

TITLE: MEDICAL MARIJUANA REGULATIONS AND LOCAL REGULATION –
UPDATE CONCERNING STATUS OF STATE LAW AND REQUEST FOR
DIRECTION

SOURCE: CITY ATTORNEY

COMMENT: As we discussed earlier this year, on May 6, 2013, the Supreme Court issued its opinion in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. et al.*, California Supreme Court Case No. S198638. The Court found that California's medical marijuana statutes **do not** preempt a local ban on facilities that collectively cultivate or distribute medical marijuana.

The City of Riverside specifically declared, by virtue of its zoning ordinances, that a "medical marijuana dispensary" is a prohibited use within the City and may be abated as a public nuisance. The City also bans and declares as nuisances any uses prohibited by federal or state law. In its Opinion the Supreme Court undertook a comprehensive review of the landmark cases addressing preemption and medical marijuana, and found that, contrary to defendant's allegations, the CUA/MMP do not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. No part of the CUA/MMP explicitly guarantees the availability of locations where such activities may occur, restricts localities otherwise broad authority to regulate zone and land use planning within its borders, or requires local zoning and licensing laws to accommodate cooperative or collective cultivation or distribution. Rather than relying on portions of the MMP (specifically Health and Safety Code Sec. 11362.768), which have been argued by cities to expressly allow regulations and bans on such facilities, the Court instead relied on preexisting local police powers recognized by the California Constitution (Cal. Const. Art. XI, Sec. 7). The Court also noted that while some communities may be well-suited to accommodating the uses, others may come to a reasonable decision that such facilities, even if carefully sited, managed, and monitored would still present an unacceptable local risk and/or burden given the potential for increased crime, blight or drug abuse.

On November 26, 2013, the California Appellate Court (3rd District) took this analysis a step further in *Maral v. City of Live Oak*, C071822 (Cal.App. 11-26-1013). In this case, the Court upheld Live Oak's ordinance prohibiting the cultivation of marijuana for any purpose within the City, finding that a complete prohibition of cultivation also falls within a city's police powers, as set forth in the above *Inland Empire* case. It appears that Live Oak may be the first city to completely ban cultivation (by virtue of the contentions of the plaintiffs in the case). It is possible

this case will be appealed to the California Supreme Court. Live Oak also has a regulation that requires zoning clearance and compliance with additional conditions for cultivation in the event the prohibition is found invalid.

Prior to the issuance of these decisions, the City of Porterville had been developing regulations requiring and regulating indoor cultivation, restricting collective cultivation, and contemplating a registration component. City staff had also met several times with medical marijuana advocates who had concerns over indoor cultivation requirements but had been more amenable to registration and outdoor screening requirements. As the Council is aware, earlier this year Tulare County adopted a moratorium prohibiting the establishment of new or the expansion of existing collectives, cooperatives, and dispensaries until 2015. In October the Board of Supervisors voted to move ahead with a proposal to ban storefront and mobile dispensaries and collective grow sites, and restrict individual grow sites to indoor structures that are connected to the main structure. Recent efforts by State legislators to develop varying regulations covering medical or nonmedical cultivation and use of marijuana have been unsuccessful, but it is expected that a new bill will be introduced in the new legislative session. Additionally, at least one initiative has obtained the requisite signatures for placement on the November 2014 ballot.

This office, and the Community Development and Public Safety Departments, request direction from the City Council in light of the most recent developments and case law. The options include but are not limited to:

- 1) proposing a complete ban on cultivation for any purpose within the City limits (with or without a regulatory alternative in the event such a ban were to be found invalid),
- 2) proposing regulations that ban distribution and require cultivation to occur indoors (with other limitations), or
- 3) allowing but restricting outdoor cultivation

With direction as to how the Council wishes to proceed, staff intends to introduce draft regulations at the City Council Meeting on January 21, 2014.

RECOMMENDATION: That the City Council provide additional direction in light of the recent developments.