COUNCIL AGENDA: 12/10/13
ITEM: 8.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: **MEDICAL MARIJUANA ENFORCEMENT**

DATE: November 18, 2013

Approved [signature] Date 11/22/13

RECOMMENDATION

Direct the Administration to:

(a) Expand the priority enforcement areas to address Medical Marijuana establishments operating in San José as follows:
   (1) Within 1,000 feet of public and private schools, child daycare centers, churches with child daycare centers, community/recreation centers, parks, libraries and other Medical Marijuana establishments;
   (2) 500 feet from substance abuse rehabilitation centers;
   (3) 150 feet from residential uses; and

(b) Either:
   (1) Return within 90 days with a complete Medical Marijuana regulatory program; or
   (2) Return in 30 days with a ban prohibiting the operation of Medical Marijuana establishments in San José.

OUTCOME

Approval of the expansion of the priority enforcement areas would assist the Administration in responding to concerns from the community. Approval of either option (b)(1) or (b)(2) from above would provide some clarity regarding the continued operation of Medical Marijuana establishments in San José.

BACKGROUND

On September 13, 2011, the Council approved two ordinances that provided Medical Marijuana establishments with an affirmative defense to the City of San José's enforcement of its Municipal Code (Code) against those establishments if these establishments located and operated in accordance with the provisions set forth in the two ordinances. The first ordinance amended Title 20 of the San José Municipal Code (Code) to provide land use restrictions on Medical

Marijuana establishments (Land Use Ordinance) and the second ordinance amended Title 6 of the Code to provide operational restrictions for Medical Marijuana establishments (Regulatory Ordinance). Together, these ordinances regulated all Medical Marijuana establishments operating in San José, including but not limited to: Collectives, Cooperatives, Dispensaries and Delivery Service businesses (hereafter collectively referred to as, Collectives). Attachment "A" to this memorandum is a table summarizing the key provisions decided by the Council on September 13, 2011.

For purposes of this memorandum, it is important to note that among other restrictions the Council approved, they specifically approved prohibiting Collectives from locating:

- Within 600 feet of public or private schools;
- Within 500 feet of child daycares, churches with child daycares, community/recreation centers, parks, libraries, substances abuse rehabilitation centers or other Collectives; and
- Within 150 feet of residentially zoned property

Also worth noting, on July 27, 2011, prior to the Council's September 13th approval of the above ordinances, the Planning Commission made recommendations to the Council regarding the location of Collectives. These recommendations followed a number of Planning Commission hearings and provided, in relevant part, that Collectives not be allowed to locate in the following areas:

- 1,000 feet from Public and Private schools, child daycares, churches with child daycares, community/recreation centers, parks, libraries and other Collectives;
- 500 feet from substance abuse rehabilitation centers; and
- 150 feet from residential uses

On October 28, 2011, Medical Marijuana advocates filed a Petition for Referendum challenging the Regulatory Ordinance, which forced the Council to either repeal the Regulatory Ordinance or put the Regulatory Ordinance to a vote of San José residents. In addition, as a result of the Petition for Referendum, the effective date of the Regulatory Ordinance was automatically suspended.

The Petition for Referendum did not address the Land Use Ordinance and therefore the Land Use Ordinance went into effect. However, because the Council intended for the ordinances to work in tandem, on November 8, 2011, the Council suspended the Land Use Ordinance making it effective only if and when the Regulatory Ordinance took effect.

On January 19, 2012, the California Supreme Court granted review in four cases involving Medical Marijuana. Among the issues to be addressed in those cases was whether a city could ban and/or regulate facilities that dispense Medical Marijuana.

On February 14, 2012, faced with the Petition for Referendum and in light of the California Supreme Court's decision to hear a number of relevant Medical Marijuana cases, the Council repealed the Regulatory Ordinance. Because the Land Use Ordinance was suspended until the

Regulatory Ordinance went into effect, there currently exists no recognized affirmative defense against the enforcement of the City's Code against Collectives operating in San José, ***making their continued operation in San José illegal.***

At the time the Council repealed the Regulatory Ordinance, there were over 100 Collectives operating in San José. Recognizing the limited resources available to take enforcement action against these illegal operations, the Council directed the Administration to first focus on those Collectives that were creating a public nuisance, failing to pay the City's Marijuana Business Tax (MBT)[1] or failing to comply with State law distance requirements which prohibited Collectives from operating within 600 feet of a school.

