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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

CITY OF SAN DIEGO,

Plaintiff and Respondent,

v.

1735 GARNET, LLC et al.,

Defendants and Appellants.

D071332

(Super. Ct. No. 37-2015-00025571-
CU-MC-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Law Offices of Dale Dixon, Roger Dale Dixon, for Defendants and Appellants.

Mara W. Elliott, City Attorney, John C. Hemmerling, Assistant City Attorney, and Patricia Ann Miranda, Deputy City Attorney, for Plaintiff and Respondent.

The City of San Diego (City) sued Todd Lesser (Lesser) and 1735 Garnet Avenue, LLC (Garnet, collectively, defendants), claiming they had violated the City's municipal code by maintaining a marijuana dispensary on their property and seeking a permanent

injunction and civil penalties. The trial court granted the City's motion for summary judgment, finding that the City had established the code violations and defendants' liability. (Code Civ. Proc., § 437c.)

On appeal, defendants contend the trial court erred in granting summary judgment because: (1) it misinterpreted the applicable municipal code provisions; and (2) they are not liable for their tenant's actions, under California law, because they did not have possession and control of the land during the tenancy. In addition, they argue that the trial court awarded civil penalties under a municipal code provision that is preempted by California state laws. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Undisputed Facts

Garnet is a California limited liability company that owns property at 1735 Garnet Avenue (the premises), which is located in a Community Commercial (CC-4-2) zone. The San Diego Municipal Code (SDMC) section 141.0614, permits operation of a medical marijuana consumer collective (MMCC) in certain areas of the city when a Conditional Use Permit is obtained prior to operations. However, a MMCC, marijuana dispensary, cooperative or collective is not a permitted use of property in a CC-4-2 zone. (SDMC, §§ 131.0520, 131.0522 and use Table 131-05B.)

Lesser is the managing member of Garnet. In October of 2014, the City investigated a marijuana dispensary operating at the premises, contacted Lesser, and the marijuana dispensary ceased operations. Approximately seven months later, in May 2015, Lesser leased the premises to Paul Spence (Spence). In June 2015, the City

received several complaints regarding a marijuana dispensary operating at the premises, and a San Diego police detective visited the premises. While there, the detective observed multiple jars of marijuana, purchased \$20 worth of marijuana, and saw various customers buying marijuana products.

On July 30, 2015, the City filed its complaint against defendants and Doe defendants in the present action, seeking injunctive relief and civil penalties. The complaint sought to prohibit defendants "from operating or maintaining a marijuana dispensary, cooperative, collective, or other distribution or sales business at 1737 Garnet Avenue, San Diego, California, or anywhere in the City of San Diego without all required permits." The complaint alleged defendants were "maintaining and allowing the operation of" a marijuana dispensary at the premises in violation of the SDMC.

On August 6, 2015, the trial court issued a temporary restraining order against defendants, prohibiting them from maintaining or operating an unpermitted marijuana dispensary at the premises or anywhere else in the City. Following issuance of the order, the City received an additional complaint of a marijuana dispensary operating on the premises. A City attorney investigator went to the premises to conduct a scheduled compliance inspection and smelled a strong odor of marijuana, saw advertisements in the lobby for "Limitless — PB's Newest Collective," which listed the address of the premises, and observed "clear glass display cases with pictures of different strains of marijuana labeled with the name of the strain," "marijuana menu boards hanging on the walls with type, quantity and price of the marijuana for sale," and "glass pipes, rolling papers and other marijuana related products" at the premises. The trial court issued a

preliminary injunction order against defendants on August 21, 2015, prohibiting them from maintaining or operating a marijuana dispensary at the premises or anywhere else in the City unless they obtained the required permits.

In January 2016, another detective went to the premises, purchased marijuana, and observed other customers buying marijuana. The trial court issued a temporary restraining order against Spence in February 2016. A police sergeant visited the premises later that month, smelled a distinct odor of marijuana, and observed marijuana in glass display cases and people leaving with small brown paper bags. In March 2016, the trial court issued a preliminary injunction order against Spence. In April 2016, a detective went to the premises and purchased \$40 worth of marijuana.

