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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COUNTY OF LOS ANGELES, Plaintiff and Respondent, v. ALTERNATIVE MEDICINAL CANNABIS COLLECTIVE et al., Defendants and Appellants.	B233419 (Los Angeles County Super. Ct. No. BC457089)

APPEAL from an order of the Superior Court of Los Angeles County. Ann I. Jones, Judge. Reversed with directions.

Law Offices of J. David Nick and J. David Nick for Defendants and Appellants.

John F. Krattli, Acting County Counsel, Lawrence L. Hafetz, Acting Assistant County Counsel, and Sari J. Steel, Principal Deputy County Counsel, for Plaintiff and Respondent.

Defendants Alternative Medicinal Cannabis Collective (doing business as Alternative Medicinal Collective of Covina), Erik M. Andresen, Kara Reyes, Justin W. Samperi, Martin Hill, and Mardy and Nordy Ying (individually and as trustees) appeal from an order granting a preliminary injunction prohibiting them from operating a medical marijuana "dispensary" in any unincorporated area of the County of Los Angeles (County). Defendants contend that the order granting the injunction should be reversed because the County's blanket ban on medical marijuana dispensaries conflicts with, and is preempted by, the Compassionate Use Act (Proposition 215) enacted by the voters in 1996 authorizing the use of marijuana for medical purposes and the Medical Marijuana Program enacted by the Legislature (as amended) authorizing the operation of a "medical marijuana cooperative, collective, dispensary" in a "storefront . . . outlet." We agree that the County's complete ban on all "medical marijuana dispensaries," including collectives and cooperatives authorized under Health and Safety Code section 11362.775, conflicts with, and is thus preempted by, California's medical marijuana laws. Accordingly, we reverse the order granting a preliminary injunction.

BACKGROUND

On December 7, 2010, the Los Angeles County Board of Supervisors banned medical marijuana dispensaries in all zones in unincorporated areas of the County effective January 6, 2011. (*County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 866, fn. 4 (*Hill*).) Los Angeles County Code (LACC) section 22.56.196 B provides that "medical marijuana dispensaries which distribute, transmit, give, or otherwise provide marijuana to any person, are prohibited in all zones in the County." Subdivision A.1 plainly states the purpose of the ordinance is to "ban medical marijuana dispensaries in all zones in the County." The ordinance provides that the ban shall remain in effect unless and until the Court of Appeal or the California Supreme Court deems it to be "unlawful," in which event the provisions of the former ordinance, which required a conditional use permit and business license and imposed location restrictions and operating requirements (set forth in subdivisions D through H), will again take effect.

In March of 2011, County, which had previously sought to enjoin defendants' operation for failure to comply with the provisions of the prior version of LACC section 22.56.196, as we set forth in *Hill*, *supra*, 192 Cal.App.4th at page 865, filed a new nuisance action against defendants on the basis of the newly enacted ban on medical marijuana dispensaries. The first cause of action sought injunctive relief. It alleged, "The Defendants, and each of them, have violated Los Angeles County Code Section 22.56.196 B., Medical Marijuana Dispensaries, by operating or permitting the operation of [a medical marijuana dispensary] on the Subject Property when such use is banned in all zones in the unincorporated areas of Los Angeles County. In so acting, the Defendants, and each of them, have been using the Subject Property in a manner that is not permitted by the Los Angeles County Code." County also alleged, on information and belief, that defendants "have been operating [a medical marijuana dispensary] which is not in compliance with state law. Defendant[s] are not a collective or cooperative or any other business entity that falls within the protections afforded to [*sic*] by the [Medical Marijuana Program] and, therefore, cannot defend their operation on that basis notwithstanding their violations of the County Code." The second cause of action sought declaratory relief and alleged that defendants "established and are operating [a medical marijuana dispensary] on the Subject Property in violation of the Los Angeles County zoning code."

