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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. _____

UNION OF MEDICAL MARIJUANA PATIENTS, INC., *Plaintiff and Appellant,* v. CITY OF SAN DIEGO, *Defendant and Respondent.*	Court of Appeal of California Fourth District, Division One D068185 Superior Court of California San Diego County 37-2014-00013481-CU-TT-CTL Hon. Joel Wohlfeil

Petition for Review

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PETITION FOR REVIEW

STATEMENT OF ISSUE PRESENTED

1. Is amendment of a zoning ordinance an activity directly undertaken by a public agency that categorically constitutes a "project" under CEQA?
2. Is a "the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions is the type of activity that may cause a reasonably foreseeable change to the environment," categorically?

WHY REVIEW SHOULD BE GRANTED

This case presents a preliminary dispositive question for a wide swath of litigation under CEQA: is passing or amending a zoning ordinance a "project" under CEQA? To answer this question would provide clarity to governments across California as to when they must perform CEQA analysis and prevent countless suits, demurrers and appeals from reaching the courts. Currently, California governments must decide whether to follow *Muzzy Ranch Co., v. Solano Cnty. Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 381, *Rominger, v. Cnty. of Colusa* (2014) 229 Cal.App.4th 690, and *Rosenthal, v. Bd. of Supervisors* (1975) 44 Cal.App.3d 815 by conducting CEQA review each time they pass a zoning ordinance or amendment, or to follow the Court of Appeal's decision and evaluate on an ordinance-by-ordinance basis whether the ordinance in question may have a direct or "reasonably foreseeable indirect physical change in the environment." (*Union of Med. Marijuana Patients, Inc. v. City of*

San Diego (2016) 4 Cal. App. 5th 103, 110.) *Muzzy Ranch*, *Rominger*, and *Rosenthal,* dictate preliminary CEQA review on a categorical basis whenever local governments pass zoning ordinances or amendments, but the decision below creates confusion by suggesting that local governments may decide on a zoning ordinance-by-zoning ordinance basis whether or not the ordinance belongs to a "category" of zoning ordinances which may have reasonable foreseeable environmental impacts.

While California Supreme Court precedent must be obeyed above lower court rulings, the City Attorneys who suggest compliance with CEQA *a la Muzzy Ranch*, *Rominger*, and *Rosenthal,* may find themselves less popular than those who suggest reading *Muzzy Ranch* narrowly and giving weight instead to a new appellate case that relieves them of their duty to perform such important review.

Even if *Muzzy Ranch* were ambiguous, there would still be a split in the appellate districts. The Court of Appeal opinion goes directly against other California appellate court opinions in *Rosenthal,* and *Rominger. Rosenthal* held that adopting a zoning ordinance was a project under *No Oil, Inc., v. City of Los Angeles* (1974) 13 Cal.3d 68. (*Rosenthal, v. Bd. of Supervisors*, *supra*, 44 Cal.App.3d at p. 822.) *Rominger* held that the statutory list of actions contained in Public Resources Code section 21080 (which includes "the enactment and amendment of zoning ordinances") are each categorical projects. (*Rominger, v. Cnty. of Colusa*, *supra*, 229 Cal.App.4th at p. 702.)

These conflicting appellate court rulings create confusion as to what duties California governments have under CEQA, and the law must be clarified before governments and litigants can know these duties with certainty.

Additionally, while the Court of Appeals does lip service to *Muzzy Ranch* and claims that "the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions" is categorically exempt from being considered a project under CEQA because it is not the "type of activity that may cause a reasonably foreseeable change to the environment." The opinion however, only comes to the conclusion that the Ordinance is not a project after a detailed consideration of the Ordinance and factual situation in question which is contrary to this Court's adoption of a categorical approach in *Muzzy Ranch.*

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

The City has a complicated history regarding the regulation of medical marijuana. On October 6, 2009 the San Diego City Council voted to initiate a process that culminated in the adoption on March 28, 2011, of an ordinance setting forth a process to permit marijuana facilities (Administrative Record[1] 16). However, a petition was circulated to amend the ordinance

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[1] Citations to the Administrative Record will follow the format of AR: Page Number. Thus, citation to page 16 will be AR 16. Further, the Administrative Record will be abbreviated as either "AR" or "Record."

