MARIJUANA OVERVIEW & IMPACT – LESSONS LEARNED

Mike Soubirous
Councilmember & Mayor Pro-Tem
City of Riverside

San Bernardino County City-County Conference,

March 31, 2016, Lake Arrowhead

California's Compassionate Use Act

California voters approved the new law in 1996.

Three-fold purpose:

1. For seriously ill Californians (suffering from "cancer, anorexia, AIDS… *or any other illness for which marijuana provides relief*….") with a doctor's recommendation;
2. Limits criminal liability under California law; and
3. Encourages federal and state government implementation.

SB 420 - "Medical Marijuana Program Act" Health & Safety Section 11362.7

Clarifies scope of Compassionate Use Act

Limits arrest and prosecution under California law

- Immunity for prosecution if person has valid ID or "qualified" patient or caregiver status (limited by case law – *People v. Strasburg* (2007) 148 Cal.App.4th 1052)

Guide to law enforcement

- Allows transport of medical marijuana (H&S Sec. 11362.765)
- Allows for collective or cooperative cultivation of medical marijuana (H&S Sec. 11362.775)

Government Code Section 37100

"The Legislative Body (City Council / County Board of Supervisors) may pass ordinances NOT in conflict with the Constitution and the laws of the State or the United States."

Possible Nuisances/Secondary Effects Associated with Dispensaries

- Murders, burglaries, robberies and thefts;
- Fraudulent physician recommendations;
- Marijuana sales to customers with obviously fake identification cards;
- DUIs;
- Sale of other illegal drugs at dispensaries; and
- Sales to minors.

Crime And Other Negative Secondary Impacts

Man slain at Hollywood pot store -- 2nd killing of the day at marijuana dispensary [Updated]

June 24, 2010 | 10:42 pm

An employee was slain Thursday night during a robbery attempt at a Hollywood medical marijuana dispensary -- the second killing of the day at a city marijuana store.

The shooting occurred about 9:15 p.m. at the Hollywood Holistic store in the 1600 block of North El Centro Avenue, the Los Angeles Police Department said.

Earlier in the day, a worker at a medical marijuana dispensary in Echo Park was killed and another was wounded in an apparent robbery, police said.

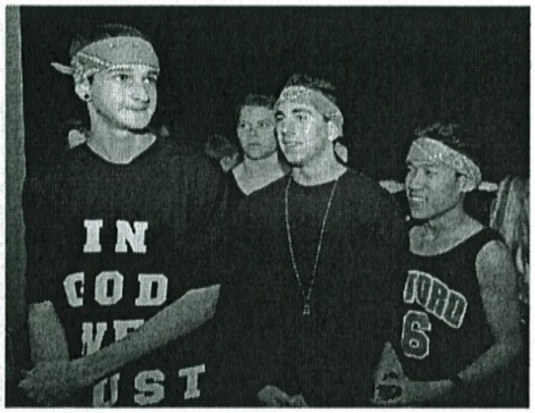
An unknown number of suspects stormed into the Higher Patch Holistic Care store at 1302 Sunset Blvd. shortly before 4:15 p.m. and shots were fired, the Los Angeles Police Department said.

Crime And Other Negative Secondary Impacts

THE ORANGE COUNTY BETA
REGISTER

Update: Teen is waking up from coma

By ERIKA I. RITCHIE
2010-02-16 12:26:03



LAKE FOREST Police confirmed today they are investigating whether marijuana played a role in the car crash that left an El Toro High student critically injured.

Sheriff's Lt. Mike Gavin, chief of police services for Mission Viejo, said a pill bottle from a Los Angeles medical marijuana dispensary was found in the 2006 Scion driven by Parker Kalmen, 17, of Lake Forest. Gavin said a "useable" amount of marijuana was found in the bottle. Neither Kalmen nor his passenger, Brent Sirignano, also 17 and from Lake Forest, has a medical marijuana card, Gavin said.

Sirignano was in the passenger seat when the Scion slid off a Mission Viejo road and slammed passenger-side first into a tree on Feb. 6. Sirignano has been in a medically induced coma at CHOC Children's at Mission Hospital since the crash. According to reports on Tuesday afternoon from his parents, Brent is beginning to wake up and has started to respond to verbal commands.

Gonzales v. Raich (2005)

Federal law enforceable despite Compassionate Use Act or Medical Marijuana Program.

No federal medical necessity defense.

Congress has the power to regulate marijuana.