On April 26, 2013, Melinda Haag, U.S. Attorney for the Northern District of California, served the owners of several San José properties that were housing Collectives located within 1,000 feet of a school with a warning letter. The letter warned that continued operation of those Collectives could result in criminal prosecution, forfeiture of property and enhanced penalties due to the proximity to a school.

On May 6, 2013, the California Supreme Court decided the case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* and confirmed local governments' land use authority to regulate or ban facilities that distribute Medical Marijuana.

On September 10, 2013, as part of its Priority Setting session, the Council deemed Medical Marijuana to, again, be a top ten priority and directed the Administration to explore expanding the criteria and priorities previously adopted by Council to guide the Administration's enforcement actions against Collectives operating in San José.

On October 1, 2013, at the request of Voices United, a non-profit organization providing resources to address substance use and addiction with a focus on reducing underage drinking and drug use, the Administration met with the organization to discuss Medical Marijuana establishments operating in San José. According to Voices United, in conjunction with students from Lincoln High School, they undertook a study of the impacts of marijuana on youth and youth attitudes towards marijuana. Specifically, the students conducted a poll of Lincoln High School students. 186 surveys were completed. The results were as follows:

- 92% of those surveyed indicated they smelled marijuana smoke at their school.
- 95% of those surveyed said marijuana was easy to obtain.
- 47% of those surveyed said they got their marijuana from nearby Collectives.
- 70% of those surveyed indicated they got their marijuana from people who get it from Collectives via resale.
- 87% of those surveyed said the people they observe going into the Collectives seem to be healthy, able-bodied people.

[1] Regardless of their legal status, all Collectives operating in San José are required to pay the City's MBT, currently 10% of gross receipts, pursuant to Chapter 4.66 of the San José Municipal Code. Payment of these taxes in no way legalizes business activities that are otherwise unlawful in the City

- 33% of those surveyed said the advertising makes them think marijuana use is ok.
- 59% of those surveyed said the sign twirlers make them think about marijuana more frequently.

In the end, the proximity of Collectives to schools was a concern as the students believed the proximity made it easier for youth to access marijuana (In this particular case, five Collectives are within 7-10 blocks of Lincoln High School; one Collective is within 900 feet of St. Martin of Tours School; and, one Collective is within 700 feet of Foundry Community Day School and within 1,000 feet of St. Leo's Catholic School.). In addition, the students were concerned with advertising around the schools giving their fellow students the impression that marijuana use is acceptable. The head of the student group was also present at the Administration's meeting with Voices United and requested, on behalf of her fellow students, that the City's Administration require Collectives to be at least one mile from any school, community center, library or any other place where youth traditionally congregate.

On October 11, 2013, the Administration was invited to attend the monthly meeting of the Juvenile Justice Systems Collaborative (JSCC) Prevention and Programs Work Group. Among those members present were representatives from the Santa Clara County Probation Department; the Santa Clara Valley Health & Hospital System; the Santa Clara County Public Health Department; the Santa Clara County Office of the Public Defender; the Santa Clara County Office of the District Attorney; the Santa Clara County Office of Education; the Santa Clara County Social Services Agency; the Santa Clara County Board of Supervisors; Voices United and, representatives from public schools and community based organizations serving vulnerable and at-risk populations.

On October 29, 2013, the Administration was invited to attend the monthly meeting of the Santa Clara County Public Health Department's Children, Family and Community Services Division of Drug and Alcohol Services. Among those present were representatives from Unity Care; Rebekah Children's Services; Catholic Charities; the Santa Clara County Department of Alcohol & Drugs Services; Asian Americans for Community Involvement; the California Department of Rehabilitation; Starlight Community Services; the Santa Clara County Public Health Department; YMCA Project Cornerstone; Choices for Children; Parents Helping Parents and Voices United.

On November 1, 2013, at their request, the Administration met with representatives from the Santa Clara County Office of the Public Defender and the Santa Clara County Juvenile Probation Department's Violence Reduction Program.

During the above three meetings, the Administration repeatedly heard concerns with both the proximity of Collectives to schools, community centers and anywhere that youth congregate and the impact of marijuana on that youth. The Administration also heard concerns with the proximity of Collectives to residential areas since youth reside and/or often pass through these areas on their way to or home from school. With more dispensaries in these particular areas, those present at the meetings claimed they noticed an increase in the amount of youth using marijuana and doing so for what appeared to be non-medical purposes. In addition,

representatives from schools, in particular, noted a specific increase in suspensions related to the use of marijuana.