(AR 32). In response, the City Council repealed the ordinance in September, 2011 (AR 32). In a widely-attended, noticed public hearing on April 22, 2013, the City Council directed the Mayor and City Attorney to develop a new ordinance, City of San Diego Ordinance No. O-20356 (the "Ordinance" or "Project"), to allow medical marijuana facilities (AR 16, 231). Thereafter, on December 5, 2013, the Planning Commission held a noticed public hearing to discuss the proposed Ordinance (AR 27). The item lasted two and a half hours, and numerous members of the public attended and spoke (AR 27).

The Ordinance came before the City Council in a noticed public hearing on February 25, 2014 (AR 32). After nearly three hours of discussion, with numerous members of the public providing comments, the City Council voted 8–1 to amend and approve. (AR 31, 32). Final adoption of an ordinance requires a second, noticed public hearing, with public comments, which occurred on March 11, 2014 (AR 43).

The Ordinance made amendments to the City's Land Development Code that will allow medical marijuana facilities to operate in specific commercial and industrial zones (AR 42). The Ordinance authorized the establishment of up to four "Medical Marijuana Consumer Cooperatives" ("Coops") per City Council District. (AR 33). In other words, the City authorized up to 36 Coops in the City. (AR 1904.) At the time the Ordinance was adopted, there were approximately 26,451 patients in the City of San Diego. (AR 1661.) Numerous Coops existed in the City at the time the Ordinance was adopted, but the City did not view these Coops as legally established uses. (AR 1660.)

The Ordinance defined a "Medical Marijuana Consumer Cooperative" as follows: "[A] facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83." (AR 26.)

Because the Ordinance limited the location of Coops to certain zoning districts and mandated buffer zones between residential zones, "sensitive uses" and other Coops, only 30 Coops could actually be established in the City. (AR 1904.) Further, in some City Council Districts it was not possible to site up to four Coops, and in at least one City Council District, no Coops could be established due to the Ordinance's locational restrictions. (AR 255). While there are 8,009 acres in the City that are allowable locations for Coops, due to the Ordinance's buffer zones and other locational requirements, Coops will be concentrated in certain parts of the City. (AR 1660, 254, 257).

The City did not conduct an initial study under CEQA. Rather, the City concluded that the Ordinance was not a project under CEQA, stating:

> The ... Ordinance is not subject to [CEQA] pursuant to CEQA Guidelines Section 15060(c)(3), in that it is not a Project as defined by CEQA Guidelines Section 15378. Adoption of the ordinance does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Future projects subject to the ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

(AR 28).

Petitioner is a California corporation whose members consist of medical cannabis patient associations, medical cannabis patients and ordinary citizens that would be affected by the Project's environmental impacts. Petitioner's members reside in cities and counties throughout California, including the City of San Diego. (Clerk's Transcript pp. 81–84 [Declaration of James Shaw]; Clerk's Transcript pp. 85–97 [Petitioner's Request for In Camera Review of Declarations in Support of Petitioner's Reply Brief]). In order to alert the City of potential resulting environmental impacts of which the City was likely unaware, Petitioner commented on the Ordinance by submitting two lengthy letters to the City and raised each of the legal deficiencies asserted herein. (AR 1658–1733, 1902–1923.) Among other things, Petitioner alerted the City to the fact that the Ordinance would cause: (1) Coops and related activities such as cultivation to either be established in new locations or intensified (i.e. displaced development), (2) patients to drive from where they reside in order to visit a Coop, and (3) patients to cultivate their own medical marijuana. Petitioner highlighted that each of these activates would necessarily create at least *some* change to the physical environment, and would necessarily create *some* environmental impacts such as traffic and air pollution, both within and outside the City. (*Ibid.)*

II. Procedural Background

Petitioner filed its Petition for Writ of Mandate on April 29, 2014. (Clerk's Transcript p. 1–11 [Petition for Writ of Mandate].)

The City of San Diego was named as the Respondent and the California Coastal Commission was named as a Real Party in Interest. (Clerk's Transcript p. 1 [Petition for Writ of Mandate].)

