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S272850

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

EMILY WHEELER,

Petitioner,

vs.

APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party In Interest.

No. S-____________

(2nd District No. B310024)

(LASC Nos. 9CJ00315, BR054851)

PETITION FOR REVIEW

After Issuing a Written Opinion Denying the Petition for Writ of Mandate

Second Appellate District, Division Three

ERIKA ANZOATEGUI

ALTERNATE PUBLIC DEFENDER OF LOS ANGELES COUNTY

Brock Hammond, State Bar No. 215986

Alvin Yu, State Bar No. 313758

210 West Temple Street, 18th Floor

Los Angeles, California 90012

Telephone No. (213) 974-4901

Fax No. (213) 626-3171

Attorneys for Petitioner

Emily Wheeler

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

EMILY WHEELER, Petitioner, vs. APPELLATE DIVISION OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES Respondent, PEOPLE OF THE STATE OF CALIFORNIA, Real Party In Interest.	)	No. S-____________ (2nd District No. B310024) (LASC Nos. 9CJ00315, BR054851)

PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Petitioner, by her attorney, Erika Anzoategui, Alternate Public Defender of Los Angeles County, respectfully petitions this Court for review of an order of the Court of Appeal of the State of California, Second Appellate District, Division Three, which denied petitioner's Petition for Writ of Mandate following the issuance of a written and published opinion.[1] Review

[1] The Court of Appeal's published opinion is attached as Exhibit A.

is necessary to secure uniformity of decision, pursuant to Rule of Court 8.500(b)(1).

ISSUES ON REVIEW

1. When a trial court exercises its discretion in ordering the dismissal of a strict liability offense pursuant to Penal Code section 1385, may a trial court consider a defendant's lack of knowledge of the offense as one of the reasons supporting its order of dismissal?

2. When a particular state law has a *mens rea* component and local ordinances prohibiting the same conduct are strict liability offenses, and the local ordinance contains a provision directing courts to interpret the local ordinance in a way that is compatible with state law, should state law preempt the local ordinances?

NECESSITY FOR REVIEW

These issues arose in a case involving petitioner, Mrs. Emily Wheeler, an 86 year old woman with no prior criminal record who required a wheelchair to attend the trial court proceedings. The trial court exercised its discretion under Penal Code section 1385 to dismiss the Los Angeles Municipal Code charges alleged against petitioner. The charges were related to petitioner being an owner of a commercial property that, without petitioner's knowledge, had been leased to a business that did not have the appropriate license to sell cannabis. When the trial court ordered petitioner's case dismissed, the trial court referenced petitioner's age, lack of criminal history, her exemplary life, and the fact that there was no showing that she knew anything about marijuana activity occurring on the property.

Respondent, the Appellate Division of the Los Angeles County Superior Court, reversed the trial court. Respondent held that while the trial court correctly considered petitioner's age, lack of criminal history, and exemplary life, it erred in considering the fact that there was no showing that petitioner was aware of the unlicensed cannabis activity on the property. Respondent held that when it comes to strict liability offenses, the trial court can consider a defendant's knowledge as an aggravating factor but not a mitigating factor when weighing a Penal Code section 1385 motion.

The Court of Appeal upheld respondent's analysis and affirmed that the trial court improperly considered petitioner's lack of knowledge when weighing whether to dismiss pursuant to Penal Code section 1385. Doing so ""'was an improper dismissal based on the [trial] court's disagreement with the law, or disapproval of the impact the provisions would have on [petitioner].'"[2] This holding is contrary to years of case law that addresses how trial court's should weigh the competing interests involved in Penal Code section 1385 dismissals.

It is also worth noting that in an unpublished opinion, the Court of Appeal, Second Appellate District, Division Three, also recently confronted the same issue and held that the same trial court did properly consider the defendant's lack of knowledge when weighing a Penal Code section 1385 motion involving strict liability offenses.[3] In that unpublished opinion, the

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[2] Exhibit A, *Wheeler v. Appellate Division*, Case No. B310024, page 26.
[3] *People v. Tam*, Case No. B310738, Filed July 21, 2021 (unpublished opin.). Petitioner does not refer to this unpublished case as authority for any holdings contained therein. Petitioner brings this case to the Court's attention for the purpose of showing the necessity for this Court to grant review for the purpose securing uniformity of decision on the issue of whether a trial court can properly consider a defendant's lack of knowledge when weighing a Penal Code section 1385 dismissal. The same division from the same Court of Appeal coming to opposite conclusions within a six month

same division held that "…a defendant's knowledge may be an appropriate factor for a court to consider as part of a holistic examination under section 1385, even when the defendant is charged with a strict liability crime. That factor may be relevant to an examination of the "'particulars of [the defendant's] background, character, and prospects,'" all of which are appropriate for a court to consider under section 1385."[4]

Other than the published opinion at issue in this case, there does not appear to be any case law on the question of whether a trial court may consider a defendant's lack of knowledge when a strict liability offense is at issue and the trial court is considering a dismissal pursuant to section 1385. In its reasons supporting the holding, the Court of Appeal did not cite to any case law supporting its conclusion, either.[5] Thus, this Court should grant review to settle this important question of law that can affect every criminal case involving strict liability offenses, pursuant to Calif. Rules of Court, Rule 8.500(b)(1).

Petitioner's case also raises the issue of state law preemption. The Los Angeles Municipal Code sections that real party in interest charged petitioner with should be preempted by a state law regulating the conduct at issue in this case. The Los Angeles Municipal Code ordinances duplicate Health and Safety Code section 11366.5 by criminalizing the use of a

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period in determining the propriety of a section 1385 dismissal order from the same trial judge shows that reviewing courts can benefit from guidance so that decisions are uniform and based on a consistent understanding of the law.

[4] *People v. Tam*, Case No. B310738, Filed July 21, 2021, page 9 (unpublished opin.), citing *People v. S.M.* (2017) 9 Cal.App.5th 210, 220.

[5] See, Exhibit A, *Wheeler v. Appellate Division*, Case No. B310024, page 25-26.

property for unlicensed marijuana sales. The ordinances conflict with Health and Safety Code section 11366.5 in that the ordinances are strict liability offenses while the state provision requires a *mens rea*. Adding to the complexity of the preemption analysis is a related Los Angeles Municipal Code ordinance that expressly defers to state law.[6] This stated deference to state law was raised by petitioner but unaddressed by the Court of Appeal's opinion.

In its opinion, the Court of Appeal drew a distinction between "preemption analysis of local land use and licensing ordinances, and preemption analysis of local ordinances that enter the area of criminal law…"[7] The Court of Appeal held that the ordinances at issue are more in the nature of land use and licensing ordinances, and since the state has disavowed an intention to occupy the field of nuisance abatement, the ordinances are not preempted.[8]

In petitioner's view, this holding does not properly weigh the impact of a criminal prosecution—as opposed to a civil proceeding—on individuals, as demonstrated in cases such as *In re Portnoy* (1942) 21 Cal. 2d 237. Further, the published opinion did not consider the Los Angeles Municipal Code ordinance declaring that the ordinances affecting licensure of cannabis businesses shall not conflict with state law.[9] Finally, the court's opinion ignored the holding of this Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729. As summarized by Justice Liu in his concurring opinion, the rule is that "state

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[6] LAMC 105.07 ("No conflict with state law.") and LAMC 104.17 ("Severability.").
[7] Exhibit A, *Wheeler v. Appellate Division*, Case No. B310024, page 18.
[8] Exhibit A, *Wheeler v. Appellate Division*, Case No. B310024, page 24.
[9] LAMC 105.07.

law may preempt local law when local law prohibits not only what a state law 'demands' but also what the state stature permits or authorizes."[10]

The policy behind preemption is based on the necessity of preventing the uncertainty and confusion of dual regulations.[11] The presence of local and state crimes prohibiting real property from being used for illegal cannabis sales, the local offense requiring no knowledge and the state offense requiring proof of knowledge of the illegal activity, raises confusion and uncertainty. The Court of Appeal's opinion appears to conflict with this Court's ruling in *In re Portnoy* (1942) 21 Cal. 2d 237, 239-241 (local ordinance preempted when it has no *mens rea* requirement and partially duplicates a state criminal statute which requires *mens rea*). This Court has settled the law in the area of preemption of municipal regulation when the issues are whether state "immunity statutes" such as the Compassionate Use Act ("CUA") and the Medical Marijuana Program ("MMP") preempt local regulation.[12] However, the issue of whether state criminal law *mens rea* requirements preempt conflicting local regulation of illegal and unlicensed cannabis sales has not been settled.

STATEMENT OF FACTS AND THE CASE

On June 26, 2018, Mrs. Emily Wheeler, the petitioner, and her son, Aaron Wheeler, were charged with unlawfully establishing, operating, and participating in an unlicensed cannabis business in violation of LAMC 104.15(a)(1); unlawfully leasing, renting to, or allowing an unlicensed

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[10] *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 763 (concurring opinion), see also 758 and 760-761.

[11] *Abott v. City of Los Angeles* (1960) 53 Cal. 2d 674, 682.

[12] See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729.