People v. Urcizeanu (2005)

- The CUA "creates a narrow defense to crimes, not a constitutional right to obtain marijuana."

Ross v. Raging Wire Telecommunications (2008)

- No duty to accommodate an employee's use of marijuana under the Compassionate Use Act.
- Cities and Counties are large employers.
- California Supreme Court analysis.

City of Corona v. Naulls

City of Corona v. Naulls (2008)

- The defendant applied for a business license and said he would sell "miscellaneous medical supplies." The City issued the license based on the defendant's representations.
- The City then enacted a moratorium against dispensaries.
- Then the defendant made it known that he was going to operate his business as a medical marijuana dispensary.
- The City obtained a preliminary injunction preventing him from operating a marijuana dispensary.

City of Claremont v. Kruse (2009)

- The City imposed a moratorium against dispensaries.
- Kruse opened a dispensary.
- The City cited Kruse numerous times.
- The trial court issued a permanent injunction. Kruse appealed.
- The appellate court upheld the trial court's holding.
- The court found that neither the Compassionate Use Act nor the Medical Marijuana Program preempted the City's actions.

City of Claremont v. Kruse (2009)

"Neither the CUA nor the MMP compels the establishment of local regulations to accommodate medical marijuana dispensaries. The City's enforcement of its licensing and zoning laws and its temporary moratorium on medical marijuana dispensaries do not conflict with the CUA or the MMP."

City of Riverside

- Current population of 317,000+
- 12th largest city in the state out of 482 cities.
- 59th largest city in the country.
- Over 85 sq. miles of territory.
- Over 90,000 housing units.
- Divided into seven wards and 26 distinct neighborhoods.

City of Riverside v. IEPHWC

City of Riverside v. IEPHWC

THE PRESS-ENTERPRISE PE.com

RIVERSIDE: Judge backs city in pot dispensary ban

10:53 PM PST on Wednesday, November 24, 2010

By SANDRA STOKLEY
The Press-Enterprise

RIVERSIDE - While acknowledging that this was "a troubling case for the court," a judge nevertheless ruled Wednesday that the city of Riverside is within its rights to use zoning laws to ban medical marijuana dispensaries.

"The city has acted within their authority," Superior Court Judge John Molloy said at the end of the hour-long hearing that pitted attorneys for the city of Riverside against medical marijuana activists.

Supporters of medical marijuana -- some of whom identified themselves as cancer patients -- filled the courtroom seats. Others were not allowed in because all seats were taken.

City of Riverside v. IEPHWC

What is prohibited:

conducting any activities or operations related to the distribution of marijuana, and/or conducting allowing, permitting, inhabiting, leasing, renting, or otherwise using or granting authority to use, the property located at 647 North Main Street, Suites 2A, 2B and 2C, Riverside, California 92501 for such activities listed herein.

IT IS SO ORDERED.

Dated: 11/24, 2010

Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE

City of Riverside v. IEPHWC

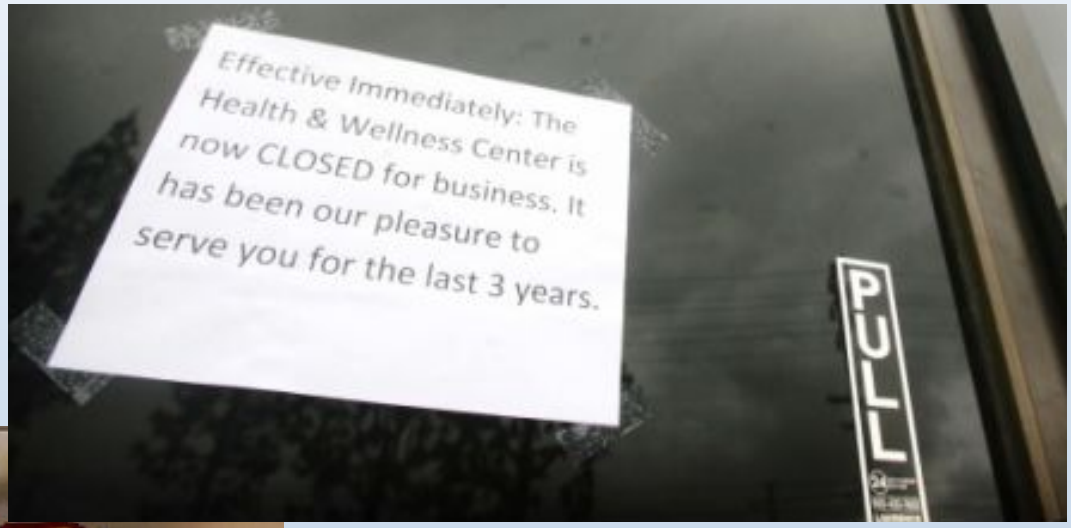
Case went to the California Supreme Court

City of Riverside v. IEPHWC (2014)

"Nothing in the CUA or the MMP expressly or impliedly limits the inherent authority of a local jurisdiction, by its own ordinances, to regulate the use of its land, including the authority to provide that facilities for the distribution of medical marijuana will not be permitted to operate within its borders."

