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MUNICIPAL ORDINANCE - CALIFORNIA

City of Palm Springs v. Luna Crest Inc.

Court of Appeal, Fourth District, Division 2, California - March 17, 2016 - Cal.Rptr.3d - 2016 WL 1056700 - 16 Cal. Daily Op. Serv. 2902

City brought action against medical marijuana dispensary operator for injunction against operation of the dispensary, after the operator failed to apply for the dispensary permit required by city ordinance. Operator cross-complained for injunction against continued enforcement of the city's permitting requirement for medical marijuana dispensaries. The Superior Court granted preliminary injunction for city, and denied operator's injunction motion. Operator appealed.

The Court of Appeal held that Controlled Substances Act did not preempt city's ordinance requiring a permit to operate a medical marijuana dispensary.

The Controlled Substances Act did not preempt city ordinance requiring a permit to operate a medical marijuana dispensary, even though the ordinance involved the city in overseeing the dispensaries' operation through regulations, including testing requirements regarding safety and potency of the marijuana and marijuana products being dispensed, since the permitting requirements did not require the city to do anything forbidden by the Controlled Substances Act, and city's regulatory program for medical marijuana did not stand as an obstacle to the purposes and objectives of Congress.

The Controlled Substances Act does not direct local governments to exercise their regulatory, licensing, zoning, or other power in any particular way, so exercise of those powers with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law.

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