Commercial Cannabis establishment on land in violation of LAMC 104.15(b)(4); and maintaining or using a structure for purposes other than permitted in the zone, in violation of LAMC 12.21(a)(1)(A).[13] Omar Brown was arrested after he was found operating the cannabis shop on their property and he was also charged in the complaint.[14]

On October 7, 2019, petitioner's trial counsel filed a motion to dismiss on the grounds that the Los Angeles ordinances were unconstitutionally vague, and counsel also invited the trial court to exercise its discretion to dismiss the case under Penal Code section 1385.[15] As part of the motion, petitioner's trial counsel attached a declaration stating that petitioner was 85 years old, had never been arrested, was an upstanding member of the community, did not have any direct or indirect connection to or awareness of the presence of the cannabis on the property, and that she merely owned the property.[16] Real party in interest filed an opposition to this motion which stated facts regarding a controlled purchase from Mr. Brown, and Mr. Brown's subsequent arrest at a later date on the property.[17] However, real party did not allege any facts that showed that petitioner was ever notified or ever had any knowledge of any cannabis sales activities, licensed or not, occurring on the property.

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[13] Exhibit A of the Petition for Writ of Mandate, Clerk's Transcript ("CT"), pgs. 1-4.

[14] Exhibit A of the Petition for Writ of Mandate, Clerk's Transcript ("CT"), pgs. 1-4.

[15] Exhibit A of the Petition for Writ of Mandate, Clerk's Transcript ("CT"), pgs. 10-21.

[16] Exhibit A of the Petition for Writ of Mandate, Clerk's Transcript ("CT"), pg. 20.

[17] Exhibit A of the Petition for Writ of Mandate, Clerk's Transcript ("CT"), pgs. 24-25.

On November 19, 2020, petitioner appeared in the courtroom in her wheelchair and a hearing was held on the motion.[18] The trial court denied the motion to dismiss based on the asserted unconstitutionality of the ordinances.[19] The trial court then ordered the case against petitioner dismissed pursuant to section 1385 based on the following: petitioner was a woman born in 1934 with no criminal history, petitioner had led an exemplary life, and there was no showing that petitioner had any awareness of the alleged illegal activity on her property.[20] Notably, the trial court did not agree to dismiss co-defendant Aaron Wheeler's case pursuant to section 1385.[21]

Real party in interest filed an appeal with respondent, the Appellate Division of the Los Angeles Superior Court. On November 20, 2020, respondent filed its opinion reversing the trial court's judgment.[22] Respondent held that the trial court's reliance on petitioner's lack of knowledge as a mitigating circumstance was improper.[23] Respondent also held that that the ordinances at issue were not preempted by state law.[24]

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[18] Exhibit B of the Petition for Writ of Mandate, Reporter's Transcript ("RT"), pg. 301.
[19] Exhibit B of the Petition for Writ of Mandate, Reporter's Transcript ("RT"), pg. 306.
[20] Exhibit B of the Petition for Writ of Mandate, Reporter's Transcript ("RT"), pg. 306-309.
[21] Exhibit B of the Petition for Writ of Mandate, Reporter's Transcript ("RT"), pg. 309.
[22] Exhibit I of the Petition for Writ of Mandate, Slip Opinion.
[23] Exhibit I of the Petition for Writ of Mandate, Slip Opinion, pg. 5.
[24] Exhibit I of the Petition for Writ of Mandate, Slip Opinion, pg. 10.

On December 3, 2020, petitioner filed a Petition for Rehearing and Application for Certification for Transfer with respondent.[25] Respondent denied this petition on December 9, 2020.[26]

On December 23, 2020, petitioner filed a Petition for Transfer with the Court of Appeal.[27] On January 14, 2021, the Court of Appeal denied petitioner's Petition for Transfer.[28]

On January 25, 2021, petitioner filed a Petition for Writ of Mandate with the Court of Appeal.[29] This petition argued that respondent exceeded its jurisdiction and erred in holding that the LAMC ordinances at issue were not preempted by Health and Safety Code section 11366.5 and Penal Code section 373a. The petition also argued that respondent exceeded its jurisdiction and erred by holding that the trial court could not consider petitioner's lack of knowledge in weighing whether to dismiss the case pursuant to section 1385.

On February 11, 2021, the Court of Appeal summarily denied the Petition for Writ of Mandate.[30]

On February 16, 2021, petitioner filed a Petition for Review with this Court.[31] On March 30, 2021, this Court granted the Petition for Review.[32]

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[25] Exhibit J of the Petition for Writ of Mandate, Petition for Rehearing and Application for Certification for Transfer.
[26] See Exhibit C, LASC Appellate Division Case Summary,
[27] Exhibit K of the Petition for Writ of Mandate, Petition for Transfer, Case no. B309498.
[28] Exhibit L of the Petition for Writ of Mandate, Order, Case no. B309498.
[29] Second District Court of Appeal, Case no. B310024.
[30] Second District Court of Appeal, Case no. B310024.
[31] Supreme Court, Case No. S267083.
[32] Supreme Court, Case No. S267083.

After further briefing and oral argument, the Court of Appeal issued its written opinion on December 15, 2021, attached as Exhibit A to this Petition for Review.[33]

[33] Exhibit A, *Wheeler v. Appellate Division*, Second District Court of Appeal, Filed on December 15, 2021, Case no. B310024.

ARGUMENT

I. This Court should grant review to decide whether when a trial court exercises its discretion to dismiss a strict liability charge in the interests of justice pursuant to section 1385, a trial court may consider a defendant's lack of knowledge of the crime as a factor supporting dismissal.

A trial court's dismissal of the charges in the interests of justice pursuant to Penal Code section 1385 is reviewed under the abuse of discretion standard.[34] A close review of the record and real party in interest's arguments in their return shows that the trial court did not abuse its discretion in ordering the municipal code violations alleged against petitioner dismissed.

A trial court has wide discretion to dismiss alleged offenses under section 1385, and in applying its discretion the court should consider the nature and circumstances of the defendant's current crimes, whether the defendant has any prior criminal history, and the particulars of the defendant's background, character, and prospects.[35] A defendant's knowledge and awareness of the underlying crime is also an appropriate part of the court's exercise of discretion under 1385, even when the alleged violation is a strict liability offense. That factor can be relevant to the court's examination of the " 'particulars of [the defendant's] background, character, and prospects,' " all of which are appropriate for a court to consider under section 1385.[36] "So long as the trial court balances the interests of justice in a

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[34] *People v. Smith* (2016) 245 Cal.App.4th 869, 873.
[35] *People v. Williams* (1998) 17 Cal. 4th 148, 162-163.
[36] *People v. S.M.* (2017) 9 Cal.App.5th 210, 220, citing *People v. Williams* (1998) 17 Cal. 4th 148, 161.

rational way, appellate courts have, and will, give their imprimatur to such dismissals, even when the exercise of that judgment deprives the prosecutor of asserting enhanced penalties."[37]

In addition to the wide discretion given to trial courts in exercising their authority to dismiss pursuant to section 1385, the trial court based its ruling on uncontested evidence that was presented to it in the form of an affidavit from counsel: petitioner is 85 years old with no prior criminal history, petitioner had lived an exemplary life, petitioner was unaware that marijuana was present on her property, petitioner was not directly or indirectly connected to the marijuana on her property, and petitioner merely owned the property.[38]

The Court of Appeal held that the trial court's consideration of petitioner's lack of knowledge of the strict liability offenses she was charged with was an improper fact to base the dismissal on:

> "In this case, the 'interests of society' as expressed in the ordinances are to aid the City in enforcing its commercial cannabis licensing scheme, and to minimize incentives to undercut this scheme by operating unlicensed cannabis businesses, by imposing criminal liability on landlords who rent to cannabis businesses without ascertaining that such businesses are licensed. Given these societal interests, the appellate division did not err in concluding that '[f]inding that a person's lack of knowledge called for the dismissal of offenses,

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[37] *People v. S.M.* (2017) 9 Cal.App.5th 210, 220, citation omitted.
[38] *See*, Exhibit B of the Petition for Writ of Mandate, page 20 ["…Ms. Wheeler has no prior criminal history. In fact, Ms. Wheeler is 85 years old and has never been arrested. Ms. Wheeler is an upstanding member of the community. Ms. Wheeler did not have any direct or even indirect connection to the marijuana or had any idea of its presence on their property. She merely owned the property."] and page 21 [declaration of counsel Alvin Yu].

when the offenses required no knowledge for conviction, in effect, was an improper dismissal based on the court's disagreement with the law, or disapproval of the impact the provisions would have on defendant'."[39]

The Court of Appeal cited no authority for the holding that consideration of a defendant's lack of knowledge when weighing a dismissal under section 1385 was improper. A long history of cases examining the issue of whether a trial court abused its discretion in ordering a charge dismissed pursuant to section 1385 have held that considering the impact of a conviction on the defendant is appropriate. These cases also establish that if the court's consideration of the impact of a conviction on a defendant is improper, then no dismissal of a charge pursuant to section 1385 would ever be proper.[40] Finally, it is worth noting that the trial court never expressed any antipathy for the laws that petitioner was charged with at any stage of the proceedings.

A trial court is entitled to consider the nature and circumstances of the offense and the defendant's background—such as her age and lack of criminal record—in exercising its discretion under section 1385.[41] Like many crimes, the LAMC ordinances charged in this case can be violated with a range of acts, degrees of personal involvement or participation, degrees of moral blameworthiness, knowledge or lack thereof, and whether the accused person intended for the crime to happen.

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[39] Exhibit A, *Wheeler v. Appellate Division*, Case No. B310024, page 26.
[40] See, for example, *People v. S.M.* (2017) 9 Cal.App.5th 210 (Court dismissed case based on the defendant's age, no prior criminal history, and he did not reoffend in the four years since the case had been pending).
[41] See *People v. Orabuena* (2004) 116 Cal.App.4th 84, 99; *People v. S.M.* (2017) 9 Cal.App.5th 210, 218-219.