City of Riverside v. IEPHWC

The Result . . .



Dispensary Bans

There are two primary methods cities use to ban dispensaries:

1. Adopt business license provisions that says licenses will be issued only to those operating in compliance with state and federal law; and

2. Prohibit dispensaries in all land-use zones.

Enforcing the Injunction

It is unfortunately not uncommon for a dispensary to refuse to close down even after the issuance of a injunction.

The remedy?

Hold the Offending Parties in Contempt.

Enforcing the Injunction

A person guilty of contempt may be fined $1,000 and imprisoned for 5 days for each contempt violation. Code of Civil Procedure Section 1218(a).

Enforcing the Injunction

RIVERSIDE CONSOLIDATED SUPERIOR/MUNICIPAL COURTS
COMMITMENT/RELEASE NOTICE

The Closet Patient Care v. City of Riverside

Case No.: RIC1112539
Charges: Civil – Contempt of Court

TO THE SHERIFF OF RIVERSIDE COUNTY: Defendant is remanded as indicated

( ) State Prison
(X) County Jail
( ) Youth Authority (CYA)
( ) Dept Mental Health
( ) Ca. Rehab Ctr. (CRC)
( ) Patton State Hospital
( ) Deft remains housed at Juvenile Hall

(X) 5 Years/Months/Days
( ) Less _____ Actual Days Served
( ) Plus _____ Days 4019 Pc Time
( ) Credit from Post Sentence Report
( ) House at CYA pur 1731.5 WIC
( ) _____ Credits State Hospital

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
JUN 28 2013

REFERRED FOR DIAGNOSTIC REPORT AND MISCELLANEOUS ORDERS

Enforcing the Injunction

E. RECEIVER'S SPECIFIC POWERS

In addition to the plenary powers described in Section B of this Order, the Receiver is given the following specific powers and duties:

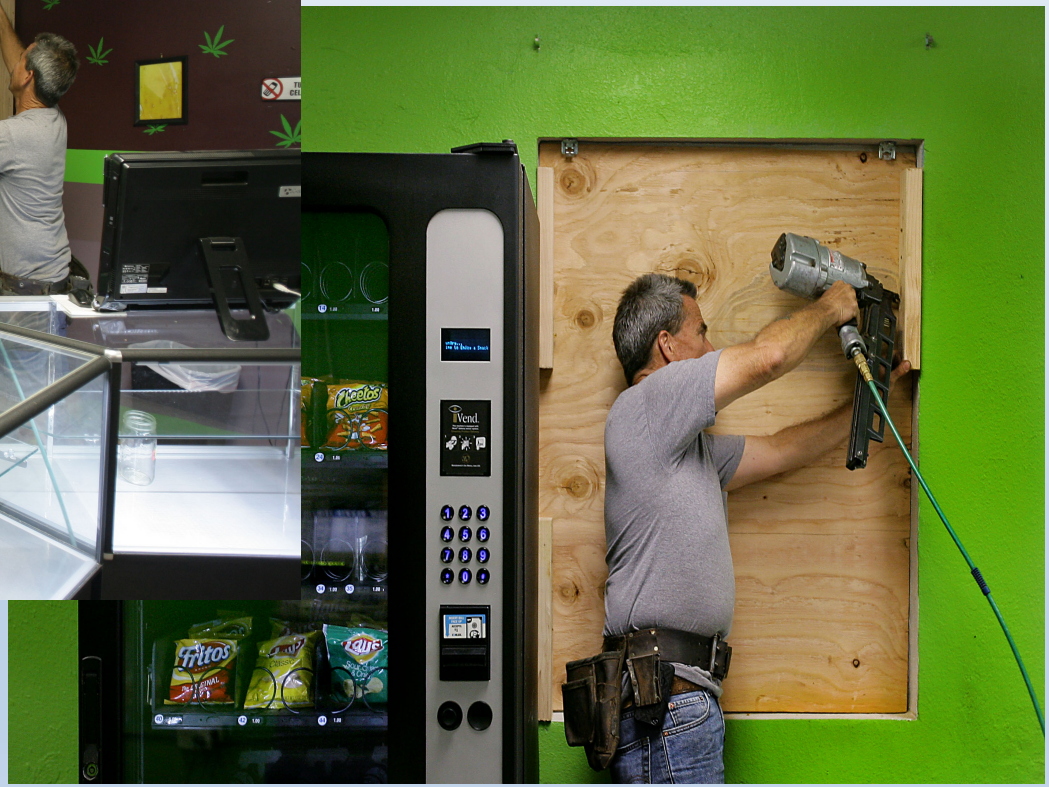
1. To take full and complete possession and control of the Subject Property, including the tangible and intangible personal property located in or about the Subject Property or used in connection with the Subject Property.