On March 6, 2015, the Trial Court conducted a hearing on the Petition for Writ of Mandate. Thereafter, Judge Wohlfeil denied the Petition for Writ of Mandate and judgment was entered on April 22, 2015. (Clerk's Transcript pp. 135–144 [Judgment Denying Petition for Writ of Mandate].) Judge Wohlfeil held that Petitioner had standing to prosecute the appeal, but sustained the City's argument that the Ordinance was not a project under CEQA. (Clerk's Transcript pp. 107–111 [Minute Order].) Judge Wohlfeil declined to address the argument raised by Real Party in Interest California Coastal Commission ("Real Party") that it was improperly named in this lawsuit as a party, because he denied the Petition for Writ of Mandate on substantive grounds. (*Ibid.)* On May 1, 2015, Respondent filed a Notice of Entry of Judgment (Clerk's Transcript pp. 145–157.)

On May 18, 2015, Petitioner filed its notice of appeal regarding the denial of the Petition for Writ of Mandate, and on October 14, 2016 the Fourth Appellate District Court of Appeal affirmed the trial court's judgment. (Clerk's Transcript pp. 156–159 [Notice of Appeal]; Court of Appeal, Fourth Appellate District Judgment).

LEGAL DISCUSSION

I. This Court Should Grant Review to Clarify Whether the Enactment or Amendment of a Zoning Ordinance is Categorically a "Project" under CEQA.

The Fourth Appellate District announced an approach to project analysis under CEQA that conflicts with this Court's precedents, conflicts with other California appellate court precedents, and will cause confusion among state courts. The Court of Appeal applied California law in a way contrary to existing California Supreme Court and California appellate court precedent. The law misapplied is vital to the functioning of CEQA – it tells us which activities are regulated. Here we have the proto-typical CEQA regulated land use activity taken on by governments in California, passing or amending a zoning ordinance. To have confusion over whether zoning ordinances must undergo CEQA review, is to have confusion in every city council chamber and board of supervisors meeting room in the state. Resolving this question, on the other hand, will dispose of the need to argue whether a given zoning ordinance will cause "a reasonably foreseeable indirect physical change in the environment." The answer, under *Muzzy Ranch*, is "yes".

In *Muzzy Ranch Co., v. Solano County Airport Land Use Commission,* the Supreme Court clearly held that "[w]hether an activity constitutes a project subject to CEQA is a *categorical question* respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity *will actually have* environmental impact" *(Muzzy Ranch Co., v.*

Solano Cnty. Airport Land Use Comm'n, supra, 41 Cal.4th at p. 381 (emphasis added).) The court in *Muzzy* goes into the categorical analysis by asking whether a purported project "is the *sort of activity* that may cause a direct change or a reasonably foreseeable indirect physical change in the environment so as to constitute a project." (*Ibid.,* citing Pub. Resources Code, § 21065.) In *Muzzy Ranch,* the court held that an ordinance adopting a land use plan was a categorical project. (*Muzzy Ranch Co., v. Solano Cnty. Airport Land Use Comm'n, supra,* at p. 381.*)* Likewise, we argue that an amendment to a zoning plan is a categorical project because it "is the sort of activity that may cause a direct change or a reasonably foreseeable indirect physical change in the environment..." (*Ibid.)* This categorical approach makes sense, since the decision to undertake environmental review should be made early in the process, and sometimes reveals foreseeable impacts which were not foreseen at the time the government was deciding whether to undertake CEQA review. The statute, as read by *Muzzy Ranch* and the sources cited below, stated simply, says if an activity is of the type that usually results in environmental impacts, the government must do the analysis, even if it cannot see the impacts yet. If, after preliminary analysis, the city decides there will be no significant impacts or that a Categorical Exemption applies, the city can issue a Negative Declaration or officially find that the project is exempt. But whenever a city passes a zoning ordinance, it must do a preliminary CEQA analysis.

Indeed, the Appellate Court split is so sudden and deep that Petitioner believed the law on this subject to be well established. *Rosenthal v. Board of Supervisors* held that zoning ordinances

are projects under CEQA after a thorough review of California Supreme Court precedent, and no analysis of the specific potential environmental impacts of the ordinance in question. (*Rosenthal, v. Bd. of Supervisors*, *supra*, 44 Cal.App.3d at pp. 822–823 (analyzing *No Oil, Inc., v. City of Los Angeles*, *supra*, 13 Cal.3d 68 and *Bozung v. Local Agency Formation, Comm'n* (1975) 13 Cal.3d 263.) Likewise, *Concerned Citizens of Palm Desert v. Board of Supervisors* held that CEQA "makes it clear that it applies to 'the enactment and amendment of zoning ordinances.'" (*Concerned Citizens of Palm Desert v. Bd. of Supervisors* (1974) 38 Cal.App.3d 272, 283, quoting Pub. Resources Code, § 21080.) The office of the Attorney General has also opined that "Ordinances and resolutions adopted by a local agency are 'projects' within the meaning of CEQA." (60 Ops. Cal. Atty. Gen. 335 (1977).