A defendant's moral blameworthiness is specifically a part of the nature and circumstances of the crime which may support a dismissal under section 1385.[42] The principle that a court may consider a defendant's lack of moral culpability for a crime is a well settled principle in the law.[43] These considerations of the circumstances of the crime may be taken into account even if a defendant is criminally liable because the purpose of section 1385 is to effectuate the decision that in the interests of justice a defendant should not be required to undergo the punishment dictated by statute.[44]

The policy served by section 1385 is that mandatory, arbitrary, or rigid sentencing procedures invariably lead to unjust results, and society receives maximum protection where the penalty, treatment, or disposition of the offender is tailored to the individual case.[45] Consequently, the mere fact that a defendant is charged with a strict liability offense should not prevent the trial court from considering the circumstances of the offense as part of a section 1385 determination, including a defendant's degree of knowledge or

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[42] See *People v. Cluff* (2001) 87 Cal.App.4th 991, 1001-1002 (The defendant's moral blameworthiness should be a factor guiding a motion to dismiss a strike prior).

[43] See 2018 Cal. Legis. Serv. Ch. 1015 (S.B. 1437, sec. 1(d)) ("It is a bedrock principle of the law and of equity that a person should be punished for his or her actions according to his or her own level of individual culpability."); *People v. Roberts* (1993) 2 Cal. 4th 271, 316 (Modern penal law is founded on moral culpability); *California v. Brown* (1987) 479 U.S. 538, 554 (Emphasis on culpability in sentencing decisions has long been reflected in Anglo-American jurisprudence); see also Calif. Rules of Court, Rule 4.413(b)(2) (Court may consider factors not amounting to a defense but reducing a defendant's culpability), Rule 4.423(a)(1) (The defendant was a passive participant), Rule 4.423(a)(4) (The defendant's conduct was partially excusable for a reason not amounting to a defense).

[44] See *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 524, fn. 11; *People v. Williams* (1989) 30 Cal. 3d 470, 482.

[45] *People v. Williams* (1989) 30 Cal. 3d 470, 482.

participation in the offense. If a trial court may consider a person's moral blameworthiness notwithstanding the person's conduct meeting the elements of the charged offense, then a trial court should be able to consider a defendant's lack of knowledge in a case alleging a strict liability offense when weighing a dismissal pursuant to section 1385.

II. This Court should grant review to decide whether state criminal statutes requiring *mens rea* preempt the enforcement of conflicting strict liability local cannabis ordinances that are used to criminally prosecute a defendant for the same conduct proscribed by the state statutes.

If otherwise valid local legislation is in conflict with state law, it is preempted by such law and is void.[46] Conflict exists if local regulation duplicates, contradicts, or enters an area fully occupied by state law, either expressly or by implication.[47]

In *In re Portnoy* (1942) 21 Cal. 2d 237, this Court held that when a local ordinance purports to even partially regulate acts which are already made criminal by state statute but conflicts with them by omitting a *mens rea* requirement, the ordinances are preempted and invalid as conflicting with the state statutes they duplicate.[48]

Health and Safety Code section 11366.5(a) is part of the California Uniform Controlled Substances Act ("CUCSA").[49] The statute provides, "Any person who has under his management of control any building, room, space

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[46] *O'Connell v. City of Stockton* (2007) 41 Cal. 4th 1061, 1067. See also Cal. Const. Art. 11, Sec. 7.
[47] *O'Connell v. City of Stockton* (2007) 41 Cal. 4th 1061, 1067.
[48] *In re Portnoy* (1942) 21 Cal. 2d 237, 239-241.
[49] See Health and Safety Code section 11366.5.

or enclosure either as an owner, lessee, or agent *who knowingly* rents, leases, or makes available for use, with or without compensation, the building, room, space…for purposes of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in county jail for not more than one year, or pursuant to subdivision (h) of section 1170 of the Penal Code."[50]

For the purpose of Health and Safety Code section 11366.5, cannabis is a "controlled substance".[51] Thus, by its clear terms, Health and Safety Code section 11366.5 criminalizes a property owner's renting, leasing, or making available for use a building or space for the illegal sale or distribution of cannabis.

LAMC 104.15 is entitled "Enforcement and Penalties for Unlawful Cannabis Related Activities" and subsection (b)(4) provides, "Starting on January 1, 2018, it shall be unlawful to…(4) Lease, rent to, or otherwise allow an Unlawful Establishment to occupy any portion of parcel of land."[52] LAMC 104.15(c) makes a violation of LAMC 104.15 punishable as a misdemeanor with a maximum jail sentence of six months and a maximum fine or $1,000.[53] An "unlawful establishment" is defined in the LAMC as any person engaged in Commercial Cannabis Activity if the person does not have a city issued license.[54] "Commercial cannabis activity" includes the

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[50] Health and Safety Code section 11366.5 (emphasis added).
[51] See Health and Safety Code section 11007 of the CUCSA (defining "controlled substance" to include substances on a schedule contained in Health and Safety Code section 11054 list); Health and Safety Code section 11054(d)(13) including "cannabis" in a list of Schedule 1 substances; Health and Safety Code section 11018 (defining "cannabis" to include all parts of the Cannabis Sativa L plant.
[52] LAMC 104.15(b)(4).
[53] LAMC 104.15(c).
[54] See LAMC 104.01(a)(2).

cultivation, possession, manufacture, distribution…delivery or sale of cannabis and cannabis products as provided for in Division 10 of California Business and Professional Code as implemented by the California Code of Regulations…"[55]

While LAMC 104.15(b)(4) criminalizes a property owner's renting, leasing, or making available for use a building or space for the illegal sale or distribution of cannabis, there is no provision in this or related LAMC sections requiring proof that the owner who is charged with violating these provisions is aware of the illegal activities on her or his property. Consequently, LAMC 104.15(b)(4) both duplicates and contradicts Health and Safety Code section 11366.5. To the extent that LAMC 104.15(b)(4) is used to extend criminal liability to unknowing property owners who were unaware of and had no notice of illegal cannabis activity on their property, the ordinance should be deemed to be preempted by state law.[56]

LAMC 12.21(a)(1) states: "Permits and Licenses. No building or structure shall be erected, reconstructed structurally, altered, enlarged, moved or maintained, nor shall any building, structure, or land be used or designed to be used for any use other than is permitted in the zone in which such building, structure, or land is located and then only after applying for and securing all permits and licenses required by all laws and ordinances."

To the extent that LAMC 12.21(a)(1)(A) is being interpreted to extend misdemeanor criminal liability to property owners with no knowledge that their property is being used to illegally sell cannabis, this ordinance also contradicts and is in conflict with the CUCSA, Health and Safety Code

[55] LAMC 104.01(a)(7).
[56] See *In re Portnoy* (1942) 21 Cal. 2d 237, 239-241.

section 11366.5, and Penal Code section 373a.[57] This is because Penal Code section 373a requires notice to a property owner before prosecution (and therefore proof of knowledge), and Health and Safety Code section 11366.5 requires proof that the accused knew of the illegal activity on her or his property before criminal liability can be imposed on a person for illegal cannabis activity occurring on the property.

Notably, there is no "zone" for the unlicensed sale of cannabis anywhere in the city of Los Angeles. The ordinances at issue are being used to criminally penalize petitioner for unknowingly allowing the illegal sale of cannabis on her property.[58]

City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc. (2013) 56 Cal. 4th 729, is a case cited by real party in interest to support its position that the ordinances at issue are not preempted by state law. This case does not address the direct preemption issue presented by petitioner's case. The case analyzed statutes unrelated to the present case: the Compassionate Use Act ("CUA") and the Medical Marijuana Program ("MMP").[59] This Court examined whether these provisions were preempted by state law and this Court characterized these provisions as immunity statutes that provide for "decriminalization" of cannabis activity instead of

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[57] Penal Code section 373a requires notice to a property owner by the city attorney before prosecution for leasing property to another who maintains, permits, or allows a nuisance to exist on the property. See also *People v. Cooper* (1944) 64 Cal.App.2d Supp. 946, 949 (Under section 373a, it is the omission to abate the nuisance after notice to the property owner that offends the law.); LAMC 104.15(c) (violation of the ordinance is a nuisance); LAMC 11.00(l) (violation of zoning ordinance is a nuisance).
[58] See *Jones v. City of Los Angeles* (1930) 211 Cal. 304, 309 (Discussing the distinction between zoning and nuisance ordinances—zoning ordinances are future looking and used for planning purposes.).
[59] *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc*. (2013) 56 Cal. 4th 729, 753.

modifying criminal liability.[60] This Court specifically relied on the fact that these state immunity statutes "decriminalized" conduct instead of criminalizing conduct when holding that the state statutes did not conflict or duplicate, and therefore did not preempt specific local cannabis legislation.[61]

Notably, Health and Safety Code section 11366.5 and Penal Code section 373a are not immunity statutes. Rather, they are statutes that impose criminal liability for proscribed conduct. Thus, the line of cases embodied by *In re Portnoy*[62] controls.