2. To remove Cross-Defendants and any other tenants, sub-tenants, licensees, or other individuals from the Subject Property.

3. To manage the Subject Property and pay operating expenses, taxes, insurance, utilities, and general maintenance.

4. To collect all rents and income from the Subject Property, to collect any debts associated with the Subject Property, to invest all funds on hand, and to use these funds to pay for the costs of operating, managing, and maintaining the Subject Property.

Enforcing the Injunction



HTC will be closed until further notice.

Effective 5/6/2013

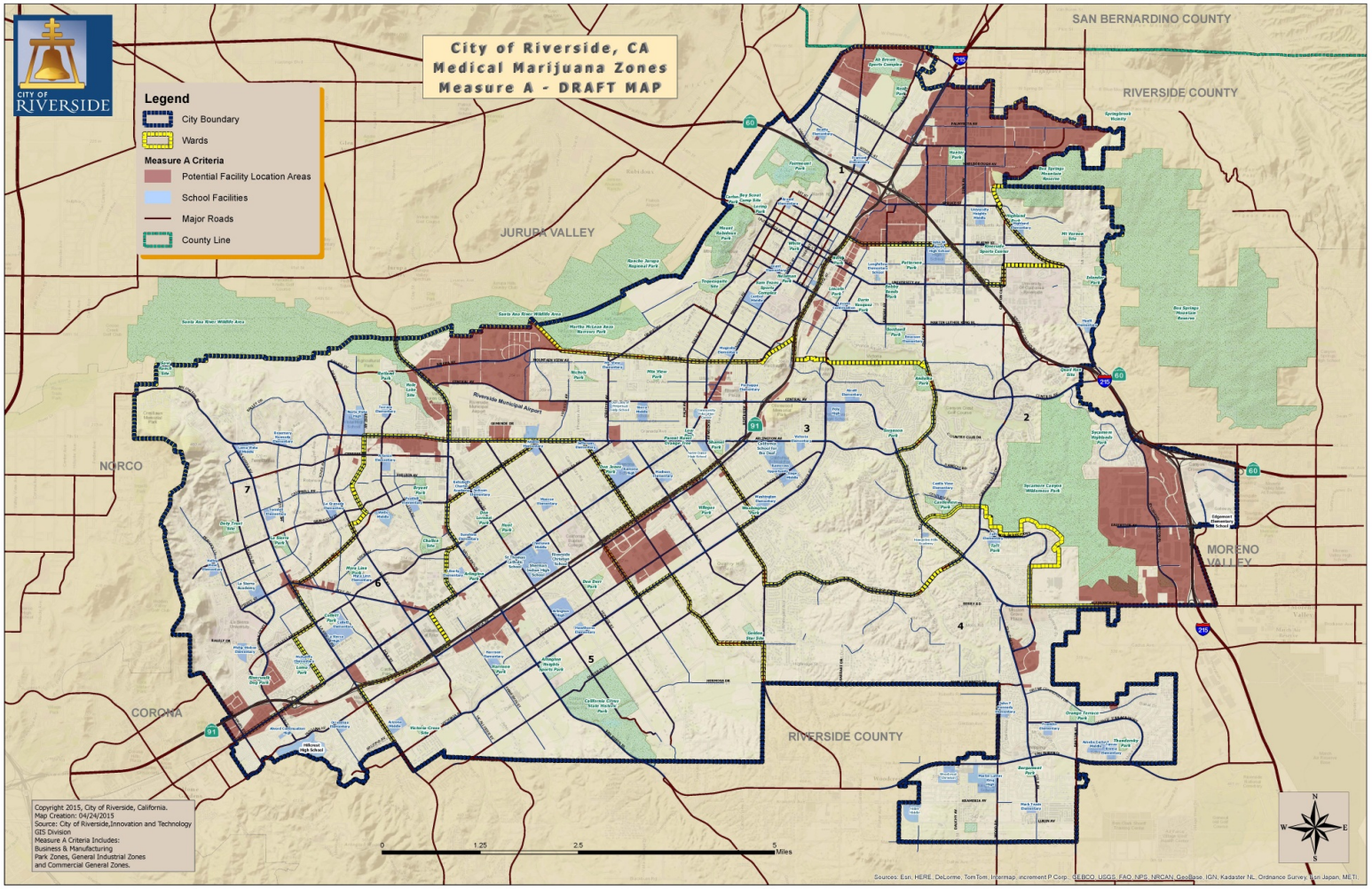
-Herb Town Collective

CLOSED
WARNING
NIGHT OWL

City of Riverside Measure A

- Would have rescinded the City's ban of storefront and mobile marijuana dispensaries.
- Would have allowed 1 dispensary per 30,000 residents.
- Preferred status to be selected to those dispensaries that previously illegally operated and had filed a lawsuit against the City.
- Would be allowed in Business/Manufacturing Park, General Industrial, and Commercial zones.

City of Riverside Measure A



CITY OF RIVERSIDE

RiversideCa.gov

City of Riverside Measure A

- Ballot arguments written by Mayor and Council.
- Staff made community presentation as part of educational efforts.
- Proponents were believed to be funded by marijuana dispensaries that would qualify for "preferred status" if the Measure passed.

City of Riverside Measure A

Election results

Riverside City, Measure A		
Result	Votes	Percentage
No	**14,647**	**59.96%**
Yes	9,779	40.04%

Election results from Riverside County Elections Office

Cultivation

Need to have an ordinance regulating or prohibiting cultivation to avoid state control.

Deliveries and Mobile Dispensaries

Need to have need to have an ordinance in place that affirmatively identifies and prohibits this activity.

Canna Express

State Law

Health and Safety Code § 11362.77 authorizes the City to:

1. Adopt a zoning ordinance to allow issuance of permit, license or entitlement for medical marijuana cultivation; **or**
2. Adopt a zoning ordinance prohibiting the cultivation of marijuana.

City can limit cultivation in any way that serves the public health, safety and welfare including, but not limited to:

1. Amount/number of plants grown
