Published on *The National Law Review* https://natlawreview.com

Challenge to California Ordinance Prohibiting Mobile Medical Marijuana Dispensaries Goes Up in Smoke

Article By:

Arthur Yu

Union of Medical Marijuana Patients, Inc. v. City of Upland (3/25/16, D069293)

In 2007, the City of Upland banned both fixed and mobile medical marijuana dispensaries from any zone within the City's limits. Presumably this ban applied to mobile dispensaries delivering marijuana into the City from locations outside the City. However, in 2013, the City adopted an additional ordinance expressly prohibiting deliveries by mobile dispensaries headquartered outside the City. The ***Union of Medical Marijuana Patients, Inc.***, challenged the 2013 ordinance, arguing the City was required to undertake a preliminary review of environmental impacts under the ***California Environmental Quality Act*** prior to its adoption. The Union asserted that the ordinance had foreseeable environmental effects, including travel by residents seeking medical marijuana outside the City and increased electrical use, water consumption and waste due to higher levels of indoor marijuana cultivation. The Court of Appeal found that, because the 2013 ordinance merely restated the 2007 ordinance, it did not constitute a "project" under CEQA and was therefore exempt from review. Additionally, the environmental impacts cited by the Union were too speculative for the 2013 ordinance to be considered a project.

Under CEQA, a public agency must conduct an initial study of environmental impacts prior to undertaking any activity, including adoption of an ordinance. However, an activity is exempt from such review if it does not fall within the definition of "project" under CEQA and its Guidelines. An ordinance that merely restates existing law is not considered a project because the agency has already taken the action at issue and the purpose of an initial CEQA review is to inform the public of potential consequences before the decision is made. Here, the 2013 ordinance merely clarified the 2007 ordinance to specifically address mobile dispensaries based outside of the City, and was thus found to be a restatement of existing law.

The Union argued that the 2013 ordinance was not a restatement because it governs vehicular activities, while the 2007 ordinance was adopted as a zoning law and therefore pertained only to the use of land. According to this argument, the 2007 ordinance prohibited mobile dispensaries from using City land as a base of operations, but did not extend to activities such as driving and deliveries originating outside City walls. The court held that cities have broad power to regulate both land use and other activities. Thus the 2007 ordinance was not limited to the use of land, even though it was codified in the zoning chapter of the City's municipal code.

Even if the 2013 ordinance entailed new law, an activity is also not a project under CEQA if it does not cause a reasonably foreseeable change in the environment. The court found that the Union's cited environmental impacts relied on too many assumptions, including the number of residents using marijuana obtained from mobile dispensaries, the amount of medical marijuana consumed, and the degree to which marijuana cultivation would increase. Accordingly, the 2013 ordinance did not constitute a project requiring environmental review.

National Law Review, Volumess VI, Number 96