A close look at the laws involved in *In re Portnoy* shows parallels to the present case and another reason the Court of Appeal should have followed the holding in *In re Portnoy*. The local ordinance at issue in *Portnoy* read as follows:

> "It shall be unlawful for any person, either as owner, lessee, principal, agent, employee, servant clerk, waiter, cashier, or dealer to establish, lease, open, maintain, keep, or carry on or work in any building, house or room or any other place where any game, device, scheme, gaming or gambling is permitted, allowed, or carried on in violation of any of these provisions of this Ordinance or in violation of the law of the State of California."[63]

The second ordinance at issue in the complaint read as follows:

> "…it shall be unlawful for any person to own or have in his possession or under his custody or control any slot machine, upon the result of the action of which money or other valuable thing is staked or hazarded

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[60] *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc*. (2013) 56 Cal. 4th 729, 753.
[61] *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc*. (2013) 56 Cal. 4th 729, 754.
[62] *In re Portnoy* (1942) 21 Cal. 2d 237.
[63] *In re Portnoy* (1942) 21 Cal. 2d 237, 239.

and which is or may be operated or played by placing or depositing therein any coins, checks, or slugs, or as a result of the operation of which any money or other representative of value is or may be won or lost, when the result of the action or operation of said slot machine is dependent in whole or in part upon hazard or chance."[64]

The state law provision at issue involved Penal Code section 330a (note that the following is taken directly from the case and is therefore as section 330a existed at the time):

"Every person who has either in his possession or under his control either as owner, lessee, agent, employee, mortgagee, or otherwise, or who permits to be placed, maintained or kept, in any room, space, inclosure or building owned . . . by him, or under his management or control, any slot or card machine, contrivance, appliance or mechanical device, upon the result of action of which money or other valuable thing *is staked* or hazarded, and which *is operated*, or played, by placing or depositing therein any coins, checks, slugs, balls, or other articles or device, or in any other manner and by means whereof, or as a result of the operation of which any merchandise, money, representative or articles of value, checks, or tokens, redeemable in, or exchangeable for money or any other thing of value, *is won* or lost, or taken from or obtained from such machine, when the result of action or operation of such machine, contrivance, appliance, or mechanical device is dependent upon hazard or chance . . . is guilty of a misdemeanor...."[65]

The arguments made by the government in *In re Portnoy* mirror the contemporary arguments made by real party in interest. For example, the

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[64] *In re Portnoy* (1942) 21 Cal. 2d 237, 239.
[65] *In re Portnoy* (1942) 21 Cal. 2d 237, 240 (emphasis in original).

government argued that the language of the ordinance is broader than the language in the Penal Code provision.[66] There is no preemption, they argued, because the ordinance supplemented, rather than duplicated, existing statutes.[67] This Court rejected these arguments and observed that the proscribed conduct is essentially identical between the local and state statutes, and therefore the duplicative local statutes are preempted by the state law.[68]

After analyzing the local and state provisions, this Court concluded that "[i]nsofar as the provisions of [the local ordinances] purport to prohibit acts which already are made criminal by the Penal Code, it is clear that they exceed the proper limits of supplementary regulation and must be held invalid because in conflict with the statutes which they duplicate."[69]

The conflict between the laws at issue in *In re Portnoy* is similar to the one presented in this case. The local laws do not match the verbiage of the state laws, but the local laws are being used to prosecute the same conduct forbidden by the state laws. The glaring exception—and the genesis of the inconsistency and confusion that the preemption is meant to avoid—is that the state laws require an awareness of the forbidden activity, and the local laws do not.

The other difference of note between the ordinances and Health and Safety Code section 11366.5 is that the ordinances are punishable by up to six months in jail, while Health and Safety Code section 11366.5 is punishable as a misdemeanor for up to one year, or as a felony for sixteen

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[66] *In re Portnoy* (1942) 21 Cal. 2d 237, 240-241.
[67] *In re Portnoy* (1942) 21 Cal. 2d 237, 240-241.
[68] *In re Portnoy* (1942) 21 Cal. 2d 237, 240-241.
[69] *In re Portnoy* (1942) 21 Cal. 2d 237, 240.

months, two years, or three years.[70] This is yet another significant difference between the local and state laws and a reason why the state law should preempt enforcement of the local laws for the same conduct.

When it comes to the issue of preemption, the focus is on whether the state and local laws have differing requirements in what they “prohibit” or “demand.” With LAMC section 104.15, the government has less of a burden in that they need not prove that the defendant had knowledge of the underlying illegal activity. With Health and Safety section 11366.5(a), the government has a higher burden in that they need to prove that the defendant had knowledge of the illegal activity.

Justice Liu wrote a concurring opinion in *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* which summarizes and clarifies the preemption analysis in this area: “…[S]tate law may preempt local law when local law prohibits not only what a state statute ‘demands’ but also what the state statute permits or authorizes.”[71] Here, the state statute authorizes a property owner to unknowingly permit its lessee to operate a business illegally selling a controlled substance, marijuana. The city ordinance prohibits a property owner from unknowingly permitting its lessee to operate a business illegally selling the same controlled substance.

The difference in these two provisions is not just academic. In this case, petitioner is being charged by the government for conduct occurring on her

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[70] See Health and Safety Code section 11366.5(a) and Penal Code section 1170(h).
[71] *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 763 (concurring opin.). *See also City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.* (2013) 56 Cal. 4th 729, 758, 760-761.

property that petitioner was not aware of.[72] Petitioner could not be convicted under state law for the same conduct. Additionally, a violation of Health and Safety Code section 11366.5(a) is a crime of moral turpitude.[73] Thus, the policy of congruity in laws that preemption is meant to further is implicated by this significant difference in mental state between these two legal provisions regulating the same conduct.

Finally, petitioner drew the attention to the Court of Appeal of two provisions in the LAMC that impact the significance of the various arguments raised by real party in interest and the amici briefs filed on its behalf in the Court of Appeal. These provisions regarding severability and a declaration that the LAMC cannabis regulatory provisions be interpreted in a way that does not conflict with state law were not addressed in the Court of Appeal opinion.

The Los Angeles Municipal Code contains a severability clause that would maintain the enforceability of the rest of the cannabis regulatory framework:

> LAMC 104.17. SEVERABILITY. If any section, subsection, subdivision, clause, sentence, phrase, or portion of this article is held unconstitutional or invalid or unenforceable by any court or tribunal of competent jurisdiction, the remaining sections, subsections, subdivisions, clauses, sentences, phrases, or portions of this measure shall remain in full force and effect, and to this end the provisions of this article are severable. Notwithstanding anything to the contrary in the prior sentence, if any State of City licensure requirement is held unconstitutional or invalid or unenforceable by any court or tribunal of

[72] See, for example, Exhibit A of the Petition for Writ of Mandate, page 308:24-27.

[73] *People v. Vera* (1999) 69 Cal.App.4th 1100, 1102-1103.

competent jurisdiction, the Commercial Cannabis Activity subject to such licensure requirement shall be prohibited in the City.

Thus, the particular sections that this court deems to be in conflict with state law, if any, can be severable from the entire regulatory framework enacted by the city.

The Los Angeles Municipal Code also contains another provision in an article entitled "Commercial Cannabis Activity" which evinces an intent that its provisions comply with state law:

> LAMC 105.07. NO CONFLICT WITH STATE LAW. This article is not intended to conflict with State law. This article shall be interpreted to be compatible with State enactments and in furtherance of the public purpose that those enactments encompass.

The language of this provision is entirely in alignment with petitioner's contentions: the provisions that petitioner is charged with are regulating conduct that state law already regulates and are thus in conflict. The provisions conflict with state law, and LAMC 105.07 directs a reviewing body to interpret the LAMC provisions to be compatible with state law. Thus, a finding of preemption is warranted because the LAMC provisions at issue here are not compatible with state law.

III. Conclusion

For the reasons stated herein, petitioner respectfully requests that this court grant the Petition for Review.

Respectfully submitted,

ERIKA ANZOATEGUI

Alternate Public Defender, Los Angeles County

By:___________________________

Brock Hammond

Deputy Alternate Public Defender

CERTIFICATE OF WORD COUNT COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule to Rule 8.504(d)(1) of the California Rules of Court, the attached brief, entitled, PETITION FOR REVIEW, is produced using 13-point Century Schoolbook type including footnotes and contains approximately 7,275 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: January 21, 2022.

By:_____________________________________

Brock Hammond,

Deputy Alternate Public Defender

Attorney for Petitioner, Emily Wheeler

EXHIBIT A

COURT OF APPEAL – SECOND DIST.
FILED
Dec 15, 2021
DANIEL P. POTTER, Clerk
Maria Perez Deputy Clerk

Filed 12/15/21

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

EMILY WHEELER, Petitioner, APPELLATE DIVISION OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	B310024 (Los Angeles County Super. Ct. Nos. 9CJ00315, BR054851)

Petition for Writ of Mandate. H. Elizabeth Harris, Commissioner. Petition denied.

Erika C. Anzoategui, Alternate Public Defender, Reid S. Honjiyo, Brock Hammond and Alvin Yu Deputy Alternate Public Defenders, for Petitioner.

No appearance for Respondent.

Michael N. Feuer, City Attorney, Meredith A. McKittrick, Supervising Deputy City Attorney, and Hannah M. Barker, Deputy City Attorney, for Real Party in Interest.

Michael N. Feuer, City Attorney (Los Angeles), David J. Michaelson, Chief Assistant City Attorney, Taylor C. Wagniere and Kabir Chopra, Deputy City Attorneys, for the Los Angeles Department of Cannabis Regulation as Amicus Curiae on behalf of Real Party in Interest.

Susana Alcala Wood, City Attorney (Sacramento), for City of Sacramento as Amicus Curiae on behalf of Real Party in Interest.