*Evidence Submitted to Support Imposition of the Civil Penalty*¹

Additional Facts Relating to the Property

Spence's lease of the premises was for a one-year term and expired on May 6, 2016. On May 6, 2016, a confidential informant purchased marijuana at the premises. On May 10, 2016, the police executed a search warrant at the premises and recovered over 30 pounds of marijuana, thousands of dollars in cash, thousands of copies of physician's recommendations for medical marijuana for patients, and employee schedules. An individual at the premises identified himself as a customer and allowed a police officer to view the marijuana he had just purchased. The police also found posted

¹ In addition to the evidence presented in support of summary judgment, a trial judge may consider other evidence "relevant to the proper exercise of her or his equitable powers . . . in assessing appropriate amounts of civil penalties." (*People v. Super. Ct. of Los Angeles County* (2015) 234 Cal.App.4th 1360, 1387 (*Los Angeles County*)).

at the premises a picture of a detective with her full name at the bottom, a post-it note listing the detective as "banned," and another note identifying an individual as "possible undercover." Sales inventory spreadsheets obtained at the premises revealed sales totaling \$131,528 for the 11-day period from April 17, 2016 to May 9, 2016.

The Unlawful Detainer Action

In September 2015, defendants had filed an unlawful detainer action against Spence, *1735 Garnet LLC v. Paul Spence*, Case No. 37-2015-00032158-CL-UD-CTL. The unlawful detainer trial was originally set for early November 2015, but was continued by stipulation twice and the case went to trial on December 21, 2015. Spence did not attend the trial. Defendants proffered Lesser as their witness.² He testified that he had received a letter from the City about the activity at the premises, and thereafter wrote a letter to Spence asking him to stop dispensing marijuana. Lesser stated he had visited the premises five times in August 2015 and did not see marijuana, and his attorney had conducted a joint inspection with the City and did not see marijuana,³ and he therefore viewed the breach as cured. However, the City continued to send him further communications thereafter, and he then filed the unlawful detainer action because "[t]he

² Defendants did not call any additional witnesses even though the City had provided sufficient evidence that a marijuana dispensary was operating on the premises to obtain a preliminary injunction in its action against defendants in August 2015, and such evidence included detailed declarations from several witnesses.

³ As noted above, although the City investigator did not observe marijuana during the prescheduled inspection, he smelled a strong odor of marijuana and "saw all the equipment needed to operate a marijuana dispensary," including empty glass display cases with pictures of different marijuana strains.

City told me that I had to." Lesser further testified that the City had informed him the "marijuana delivery business" at the premises was prohibited, even if there wasn't marijuana on-site. Spence's attorney characterized the business conducted at the premises as consisting of office functions, such as answering the phone, without any marijuana storage or transfer at the premises. He further presented evidence that: (1) a dispensary by definition involves a transfer of marijuana; and (2) the premises was in a zone approved for use as an office or headquarters without any conditional use permit requirement. The court construed the entire case, as "stand[ing] or fall[ing] on the issue of whether operating a medical marijuana delivery service is an illegal use," and dismissed the action without prejudice.

The City's Motion for Summary Judgment

The City filed a motion for summary judgment against defendants and Spence, contending it is undisputed that Garnet owns the premises; Lesser, as managing member of Garnet, leased the premises to Spence; a police investigation revealed sales of marijuana at the premises on three occasions between June 2015 and April 2016; the area where the premises is located is not zoned for operation of a marijuana dispensary and such use violates the SDMC; and defendants are each a "Responsible Person," as defined in the SDMC, subject to liability for violations of its provisions.

Defendants opposed the motion, asserting that the law does not impose strict vicarious liability on them as property owners. Defendants argued the term "Responsible Person," as used in SDMC, did not apply to the SDMC sections they were accused of violating because the term was not mentioned in those sections. Defendants further

argued they had no control over the property after it was leased, and thus could not be held liable for their tenant's misconduct. In addition, defendants asserted that they were required to follow the eviction process imposed by California law, thus a provision imposing penalties on them for their tenant's violation of the SDMC "conflicts with general laws regarding the landlord-tenant relationship."