County moved for a preliminary injunction, which defendants opposed. After a hearing, the trial court granted the motion and enjoined defendants and anyone acting on their behalf "from operating or permitting to operate a medical marijuana dispensary and/or possessing, offering, selling, giving away or otherwise dispensing marijuana on or from the subject property at 20050 E. Arrow Highway, in the unincorporated community of Covina, California, and from any other location within the unincorporated area of the County of Los Angeles, pending trial of this action or further order of this court." The trial court's written ruling on the motion concluded that County's ban on all medical marijuana dispensaries was consistent with, and thus not preempted by, state law. The

court characterized the provisions of the Compassionate Use Act of 1996 (CUA) (Health & Saf. Code, § 11362.5; undesignated statutory references are to that code) and the Medical Marijuana Program (MMP) (§ 11362.7 et seq.) as "limited criminal defenses from prosecution for cultivation, possession, possession for sale, transportation and certain other criminal sanctions involving marijuana for qualified patients, persons with valid identification cards and designated primary caregivers of the foregoing," then noted that County's ban "is not a criminal ordinance," but "merely a zoning restriction and has no impact on the criminal defenses provided by the CUA and MMP." The court, citing our prior decision in *Hill, supra*, 192 Cal.App.4th at page 869, stated, "Moreover, the Court of Appeal has specified that, '[t]he statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose,' instead finding that the County has 'authority to regulate the particular manner and location in which a business may operate' under the Constitution." But the court made no factual findings regarding whether defendants had been operating a medical marijuana dispensary in violation of state law.

Defendants appealed the order granting a preliminary injunction and filed a petition for a writ of supersedeas staying the enforcement of the preliminary injunction, which we granted.

DISCUSSION

Defendants contend that County's "TOTAL ban on medical marijuana patient associations formed pursuant to Health and Safety Code section 11362.775 is preempted by general principles of the preemption doctrine [and] unlawful under Health and Safety Code section 11362.83 as a local ordinance not 'consistent' with the Medical Marijuana Program Act." (Italics omitted.) County contends its ban is a permissible land use regulation that is consistent with, and not preempted by, state medical marijuana laws. It further contends that the preliminary injunction was properly issued because defendants are operating in violation of state medical marijuana laws.

While the parties' preemption contentions require extensive discussion, we can readily dispose of County's second argument. The trial court made no factual findings that defendants were operating a medical marijuana dispensary in violation of state law and it based its preliminary injunction solely upon a theory that the County's blanket ban on all "medical marijuana dispensaries" was valid and not preempted by state law. Although County may ultimately be able to establish in the trial court that the manner in which defendants are operating their dispensary does not comply with state medical marijuana laws, County's repeated allegations to that effect in its appellate brief have no relevance to our determination of the validity of the preliminary injunction, which was premised entirely on a conclusion that County's ban was not preempted by state law.

1. Standard of review

An order granting a preliminary injunction is an appealable order. (Code Civ. Proc., § 904.1, subd. (a)(6).) "In deciding whether to issue a preliminary injunction, a court must weigh two 'interrelated' factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction." (*Butt v. State of California* (1992) 4 Cal.4th 668, 677–678.) Although appellate review is generally limited to whether the trial court's decision constituted an abuse of discretion (*ibid.*), "[t]o the extent that the trial court's assessment of likelihood of success on the merits depends on legal rather than factual questions, our review is de novo." (*O'Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1463.) Here, the question is solely a legal one.

2. California's medical marijuana laws

California medical marijuana law is embodied in two enactments, the CUA and the MMP. First, California voters approved Proposition 215 in 1996, codified as the Compassionate Use Act of 1996 at section 11362.5. Subdivision (d) of section 11362.5 provides: "Section 11357, relating to the possession of marijuana, and [s]ection 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical

purposes of the patient upon the written or oral recommendation or approval of a physician."

The electorate expressly stated its intent in enacting the CUA: first, to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of [specified illnesses] or any other illness for which marijuana provides relief"; second, to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction"; and third, to "encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (§ 11362.5, subd. (b)(1)(A)–(C).) The electorate thus "directed the state to create a statutory plan to provide for the safe and affordable distribution of medical marijuana to qualified patients." (*People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1014.)

