

Limit on Number of Marijuana Dispensaries Upheld

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Cities and counties may adopt laws that limit the number of medical marijuana dispensaries to those already in operation and compliant with prior law. Such laws provide local officials yet another tool to regulate and combat the growth of dispensaries in their communities.

In *City of Vallejo v. NCORP4, Inc.*, a local ordinance declared dispensaries a public nuisance but nonetheless granted those existing dispensaries that had consistently paid business taxes (among other requirements) limited immunity from prosecution. Under prior local law, dispensaries, which remained unpermitted, were required to pay business taxes. The Vallejo ordinance effectively “grandfathered” existing marijuana businesses in the City if they had paid business taxes.

A dispensary in Vallejo applied for immunity, which the City denied for nonpayment of business taxes under the prior law. Vallejo then sued the dispensary to enjoin it as a public nuisance and sought a preliminary injunction. The trial court denied the injunction on grounds that the ordinance imposed an unconstitutional *ex post facto* condition – that is, it retroactively increased penalties for violation of the prior law.

On appeal, Vallejo argued the ordinance did not increase the prior law’s penalties but simply limited the number of dispensaries by preferring those that had “demonstrated a willingness and ability to comply with local law.” The Court of Appeal agreed and reversed the trial court. In support of the ordinance, the Court relied on a 2012 decision that upheld a Los Angeles ordinance restricting dispensaries to those that had been in operation for several years and had registered under a prior ordinance. “A dispensary’s timely payment of business taxes,” the Court reasoned, “provides Vallejo with a rational basis to conclude that the dispensary will continue to act in a law-abiding manner.”

The Court also concluded that the ordinance did not retroactively increase tax penalties. Rather, the ordinance left the civil penalty for nonpayment of taxes unchanged.

PRACTICE AREAS

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This case serves as important guidance for cities and counties seeking to regulate marijuana dispensaries, particularly through "grandfathering" provisions.

For more information on marijuana law and regulations, please contact Romtin Parvaresh.