Following oral argument, the trial court granted the City's motion for summary judgment. The court concluded the City had provided admissible evidence sufficient to establish that a marijuana dispensary was operating at the premises in a zone that does not permit such use and defendants and Spence were responsible persons for the unpermitted use of the premises. The court therefore enjoined defendants and Spence from operating a medical marijuana dispensary, cooperative, or collective in any form in the City of San Diego without a permit.

Regarding civil penalties, the court noted defendants and Spence had declined the opportunity to have a separate post-judgment evidentiary hearing on the issue and ordered civil penalties of \$200,000 against defendants and \$700,000 against Spence. The trial court attributed the "high amount" of the penalties to the continued operation of the illegal dispensary for many months following the court's issuance of a temporary restraining order and preliminary injunction, the high volume of sales, the posting of information identifying an undercover police officer at the premises, defendants' prior rental of the premises to a different illegal marijuana dispensary, "the sham unlawful detainer action filed by [defendants]," and defendants' willingness to let the tenancy continue after the lease had expired.

DISCUSSION

I. *The Trial Court Did Not Err in Granting the City's Summary Judgment Motion*

Defendants do not dispute the fact that operation of a marijuana dispensary was an impermissible use of the premises under the SDMC. Instead, they argue that the trial court erred in granting the City's motion for summary judgment because it misinterpreted the SDMC provisions they were alleged to have violated to include the term "Responsible Person," even though that term is not used in those provisions. Defendants also assert that under California law, landlords are not liable for conditions that arise after a tenant takes control of leased property and thus they cannot be held liable for Spence's violation of the SDMC. We are not persuaded by their arguments.

A. Standards of Review and Legal Principles

We review an order granting a motion for summary judgment de novo. (*Marshall v. County of San Diego* (2015) 238 Cal.App.4th 1095, 1107.) " 'We will affirm a summary judgment if it is correct on any ground, as we review the judgment, not its rationale.' " (*Ibid.*) Summary judgment is properly granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) A plaintiff seeking summary judgment bears the initial burden of producing admissible evidence proving each element of a cause of action. (Code Civ. Proc., § 437c, subd. (p)(1); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) However, once a plaintiff meets this burden, the burden shifts to the defendant to show the existence of a triable issue of material fact as to the cause of action or a defense. (Code Civ. Proc., § 437c, subd. (p)(1).)

We likewise apply a de novo standard of review to the interpretation of a local ordinance because it presents a pure question of law. (*Audio Visual Services Group, Inc. v. Superior Court* (2015) 233 Cal.App.4th 481, 489 (*Audio*)). When interpreting an ordinance, we apply the same rules of interpretation applicable to statutes. (*Ibid.*) Thus, we first examine the language of the ordinance, giving the words their usual and ordinary meaning, in the context of the ordinance as a whole and its purpose. (*Ibid.*) In addition, we "apply common sense to the language at hand" and interpret a provision in a manner that makes "it workable and reasonable" and avoids an absurd result. (*Wasatch Property Management v. Degrade* (2005) 35 Cal.4th 1111, 1122 (*Wasatch*)).

B. Analysis.

In its complaint and motion for summary judgment, the City contended defendants maintained the premises for an impermissible use, in violation of the SDMC. Section 121.0302(a) of the SDMC states as follows: "It is unlawful for any person to maintain or use any *premises* in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions, or without a required variance."⁴ As noted above, defendants did not dispute that operation of a marijuana dispensary was not a permissible use of the premises under SDMC sections 131.0520, 131.0522 and use Table 131-05B, but contend they are not liable for the violation.

To interpret section 121.0302(a) of the SDMC, we look at the plain language of the provision, construing it in context and considering its purpose. (*Audio, supra*, 233

⁴ The "Land Development Code" consists of Chapters 11 through 14 of the SDMC (encompassing sections 111.0101-1410.0501). (SDMC, § 111.0101(a).)

Cal.App.4th at p. 489.) The purpose of the division of the SDMC containing section 121.0302(a) "is to require compliance with the Land Development Code, to state what activities violate the Land Development Code, and to establish general remedies for these violations." (SDMC, § 121.0301.) Additionally, the SDMC states that "[v]iolations of the Land Development Code shall be treated as strict liability offenses regardless of intent." (SDMC, § 121.0311.) The SDMC further provides that "[w]ords and phrases used in [the SDMC] and not specifically defined shall be construed according to the context and approved usage of the language." (SDMC, § 11.0209(e).)