After a time, the Legislature responded by enacting the MMP, which became effective January 1, 2004. The MMP added sections 11362.7 through 11362.83 (not including the later-enacted section 11362.768). The Legislature expressly stated that its intent in enacting the MMP was to "(1) Clarify the scope of the application of the [CUA] and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers. [¶] (2) Promote uniform and consistent application of the act among the counties within the state. [¶] (3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003, ch. 875, § 1, subd. (b)(1)–(3).)

In enacting the MMP, the Legislature expressly authorized collective, cooperative cultivation projects as a lawful means to obtain medical marijuana under California law and immunized the activities of such projects from both criminal sanctions and nuisance

abatement actions. Section 11362.775 provides: "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357 [possession of marijuana or "concentrated cannabis"], 11358 [cultivation of marijuana], 11359 [possession of marijuana for sale], 11360 [transporting, importing, selling, furnishing, or giving away marijuana], 11366 [maintaining a place for the sale, giving away, or use of marijuana], 11366.5 [making real property available for the manufacture, storage, or distribution of controlled substances], or 11570 [abatement of nuisance created by premises used for manufacture, storage, or distribution of controlled substance]." Section 11570 states, "Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance."

The MMP also created a voluntary identification card system for qualified medical marijuana patients. To further the Legislature's goals, including promoting "uniform and consistent application of the act among the counties within the state," the MMP mandated that every county health department or a county designee provide, receive, and process applications for such identification cards, then issue such cards. (§ 11362.71, subds. (b)–(c); § 11362.72.)

3. Preemption analysis

Whether state law preempts a local ordinance is "a pure question of law subject to de novo review." (*City of Watsonville v. State Dept. of Health Services* (2005) 133 Cal.App.4th 875, 882.)

"A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) "Local legislation in conflict with the general laws is void." (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290 (*Cohen*).)

"The first step in a preemption analysis is to determine whether the local regulation explicitly conflicts with any provision of state law." (*Cohen, supra,* 40 Cal.3d at p. 291.) "[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) But "'[i]f otherwise valid local legislation conflicts with state law, it is preempted by such law and is void.'" (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*).) "'A conflict exists if the local legislation "'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.'"'" (*Ibid.*) "Local legislation is 'duplicative' of general law when it is coextensive therewith." (*Ibid.*) "Similarly, local legislation is 'contradictory' to general law when it is inimical thereto." (*Id.* at p. 898.) "Finally, local legislation enters an area that is 'fully occupied' by general law when the Legislature has expressly manifested its intent to 'fully occupy' the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the' locality." (*Ibid.*)

a. MMP authorizes marijuana cooperatives, collectives, and dispensaries and shields them from nuisance abatement actions

By enacting the MMP, the Legislature expressly authorized collective, cooperative cultivation projects as a lawful means to obtain medical marijuana under California law. (§ 11362.775.) It did so to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects." (Stats. 2003, ch. 875, § 1, subd. (b)(3).) The Legislature also expressly chose to place such projects beyond the reach of nuisance abatement under section 11570, if predicated solely on the basis of the project's medical marijuana activities.

Although the term "dispensary" was not initially used in the MMP, the later-enacted section 11362.768 repeatedly refers to "medical marijuana cooperative, collective, *dispensary*, operator, establishment, or provider." (§ 11362.768, subds. (b)–(g), italics added.) Subdivision (e) of section 11362.768 expressly contemplates that a "medical marijuana cooperative, collective, *dispensary*, operator, establishment, or provider" may have a "*storefront* or *mobile retail outlet*": "This section shall apply only to a medical marijuana cooperative, collective, *dispensary*, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a *storefront* or *mobile retail outlet* which ordinarily requires a local business license." (Italics added.) Further, an examination of the activities immunized by section 11362.775 reveals that the Legislature necessarily contemplated a dispensary function by collective or cooperative cultivation projects by authorizing such projects to maintain a place for the sale, use, and distribution of marijuana (§ 11366); use property to grow, store, and distribute marijuana (§ 11366.5); and possess marijuana to distribute (§ 11359). While, as discussed later in this opinion, section 11362.768 limits the proximity of the described medical marijuana projects to schools and permits certain other local location limits, the repeated use of the term "dispensary" throughout the statute and the reference in subdivision (e) to a "storefront or mobile retail outlet" make it abundantly clear that the

