

Court: Cities don't have to allow pot shops

By Howard Mintz, San Jose Mercury News

SAN FRANCISCO – The California Supreme Court on Monday upheld the right of local governments to ban medical marijuana dispensaries, leaving intact a growing movement by political officials to outlaw the pot businesses despite a 1996 state law that permits the use of weed for medical purposes.

In a 7-0 decision, the state's high court concluded that cities and counties have a right to restrict the dispensaries within their boundaries, rejecting the arguments of medical marijuana advocates who maintain local governments cannot bar activity that is legal in California. The ruling could now be used to further bolster local efforts to place stricter regulatory rules on medical pot dispensaries that are allowed to operate.

“Nothing in the (1996 law) 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,” Justice Marvin Baxter wrote for the court.

At least 180 cities across the state and Bay Area have enacted bans in recent years, from Hollister to Petaluma to Moraga. But the region's largest cities, San Jose, San Francisco and Oakland, have permitted the dispensaries, taxing the revenues while communities in-between increasingly become dispensary-free zones.

South Lake Tahoe limits dispensaries to three at any one time, but any new ones beyond the one pot shop that exists must have City Council approval.

Many local governments have opted to ban the dispensaries

due to worries about problems surrounding them, such as lax control over the distribution of a drug that remains illegal under federal law. The Supreme Court case is the latest legal struggle over the issue, which has repeatedly tested the limits of the voter-approved law that allows the use of marijuana to treat illnesses such as cancer, glaucoma and AIDS.

The Supreme Court decision came in a challenge to Riverside's dispensary ban. Riverside, backed by groups such as the League of California Cities, argued that local governments have strong rights to regulate land uses within their boundaries, particularly an unusual land use such as a medical pot dispensary.

Medical marijuana advocates, however, say the bans undermine the intent of the state law, which they argue was meant to provide uniform access to medical cannabis across the state for patients who need it most. With the bans in place, many patients are forced to drive long distances to obtain the drug – for example, Peninsula patients now for the most part must travel to either San Jose or San Francisco to get to a dispensary.

The Supreme Court's decision was not unexpected. Legal experts have predicted the justices would be reluctant to strip cities of the right to enact the bans.