

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
CENTRAL**

**MINUTE ORDER**

DATE: 12/02/2016

TIME: 10:30:00 AM

DEPT: C-61

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Herlinda Chavarin

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: J. Pedroza

CASE NO: **37-2016-00005526-CU-MC-CTL** CASE INIT.DATE: 02/18/2016

CASE TITLE: **City of San Diego vs Cotton [IMAGED]**

CASE CATEGORY: Civil - Unlimited      CASE TYPE: Misc Complaints - Other

---

**EVENT TYPE:** Summary Judgment / Summary Adjudication (Civil)

---

**APPEARANCES**

Onuoma O Omordia, counsel, present for Plaintiff(s).

Nathan Shaman, specially appearing for counsel Jeffrey A Lake, present for Defendant(s).

---

The Court hears oral argument and CONFIRMS, AS MODIFIED, the tentative ruling as follows:

Plaintiff City of San Diego brings this motion for summary judgment, seeking a permanent injunction against Defendant Darryl Cotton from operating or maintaining a marijuana dispensary, collective or cooperative on his property located at 6166 Federal Blvd., San Diego.

"The party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.

The Court declines to rule on the objections contained within the opposing Separate Statement of Undisputed Material Facts. Written objections should be presented in a separate document, and not contained in the Separate Statement of Undisputed Material Facts. [See CRC Rules 3.1350, 3.1352, and 3.1354]

The complaint is based on a cause of action for violation of the San Diego Municipal Code. SDMC section 121.0302(a) states, "It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code 2, without a required permit, contrary to permit conditions, or without a required variance." Plaintiff alleges that defendant violated this section of the Municipal Code.

The evidence demonstrates:

(1) Prior to January 14, 2016, the property was located in the Southeastern San Diego Planned District Industrial I-1 zone in the City of San Diego. The operation or maintenance of a Medical Marijuana Consumer Cooperative was a permitted use if a Conditional Use Permit was obtained. No CUP was obtained to operate such a business.

(2) As of January 14, 2016, the property was rezoned and is currently located in a Commercial Office (CO-2-1) zone. The operation or maintenance of a Medical Marijuana Consumer Cooperative is not permitted, even if a Conditional Use Permit was obtained.

(3) SDPD Detective James Hunter purchased marijuana in an undercover capacity in February 2016. Inside the dispensary, he smelled the odor of marijuana. Inside the product room, he saw a large display case containing marijuana, THC infused edibles, and concentrated cannabis. He purchased 2.3 grams of marijuana for \$25. Because he was a first time patient, the employee gave him an additional 3.3 grams of marijuana and a marijuana cigarette for free.

(4) On April 6, 2016, SDPD Officer Marisela Cooper and other officers executed a search warrant at the property for drug trafficking. The odor of marijuana was present. The usual marijuana products were found in display cases. The police confiscated 300 marijuana plants. Defendant Darryl Cotton was present at the time and he admitted that the plants belonged to him.

(5) On June 15, 2016, zoning investigators returned to the property, to conduct an inspection to determine whether the marijuana dispensary was operating. There were no marijuana products, display cases, or drug paraphernalia inside the building. Defendant Cotton was present during the inspection. He stated that the walls that separated his business and the marijuana dispensary had been removed.

As the property owner, Darryl Cotton is a Responsible Person pursuant to SDMC section 11.0210 for causing and maintaining violations of the San Diego Municipal Code. He is also strictly liable for all code violations existing at the property per SDMC section 121.0311. Although defendant contends that the owner of the property should not be held liable for the actions of the tenant, there is no evidence that the property was leased or that there was a tenant. Defendant was present on April 6, 2016 and on June 15, 2016, and admitted that his business was on the premises (i.e., the walls that separated his business and the marijuana dispensary had been removed).

Based on the evidence submitted, the relevant facts are undisputed and there is no triable issue of material fact. Defendant violated the San Diego Municipal Code.

The only remaining matter is civil penalties, which is a remedy in the context of zoning violation. See, *People v. Superior Court of Los Angeles County* (2015) 234 Cal.App.4th 1360, 378-1379. City seeks civil penalties pursuant to SDMC §12.0202 (Civil Violations – Injunctions and Civil Penalties), which provides that, "[i]n addition to any other remedy provided by this Code, any provision of this Code may be enforced by injunction issued by the Superior Court upon a suit brought by The City of San Diego[, and a]s part of a civil action to enforce provisions of this Code, a court may assess a maximum civil penalty of [\$2,500] per violation of the Municipal Code for each day during which any person commits, continues, allows or maintains a violation of any provision of this Code."

There is evidence that the dispensary was in operation one day in February 2016 and on April 6, 2016. There is no evidence that the dispensary operated continuously between those dates, or after execution of the search warrant on April 6, 2016.

**THEREFORE**, the Court grants the motion for summary judgment and hereby enjoins Defendant Darryl Cotton from operating a marijuana dispensary, collective or cooperative on his property located at **6176** Federal Blvd., San Diego, without a permit. The Court also grants civil penalties in the amount of \$5,000.00 (2 days x \$2,500). The City is directed present a form of judgment consistent with the foregoing.

**IT IS SO ORDERED:**



---

Judge John S. Meyer