

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CITY OF CORONA,

Plaintiff and Respondent,

v.

HARMONIC HEALTH
ALTERNATIVES,

Defendant and Appellant.

E054936

(Super.Ct.No. RIC1115585)

OPINION

APPEAL from the Superior Court of Riverside County. John Vineyard, Judge.

Affirmed.

Lee J. Petros and Christopher Glew for Defendants and Appellants.

Best Best & Kreiger LLP, John Higginbotham, Dean Derleth, and Laura L. Crane,
for Plaintiff and Respondent.

I. INTRODUCTION

Defendant Harmonic Health Alternatives (HHA) appeals from the trial court's grant of the request of plaintiff City of Corona (City) for a preliminary injunction

enjoining HHA from conducting activities or operations related to the distribution of marijuana. HHA contends that (1) the City's ordinance that bans medical marijuana collectives is invalid because it conflicts with or is preempted by state law, specifically, the Compassionate Use Act of 1996 (CUA) (Health & Saf. Code, § 11362.5) and the Medical Marijuana Program (MMP) (Health & Saf. Code, § 11362.7 et seq.), and (2) the City's ban on medical marijuana collectives violated HHA's constitutional right to equal protection of the law. We affirm.

II. FACTS AND PROCEDURAL BACKGROUND

In September 2011, the City filed a complaint against HHA and others not parties to this appeal, alleging three causes of action based on public nuisance. The complaint alleged HHA operated a medical marijuana dispensary within the City; such use is prohibited by the City's Municipal Code; and consequently, such use constitutes a nuisance per se.

The City filed a motion for preliminary injunction. Following briefing and a hearing, the trial court granted the motion and this appeal ensued. HHA also filed a petition for writ of supersedeas; this court denied the petition.

III. DISCUSSION

A. Request for Judicial Notice

The City has requested this court to take judicial notice of various provisions of its municipal code: Sections 8.23.210 (Alternatives);¹ 17.108.130 (Penalties);² and 17.02.080 (Illegal land use prohibited).³ We reserved ruling on the request for consideration with the merits of the appeal. The request is granted. (*Stockton Citizens for Sensible Planning v. City of Stockton* (2012) 210 Cal.App.4th 1484, 1488, fn. 3; Evid. Code, §§ 452, subs. (b) & (c), 459.)

B. Standard of Review

“In deciding whether to issue a preliminary injunction, a court must weigh two ‘interrelated’ factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of

¹ “Nothing in this chapter shall be deemed to prevent the city from taking any other action available to it under applicable law to abate a nuisance or enforce this chapter, including, but not limited to, issuing criminal citations . . . or otherwise commencing a civil or criminal proceeding as an alternative to the proceedings set forth herein.” (Corona Mun. Code, § 8.32.210.)

² “It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, use, occupy or maintain any real or personal property or portion thereof in the city or cause the same to be done contrary to or in violation of any of the provisions of this title. Likewise, it shall be unlawful for any person to carry out the use of a major or minor conditional use permit, precise plan, precise plan modification, or minor precise plan modification in violation of any of the conditions of approval, which are incorporated by reference in this title. . . .” (Corona Mun. Code, § 17.108.130.)

³ “Notwithstanding any other provision of this code, no land use shall be permitted or allowed in any zone if the use cannot be, or is not, conducted or carried out without being in violation of state or federal law.” (Corona Mun. Code, § 17.02.070.)

the injunction. [Citation.]” (*Butt v. State of California* (1992) 4 Cal.4th 668, 677-678.)

On appeal, this court determines whether the trial court’s decision was an abuse of discretion. (*Ibid.*) To the extent the trial court’s assessment of the likelihood of success on the merits depends on legal rather than factual questions, our review is de novo.

(*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463.)

C. Preemption

On May 6, 2013, the California Supreme Court issued its opinion in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, review granted January 18, 2012, S198638 (*Inland Empire*). The court held that “the CUA and the MMP do not expressly or impliedly preempt Riverside’s zoning provisions declaring a medical marijuana dispensary, as therein defined, to be a prohibited use, and a public nuisance, anywhere within the city limits.” (*Id.* at p. 752.)

In *Inland Empire*, the court addressed a city ordinance that not only declared that a medical marijuana dispensary was a prohibited use of land that could be abated as a nuisance but also “ban[ned], and declare[d] a nuisance, any use that is prohibited by federal or state law.” (*Inland Empire, supra*, 56 Cal.4th at p. 738.) The court’s analysis and holding are broad enough to apply both to a zoning ordinance that explicitly prohibits medical marijuana dispensaries and one that generally prohibits land uses that violate federal law. As the *Inland Empire* court observed, “[b]oth federal and California laws generally prohibit the use, possession, cultivation, transportation, and furnishing of marijuana.” (*Id.* at p. 737.)

That decision is binding on us and is dispositive of the preemption issues raised in the current appeal. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We conclude the City’s prohibition of medical marijuana dispensaries was a valid exercise of its police powers.

D. Equal Protection

HHA further contends the City’s ban on medical marijuana collectives violated its constitutional right to equal protection of the laws because “[t]he City does permit pharmacies, for profit herbal or holistic medication companies (not distributing marijuana), or other institutions selling, for profit, substances with known or presumed medical value.”

“‘The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.’ [Citations.]” (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253.) In *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, the court held that “[medical marijuana dispensaries] and pharmacies are not ‘similarly situated’ for public health and safety purposes and therefore need not be treated equally.” (*Id.* at p. 871, fn. omitted.) We agree with that holding. We therefore conclude the trial court did not abuse its discretion in issuing a preliminary injunction because HHA has shown no likelihood of success on the merits. (*Butt v. State of California, supra*, 4 Cal.4th at pp. 677-678.)

IV. DISPOSITION

The order appealed from is affirmed. The City is awarded its costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.