medical marijuana cooperatives or collectives authorized by section 11362.775 are permitted by state law to perform a dispensary function.

County, the trial court, and some published decisions have relied upon an unduly narrow view of California's medical marijuana laws as providing only "limited criminal immunities under a narrow set of circumstances." (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1175 (*Kruse*).) Although section 11362.775 refers to "criminal sanctions," it also expressly affords immunity from nuisance abatement actions under section 11570, which provides for exclusively civil remedies to curb the use of property for illegal drug activity, such as injunctions, damages, closing a building, and selling fixtures and personal property therein. (§§ 11570, 11581; *Lew v. Superior Court* (1993) 20 Cal.App.4th 866, 872.) To give effect to the Legislature's inclusion of section 11570 among the penal provisions that section 11362.775 renders inoperative for collectively or cooperatively cultivating marijuana for medical purposes, we must conclude section 11362.775 also bars the use of the purely civil remedies afforded by section 11570. Any other construction renders section 11362.775's express reference to section 11570 mere surplusage, a result we must avoid. (*McCarther v. Pacific Telesis Group* (2010) 48 Cal.4th 104, 110 (*McCarther*).)

County also attempts to avoid preemption by relying upon Civil Code sections 3479 and 3480 as bases for its nuisance abatement action. Civil Code section 3479 provides, "Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance." Civil Code section 3480 states, "A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." But Health and Safety Code section 11570 is more

specifically aimed at enjoining or otherwise curbing the use of property for illegal drug activity than Civil Code section 3479, the general nuisance statute. Accordingly, the "special over the general" rule of statutory construction leads us to conclude that the Legislature in Health and Safety Code section 11362.775 intended not only to bar civil nuisance prosecutions under section 11570, but also to preclude nuisance claims under Civil Code section 3479. (See *People v. Jenkins* (1980) 28 Cal.3d 494, 505 ["The doctrine that a specific statute precludes any prosecution under a general statute is a rule designed to ascertain and carry out legislative intent"].) To permit a nuisance prosecution under Civil Code section 3479 when it is precluded under Health and Safety Code section 11570 would frustrate the Legislature's express intent to exempt from nuisance abatement the medical marijuana activities it identified in section 11362.775.

In any event, Civil Code section 3482 precludes such a contradictory result by specifying that "[n]othing which is done or maintained under the express authority of a statute can be deemed a nuisance." The statutory immunity provided by Civil Code section 3482 applies where the acts complained of are authorized by the express terms of a statute """or by the plainest and most necessary implication from the powers expressly conferred, so that it can be fairly stated that the Legislature contemplated the doing of the very act which occasions the injury."""" (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 291.) "Courts must scrutinize the statutes in question to ascertain whether a legislative intent exists to sanction a nuisance." (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1258.) Because medical marijuana cooperative or collective cultivation projects are authorized by the express terms of Health and Safety Code section 11362.775, Civil Code section 3482 applies, and their mere existence and operation pursuant to state law cannot be deemed a nuisance under Civil Code sections 3479 or 3480.