The words used in SDMC, section 121.0302(a), that directly pertain to the disputed issue of defendants' liability for violations of the SDMC are "any person" and "maintain or use." The term "Person" is defined in the SDMC to include, among other specific entities, "any natural person," "company," and "any other entity which is recognized by law as the subject of rights or duties." (SDMC, § 11.0210.) Therefore, the term encompasses both Lesser (a natural person) and Garnet (a limited liability company).

In contrast, the word "maintain" is not specifically defined in the SDMC. Accordingly, per SDMC section 11.0209(e), and the rules of statutory construction, we are to construe the term in the manner corresponding to generally approved usage. (*Audio, supra*, 233 Cal.App.4th at p. 489.) We may appropriately refer to the dictionary definition of a word when we are attempting to ascertain its usual meaning. (*Wasatch, supra*, 35 Cal.4th 1111, 1121-1122.) The Merriam Webster Collegiate Dictionary defines "maintain" as meaning, among other things, "to keep in an existing state (as of

repair, efficiency, or validity): preserve from failure or decline" and, alternatively, "to continue or persevere in." (Merriam Webster Collegiate Dict. (11th ed. 2005) p. 749.)

As noted in an earlier case in which an appellate court was tasked with interpreting "maintain," the term is "variously defined in both active and passive senses." (*Clinton v. County of Santa Cruz* (1981) 119 Cal.App.3d 927, 934-935.) In the context of a statutory scheme intended to encourage timber production and harvesting, the court in *Clinton* interpreted the word "maintain," as used in the phrase "maintained for eventual harvest," to include "a lack of affirmative conduct" that would make the land unsuitable for commercial timber purposes. We conclude a similar interpretation of "maintain" applies in the context of SDMC section 121.0302(a)—it is meant to encompass inaction that would allow an unpermitted use to continue. This interpretation appears proper within the context of the Land Development Code because the code's purpose is to delineate impermissible land uses and "require compliance" and any violations are to be "treated as strict liability offenses regardless of intent." (SDMC, §§ 121.0301, 121.0311.)

As owners of a leased property, defendants have the legal authority to require a tenant to discontinue unlawful land use. Code of Civil Procedure section 1161, subdivision 4, provides that a tenant's use of a property for an unlawful purpose *terminates the lease*, and the landlord is entitled to repossess the property following service of three days' notice to quit using unlawful detainer procedures. (See Code Civ. Proc., § 1161.) Consequently, in the context of the Land Development Code, which is intended to regulate land use and ensure compliance, a land owner is encompassed within the definition of "any person" who maintains, through failure to take appropriate action,

property in a condition of illegal use under SDMC section 121.0302(a). A contrary interpretation of the Land Development Code would defeat the objectives of the law, allowing a land owner to repeatedly rent to tenants who intended to use the property in an unlawful manner, profiting from the lease until the tenant is forced out by the City, only to re-lease the property to another similar tenant.

In its complaint and summary judgment motion, the City argued that defendants were liable for violations of the SDMC because they are each a "Responsible Person" under section 11.0210 of the SDMC, which defendants disputed.⁵ The definition of "Responsible Person" is included in a section of the SDMC entitled "Definitions Applicable to Code Generally," which is prefaced by the statement "[t]he following words and phrases *whenever used in this Code* shall be construed as defined in this section unless a different meaning is specifically defined elsewhere in this Code and specifically stated to apply." (SDMC, § 11.0210, (italics added).) Within the SDMC, the term "Responsible Person" is primarily used in conjunction with administrative enforcement proceedings, such as the procedures for issuing orders requiring a Responsible Person to restore a structure or premises to a lawful condition, or orders requiring a Responsible Person to abate a public nuisance. (SDMC, §§ 121.0312, 121.0406 et seq.) Here, the City did not pursue these types of administrative enforcement