2. Location
3. Separation from sensitive uses
4. Zones permitted

County of Riverside Ordinance

- Adopted on June 2, 2015
- Prohibits commercial marijuana cultivation
- Allows for indoor or outdoor medical marijuana cultivation (with screening)
- Maximum quantity of plants: twelve (12) per patient – twenty-four (24) per premise
- Must be 1,000 feet from any school, community center, or park
- Must be at least ten (10) feet from all boundaries of premises – measured from building or fence surrounding cultivation

City of Riverside Ordinance

- Adopted on January 5, 2016
- Prohibits commercial marijuana cultivation
- Allows for indoor or outdoor medical marijuana cultivation (with screening)
- Marijuana Cultivation shall only occur on a single-family residential zoned parcel, and only when that parcel contains, wholly within its property boundaries, a legally permitted single-family residential dwelling
- Marijuana cultivation is prohibited in the Residential Conservation (RC) and Residential Agricultural (RA-5) Zones

City of Riverside Ordinance

- Maximum quantity of plants: eight (8) marijuana plants of any size per parcel containing a legally permitted residential dwelling
- At least one (1) qualified patient or one (1) primary caregiver must live in the dwelling
- Marijuana cultivation outside of any building must be fully enclosed by an opaque fence at least six (6) feet in height
- Marijuana cultivation shall not exceed one hundred (100) square feet in cumulative area and shall not displace any space required for on-site parking
- Must be at least ten (10) feet from all boundaries of premises – measured from building or fence surrounding cultivation

City of Riverside Ordinance

- Must be 1,000 feet from any school, community center, or park
- There shall be no external visual, audible, or olfactory evidence of the marijuana cultivation from any street, sidewalk, public right-of-way, or adjacent property
- Lights, heaters, fans, and generators shall be prohibited outdoors
- Must obtain an annual license from the City (which can be revoked if two (2) complaints of odors resulting from cultivation are received within a 12-month period

Lessons Learned

Any Questions?

Mike Soubirous

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