Best Best & Krieger and Jeffrey V. Dunn for League of California Cities and California State Association of Counties as Amici Curiae on behalf of Real Party in Interest.

Petitioner Emily Wheeler (Wheeler) seeks a writ of mandate directing the appellate division of the Los Angeles County Superior Court to set aside its opinion reversing the trial court's dismissal of her criminal case under Penal Code section 1385, and instead to affirm the dismissal. Wheeler contends that the trial court did not abuse its discretion in dismissing her case under section 1385. She also contends that the local ordinances she was charged with violating, Los Angeles Municipal Code (LAMC) sections 104.15(a)1, 104.15(b)4, and 12.21A.1.(a), are preempted by state law and thus unenforceable, providing an alternative basis to uphold the trial court's dismissal of her criminal case.

We hold that the local ordinances are not preempted by state law. We further hold that the appellate division did not err in concluding that the trial court abused its discretion by dismissing the charges primarily based on Wheeler's lack of knowledge or intent, because the ordinances impose strict liability and do not require proof of knowledge or intent.

FACTUAL AND PROCEDURAL HISTORY

Wheeler and her son are the owners of a commercial storefront building in the City of Los Angeles (the City). They leased the storefront to another person. During the lease term, Omar Brown allegedly was selling cannabis illegally from the Wheelers' property. In June 2019, Wheeler, her son, and Omar Brown were charged with misdemeanor violations of various provisions of the LAMC.[1] The charges relevant to this appeal are that Wheeler leased or rented her building to an unlicensed cannabis business in violation of LAMC section 104.15(a)1 and (b)4, and maintained a building for uses other than permitted in the zone in which it was located in violation of LAMC section 12.21A.1.(a).

Wheeler moved to dismiss the charges, arguing that the LAMC provisions were unconstitutionally vague, and that the charges should be dismissed in furtherance of justice under Penal Code section 1385, because Wheeler was 85 years old, had never been arrested or convicted of any crime, had no connection to the illegal cannabis shop, and was unaware of its presence on her property.

The trial court did not grant Wheeler's motion, but on its own motion dismissed the charges against Wheeler pursuant to Penal Code section 1385, explaining: "You have a woman born in 1934 who has no prior criminal history. There is nothing to suggest that she knows anything about this, other than the fact that she owns the property, and the Code says, 'in the interest of justice;' and I think justice can only be served if a person who has

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[1] Wheeler's son and Omar Brown are not parties to this writ proceeding.

lived an exemplary life for 80 plus years, and finds herself, because she owns property, and that property is leased to another individual, and that individual is operating a dispensary, that says to this court that justice would properly be served by dismissing the case in its entirety against Ms. Emily Wheeler." The court added, "I don't see where justice requires that she be subjected to prosecution on a situation where there's no showing that she even knew anything about it." The People objected that the court was "assuming that knowledge is an element of the offense," to which the court responded, "[n]o, the court is not," and reiterated that the dismissal was "in the interest of justice."

The People appealed the dismissal. Citing *People v. Gonzalez* (2020) 53 Cal.App.5th Supp. 1, 6 (holding that LAMC section 104.15(b)2 does not require proof of mens rea), the appellate division reversed, holding that the trial court's "reliance on [Wheeler]'s lack of knowledge as a mitigating circumstance was improper" given that the ordinances are strict liability offenses. The appellate division further held that the section 1385 dismissal was "an improper dismissal based on the court's disagreement with the law." The error was prejudicial, the appellate division concluded, because it was "reasonably probable" that the trial court might not have dismissed the charges if it had considered only appropriate factors, such as Wheeler's age and lack of previous arrests or convictions.

The appellate division also considered Wheeler's argument, raised for the first time on appeal, that the dismissal should be affirmed because the ordinances were preempted by Health and Safety Code section 11366.5, subdivision (a) which makes it a misdemeanor to *knowingly* lease or rent a building "for the purpose of unlawfully manufacturing, storing, or distributing any

controlled substance." The appellate division rejected the preemption argument because state law, and in particular Business and Professions Code section 26200, subdivision (a)(1), "explicitly contemplates that municipalities can implement and enforce their own rules concerning the regulation of the cannabis industry within their borders," the ordinances at issue regulate commercial cannabis activities, and state law does not fully occupy the field.

Wheeler filed a petition for transfer, which our court denied. Wheeler then filed a petition for writ of mandate, which our court also denied. Wheeler then filed a petition for review. The Supreme Court granted the petition and transferred the matter to our court, with directions to vacate the order denying mandate and to issue an order to show cause.

DISCUSSION

I. Principles of review

Our court's prior order denying Wheeler's transfer motion was not reviewable. (Cal. Rules of Court, rule 8.500(a)(1); *Dvorin v. Appellate Department* (1975) 15 Cal.3d 648, 650.) However, after unsuccessfully petitioning this court for a writ of mandate, Wheeler filed a petition for review, which the Supreme Court granted, transferring the matter to this court "with directions to vacate [our] order denying mandate and to issue an order directing the respondent Appellate Division of the Superior Court of Los Angeles County to show cause why the relief sought in the petition should not be granted."

Although the procedural route taken by this case is unusual, the matter is properly before us. In *Barajas v. Appellate Division of Superior Court* (2019) 40 Cal.App.5th 944, as in this

case, a criminal defendant filed a petition for writ of mandate seeking to challenge the appellate division's order reversing the dismissal of his case, which was denied. The Supreme Court granted review and transferred the matter to the Court of Appeal with directions to vacate the denial and issue an order to show cause. (*Id.* at p. 950.) The court noted that " '[t]he Supreme Court may order review . . . [¶] . . . [¶] [f]or the purpose of transferring the matter to the Court of Appeal for such proceedings as the Supreme Court may order.' (Cal. Rules of Court, rule 8.500(b)(4).) The matter is properly before us on the Supreme Court's order." (*Barajas*, at p. 951; see *Tecklenburg v. Appellate Division* (2009) 169 Cal.App.4th 1402.)

A. *Forfeiture*

The People contend that the preemption issue is not properly before this court because Wheeler forfeited it by failing to raise it at trial. As the People correctly observe, preemption is a purely legal issue properly raised by demurrer (*Wells Fargo Bank, N.A. v. Superior Court* (2008) 159 Cal.App.4th 381, 385), so Wheeler could have raised it by demurrer below (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1091, fn. 10 ["if a statute under which a defendant is charged . . . is invalid, the complaint is subject to demurrer"]). However, as stated in *People v. Hamilton* (2018) 30 Cal.App.5th 673, 678, footnote 2, when concluding that a claim of federal preemption was not waived by the defendant's failure to raise it below, "The People have cited no authority that would allow us to conclude that a criminal defendant waives the ability to argue on appeal that he has been convicted for engaging in conduct that the state has no authority to punish." (Accord *Molina v. Retail Clerks Unions Etc. Benefit Fund* (1980) 111 Cal.App.3d 872, 878 [since preemption is purely legal issue

not involving disputed facts, it may be raised for the first time on appeal].)

Moreover, the preemption issue has now been fully briefed, both by the parties and by amici curiae. Considerations of judicial economy favor addressing the preemption issue on the merits.

II. State law does not preempt LAMC sections 104.15 and 12.21

A. *The LAMC provisions at issue*

Section 104.15(a)1 and (b)4 of the LAMC, under which Wheeler was charged with leasing a building to an unlicensed cannabis shop, are part of Ordinance No. 185343, a comprehensive scheme enacted in 2018 by local voter initiative "to regulate commercial cannabis activities in the City of Los Angeles." The purposes of the ordinance are to "create a licensing system for certain cannabis-related businesses," protect consumers from "the dangers inherent in ingesting and using a substance that was not subject to basic rules of safety" and from the "unscrupulous practices" of "unregulated cannabis businesses," and to "issue licenses in an orderly and transparent manner to eligible applicants according to the requirements of this article, . . . and to mitigate the negative impacts brought by unregulated Cannabis businesses." (LAMC § 104.00.)

The ordinance requires all businesses that manufacture, distribute, or sell medicinal and/or adult-use cannabis in the City to have a city-issued license. (LAMC § 104.02.) It requires that the license be "prominently displayed at the Business Premises." (LAMC § 104.11(b).) The City maintains a website listing all businesses that have a license to sell cannabis, including a map

feature allowing the public to search by address to determine whether a business at a particular location has a license.

The ordinance imposes criminal penalties for establishing, operating, or participating in “any unlicensed Commercial Cannabis Activity in the City,” which includes “renting, leasing to or otherwise allowing any unlicensed Commercial Cannabis Activity . . . to occupy or use any building or land.” (LAMC § 104.15(a)1 & (a)3.) The ordinance also provides that “it is unlawful to[ ] [¶] . . . [¶] . . . [l]ease, rent to, or otherwise allow an Unlawful Establishment to occupy any portion of parcel of land.” (LAMC § 104.15(b)4.) “Unlawful Establishment” is defined as a commercial cannabis activity that does not have a city-issued license. (LAMC § 104.01(a)27.) Violations of these provisions are subject to nuisance abatement procedures and to civil penalties of up to $20,000, and are punishable as misdemeanors by a fine of up to $1000 and up to six months in jail. (LAMC § 104.15(c) & (d).)

