

INFORMATIONAL REPORT

TITLE: REPORT – UPDATE REGARDING STATUS OF MEDICAL MARIJUANA LAW AND THE CALIFORNIA SUPREME COURT DECISION IN CITY OF RIVERSIDE V. INLAND EMPIRE PATIENTS HEALTH AND WELLNESS CENTER, INC. ET AL.

SOURCE: CITY ATTORNEY

In December 2012 at a regular City Council meeting, this office discussed with the City Council several cases pending before the California Supreme Court. 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 regulations "medical marijuana dispensary" is defined broadly as "[a] facility where marijuana is made available for medical purposes in accordance with" the Compassionate Use Act. (Riverside Municipal Code Sec. 19.910.140). Riverside also has regulations that provide that any condition caused or permitted to exist in violation of these regulations is a public nuisance which may be abated by the City. (Riverside Municipal Code Sec. 1.01.110E, 6.15.020Q) In 2009 the City's Community Development Department notified defendants that the City's all-encompassing definition of "medical marijuana dispensary" referred to all facilities including dispensaries, cooperatives, and collectives and that therefore all three types of facilities are banned. Subsequently the City filed a complaint alleging a nuisance and requesting injunctive relief. The trial court judge granted the City's request for a preliminary injunction against the operation of the facility, prohibiting defendants from using, or allowing use of the property to conduct any activities or operations related to the distribution of marijuana. The Court of Appeal affirmed the order, finding that the City's provisions do not duplicate or contradict the state statutes, or invade a field expressly or impliedly occupied by those laws.

At the Supreme Court, defendants continued to urge that the City's total ban on facilities that cultivated and distributed medical marijuana was in conflict with the Compassionate Use Act (CUA) and Medical Marijuana Program (MMP), and therefore preempted by 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 found the CUA and MMP only took limited steps toward recognizing marijuana as a medicine by exempting particular activities from state laws that would otherwise prohibit them, but that this is a far cry from establishing a comprehensive scheme or system for authorizing, controlling, and regulating these activities. Additionally the presumption against preemption is supported by the existence of varying local interests depending on the particular jurisdiction. The Court 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.

In sum the Supreme Court found the CUA/MMP do not mandate that local governments authorize, allow, or accommodate the existence of various medical marijuana facilities, including collectives, cooperatives, or dispensaries. The Supreme Court did not address whether the CUA/MMP is preempted by federal law, nor did the Supreme Court address whether cities could lawfully enact a permitting regulatory system (found to be improper in *Pack v. Superior Court (City of Long Beach)* (2011) 199 Cal.App.4<sup>th</sup>).

Given this new decision, this office, along with the Community Development and Public Safety Departments, intend to schedule an agenda item for a future meeting to request direction from the City Council concerning potential updates and amendments to the City's medical marijuana regulations.