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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

WELLNESS AND PAIN  
MANAGEMENT CENTER,

Plaintiff, Cross-defendant and  
Appellant,

v.

CITY OF RIVERSIDE,

Defendant, cross-complainant  
and Respondent.

E055578

(Super.Ct.No. RIC1112538)

OPINION

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

The Law Offices of Charles M. Farano and Charles M. Farano for Plaintiff,  
Cross-defendant and Appellant.

Office of The City Attorney, Gregory P. Priamos, James E. Brown, and  
Neil Okazaki; Best Best & Kreiger, Jeffrey V. Dunn and Lee Ann Meyer, for  
Defendant, Cross-complainant and Respondent.

## I. INTRODUCTION

Plaintiff Wellness and Pain Management Center (Wellness) appeals from an order of the trial court granting the request of defendant City of Riverside (City) for a preliminary injunction enjoining Wellness from operating a medical marijuana collective dispensary. Wellness contends: (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.); (2) the City's ordinance is void under Government Code section 65008; and (3) the City's ordinance violates Civil Code section 54. We conclude the trial court did not abuse its discretion in issuing the preliminary injunction, and we affirm.

## II. FACTS AND PROCEDURAL BACKGROUND

Wellness operated a marijuana distribution facility in the City. A City ordinance prohibits medical marijuana dispensaries in all zones. (Riverside Municipal Code, § 19.150.020(A).) Wellness sued the City for declaratory and injunctive relief, alleging the ordinance was preempted by the CUA and MMP and was otherwise unconstitutional and invalid. The City filed a cross-complaint for abatement of a public nuisance. The trial court granted a temporary restraining order and set the matter for a hearing on a preliminary injunction. Following the hearing and additional briefing, the trial court issued a preliminary injunction

enjoining Wellness from operating a medical marijuana collective dispensary in the City.

Wellness appealed from that order and filed a petition for writ of supersedeas. This court denied the petition. Wellness filed a petition for stay of appeal and application for stay of preliminary injunction in the California Supreme Court. That court denied the petition and application.

### III. DISCUSSION

#### **A. Request for Judicial Notice**

The City has requested this court to take judicial notice of various provisions of its municipal code, including Chapter 1.01 (Code Adopted); Chapter 6.15 (Abatement of Public Nuisances), and Chapter 19.020 (Zoning Code Enactment and Applicability). 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 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**

Wellness argues that the local ordinance that bans medical marijuana collectives is invalid because it conflicts with or is preempted by the CUA and the MMP.

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. 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.)

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.) The trial court did not abuse its discretion in issuing the preliminary injunction because Wellness had no chance of success on the merits. Wellness’s argument that the trial court improperly presumed the existence of irreparable harm to the City is therefore moot.

#### **D. Government Code Section 65008 and Civil Code Section 54**

Wellness contends the City's ordinance is void under Government Code section 65008, which declares an action of a local entity null and void if it denies any individual or group "the enjoyment of residence, landownership, tenancy, or any other land use in this state" because of, among other reasons, "[t]he lawful occupation, age, or any characteristic" of the individual or group. Wellness also contends the City's ordinance violates Civil Code section 54 because it establishes "a policy that substantially impairs access, by a segment of its citizens, to a substance that has been identified as an accommodation" by the CUA. Civil Code section 54 provides that individuals with disabilities or medical conditions have the same rights as the general public to the full and free use of streets, highways, sidewalks, walkways, public buildings, medical facilities, and other public places.

The City adopted the applicable ordinance in 2007. A facial attack to a zoning ordinance must be brought within 90 days of the adoption of the ordinance. (Gov. Code, § 65009, subd. (c)(1)(B);<sup>1</sup> *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, 1326.) In *County of Sonoma*, the operators of a medical marijuana dispensary brought an action against the county to challenge the ordinance that governed the zoning of such dispensaries. The trial court

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<sup>1</sup> "(c)(1) Except as provided in subdivision (D), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision: [¶] . . . [¶]"

"(B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance." (Gov. Code, § 65009, subd. (c)(1)(B).)

sustained the operators' challenge on the ground that the ordinance was discriminatory in nature, and the county brought a petition for writ of mandate. The appellate court held that the challenge to the ordinance was a facial challenge that was required to be brought within 90 days of the effective date of the ordinance. (*Id.* at p. 1326.)

Here, similarly, we conclude Wellness's facial attack on the City's ordinance was barred under Government Code section 65009, subdivision (c)(1)(B).

#### IV. DISPOSITION

The order appealed from is affirmed. Costs on appeal are awarded to City.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

KING

J.