Wheeler was also charged with a violation of LAMC section 12.21A.1.(a), which provides that “[n]o building or structure shall be . . . used . . . for any use other than is permitted in the zone in which such building . . . is located and then only after applying for and securing all permits and licenses required by all laws and ordinances.” Violation of this ordinance is a misdemeanor punishable by a fine of up to $1,000 and up to six months in jail (LAMC § 11.00(m)), and is also subject to nuisance abatement procedures (LAMC § 11.00(l)).

B. *State law regarding commercial cannabis activity*

1. MAUCRSA

In 2017, pursuant to a statewide voter initiative, California enacted the Medicinal and Adult-Use Cannabis Regulation and

Safety Act (MAUCRSA), which is codified in Business and Professions Code sections 26000 to 26260. The stated purpose of MAUCRSA was "to establish a comprehensive system to control and regulate the cultivation, distribution . . . and sale" of medicinal and adult-use cannabis and to set forth "the power and duties of the state agencies responsible for controlling and regulating the commercial . . . cannabis industry." (Bus. & Prof. Code, § 26000, subds. (b) & (c).)

MAUCRSA creates a state licensing process for cannabis businesses (Bus. & Prof. Code, § 26010 et seq.), including penalties for licensing violations (§§ 26030–26037). It imposes civil penalties for "unlicensed commercial cannabis activity," and provides that in addition to these civil penalties, "criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this division." (§ 26038, subds. (a)(1), (f).)

Despite the broad sweep of MAUCRSA, its licensing scheme explicitly contemplates that municipalities may also have their own regulations and licensing requirements for cannabis businesses. Subdivision (f) of Business and Professions Code section 26030 includes, as a basis for disciplinary action, "Failure to comply with the requirement of a local ordinance regulating commercial cannabis activity." MAUCRSA includes a provision protecting landlords who rent to cannabis businesses from prosecution, but only if they rent to businesses that comply with state *and local* licensing requirements: "The actions of a person who, in good faith, allows his or her property to be used by a licensee . . . as permitted pursuant to a state license and, if required by the applicable local ordinances, a local license or permit, are not unlawful under state law." (Bus. & Prof. Code,

§ 26032, subd. (b).) Finally, MAUCRSA provides that "[t]his division shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, . . . or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction. [¶] . . . This division shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements." (Bus. & Prof. Code, § 26200, subd. (a)(1), (2).)

2. UCSA

Although MAUCRSA and previously enacted state laws have, to a large extent, legalized the sale of medicinal and adult-use cannabis, state law also continues to define cannabis as a controlled substance. The California Uniform Controlled Substances Act (UCSA) (Health & Saf. Code, § 11000 et seq.) includes cannabis under the category of "hallucinogenic substances." (Health & Saf. Code, §§ 11054, subd. (d)(13), 11018, 11007.)

In particular, Health and Safety Code section 11366.5, subdivision (a) provides that "[a]ny person who has under his or her management or control any building . . . as an owner . . . who knowingly rents, leases, or makes available for use . . . the building . . . for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment . . . for not more

than one year." As cannabis is a controlled substance (Health & Saf. Code, § 11054), and engaging in unlicensed commercial cannabis activity is a crime (Bus. & Prof. Code, § 26038, subd. (c)), the state misdemeanor penalty in section 11366.5 would apply to a landlord who *knowingly* leases a building to an unlicensed cannabis shop.

3. Nuisance

Finally, the state's general nuisance statute, Penal Code section 373a, could also apply in situations where a landlord allows unlicensed commercial cannabis activity to occur on his or her property. This statute imposes misdemeanor penalties on every "person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises . . . after reasonable notice . . . to remove, discontinue, or abate." (§ 373a.)

C. *Principles of preemption*

Having surveyed the local ordinances and state statutes at issue, we turn to preemption. Wheeler contends that the ordinances she was charged with violating are invalid because they are preempted by state law. She argues that the state has occupied the field of imposing penalties for drug crimes, and also that the local provisions duplicate and conflict with state law in that the ordinances impose strict-liability penalties for the same conduct that, under state law, requires proof of knowledge (Health & Saf. Code, § 11366.5) or notice and an opportunity to abate (Pen. Code, § 373a).

Article XI, section 7 of the California Constitution states that "[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." "This inherent local police power

includes broad authority to determine, for purposes of the public health, safety, and welfare, the appropriate uses of land within a local jurisdiction's borders." (*City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc*. (2013) 56 Cal.4th 729, 738 (*Inland Empire*).)

"[P]reemption by state law is not lightly presumed." (*Inland Empire*, *supra*, 56 Cal.4th at p. 738.) " 'When local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, . . . courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted.' " (*Id.* at p. 743.) Even outside the area of land use, courts are " 'reluctant' " to infer preemptive intent where there are significant local interests that may differ from one locality to another. (*Big Creek Lumber Co. v. City of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.) The presumption against preemption is even stronger in cases involving "home rule" or charter cities such as Los Angeles, which have the right to adopt and enforce ordinances that conflict with general state laws on subjects of municipal rather than statewide concern. (*O'Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1075–1076 (*O'Connell*); see Cal. Const., art. XI, § 7.)

In contrast, "local legislation that conflicts with state law is void." (*Inland Empire*, *supra*, 56 Cal.4th at p. 743.) Local legislation has been found to conflict with state law in various ways: if it " ' " ' "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." ' " ' " (*Ibid*.)

Local legislation " ' " ' "duplicates" ' " ' " state law when it is " ' "coextensive therewith," ' " regulating or prohibiting exactly the same conduct. (*Inland Empire*, *supra*, 56 Cal.4th at p. 743;

Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893, 897.) Local legislation "*contradicts*" state law when "it is inimical or cannot be reconciled with state law," such that it is impossible to comply with both. (*O'Connell*, *supra*, 41 Cal.4th at p. 1068; *Inland Empire,* at p. 743 ["The 'contradictory and inimical' form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands"].)

Local legislation " 'enters an area that is "fully occupied" by general law' " either 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 clearly 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 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.' " (*Inland Empire*, *supra*, 56 Cal.4th at p. 743.)

D. *Case law applying preemption to local cannabis ordinances*

Inland Empire, *supra*, 56 Cal.4th at page 737, held that state statutes regarding medical marijuana do not preempt a local ban on medical marijuana dispensaries. In reaching this conclusion, the Supreme Court analyzed then-existing state laws, the Compassionate Use Act and the Medical Marijuana Program, which were later amended, reorganized, and incorporated into

MAUCRSA. (Assem. Com. on Budget and Fiscal Review, Analysis of Sen. Bill No. 94 (2017–2018 Reg. Sess.) These laws exempted cultivation of medical marijuana by patients and their caregivers from prosecution under state drug laws. (*Inland Empire*, at p. 738.)

Inland Empire, *supra*, 56 Cal.4th at page 743, concluded that local zoning and nuisance ordinances which, in effect, banned medical marijuana dispensaries in the City of Riverside were not preempted as " ' "duplicative" ' " of state law. Although the subject matter of the state medical marijuana statutes and the local ordinances overlapped, they were not " 'coextensive.' " The state statutes protected medical marijuana users and their caregivers from prosecution under certain state criminal laws including " 'drug den' " nuisance statutes; the Riverside ordinances, in contrast, defined the use of property for medical marijuana-related activities as a local nuisance, and as a violation of local zoning ordinances. (*Id.* at pp. 752, 754, 762.) *Inland Empire* also held that the local ordinances did not contradict state law. It was possible to comply with both the local ordinances and state law, by refraining from cultivating or distributing medical marijuana within the city's boundaries, and the state laws did not require local governments to authorize, allow, or accommodate medical marijuana dispensaries. (*Id.* at pp. 754–755, 759.) Finally, *Inland Empire* held there was "no attempt by the Legislature to fully occupy the field of medical marijuana regulation as a matter of statewide concern, or to partially occupy this field under circumstances indicating that further local regulation will not be tolerated," particularly in light of the varying local interests involved. (*Id.* at p. 755.) "[W]hile some counties and cities might consider themselves well suited to

accommodating medical marijuana dispensaries, conditions in other communities might lead to the reasonable decision that such facilities within their borders . . . would present unacceptable local risks and burdens." (*Id*. at p. 756.)

Other cases have also rejected preemption challenges to local ordinances involving medical marijuana. *Conejo Wellness Center, Inc. v. City of Agoura Hills* (2013) 214 Cal.App.4th 1543, 1556 to 1557 (*Conejo*), held that state medical marijuana laws did not preempt local ordinances banning medical marijuana dispensaries, noting that the state statutes were amended to clarify that they "expressly permit[ ] 'civil and criminal enforcement' of local ordinances 'that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.' " Similarly, *County of Los Angeles v. Hill* (2011) 192 Cal.App.4th 861, 868 (*Hill)*, held that local nuisance ordinances restricting the location of medical marijuana dispensaries were not preempted by state statutes providing immunity from prosecution under state " 'drug den' " nuisance laws to medical marijuana patients and caregivers. *Hill* concluded that the state laws were not intended to occupy the field of medical marijuana regulation, and the local nuisance ordinances did not duplicate or contradict the state statute providing immunity from state nuisance laws. (*Id*. at pp. 867–869 ["County's constitutional authority to regulate the particular manner and location in which a business may operate [citation] is unaffected by" state law granting immunity from state nuisance statutes]; see *Browne v. County of Tehama* (2013) 213 Cal.App.4th 704 [local ordinance restricting cultivation of medical marijuana not preempted]; *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153 [local ordinance requiring medical

marijuana dispensaries to be licensed, and subjecting unlicensed dispensaries to nuisance penalties, not preempted].)

