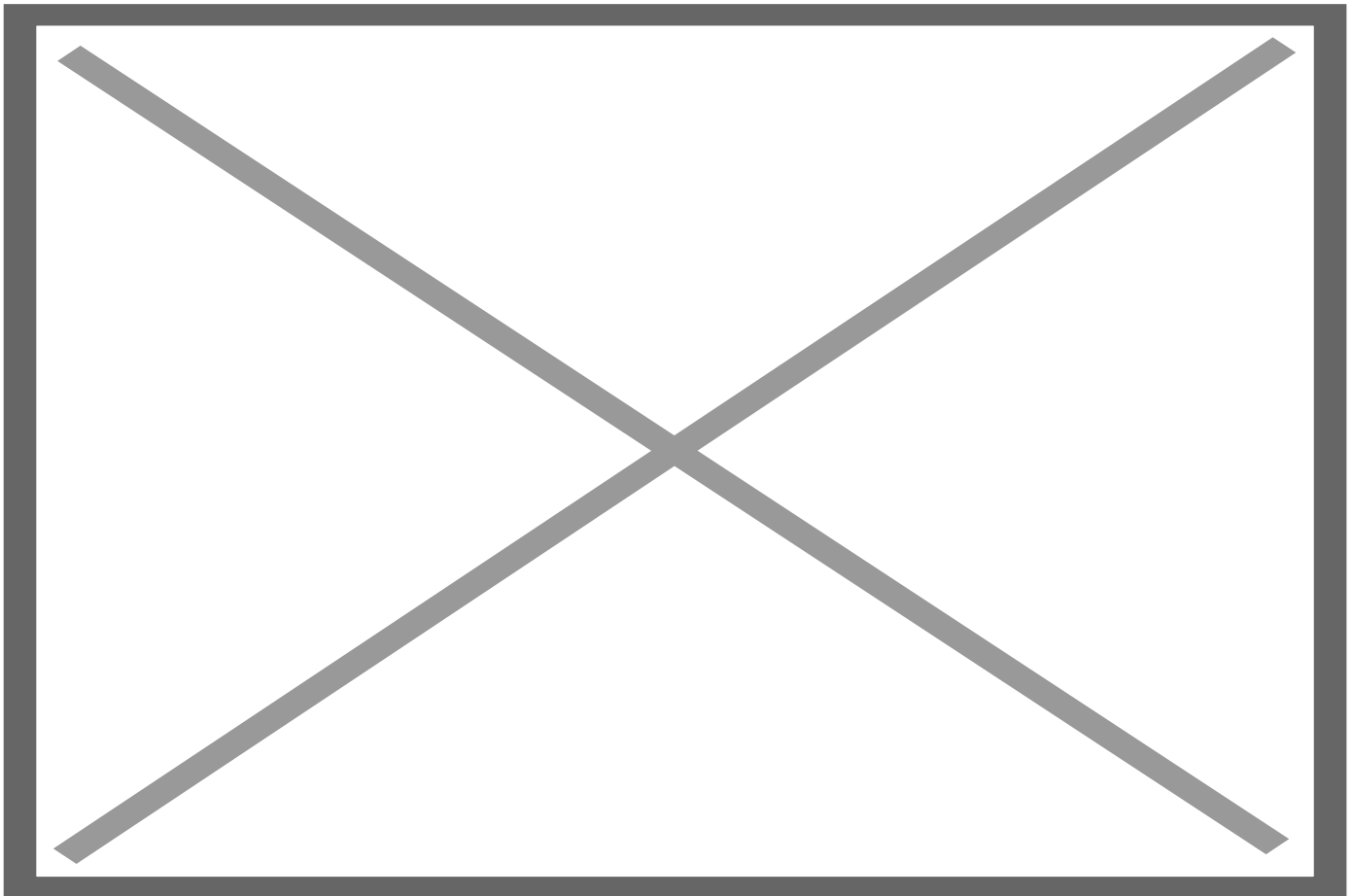


Court Rejects Interpretation of Medical Marijuana Collective as a “Medical Office” under City’s Zoning Code



The Sixth District Court of Appeal has held that a medical marijuana collective is not a "medical office" as defined in San Jose's Municipal Code. *J. Arthur Properties, II, LLC v. City of San Jose*, 21 Cal. App. 5th 480 (2018) Plaintiffs opened a medical marijuana collective in 2010 at a site zoned Commercial Office. At the time, San Jose's Municipal Code did not regulate any type of marijuana-specific uses and allowed medical offices in Commercial Office zoning areas. The City Council amended the Municipal Code in 2014 to regulate and permit medical marijuana uses in certain industrial zoning area but not in Commercial Office areas. Plaintiffs received a compliance order in 2014 stating that medical marijuana collectives were not permitted in Commercial Office zoning areas, effectively requiring them to discontinue their business at the site. Plaintiffs sued, contending that their marijuana collective should continue to be allowed as a legal, nonconforming use. The Sixth District Court of Appeal disagreed. San Jose's Municipal Code defines medical office as "offices of doctors, dentists, chiropractors, physical therapists, acupuncturists, optometrists, and similar health related occupations, where patients visit on a daily basis." Plaintiffs argued that medical marijuana collectives should be considered medical offices because they provide a medical and health-related service. The court declined this broad interpretation, observing that medical marijuana collectives did not fall under any of the enumerated uses listed in the definition and that a medical marijuana collective is not a "similar health related occupation." Emphasizing that the enumerated uses typically involve the on-site treatment of patients by a physician or other professional, the court

found no evidence that medical marijuana collectives provided a similar service. Instead, "members of collectives are patients of the physicians who prescribed marijuana." Accordingly, the court held that the collective had never been a permitted use to begin with and hence could not be a legal nonconforming use.

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