⁵ Section 11.0210 of the SDMC, entitled "Definitions Applicable to Code Generally," defines "Responsible Person" as follows: " 'Responsible Person' " means a person who a Director determines is responsible for causing or maintaining a public nuisance or a violation of the Municipal Code or applicable state codes. The term "Responsible Person" includes but is not limited to a property owner, tenant, person with a Legal Interest in real property or person in possession of real property."

proceedings against defendants; instead, it elected to file a civil action seeking injunctive relief and civil penalties. The term "Responsible Person" is not used in the Land Development Code sections the City has charged defendants with violating (SDMC, §§ 121.0302(a), 131.0520(b), or 131.0522) or in the civil penalty and injunctive relief provision it relied on to obtain remedy (SDMC, § 12.0202(b)). Thus, it is not apparent that those provisions should be interpreted to incorporate the term. In any case, as discussed above, even without construing SDMC section 121.0302(a), to incorporate the definition of "Responsible Person," we interpret the language of that section as imposing liability on a land owner for maintaining a marijuana dispensary on its property in violation of the SDMC.⁶

Defendants further contend it was improper for the trial court to interpret the SDMC's prohibitions as applying to them because they did not have possession and control of the land when the violation occurred and therefore did not "contribute" to the violation. However, the cases defendants rely on to support their contention address a property owner's liability under common law nuisance or negligence theories. (See, e.g., *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1370 [land owner could not be held liable to a neighbor who was bitten by his tenant's dog in the absence of evidence of the land owner's actual knowledge regarding the dog's dangerous

⁶ We likewise construe the SDMC provision providing for imposition of civil penalties on "any person" who "commits, continues, allows or *maintains* a violation of any provision of this Code," as encompassing landlords who fail to take appropriate action, such as defendants, for the same reasons discussed above in our interpretation of SDMC, section 121.0302(a). (SDMC, § 12.0202(b), (*italics added*)).

nature]; *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1170 [land owner's liability turned on whether he exercised sufficient control over adjacent city-owned land so as to have a duty to protect or warn his tenant of its hazardous condition]; *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 512 [land owner who could terminate the tenancy with two weeks' notice could be held liable for injuries caused by his tenant's dangerous dog if evidence showed he had actual knowledge of the dog and its dangerous propensities]; *Resolution Trust Corp. v. Rossmoor Corp.* (1995) 34 Cal.App.4th 93, 104 [commercial landlord had, "at most," a duty to neighboring property owners, upon learning of a fuel leak caused by its gas station tenant, to ascertain whether the leaks had been corrected, and whether damage to third parties was imminent and preventable].) The analysis of the scope of a property owner's duty under those theories of liability depends on the extent of the property owner's (1) knowledge of the circumstances and (2) control over the property, but such standards do not apply to the determination of a property owner's liability for violation of strict liability zoning laws.

The case of *Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal.App.3d 605, 609 (*Leslie Salt*) is instructive. In *Leslie Salt*, a land owner (Leslie) challenged a cease and desist order requiring it to remove unpermitted fill from its property. (*Id.* at p. 609.) The trial court concluded it did not have authority to issue the order against Leslie, in the absence of evidence that Leslie had placed the fill, because it interpreted laws requiring a permit to place fill on certain lands and authorizing the issuance of cease and desist orders to apply only to the person placing the fill. (*Id.* at p. 611.) The appellate court reversed, interpreting the relevant sections (in the context of

the statutory scheme), to refer not only to "the one responsible for the actual placement of unauthorized fill but also to one whose property is misused by others for that purpose and who even passively countenances the continued presence of such fill on his land."⁷ (*Id.* at p. 618.) The court reasoned that to hold otherwise would materially impair the enforcement agency's ability to prevent and remedy the unpermitted filling, thereby frustrating the effectiveness of the act, and "would diminish the incentive for landowners to manage their properties so as to reduce the prospect of illegal fill, a result that is also clearly repugnant to the legislative purpose." (*Id.* at p. 617.) However, the statutory provisions at issue in *Leslie Salt* did not explicitly provide for strict liability. Thus, the appellate court determined that because the statute represented a "refinement of nuisance law" and did not expressly purport to depart from the common law, it would construe the statute "in light of common law principles bearing upon the same subject." (*Id.* at pp. 618-619.) The court therefore analyzed Leslie's liability under tort law principles and concluded that under such principles Leslie could be held liable because it knew or should have known of the fill and had the right to control the land. (*Id.* at p. 622.)

