Ordinance Prohibiting Mobile Medical Marijuana Dispensaries Was Not a “Project” Under CEQA

A California Court of Appeal has held that a city ordinance prohibiting mobile medical marijuana dispensaries within city boundaries did not constitute a "project" under the California Environmental Quality Act. *Union of Medical Marijuana Patients, Inc. v. City of Upland*, 245 Cal.App.4th 1265 (2016). In 2007, the City of Upland adopted a zoning ordinance prohibiting any medical marijuana dispensary -- whether fixed or mobile - in any zone within the city. The City prepared and adopted a negative declaration under CEQA, which concluded that the ordinance would have no significant effect on the environment. No one challenged the City's negative declaration. In 2013, the City adopted an ordinance that specifically prohibited mobile marijuana dispensaries within the City. Based on its findings that mobile dispensaries are associated with increased criminal activity and that 34 mobile dispensaries just outside the City advertised direct delivery of marijuana, the City concluded that there was "a high likelihood that mobile dispensaries will immediately flourish in the City without the adoption of this Ordinance." The Union of Medical Marijuana Patients, Inc. (UMMP) submitted comments arguing that the 2013 ordinance constituted a "project" under CEQA that would have "foreseeable environmental effects," including "(1) increased travel by residents who would now be forced to travel outside the City to obtain medical marijuana; and (2) increased indoor cultivation activity within the city" which would result in increased utility use and hazardous waste. The City did not respond to these comments, and UMMP filed a petition for writ of mandate challenging the validity of the 2013 ordinance for failure to comply with CEQA. The Court of Appeal affirmed the trial court's denial of the petition, holding that the 2013 ordinance was not a project subject to CEQA because the ordinance "merely restates the prohibition on mobile dispensaries that was imposed by the 2007 ordinance." The Court noted that the ordinance met the first prong for determining whether the ordinance was a project subject to CEQA because "it was an activity directly undertaken by [a] public agency." Nonetheless, the ordinance, as a mere restatement of the previous ordinance, failed the second prong because it was not an activity that "may cause either a *direct* physical change in the environment, or a *reasonably foreseeable indirect* physical change in the environment." (Guidelines § 15378.) The Court rejected UMMP's contention that the 2013 ordinance was not a restatement of the 2007 ordinance because the 2007 ordinance was essentially a zoning ordinance adopted to regulate land use, not to regulate activities undertaken with motor vehicles. According to the Court, the 2007 ordinance did not regulate land use only, and its codification in the municipal code's zoning title did not so limit the scope of the provision. While the main focus of the 2007 ordinance was on fixed dispensaries, which is a proper zoning function, the Court found no impediment to City prohibiting *any* dispensaries, whether fixed or mobile. Finally, the Court concluded that even if the 2013 ordinance was not a mere restatement, it did not constitute a project for CEQA purposes because '[t]he ostensible environmental impacts UMMP cites" were based on layers of assumptions about what might occur as a result of the ordinance. UMMP offered no evidence to support its argument that residents currently obtaining marijuana from mobile dispensaries "would be forced to travel greater distances" to obtain the medication or that the ordinance would result in indoor cultivation, leading to increased electrical and water consumption, waste plant material and odor, and hazardous waste materials associated with fertilizing and harvesting marijuana plants. These alleged impacts, the court ruled, were too "speculative and unlikely" to be deemed "reasonably foreseeable." (Guidelines § 15064, subd. (d)(3).) The case follows a long line of California decisions rejecting challenges to municipal regulation of medical marijuana facilities on various grounds. (See, e.g., our recent post, *California Cities and Counties Can "Just Say No" to Medical Marijuana Dispensaries*)

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