More recently, in *Rominger v. County of Colusa* the court reads Public Resources Code section 21080 to set out a non-exhaustive list of *categorical* projects under CEQA. (*Rominger, v. Cnty. of Colusa*, *supra*, 229 Cal.App.4th at p. 702.) This is the plainest reading of the statutory language which says "[CEQA] shall apply to discretionary projects proposed to be carried out or approved by public agencies, *including*, but not limited to, the enactment and amendment of zoning ordinances..." (Pub. Resources Code, § 201080.) The statute says it applies to discretionary projects, and gives a non-exhaustive list of what it means by "discretionary projects." As we know from *Muzzy*, whether something is a project under CEQA is a "categorical" question. Public Resources Code section 201080 gives us a statutory set of categories of projects.

However, the appellate court below disagreed with our analysis and has now created a split among the California appellate courts as to whether projects are to be determined on a categorical basis, or whether activities that would constitute "projects" under the statute are no longer considered "projects" if they do not cause a "direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code, § 21065.) While that is part of the statutory definition of "project," the statute sets out *activities which categorically constitute projects*, as *Muzzy* explains. Simply put, the statute sets out a broad definition, and later sets out some specific examples of projects, *all* of which meet the first definition because they *usually* cause direct or "reasonably foreseeably indirect physical change in the environment." (*See* Pub. Resources Code, § 21065, and § 21080.) If the statute sets out a categorical list of "projects" it makes no sense to subject those enumerated projects to a case-by-case test found in the general definition of "project."

While *Muzzy*'s categorical approach takes into account the "reasonably foreseeable impacts" element of the statute by creating categories of activities which have "reasonably foreseeable impacts," the Court of Appeal's decision would only apply *Muzzy*'s categorical approach to the question of whether or not something is a "discretionary action" by the agency, since the "reasonably foreseeable impacts" element of whether something is a project would be analyzed independently. It is completely irreconcilable with the California Supreme Court precedent that "[w]hether an *activity* constitutes a *project* subject to CEQA is a categorical question respecting whether the activity is *of a*

general kind which with CEQA is concerned, *without regard to whether the activity will actually have environmental impact.*" (*Muzzy Ranch Co., v. Solano Cnty. Airport Land Use Comm'n*, *supra*, 41 Cal.4th at p. 281. (emphasis added).)

The court below analyzed the statutory language and concluded it could be read in one of two ways: zoning ordinances may be projects as a matter of law, or they may also have to meet the "reasonably foreseeable impacts" standard. However, in deciding between the two interpretations, the court relied on the CEQA Guidelines rather than the binding California Supreme Court Precedent in *Muzzy*, and even the CEQA Guidelines are ambiguous. The section of the CEQA Guidelines quoted states that a "project" is an action "which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and that is any of the following . . . enactment and amendment of zoning ordinances . . ." The CEQA Guidelines are just as amenable to a categorical reading as the statute: zoning ordinances have "the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change of the environment," as a categorical matter. (Cal. Code Regs., tit. 14, § 15378.)

The primary appellate case relied on by the Court of Appeal was *Walmart*, but in the Court of Appeal's opinion, they admitted that the court in *Walmart* "did not need to resolve whether 'subdivision (a) of section 21080 establishes a bright-line rule of law that all enactments of zoning ordinances are discretionary projects regardless of whether all of the requisite elements contained in section 21065's definition of a 'project have been

met.'" 117 (citing *Wal Mart* 138 Cal. App. 4th at 289.) That is to say, the Court of Appeal admitted that *Wal-Mart* was inapposite.

The one concession in the Court of Appeal's opinion to *Muzzy*'s binding injunction to take a categorical approach is a vague statement that "to the extent possible, we examine generally whether the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions is the type of activity that may cause a reasonably foreseeable change to the environment." (*Ibid.) Muzzy Ranch* however, does not analyze how land use plans that preserves existing development levels near an air force base may affect the environment (the precise issue in *Muzzy Ranch*), but how a land use plan generally may affect the environment. (*Id.* at pp. 254–55.) Creating such finite, specific categories, completely negates any benefits that taking a categorical approach may yield in terms of simplifying legal analysis, creating uniformity in lower court decisions, or providing clarity to governments looking to comply with CEQA. Under the Court of Appeal's rule, governments must decide whether a zoning ordinance is a project based on the places, uses, and conditions regulated.