⁷ The provisions addressed in *Leslie Salt* include Government Code section 66632, subdivision (j), which provides that "[a]ny person who places fill ... within the area of the commission's jurisdiction without securing a permit from the commission as required by this title is guilty of a misdemeanor," and section 66638, which authorizes a court to issue cease and desist orders against any person who "has undertaken, or is threatening to undertake, any activity' that requires a permit." (*Leslie Salt, supra*, 153 Cal.App.3d at pp. 605, 611-612.) The appellate court specifically interpreted the phrase "has undertaken, or is threatening to undertake'" to encompass a passive land owner. (*Id.* at p. 618.)

In contrast, in a recent case in which a land owner who leased property to a marijuana dispensary was sued for violations of a Los Angeles Municipal Code (LAMC) section similar to SDMC section 121.0302(a), the appellate court concluded the land owner's argument that he lacked knowledge of the marijuana dispensary and thus should not be held liable was meritless, when the violation of LAMC section 12.21A.1(a), was a strict liability offense. (*Los Angeles County, supra*, 234 Cal.App.4th at p. 1385.) The same is true here. The terms of the SDMC specifically provide that violations of the Land Development Act are to be treated as "strict liability offenses." (SDMC, § 121.0311.) Accordingly, there is no need to construe the code in light of common law nuisance or negligence principles. Because the undisputed evidence presented by the City demonstrates that defendants maintained their property in a condition of illegal use under SDMC section 121.0302(a), the trial court's grant of summary judgment was proper.

II. *The SDMC's Civil Penalty Provision is not Preempted*

Defendants contend SDMC section 12.0202(b), (which allows a court to impose civil penalties for violation of the SDMC), is preempted by "general laws regarding the landlord-tenant relationship" because the SDMC conflicts with such laws if it is interpreted as imposing penalties on a land owner for a tenant's unpermitted use of leased property. defendants argue they "were not aware Spence was operating a marijuana dispensary until the initiation of the lawsuit," and they subsequently "filed and prosecuted two unlawful detainer actions against Spence," and thus cannot legally be forced to suffer

penalties imposed as a result of their compliance with California's eviction laws.⁸ We are unconvinced by defendants' argument.

A. Standard of Review and Legal Principles

Whether state law preempts a local ordinance presents a question of law subject to de novo review. (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1168.) The party claiming state law preemption of local law bears the burden of demonstrating preemption. (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149 (*Big Creek*).

Cities and counties are endowed with broad authority, under the California Constitution (art. XI, § 7), "to make and enforce, within their borders, 'all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' " (*City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 737-738 (*Riverside*)). With respect to land use regulation, which has historically been a function of local government, "California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Id.* at p. 743.) However, a local ordinance that conflicts with state law is void. (*Ibid.*) A conflict exists if the local ordinance (1) duplicates a

⁸ Defendants state in their opening brief that they "filed a second eviction action on March 28, 2016," however, they presented no evidence of the filing in their opposition to summary judgment, which was filed on June 24, 2016. Nor have they sought judicial notice of the second unlawful detainer action on appeal. In addition, the City provided the trial court with the results of a search of the San Diego Superior Court Registrar of Actions performed on June 27, 2016, for parties named Paul Spence or 1735 Garnet LLC, and such search did not reveal a second unlawful detainer action. The trial court took judicial notice of those records. (Evid. Code, § 452, subd. (d)(1).)

state law; (2) contradicts a state law; or (3) enters an area fully occupied by state law.

(Ibid.)

