

Late Breaking Report

From The Medical Marijuana Committee

League of California Cities

CITY ATTORNEY'S DEPARTMENT PROGRAM

2012 ANNUAL CONFERENCE

Wednesday, September 5 – Friday, September 7
San Diego Convention Center

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PENDING FEDERAL LEGISLATION

- HR 6335 (Lee, CA) introduced 8/2/12

"States Medical Marijuana Property Rights Protection Act."

- Amends civil asset forfeiture statute
 - Real property is not subject to civil asset forfeiture for medical marijuana-related conduct that is authorized by state law
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- S 3368 (Roberts, KS) 7/10/12
 - Amends Food and Nutrition Act to prohibit funds to any state that allows income deductions for controlled substances, including medical marijuana

PENDING FEDERAL LEGISLATION

- HR 1983 (Frank, MA) 5/25/11

“States Medical Marijuana Protection Act”

- Removes marijuana from schedule 1 (or 2) of CSA
- No federal arrest for compliance with state law

- HR 1984 (Polis, Co) 5/25/11

“Small Business Banking Improvement Act of 2011”

- Protect banks that accept deposits from medical marijuana businesses

- HR 1985 (Stark, CA) 5/25/11

“Small Business Tax Equity Act of 2011”

- Allows medical marijuana dispensaries to deduct business expenses

PENDING STATE LEGISLATION

- Expect AB 2312 (Ammiano) bill to reappear next year. Preemptive, population based dispensary formula, statewide regs.

LOCAL CITIZEN INITIATIVES

- Palo Alto – November 2012 ballot
 - Allows three permitted dispensaries
 - Operational and zoning requirements
 - 4 % sales tax
- Five cities in San Diego County -- at least two (2) on November ballot
 - Allowed in non residential zones
 - Operational and permitting requirements
 - Cost recovery fees; 2.5% sales tax

US Attorney Letter re: Del Mar initiative

Letter from Laura Duffy, United States Attorney for Southern District to City Attorney of Del Mar

- Reiterates Ogden/Cole memos:
 - DOJ focus manufacturing and trafficking, money laundering; not on seriously ill individuals or their individual caretakers
- Enterprises engaged in the cultivation, manufacture, and sale of marijuana directly violate federal law
- State and city employees who conduct activities mandated by the ordinance are not immune from liability under the CSA (emphasis added)

ACLU Response Letter

- Statement (state and city employees) easily construed as a threat of prosecution
- Unprecedented interpretation of liability and unjustified interference with local legislative matters
- Compliance with ministerial duty, therefore no liability
- No aiding and abetting
 - *Conant v. Walters*
 - *City of Garden Grove v. Superior Court*
 - *Qualified Patients Association v. City of Anaheim*
- Called on US Attorney to identify specifics in ordinance; creates liability; clarify; or retract

Harborside

- US Attorney files civil forfeiture action July 2012
- Oakland and San Jose properties
- Per US Attorney Melinda Haag:
- Larger the operation, greater likelihood of abuse

Leg. Response: HR 6335

Los Angeles

- Recently enacted “gentle ban” (final on 9/6/2012)
- Prohibits dispensaries; allows associations of three or less
- Referendum petition
- Lawsuit filed seeking injunctive relief

Cases Before The Supreme Court

- *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, rev. granted S201454.
 - Total ban preempted by CUA/MMPA.

Cases Before The Supreme Court

- *People v. G3 Holistic, Inc.* (2011); non-published opinion; rev. granted S198395.
 - Total ban not preempted by CUA/MMPA.

Cases Before The Supreme Court

- *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.* (2011) 200 Cal.App.4th 885; rev. granted S198638.
 - Total ban not preempted by CUA/MMPA.

Cases Before The Supreme Court

- *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070; rev. granted, dismissed S197169.
 - “Regulatory” ordinance allowing dispensaries with permit preempted by federal CSA.
 - CRC Rule 8.528 (b): Court of Appeal opinion remains unpublished.
 - Previous appellate decisions continue to suggest permitting ordinances ok.
 - Federal preemptions remains “in play.”
 - Cities should remain cautious about permitting ordinances.

New Cases To Watch

- *County of Los Angeles v. Alternative Medicinal Cannabis Collective* (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1).
 - Total ban preempted by CUA/MMMPA.
 - Petition for review pending.

New Cases To Watch

- *420 Caregivers, LLC v. City of Los Angeles* (July 3, 2012) 207 Cal.App.4th 703 (2d Distr., Div. 8).
 - Ordinance regulating number/geographic distribution of collectives.
 - No equal protection, due process, privacy violation.
 - Not preempted by state law.
 - Petition for review pending.

New Cases To Watch

- *City of Palm Springs v. The Holistic Collective (THC)* (May 31, 2012) 2012 Cal.App. Unpub. LEXIS 4181 (4th Dist., Div. 2).
 - Numeric, location regulations not preempted.
 - No equal protection violation.
 - Petition for review, publication denied.

New Cases To Watch

- *James v. City of Costa Mesa* (9th Cir. May 21, 2012)
26 Am. Disabilities Cas. (BNA) 412, 2012 U.S. App.
LEXIS 10168.
 - Cities' enforcement of total bans did not violate the ADA.
 - ADA does not protect against discrimination on the basis of marijuana use.

New Cases To Watch

- *City of Auburn v. Sierra Patient & Caregiver Exchange, Inc.* Third District Court of Appeal (Case No. C069622).
 - Trial court ruling that total ban not preempted.
 - LOCC/CSAC amicus supporting Auburn.

Municipal Ordinances

- *Options*
 - Do nothing
 - Moratorium
 - Ban
 - Regulate
 - Tax

Resources

- LOCC compendium

Moratorium

- Government Code §65858
- Pending application
- Second moratorium?

“To protect public safety, health, and welfare from an event, occurrence, or set of circumstances different from [those] that led to the adoption of the prior interim ordinance....”

Ban

- “Gentle” ban
- Preemption – state law

Regulations

- Dispensaries
 - Commercial v. personal
- Cultivation
 - Indoor v. outdoor
- Mobile dispensaries
- Federal preemption?

Summary

- Preemption
 - State
 - Federal
- US Attorney efforts
- California Supreme Court