

Union of Medical Marijuana Patients, Inc. v. City of Upland (March 25, 2016) 245 Cal.App.4th 1265

The City adopted an ordinance in 2007 that effectively banned marijuana dispensaries in any zone. In 2013, concerned over the proliferation of mobile medical marijuana dispensaries, the City approved an ordinance expanding the ban to include mobile dispensaries. The City did not prepare a CEQA document prior to adopting the ordinance, despite UMMP's comments that the ban would increase travel to dispensaries and increase the frequency of indoor cultivation, with attendant environmental impacts.

UMMP sued the City, alleging that the City was required to undertake a preliminary review under CEQA because the 2013 ordinance constituted a project inasmuch as prohibiting mobile dispensaries would have foreseeable environmental effects on traffic and related to indoor cultivation. The City countered that the ordinance fell under the common sense exemption (i.e., CEQA does not apply where it can be seen with certainty that the project would not result in a significant environmental impact). The trial court held for the City and this appeal followed.

The Court of Appeal upheld the trial court's decision. Adoption of the ordinance was not a project under CEQA. In the words of the Court:

We conclude the 2013 ordinance is not a project as defined by CEQA. Although the ordinance satisfies the first prong of the definition because it is "[a]n activity directly undertaken by [a] public agency" (§ 21065; Guidelines, § 15378; see Santa Monica Chamber of Commerce v. City of Santa Monica, supra, 101 Cal.App.4th at p. 788, fn. 2), it does not satisfy the second prong because it merely restates the prohibition on mobile dispensaries that was first imposed by the 2007 ordinance (see County of Santa Clara, supra, 137 Cal.App.3d 948 at pp. 953-954; Black Property Owners Assn., supra, 22 Cal.App.4th at p. 985), and thus will not "cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" (§ 21065, italics added; Guidelines, § 15378). [footnote omitted]

The Court dismissed UMMP's claims of additional traffic and an increase in indoor cultivation as "based on layers of speculation, and are thus too 'speculative or unlikely' to be deemed 'reasonably foreseeable.'" (Guidelines, § 15064, subd. (d)(3).)"