Inland Empire, Conejo, Hill and similar cases considered only the state's "careful and limited forays" into decriminalization and regulation of medical marijuana. (*Inland Empire*, *supra*, 56 Cal.4th at p. 762.) In the years since those cases were decided, the state enacted additional legislation, culminating with the enactment of MAUCRSA in 2017, creating a far more comprehensive regulatory scheme that now encompasses both medicinal and recreational adult-use cannabis. (Bus. & Prof. Code, § 26000.) But the same principles articulated in the *Inland Empire* line of cases apply to broader state laws, including MAUCRSA. In *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1045, the court rejected the notion that, given the enactment in 2015 of more comprehensive state medical marijuana legislation, "regulation of medical marijuana is now a matter of statewide concern, which therefore preempts municipal regulation." The court concluded that regulation of medical marijuana "solely within the City's borders" is still a "wholly municipal matter." (*Ibid*.) Similarly, in *City of Vallejo v. NCORP4, Inc*. (2017) 15 Cal.App.5th 1078, decided shortly after the enactment of MAUCRSA, the court held that a local ordinance treating medical marijuana dispensaries as a public nuisance, but granting limited immunity to dispensaries that met certain requirements, was not preempted. The court noted that MAUCRSA—like its predecessor statutes—does not mandate that local governments authorize, allow, or accommodate the existence of marijuana dispensaries (*id*. at p. 1081), and does not preempt " 'the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict,

limit, or entirely exclude' " dispensaries, and to " 'enforce such policies by nuisance actions' " (*id*. at p. 1082).

None of these cases specifically considered whether local ordinances such as LAMC section 104.15, which impose *criminal* penalties for unlawful commercial cannabis activities, in addition to civil penalties such as fines and nuisance abatement injunctions, are subject to a preemption analysis that is less deferential to local government interests. (See *Kirby v. County of Fresno* (2015) 242 Cal.App.4th 940, 957 ["the presumption against preemption that applies to local land use regulations does not apply in the area of criminal law"].)

A preemption challenge to local ordinances imposing criminal penalties for drug-related activity was addressed, however, in *O'Connell*, where the Supreme Court found that a local ordinance allowing seizure and forfeiture of vehicles used to buy controlled substances was preempted by state law. Provisions of the UCSA also provided for forfeiture of vehicles used in drug crimes, but only for more serious offenses and only upon proof beyond a reasonable doubt, while the local ordinance allowed forfeiture even for misdemeanor possession, and upon proof by a preponderance of the evidence. *O'Connell* concluded that the state statute occupied the field of defining and punishing drug-related crimes: "The comprehensive nature of the UCSA in defining drug crimes and specifying penalties (including forfeiture) is so thorough and detailed as to manifest the Legislature's intent to preclude local regulation." (*Id*. at p. 1071.) Given the state's "comprehensive enactment of penalties for crimes involving controlled substances, but exclusion from that scheme of any provision for vehicle forfeiture for simple

possessory drug offenses," the local ordinance imposing such a penalty was preempted. (*Id*. at p. 1072.)

In reaching its conclusion, *O'Connell* relied on *In re Lane* (1962) 58 Cal.2d 99, which held that a local ordinance criminalizing nonmarital sexual intercourse was preempted because the state had occupied the field of sex crimes. *Lane* is one of a line of cases holding that local ordinances imposing harsher penalties for the same conduct covered by state criminal laws, or criminalizing additional conduct in an area where the state has enacted comprehensive criminal laws, are preempted. (See, e.g., *In re Portnoy* (1942) 21 Cal.2d 237 [local gambling ordinances preempted because they duplicated and conflicted with state law]; *Lancaster v. Municipal Court* (1972) 6 Cal.3d 805, 808 [city ordinance prohibiting massage by person of opposite sex preempted by state's "general scheme for the regulation of the criminal aspects of sexual activity"]; *People v. Nguyen* (2014) 222 Cal.App.4th 1168 [local ordinance prohibiting sex offenders from entering city parks preempted by comprehensive state laws regulating convicted sex offenders].)

The difference between preemption analysis of local land use and licensing ordinances, and preemption analysis of local ordinances that enter the area of criminal law, is illustrated by *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277. *Cohen* held that state prostitution laws preempted provisions of a local ordinance regulating escort services penalizing " 'criminal conduct' " between escorts and clients (*id*. at p. 292), but did not preempt the local ordinance's provisions requiring licensing of escort services, which fell within the city's power to "regulate businesses conducted within its borders" (*id*. at p. 296). Similarly, *Malish v. City of San Diego* (2000) 84 Cal.App.4th 725,

distinguished between permissible land use and business regulations, and local ordinances that are preempted because they impose harsher penalties than state law for the same conduct. Local ordinances defining pawnbrokers as a "police regulated" business and requiring permits, inspection, and recordkeeping, were not preempted. (*Id*. at pp. 729, 730, 732–733, 736.) But an ordinance allowing revocation of a pawnbroker's permit for a single violation of law was preempted by a state law providing that a state pawnbroker license may only be revoked upon proof of a pattern of unlawful conduct, because it imposed a harsher penalty for the same conduct. (*Id*. at pp. 734–735.)

This distinction between ordinances that enter into the area of criminal law, and those that regulate local land use and business activities, was applied in the context of medical marijuana in *Kirby v. County of Fresno*, *supra*, 242 Cal.App.4th 940. *Kirby* involved a preemption challenge to a local ordinance banning medical marijuana dispensaries and cultivation, and classifying violations of the ordinance as both public nuisances and misdemeanors. (*Id*. at p. 951.) *Kirby* held that the aspects of the ordinance that regulated land use were not preempted. (*Id*. at pp. 947–948.) In contrast, the misdemeanor penalty for medical marijuana cultivation was preempted by "California's extensive statutory scheme addressing crimes, defenses and immunities relating to marijuana" (*id*. at p. 948), which manifested "the Legislature's intent to fully occupy the area of criminalization and decriminalization of activity directly related to marijuana" (*id*. at p. 961). *Kirby* also held that the local ordinance's imposition of misdemeanor penalties for marijuana cultivation was preempted because it contradicted state law

providing immunity from prosecution for marijuana cultivation to persons with a valid medical marijuana card. (*Ibid*.)

There is not, however, a bright line between the local land use, zoning, and nuisance ordinances restricting commercial cannabis activity—which have generally survived preemption challenges--and local criminal penalties for cannabis-related activity such as the one struck down in *Kirby*. Section 104.15 of the LAMC is an example of a type of criminal law "often referred to as public welfare offenses." (*In re Jorge M.* (2000) 23 Cal.4th 866, 872.) Although these statutes impose criminal penalties, they are " 'regulatory in nature' " and are " ' "enacted for the protection of the public health and safety" ' "; their " ' "primary purpose . . . is regulation rather than punishment or correction," ' " so they are " ' "not crimes in the orthodox sense." ' " (*Ibid*.)

Conejo, *supra*, 214 Cal.App.4th at pages 1546 to 1547 arose in the context of a code enforcement investigation rather than a criminal prosecution, but the ordinances at issue were enforceable both by nuisance abatement processes and by prosecution for a misdemeanor, so the case could have involved criminal as well as civil penalties. Likewise, in *Kirby v. County of Fresno*, *supra*, 242 Cal.App.4th at page 961 while drawing a distinction between local land use ordinances—which were not preempted—and local criminal penalties for marijuana cultivation—which were preempted—the court also noted that the "*indirect* criminal sanction" of a potential misdemeanor prosecution for failing to abate a public nuisance involving the cultivation of medical marijuana was not preempted by state law.

Thus, the central question in this case is whether section 104.15 of the LAMC is a "drug crime" ordinance that would be

preempted by state criminal laws, or a permissible enforcement mechanism for the City's land use ordinances and business licensing requirements for commercial cannabis activities.

E. *Application of preemption principles to LAMC sections 104.15(a)1 and (b)4, and 12.21A.1.(a)*

We begin our preemption analysis of the LAMC ordinances at issue by noting that field preemption does not apply. MAUCRSA explicitly disavows any legislative intention to occupy the field of commercial cannabis regulation, and explicitly contemplates that cities and counties will also impose their own licensing requirements and other restrictions on commercial cannabis activities. (Bus. & Prof. Code, §§ 26030, subd. (f), 26200, subd. (a)(1).) MAUCRSA states explicitly that its provisions "shall not be interpreted to supersede or limit existing *local authority for law enforcement* activity" as well as for "enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements." (Bus. & Prof. Code, § 26200, subd. (a)(2), italics added.)

Nor does the UCSA occupy the field to the exclusion of local ordinances criminalizing cannabis-related activities. Although cannabis is still listed in the UCSA as a controlled substance (Health & Saf. Code, § 11054, subd. (d)(13)), under current law it is primarily regulated by MAUCRSA rather than prohibited by UCSA. Possession of cannabis for personal use by persons over 21 is no longer a crime under state law. (§ 11362.1.) State criminal penalties apply to commercial cannabis-related activities only if they fail to comply with MAUCRSA. (Bus. & Prof. Code, § 26038, subds. (a), (c).)

Even though the state has not occupied the field, the ordinances at issue may still be preempted if they duplicate or contradict state law. Wheeler argues that LAMC section 104.15 duplicates and conflicts with section 11366.5 of the Health and Safety Code, in that it penalizes the same conduct—leasing a building to an unlicensed cannabis shop—but the local ordinance imposes strict liability while the state law requires proof of knowledge.

