



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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Contact: Jonathan Heller, Communications Director: jheller@sandiego.gov, (619) 500-4452 (m)

COURT HOLDS LANDLORD MAY EVICT MARIJUANA DISPENSARY AS AN ILLEGAL USE

San Diego, CA: A judge has ruled that a building owner who leased space to a marijuana dispensary may evict the dispensary based on the fact that it is illegal under the City of San Diego's zoning laws.

Judge Ronald Prager said in a decision handed down last week that Kimber Investment Group, LLC, which owns a building at 11665 Avena Place, #106 in Rancho Bernardo, had a right to evict the Medibloom dispensary.

Last month, Kimber reached a stipulated agreement with the City Attorney's office in which it was permanently enjoined from renting space to Medibloom or any other marijuana dispensary. This was done without litigation.

Kimber Investment then took Medibloom to court under an "unlawful retainer" action to break the lease and evict the dispensary. On Nov. 1, 2011, Prager granted the unlawful retainer, saying that the lease contained a provision that allowed eviction when an illegal use occurred on the property. Based on the fact that City zoning laws do not allow marijuana dispensaries, Medibloom qualified as an illegal use in this case, Prager said.

"Cities ... are the arbiter of zoning laws," Prager wrote in his decision. "There's no place in the City of San Diego, including the shopping center in Rancho Bernardo here, where a medical marijuana dispensary is a permissible use. It is therefore illegal."

Prager also noted that neighbors had complained of increased crime since the dispensary moved in.

"The courts have demonstrated that stipulated agreements and unlawful retainers are powerful tools in removing illegal marijuana dispensaries," said City Attorney Jan Goldsmith.

"I would further add that building owners have been put on notice by the U.S. Attorney that they must remove these illegal dispensaries or risk loss of their buildings under asset forfeiture," Goldsmith said. "This court decision demonstrates they have no excuse to not comply with the U.S. Attorney's demand."

Goldsmith stressed that it is his office's job to enforce the law.

"Those who dispute enforcement of the law have every right to focus on changing the law," Goldsmith said.

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1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220