II. This Court Should Grant Review to Clarify That Enactment of a Zoning Ordinance Regulating Cannabis Production and Sale is Categorically a "Project" under CEQA.

In addition to misapplying the relevant law with regard to whether zoning ordinances and amendments to zoning ordinances are categorically projects under CEQA, as discussed above, the Court of Appeal came to the erroneous conclusion that

a "the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions is [not] the type of activity that may cause a reasonably foreseeable change to the environment." (*Union of Med. Marijuana Patients, Inc. v. City of San Diego*, *supra*, 4 Cal. App. 5th at p. 120.) Petitioner identified several potential areas of foreseeable environmental impacts, and the Court of Appeal analyzed each of these arguments and concluded that there would be no such environmental impacts in this case. (*Ibid.)* However, under the Court of Appeal's own admission, under *Muzzy* it was required to analyze the ordinance on a categorical basis, and not on an as-applied basis. That is not what the Court of Appeal did.

Petitioner argued that the Ordinance may result in increased development in certain parts of the city which will result in a direct environmental impact. The Court of Appeal rejected this argument "because it is purely speculative to assume that the establishment of the cooperatives permitted under the Ordinance will require any new buildings to be constructed..." (*Union of Med. Marijuana Patients, Inc. v. City of San Diego*, *supra*, 4 Cal. App. 5th at p. 123.) However, in a categorical analysis this is non-sense, and this is not the CEQA standard. An ordinance regulating medical marijuana could easily require construction of new buildings by requiring specific safety features, but under the Court of Appeal's logic still be exempt from CEQA because "the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions is [not] the type of activity that may cause a reasonably foreseeable change to the environment." (*Id.* at p.

117.) Additionally, CEQA does not ask if new buildings will be constructed, but whether a project will cause *any* "reasonably foreseeable" environmental impacts. The City of San Diego closed "over 100 illegal dispensaries in 2011–2012," suggesting that some a Medical Marijuana ordinance would apply to enough activity to cause some physical change to the environment; be it the build-out of new storefronts or increases in traffic at particular intersections. However, the Court of Appeal none-the-less held that, *categorically*, "the enactment of a law allowing the operation of medical marijuana cooperatives in certain areas of a municipality under certain conditions is [not] the type of activity that may cause a reasonably foreseeable change to the environment." (*Id.* at p. 120.)

CONCLUSION

What constitutes a project is a question at the very heart of CEQA. The primary purpose of CEQA is to force governmental entities to analyze the environmental consequences of their action—if they do not analyze their actions, the statute serves no purpose at all. If the Court of Appeal's decision stands, cities and counties will be emboldened to ignore *Muzzy* and argue that each particular zoning ordinance and land use plan they pass has no reasonably foreseeable environmental impacts because it only regulates a certain industry, a certain type of land use, or certain areas of the locality. Indeed, under the Court of Appeals' logic, you could take an entire municipal zoning ordinance and enact it industry-by-industry, land use-by-land use, and neighborhood by neighborhood and never analyze it under CEQA.

Channel Law Group, LLP

Respectfully submitted,

Dated: November 22, 2016 By: _____

Jamie T. Hall

Attorney for Plaintiff and Appellant

CERTIFICATE OF COMPLIANCE

This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **3,811** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.504(d) or by Order of this Court.

Dated: November 22, 2016

By: _____
Channel Law Group, LLP
Jamie T. Hall
Attorney for Plaintiff and Appellant

Attachment A – D068185
Opinion

Filed 10/14/16

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

UNION OF MEDICAL MARIJUANA PATIENTS, INC., Plaintiff and Appellant, v. CITY OF SAN DIEGO, Defendant and Respondent; CALIFORNIA COASTAL COMMISSION, Real Party in Interest.	D068185 (Super. Ct. No. 37-2014-00013481-CU-TT-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joel R. Wohlfeil, Judge. Affirmed.

Channel Law Group, Julian K. Quattlebaum and Jamie T. Hall for Plaintiff and Appellant.

Jan I. Goldsmith, City Attorney, and Glenn T. Spitzer, Deputy City Attorney, for Defendant and Respondent.