As discussed, the Legislature in the MMP contemplated the lawful operation of medical marijuana dispensaries in the circumstances specified in section 11362.775, namely, using property collectively or cooperatively to grow, store, and distribute medical

marijuana, and expressly immunized that activity from nuisance abatement. County's per se ban on medical marijuana dispensaries prohibits what the Legislature authorized in section 11362.775. The contradiction is direct, patent, obvious, and palpable: County's total, per se nuisance ban against medical marijuana dispensaries directly contradicts the Legislature's intent to shield collective or cooperative activity from nuisance abatement "solely on the basis" that it involves distribution of medical marijuana authorized by section 11362.775. Accordingly, County's ban is preempted.

b. Section 11362.768 does not authorize County's ban

County also relies on section 11362.768, which was added to the MMP in 2010 (effective January 1, 2011), as authority for local governments to ban medical marijuana dispensaries. Section 11362.768, subdivision (b) provides, "No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school." Subdivision (e) limits the application of section 11362.768 "to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license." County relies upon subdivision (f), which states, "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider," and subdivision (g), which states, "Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider."

We must give the words of the statute their usual and ordinary meaning; accord significance, if possible, to every word, phrase and sentence; and construe the words in context, bearing in mind the statutory purpose, and attempting to harmonize statutes or

statutory sections relating to the same subject matter to the extent possible. (*McCarther*, *supra*, 48 Cal.4th at p. 110.)

We disagree with County that in using the phrases "further restrict the location or establishment" and "regulate the location or establishment" in section 11362.768, subdivisions (f) and (g), the Legislature intended to authorize local governments to ban all medical marijuana dispensaries that are otherwise "authorized by law to possess, cultivate, or distribute medical marijuana" (§ 11362.768, subd. (e) [stating scope of section's application]); the Legislature did not use the words "ban" or "prohibit." Yet County cites dictionary definitions of "regulate" (to govern or direct according to rule or law); "regulation" (controlling by rule or restriction; a rule or order that has legal force); "restriction" (a limitation or qualification, including on the use of property); "establishment" (the act of establishing or state or condition of being established); "ban" (to prohibit); and "prohibit" (to forbid by law; to prevent or hinder) to attempt to support its interpretation. County then concludes that "the ordinary meaning of the terms, 'restriction,' 'regulate,' and 'regulation' are consistent with a ban or prohibition against the opening or starting up or continued operation of [a medical marijuana dispensary] storefront business." We disagree.

The ordinary meanings of "restrict" and "regulate" suggest a degree of control or restriction falling short of "banning," "prohibiting," "forbidding," or "preventing." Had the Legislature intended to include an outright ban or prohibition among the local regulatory powers authorized in section 11362.768, subdivisions (f) and (g), it would have said so. Attributing the usual and ordinary meanings to the words used in section 11362.768, subdivisions (f) and (g), construing the words in context, attempting to harmonize subdivisions (f) and (g) with section 11362.775 and with the purpose of California's medical marijuana statutory program, and bearing in mind the intent of the electorate and the Legislature in enacting the CUA and the MMP, we conclude that the phrases "further restrict the location or establishment" and "regulate the location or establishment" in section 11362.768, subdivisions (f) and (g) do not authorize a per se

ban at the local level. The Legislature decided in section 11362.775 to insulate medical marijuana collectives and cooperatives from nuisance prosecution "solely on the basis" that they engage in a dispensary function. To interpret the phrases "further restrict the location or establishment" and "regulate the location or establishment" to mean that local governments may impose a blanket nuisance prohibition against dispensaries would frustrate both the Legislature's intent to "[e]nhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects" and "[p]romote uniform and consistent application of the [CUA] among the counties within the state" and the electorate's intent to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes" and "encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."

c. Section 11362.83 does not authorize County's ban

County also argues that section 11362.83, as amended in 2011, provides authority for local governments to ban medical marijuana dispensaries. Section 11362.83 provides: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing any of the following: [¶] (a) Adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective. [¶] (b) The civil and criminal enforcement of local ordinances described in subdivision (a). [¶] (c) Enacting other laws consistent with this article." (Before the 2011 amendment, the entire section stated, "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing other laws consistent with this article.") County argues that subdivision (b) renders "the definition of the word 'consistent' in subsection (c) of § 11362.83, obsolete . . . ."

