

Zoning Ordinance Is Not Necessarily a Project Subject to CEQA

The enactment of a zoning ordinance regulating medical marijuana facilities is not necessarily a project under CEQA, according to the court of appeal's decision in *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, 4 Cal.App.5th 103 (2016). The decision makes it clear that a zoning ordinance is a project subject to CEQA *only* if it may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. California Medical Marijuana Cap Union of Medical Marijuana Patients challenged a San Diego ordinance that regulated the establishment and location of medical marijuana consumer cooperatives, arguing that enactment of the ordinance was a project under CEQA and that the city should have analyzed its environmental impacts. UMMP relied on Public Resources Code section 21080, which states that CEQA applies to discretionary projects carried out or approved by public agencies, and includes enactment and amendment of zoning ordinances in its list of examples. The court, however, explained that section 21080 cannot be read in isolation and must be reconciled with section 21065, which defines a CEQA "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment" that is directly undertaken, supported, or authorized by a public agency. The court concluded that while section 21080 lists zoning ordinances as an example of an activity undertaken by a public agency, a zoning ordinance qualifies as a CEQA project only if it also satisfies the first part of the definition in section 21065: that it may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment. The court also noted that the CEQA Guidelines—which are given great weight except where they are clearly unauthorized or erroneous—have a similar interpretation of the statute. The court then addressed UMMP's arguments that the medical marijuana ordinance would cause a reasonably foreseeable indirect physical change in the environment. (For its analysis, the court assumed, without deciding, that the San Diego ordinance regulating the location of medical marijuana cooperatives was a zoning ordinance.) The court held that there was insufficient evidence to support any of UMMP's three arguments regarding the environmental impacts of the ordinance: (1) that it would force patients to drive farther to obtain medical marijuana; (2) that it would result in more home marijuana cultivation; and (3) that it would cause increased development. This case is important in highlighting that the enactment of a zoning ordinance is not invariably a "project" subject to CEQA; it must be shown the ordinance will result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment for CEQA to apply.

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