Union of Medical Marijuana Patients, Inc. (UMMP) appeals from the trial court's judgment denying its petition for writ of mandate, which challenged the City of San Diego's (the City) enactment of an ordinance adopting regulations for the establishment and location of medical marijuana consumer cooperatives in the City. UMMP contends that the City did not comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.)[1] when enacting the ordinance. As we will explain, we conclude that the ordinance did not constitute a project within the meaning of CEQA, and accordingly the City was not required to conduct an environmental analysis prior to enacting the ordinance. We therefore affirm the judgment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The City's Adoption of Ordinance No. O-20356*

For several years, state law has contained provisions concerning the use and cultivation of medical marijuana. Specifically, "the Compassionate Use Act of 1996 (. . . ; Health & Saf. Code, § 11362.5, added by initiative, Prop. 215, as approved by voters, Gen. Elec. (Nov. 5, 1996)) and the more recent Medical Marijuana Program (. . . ; [Health & Saf. Code,] § 11362.7 et seq., added by Stats. 2003, ch. 875, § 2, p. 6424) have removed certain state law obstacles from the ability of qualified patients to obtain and use marijuana for legitimate medical purposes." (*City of Riverside v. Inland Empire Patients*

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1 Unless otherwise indicated, all further statutory references are to the Public Resources Code.

Health & Wellness Center, Inc. (2013) 56 Cal.4th 729, 737, fn. omitted (*City of Riverside*).)[2] One purpose of the Medical Marijuana Program Act (hereafter MMP) "was to '[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.' (Stats. 2003, ch. 875, § 1(b)(3), pp. 6422, 6423.) Accordingly, the MMP provides, among other things, that '[q]ualified patients . . . and the designated primary caregivers of qualified patients . . . , who associate within the State of California in order collectively or cooperatively to cultivate [cannabis][3] for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under [Health and Safety Code sections] 11357 [(possession)], 11358 [(cultivation, harvesting, and processing)], 11359 [(possession for sale)], 11360 [(transportation, sale, furnishing, or administration)], 11366 [(maintenance of place for purpose of unlawful sale, use, or furnishing)], 11366.5 [(making place available for purpose of unlawful manufacture, storage, or distribution)], or 11570 [(place used for unlawful sale, serving, storage, manufacture, or furnishing as statutory nuisance)].' ([Health & Saf. Code,] § 11362.775.)" (*City of Riverside*, at pp. 739-740.) Under the MMP, as amended in 2011 (Stats. 2011, ch. 196, § 1), a city or other local governing body is expressly authorized to "[a]dopt[] local ordinances that regulate the location,

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2 More recently, after the City's enactment of the ordinance at issue here, the Legislature passed the Medical Cannabis Regulation and Safety Act (Bus. & Prof. Code, § 19300 et seq.), which became effective in 2016 and regulates the licensing of medical cannabis commercial activity.

3 In 2015, the Legislature replaced the word "marijuana" in Health and Safety Code, section 11362.775 with the word "cannabis." (Stats. 2015, ch. 689, § 6.)

operation, or establishment of a medical marijuana cooperative or collective" in its jurisdiction. (Health & Saf. Code, § 11362.83, subd. (a).)

In April 2013, the City Council directed the City Attorney to develop an ordinance to allow medical marijuana facilities in the City. On December 5, 2013, the Planning Commission held a noticed public hearing on the issue and recommended that the City adopt an interim ordinance. The City Council held public hearings and finally adopted Ordinance No. O-20356 on March 11, 2014 (the Ordinance).

The Ordinance amends several parts of the City's municipal code to regulate the establishment and location of medical marijuana consumer cooperatives. The ordinance defines the term "medical marijuana consumer cooperative" to mean "a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the [MMP]," and specifically states that the enacted regulations "are intended to apply to commercial retail facilities."

The Ordinance provides that medical marijuana consumer cooperatives (cooperatives) may be permitted with a conditional use permit in certain zones in the City, including certain commercial and industrial zones, provided that no more than four medical marijuana consumer cooperatives are located in each of the City's nine City Council districts (council districts) and that they are located 1,000 feet from public parks, churches, childcare centers, playgrounds, minor-oriented facilities, residential care facilities, schools and other cooperatives, and 100 feet from residential zones. The ordinance also requires that the cooperatives follow certain requirements for lighting, security, signage and operating hours, among other things.