For the reasons discussed in the prior section, we conclude the phrase "regulate the location, operation, or establishment" does not mean ban, prohibit, forbid, or prevent all medical marijuana collectives and cooperatives from operating within the entire

jurisdiction "solely on the basis" that they engage in medical marijuana activities authorized by section 11362.775.

County's argument that "consistent" in subdivision (c) of section 11362.83 is "obsolete" ignores many of the rules of statutory construction, both those previously set forth in this opinion and the following: "It is assumed that the Legislature has in mind existing laws when it passes a statute. [Citations.] 'The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended.'" (*Estate of McDill* (1975) 14 Cal.3d 831, 837–838.) Thus, we necessarily reject County's attempt to eliminate "consistent" from subdivision (c), as that term was included in the previous version of section 11362.83.

For reasons previously discussed, County's ban on all medical marijuana collectives or cooperatives cannot be deemed "consistent with this article," that is, California's medical marijuana laws as enacted in the CUA and the MMP.

d. Section 11362.5, subdivision (b)(2) does not authorize County's ban

County also argues that section 11362.5, subdivision (b)(2) provides authority for local governments to completely ban medical marijuana dispensaries. That subdivision states, "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." County's argument fails. In light of the provisions and intent of the MMP, merely operating a medical marijuana collective or cooperative authorized by section 11362.775 cannot be deemed to constitute "engaging in conduct that endangers others" or "condon[ing] the diversion of marijuana for nonmedical purposes." The CUA and the MMP expressly pertain to marijuana used for *medical* purposes. Section 11362.775 expressly pertains to and authorizes the collective or cooperative cultivation of "marijuana for *medical* purposes." A ban on *medical* marijuana dispensaries cannot possibly be deemed to be legislation prohibiting "the

diversion of marijuana for nonmedical purposes." Thus, section 11362.5, subdivision (b)(2) is inapplicable to the issues presented herein.

e. Viewing County's ban as a zoning law does not save it from preemption

County also argues that its ban is merely a zoning ordinance: a zoning ordinance is distinguishable from a drug abatement law and thus does not fall within the scope of section 11362.775; the MMP does not expressly prohibit local governments from enacting zoning regulations banning medical marijuana dispensaries or from bringing a nuisance action enforcing such ordinances; and the MMP does not "mandat[e] cities and counties to allow and zone for [medical marijuana dispensaries]."

Preemption does not arise only from an express legislative statement; a contradiction is sufficient. (*Sherwin-Williams, supra,* 4 Cal.4th at p. 897.) Thus, the Legislature's failure to include in the MMP express provisions (1) prohibiting local governments from enacting "zoning" provisions banning all medical marijuana dispensaries or from bringing a nuisance action enforcing such provisions or (2) mandating that local governments zone for medical marijuana dispensaries does not negate preemption. County provides no authority for the proposition that a local government may completely bar what state law authorizes and shield that conflict with state law simply by labeling it a "zoning" ordinance.

f. Earlier published decisions are distinguishable

Although, as far as we can determine, the California Supreme Court has granted review of every appellate decision dealing with a complete ban on medical marijuana dispensaries (see, e.g., *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.* (2011) 200 Cal.App.4th 885, review granted Jan. 18, 2012, S198638; *City of Lake Forest v. Evergreen Holistic Collective* (2012) 203 Cal.App.4th 1413, review granted May 16, 2012, S201454), several prior published appellate cases addressing limitations short of a complete ban remain effect at this time. We briefly distinguish these cases.

In *Kruse*, *supra*, 177 Cal.App.4th 1153, an individual applied for a business license to operate a medical marijuana collective. The city denied his application on the ground that his proposed business did not fall within any of the city's permitted uses, but advised him he could apply for a code amendment and could appeal the denial of his license application. Kruse appealed the denial of the license, but did not seek a code amendment, and proceeded to open his medical marijuana collective without the required business license. (*Id.* at p. 1159.) Subsequently, the city enacted a temporary moratorium on "approval or issuance of any permit, variance, license, or other entitlement for the establishment of a medical marijuana dispensary in the City. " (*Id.* at p. 1160.) Division Two of this district held, inter alia, that Kruse's operation of a medical marijuana dispensary without obtaining the required business license constituted a nuisance per se under the municipal code and could properly be enjoined. (*Id.* at pp. 1164–1166.)

