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Land Use

§10.148 13. Medical Marijuana Cultivation and Dispensaries

The use, cultivation, transportation, and sale of marijuana for medical purposes is governed by the Compassionate Use Act of 1996 (CUA), which was approved by California voters as Proposition 215 and was extended and clarified in Health & S C §11362.5, and the Medical Marijuana Program Act (MMPA or SB 420), which is codified in Health & S C §11362.7 *et seq.* For a more detailed discussion of the use, transportation, and sale of medical marijuana, see §§9.47–9.52.

Under most zoning ordinances, uses that are not explicitly enumerated as permitted are prohibited. Thus, when a city's zoning ordinance does not explicitly permit marijuana dispensaries, the city properly may enjoin such dispensaries. *City of Riverside v Inland Empire Patient's Health & Wellness Ctr., Inc.* (2013) 56 C4th 729; *City of Claremont v Kruse* (2009) 177 CA4th 1153; *City of Corona v Naulls* (2008) 166 CA4th 418.

Some medical marijuana advocates have asserted that the CUA and MMPA preempt local zoning and business license requirements. The courts have consistently ruled against such arguments. In May 2013, the California Supreme Court unanimously held that the state's medical marijuana laws do not preempt local bans on medical marijuana dispensaries. *City of Riverside v Inland Empire Patients Health & Wellness Ctr., Inc.* (2013) 56 C4th 729. Similarly, in *Conejo Wellness Ctr., Inc. v City of Agoura Hills* (2013) 214 CA4th 1534, the court of appeal ruled that a local ban on medical marijuana dispensaries is consistent with the constitutional zoning power conferred on local governments. In *Browne v County of Tehama* (2013) 213 CA4th 704, the court of appeal held that a county could regulate, but not ban, the cultivation of medical marijuana. Subsequently, in *Maral v City of Live Oak* (2013) 221 CA4th 975, the court of appeal held that the CUA and MMPA do not preempt a city's police power to prohibit all cultivation of marijuana.



For further discussion, see [The California Municipal Law Handbook](#): Land Use, chap 10 (Cal CEB). Available in print and through [OnLaw](#).

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