Defendants do not contend the SDMC duplicates state law or occupies the field of local land use regulation. Instead, defendants challenge the SDMC as requiring landlords to take actions contrary to state law in order to avoid a penalty. For purposes of the conflicts analysis, a local ordinance contradicts state law "when it is inimical thereto," i.e., "the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." (*Riverside, supra*, 56 Cal.4th 729, at p. 743.) There is no inimical conflict "where it is reasonably possible to comply with both the state and local laws." (*Ibid.*)

B. Analysis

Defendants have not satisfied their burden of demonstrating preemption. (*Big Creek, supra*, 38 Cal.4th at p. 1149.) Defendants do not identify any specific state provision as conflicting with the SDMC. Rather, they argue that the SDMC contradicts "California's eviction laws" by effectively requiring landlords to immediately evict tenants in violation of state laws governing "the landlord-tenant relationship." Presumably, defendants intend to refer to the state's unlawful detainer statutes (Code Civ. Proc., § 1161). Those statutes are considered procedural, providing the process by which a landlord may recover possession once the tenancy ceases. (*Birkenfeld v. City of Berkeley* (1976) 17 Cal.3d 129, 149.) As previously noted, a lease agreement is deemed terminated when a tenant uses leased property in an unlawful manner. (Code Civ. Proc., § 1161, subd. 4.)

In contrast, SDMC section 12.0202, provides an enforcement mechanism and a *discretionary* civil penalty to remedy violations of the City's land use ordinances.⁹ In interpreting the civil penalty ordinance, we rely on basic rules of statutory construction, which require that it " 'be given a reasonable and common sense construction in accordance with the apparent purpose and intention of the lawmakers—one that is practical rather than technical, and that will lead to a wise policy rather than to mischief or absurdity.' " (*City of Costa Mesa v. McKenzie* (1973) 30 Cal.App.3d 763, 770.) In addition, "we must presume the City intended to act within the scope of its constitutional powers, and interpret the [ordinance] 'in a manner, consistent with [its] language and purpose, that eliminates doubts as to the [ordinance's] constitutionality.' " (*Nick v. City of Lake Forest* (2014) 232 Cal.App.4th 871, 881–882.)

Applying these rules, we do not interpret SDMC section 12.0202(b), as requiring a land owner to take action forbidden by state statute or prohibiting a land owner from complying with unlawful detainer procedures, particularly in light of the discretionary nature of the penalty. We presume that a trial court will evaluate a land owner's violation of the SDMC and exercise its discretion under SDMC section 12.0202(b), in the context

⁹ SDMC section 12.0202, entitled " Civil Violations—Injunctions and Civil Penalties" states as follows: (a) In addition to any other remedy provided by this Code, any provision of this Code may be enforced by injunction issued by the Superior Court upon a suit brought by The City of San Diego. (b) As part of a civil action filed to enforce provisions of this Code, a court may assess a maximum civil penalty of two thousand five hundred dollars (\$2,500) per violation of the Municipal Code for each day during which any person commits, continues, allows or maintains a violation of any provision of this Code.

of the state's general laws and policies, as was the case here.¹⁰ Further, the City's land use ordinances are endowed with a presumption against preemption (see *Riverside, supra*, 56 Cal.4th at p. 743), and SDMC section 12.0202(b), does not purport to modify the legal procedure a landlord should use to maintain its property in compliance with local land use laws. Accordingly, we conclude that "it is reasonably possible [for land owners] to comply with both the state and local laws" and therefore SDMC section 12.0202, is not preempted. (*Riverside, supra*, at p. 743.)

¹⁰ The trial court imposed a penalty of \$200,000 on defendants, the equivalent of imposing the maximum per day penalty (\$2,500) for an 80-day period. (SDMC, § 12.0202(b).) Defendants received notice of the land use violation no later than July 2015; their unlawful detainer action went to trial in December 2015; and the unlawful land use continued for four additional months, until the facility was shut down by law enforcement in May 2016. In imposing the civil penalty, the trial court took into consideration the "sham" nature of defendants' unlawful detainer action, defendants' apparent willingness to continue to lease to Spence after the initial lease-term had expired, and their prior lease of the premises to a different illegal marijuana dispensary. Defendants, who effectively allowed the illegal use of their property to continue *for more than nine months* after they first received notice, have not demonstrated that the trial court's imposition of the discretionary civil penalty for a fraction of that time period was attributable to delay resulting from their efforts to comply with the procedural requirements of California's unlawful detainer laws.

DISPOSITION

The judgment is affirmed. The City is awarded its costs on appeal.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.