Kruse went on to hold that "[t]he MMP does not expressly preempt the City's actions at issue here. The operative provisions of the MMP, like those in the CUA, provide limited criminal immunities under a narrow set of circumstances. The MMP provides criminal immunities against cultivation and possession for sale charges to specific groups of people and only for specific actions. (§ 11362.765; [*People v.*] *Mentch* [(2008) 45 Cal.4th 274,] 290–291.) It accords additional immunities to qualified patients, holders of valid identification cards, and primary caregivers who 'collectively or cooperatively cultivate marijuana for medical purposes.' (§ 11362.775.) [¶] Medical marijuana dispensaries are not mentioned in the text or history of the MMP. The MMP does not address the licensing or location of medical marijuana dispensaries, nor does it prohibit local governments from regulating such dispensaries. Rather, like the CUA, the MMP expressly allows local regulation. Section 11362.83 of the MMP states: 'Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.' Nothing in the text or history of the MMP precludes the City's adoption of a temporary moratorium on issuing permits and licenses to medical marijuana dispensaries, or the City's enforcement of licensing and zoning

requirements applicable to such dispensaries." (*Kruse, supra,* 177 Cal.App.4th at p. 1175.)

Thus, *Kruse* involved the violation of licensing and zoning requirements applicable to all local businesses, not just medical marijuana collectives or cooperatives, and a temporary moratorium on the issuance of permits, variances, and licenses for operation of medical marijuana dispensaries. It did not deal with a permanent and complete ban on such dispensaries. And later the MMP was amended to expressly authorize a medical marijuana cooperative, collective, [or] dispensary," including a "storefront . . . outlet." (§11362.768.)

City of Corona v. Naulls (2008) 166 Cal.App.4th 418 also did not address the issue of preemption or involve a ban on medical marijuana operations. Naulls did not disclose on his business license application that he intended to open a medical marijuana collective. (*Id.* at p. 421.) When the city discovered his true purpose, it informed him that medical marijuana dispensaries were not an enumerated permitted use under the city's zoning laws, and a variance would be required. But in the interim, the city had passed a moratorium on medical marijuana dispensaries. The trial court issued a temporary injunction on the ground that Naulls's business was a nuisance per se because it was nonpermitted and nonconforming. (*Id.* at pp. 421–422.) The appellate court concluded that the preliminary injunction was supported by substantial evidence and not an abuse of discretion.

Our own prior opinion involving the parties in the present case, *Hill, supra,* 192 Cal.App.4th 861, addressed defendants' failure to obtain the license, conditional use permit, and zoning variance required by the prior version of LACC section 22.56.196, which County later supplanted by the complete ban addressed herein. (192 Cal.App.4th at p. 865.) We held that the operating requirements placed upon medical marijuana dispensaries were consistent with the MMP (*id.* at p. 868) and noted that section 11362.775 "does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. The County's constitutional

authority to regulate the particular manner and location in which a business may operate (Cal. Const., art. XI, § 7) is unaffected by section 11362.775." (192 Cal.App.4th at p. 869.)

The present case is thus distinguishable from *Kruse*, *Naulls*, and *Hill*. A complete ban, such as County's ordinance at issue herein, stands in an entirely different relationship to California's medical marijuana law than a temporary moratorium, general regulations applicable to all business operations, and reasonable restrictions on the location of medical marijuana collectives and cooperatives. We conclude state law preempts County's ban.

DISPOSITION

The order granting a preliminary injunction is reversed, our stay of the injunction is dissolved when the remittitur issues from this court, and the matter is remanded for further proceedings consistent with this opinion. Defendants are entitled to their costs on appeal.

CERTIFIED FOR PUBLICATION.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.