The two provisions, however, are not coextensive. Section 11366.5 of the Health and Safety Code penalizes landlords if they *knowingly* permit any of a wide range of drug-related activities to occur on property located anywhere in the state, including the manufacture, distribution, or sale of any controlled substance. So, for example, landlords who knowingly allow a methamphetamine manufacturing lab, a cocaine-distributing cartel, or a street-level heroin dealer to operate on their property could be prosecuted under this statute. LAMC section 104.15, in contrast, applies only to landlords who allow commercial cannabis activity to occur on their property within the City, without a City-issued license. It is not the presence of a controlled substance that triggers enforcement of this ordinance, but the location of the business within the City and the absence of a license. Nor are the state and local provisions contradictory in the sense of being "inimical." It is possible for landlords to comply with both of them, by refraining from allowing an unlicensed cannabis business to operate on property located in the City.

LAMC section 104.15 and section 11366.5 of the Health and Safety Code are also not duplicative or contradictory in the broader sense discussed in *O'Connell*, *Portnoy*, and similar cases,

where local criminal or quasi-criminal ordinances were held to be preempted because they imposed different, broader, or harsher penalties for the same conduct addressed in state criminal laws. Cannabis, unlike other controlled substances such as methamphetamine, cocaine, and heroin, is not unlawful in all contexts. Through successive enactments of state and local legislation, cannabis has gradually come to be regulated in a manner more similar to alcohol, prescription medications, or firearms than to these other controlled substances. There is no such thing as a licensed methamphetamine lab or heroin dealership. Any manufacture, distribution, or commercial activity involving these other controlled substances is necessarily clandestine, so it would violate basic principles of fairness to impose strict liability on a landlord from whom such activity has been successfully concealed. But cannabis shops are businesses, operating openly in public, and so it is not unfair to impose on landlords the responsibility to ensure that they are licensed, especially because cannabis businesses are required to display their licenses prominently, and the City maintains a publicly accessible website listing all licensed cannabis businesses.

Moreover, there are policy justifications supporting LAMC section 104.15's imposition of strict liability, that do not apply in the context of other controlled substances. As explained in the amicus brief of the Los Angeles Department of Cannabis Regulation, there is a large volume of unlicensed commercial cannabis activity that undercuts the City's licensing scheme, and circumvents public health, safety, and environmental regulations. The City may reasonably believe that imposing strict liability on landlords who rent to cannabis shops without confirming that they are licensed is essential to the City's

ongoing efforts to combat the negative impact of unlicensed commercial cannabis activity on the health, safety, and welfare of the City's residents.

For similar reasons, LAMC section 12.21A.1(a), and its enforcement through the City's nuisance ordinances, is not preempted by section 373a of the Penal Code, even though the ordinance lacks the explicit notice requirement contained in the state statute. Once again, the state has explicitly disavowed any intention to occupy the field of nuisance abatement. (Gov. Code, § 38771 ["By ordinance the city legislative body may declare what constitutes a nuisance"]; *Inland Empire*, *supra*, 56 Cal.4th at p. 761 ["[n]uisance law is not defined exclusively by what the *state* makes subject to, or exempt from, its own nuisance statutes"; unless there is "clear conflict with general law, a city's or county's inherent, constitutionally recognized power to determine the appropriate use of land within its borders [citation] allows it to define nuisances for local purposes"].)

This ordinance does not duplicate or contradict state law. It falls well within the City's land use powers to enforce its zoning ordinances through criminal as well as civil nuisance penalties, and it is common for such "public welfare offenses" not to require proof of knowledge or intent. (*In re Jorge M.*, *supra*, 23 Cal.4th at p. 872 [" ' "[u]nder many statutes enacted for the protection of the public health and safety . . . criminal sanctions are relied upon even if there is no wrongful intent" ' "].)

We conclude that the appellate division correctly held that LAMC sections 104.15(a)1, 104.15(b)4, and 12.21A.1.(a) are not preempted by state law.

III. The appellate division did not err in reversing the Penal Code section 1385 dismissal.

Section 1385, subdivision (a) of the Penal Code provides that "[t]he judge . . . may . . . in furtherance of justice, order an action to be dismissed." The standard for appellate review of a decision to dismiss charges in the furtherance of justice is abuse of discretion. (*People v. Williams* (1998) 17 Cal.4th 148, 162; *People v. S.M.* (2017) 9 Cal.App.5th 210, 218.) This standard of review is "deferential. [Citations.] But is not empty." (*Williams*, at p. 162 [affirming Court of Appeal's ruling that trial court's Pen. Code, § 1385 dismissal was abuse of discretion].) Although the trial court's discretion to dismiss pursuant to Penal Code section 1385 is broad, it is " ' "by no means absolute." ' " (*Williams*, at p. 158.)

Because the Legislature did not define the term " ' " 'in furtherance of justice,' " ' " " ' "appellate courts have been faced with the task of establishing the boundaries of the judicial power conferred by the statute." ' " (*People v. Williams*, *supra*, 17 Cal.4th at p. 159.) *Williams* reviewed the extensive case law on Penal Code section 1385 and concluded that " ' "several general principles emerge. Paramount among them is the rule 'that the language . . . [citation] "in furtherance of justice," requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People* . . . .' . . . " " . . . in 'the fair prosecution of crimes properly alleged.' " ' " (*Williams*, at p. 159.) A trial court abuses its discretion if its Penal Code section 1385 dismissal is " ' "guided solely by a personal antipathy for the effect that the . . . law would have on [a] defendant." ' " (*Williams*, at p. 159; *People v. McGlothin* (1998) 67 Cal.App.4th 468, 476 ["A court may not

simply substitute its own opinion of what would be a better policy, or a more appropriately calibrated system of punishment, in place of that articulated by the People"].)

In this case, the "interests of society" as expressed in the ordinances at issue are to aid the City in enforcing its commercial cannabis licensing scheme, and to minimize incentives to undercut this scheme by operating unlicensed cannabis businesses, by imposing criminal liability on landlords who rent to cannabis businesses without ascertaining that such businesses are licensed. Given these societal interests, the appellate division did not err in concluding that "[f]inding that a person's lack of knowledge called for the dismissal of offenses, when the offenses required no knowledge for conviction, in effect, was an improper dismissal based on the court's disagreement with the law, or disapproval of the impact the provisions would have on defendant."

DISPOSITION

The petition for writ of mandate is denied. Upon remand, the trial court may, upon its own motion, reconsider whether to dismiss the charges in the interests of justice, on the basis of factors other than Wheeler's lack of knowledge.

CERTIFIED FOR PUBLICATION.

MATTHEWS, J.*

We concur:

EDMON, P. J.

EGERTON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

DECLARATION OF PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United Stated, over eighteen years of age, not a party to the within action and my business address in 210 West Temple Street, Suite 18-709, Los Angeles, California 90012, and that on January 24, 2022, I served true copies of the attached "**PETITION FOR REVIEW, EMILY L. WHEELER"** on each of the persons names below by serving a true copy thereof, via the TrueFiling e-filing system as follows:

On January 24, 2022, I served Via TrueFiling and no error was reported, a copy of the document identified above to the following entities:

ROB BONTA
ATTORNEY GENERAL
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013
docketinglaawt@doj.ca.gov

GEORGE GASCŌN
DISTRICT ATTORNEY
APPELLATE DIVISION
320 WEST TEMPLE STREET
SUITE 540
LOS ANGELES, CA 90012
TrueFiling@da.lacounty.gov

On January 24, 2022, following ordinary business practices, I placed for collection and mailing at the Law Offices of the Alternate Public Defender, located at 210 West Temple Street, Suite, 18-709, Los Angeles, California 90012, a copy of the attached PETITION FRO REVIEW, EMILY L. WHEELER, in a sealed envelope, with postage fully prepaid, addressed to the following persons:

Hannah M. Barker, DCA
LA City Attorneys Ofc.
200 N. Main Street
966 City Hall East
Los Angeles, CA 90012
Phone (213 978-4090

Hon. H. Elizabeth Harris, Com.
LA Superior Court Dept. 47
CDF-CJC
210 W. Temple St.
LOS ANGELES, CA 90012
Phone (213) 628-7747

Los Angeles Superior Court
Appellate Division
111 N. Hill St. Rm 607
Los Angeles, CA 90012
Phone (213) 633-1070

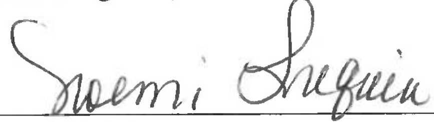
Mrs. Emily L. Wheeler
2626 Billings St.
Compton, CA 90220
(Defendant)

LA SUPERIOR COURT CLERK
111 N. HILL ST., RM 105E
LOS ANGELES, CA 90012

COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

I declare under penalty of perjury that the above is true and correct and that I have signed an original, printed paper copy of this declaration and it is available for inspection per CRC 8.75.

Executed on January 24, 2022, at Los Angeles, California.



NOEMI LUQUIN

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 1/24/2022 by Karissa Castro, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **EMILY WHEELER V. SUPREME COURT OF CALIFORNIA**
Case Number: **TEMP-ZHN12GDJ**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **bhammond@apd.lacounty.gov**

3. I served by email a copy of the following document(s) indicated below:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/24/2022
Date

/s/Noemi Luquin
Signature

Hammond, Brock (215986)
Last Name, First Name (PNum)

Los Angeles County Alternate Public Defender
Law Firm