

# **Bond Case Briefs**

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## **ZONING - CALIFORNIA**

### **J. Arthur Properties, II, LLC v. City of San Jose**

**Court of Appeal, Sixth District, California - March 19, 2018 - 2018 WL 1373644**

Operator of medical marijuana collective and landowner brought petition for writ of administrative mandate, seeking to prevent city from forcing collective to close.

The Superior Court denied petition. Operator and landowner appealed.

The Court of Appeal held that:

- Medical marijuana collective was not a “medical office” as permitted by ordinance in commercial office zoning district, and
- City was not estopped from enforcing such ordinance.

Medical marijuana collective was not a “medical office” as permitted by ordinance in commercial office zoning district, even if collective was a health-related occupation; all of the specifically enumerated professions in ordinance’s definition of “medical office” involved physicians or similar professions and patients, and unlike medical marijuana collectives, none of the listed occupations for a “medical office” provided a good or service that was illegal under federal law.

Medical marijuana collective operator’s reliance on city’s delay in enforcing commercial office district zoning ordinance to exclude medical marijuana collectives was not reasonable, and thus city was not estopped from enforcing ordinance to preclude collective’s operation in commercial office district, where city had consistently interpreted ordinance in same manner, and city inspector had directly stated to operator that collective’s location “may not qualify due to the residential use located next door.”

Medical marijuana collective operator’s reliance on city’s requirement that operator pay taxes, as purported evidence of legality of use under zoning ordinance, was not reasonable, and thus city was not estopped from enforcing ordinance to preclude collective’s operation in commercial office district, where express disclaimers in ordinance and on business tax certificate stated that collection of taxes was not authorization to operate a medical marijuana collective.