For a complete list of Collectives currently operating in the City and/or paying the City's MBT, please refer to Attachment "B."

Worth noting, Washington state and Colorado state recently passed laws legalizing the use of marijuana for recreational purposes. As part of their regulatory programs, each has included restrictions related to the proximity of Collectives to certain sensitive uses. For Washington state, Collectives cannot be located within 1,000 feet of an elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library or arcade where admission is not restricted to those age 21 and older. In Colorado, Collectives cannot be located within 1,000 feet of any school, alcohol or drug treatment facility, or the principal campus of a college, university, or seminary, or a residential child care facility.

ANALYSIS

As indicated above, there is no authority in the Code that allows Collectives to legally operate within San José; and, under federal law the use, sale and transportation of marijuana is and remains illegal as a Schedule I Controlled Substance. However, due to limited resources in the City of San José, on February 14, 2012, the Council directed the Administration to focus its enforcement efforts on those Collectives that operate in a manner that creates a public nuisance, fail to pay the MBT, or fail to comply with State law distance requirements. Since that time, the City has heard an increase in concerns from the community regarding the proximity of Collectives to residential uses and areas where youth congregate. In addition, the U.S. Attorney has focused part of its enforcement efforts on those Medical Marijuana establishments located within 1,000 feet of schools. Moreover, the Supreme Court has decided that Cities regulate or altogether ban facilities that dispense Medical Marijuana. And, finally, the states that have legalized marijuana for recreational use have restricted them from locating within 1,000 feet of schools and places where youth traditionally congregate.

In light of the above, the Administration recommends expanding the areas of enforcement to include those Collectives located as follows:

- Within 1,000 feet of Public and Private schools, child daycares, churches with child daycares, community/recreation centers, parks, libraries and other Collectives;
- 500 feet from substance abuse rehabilitation centers; and
- 150 feet from residential uses

Alternatively, the Council could rely on those buffers it previously approved on September 13, 2011, such that the Administration would continue to focus on Collectives located within 600 feet of schools (AB 2650); and, add to its list of priorities those Collectives which are located as follows:

- Within 500 feet of child daycares, churches with child daycares, community/recreation centers, parks, libraries, substances abuse rehabilitation centers or other Collectives; and
- Within 150 feet of residentially zoned property.

For ease of consideration, Attachments "C" and "D" to this memorandum are maps showing the enhanced enforcement areas with either option set forth above.

EVALUATION AND FOLLOW-UP

Staff will return in either 90 days with a complete regulatory program to fully address the safe operation of Collectives or 30 days with a ban on Collectives altogether.

POLICY ALTERNATIVES

Alternative: Do not expand the areas to take enforcement action against Collectives.
Pros: The Administration can focus solely on bringing back complete medical marijuana regulatory to Council for review and approval.
Cons: The City will not be responding to an increase in concerns by the community and various agencies throughout the County to the operation of dispensaries in proximity to facilities serving children.
Reason for not recommending: The City needs to take action to respond to concerns regarding its youth and take steps to protect their health, safety and well-being.

PUBLIC OUTREACH/INTEREST

❑ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

❑ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

❑ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Prior to Council consideration of the land use and regulatory ordinances, the Administration did significant outreach to the Collectives and general pubic. As noted in this memorandum, more recent outreach was conducted to inform the recommendations presented in this report.

COORDINATION

This memo has been coordinated with the Department of Planning, Building & Code Enforcement, the Police Department, the Finance Department and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Resource needs with the relevant departments appear to be sufficient to handle the recommended increase in enforcement. If any additional resources are identified to be needed for this enforcement, they will be evaluated and considered as part of the 2014-2015 budget process, as appropriate and in the context of the City's budget situation and other service and organizational priorities.

CEQA

Not a Project, File No. PP10-068, General Procedure and Policy Making.

/s/
ANGELIQUE GAETA
Assistant to the City Manager

For questions please contact Angelique Gaeta, Assistant to the City Manager, at (408) 535-8253.

Attachments

ATTACHMENT "A"

MEDICAL MARIJUANA
(Summary of Ordinances Previously Adopted Then Suspended/Repealed by Council)

Key Provisions	LAND USE ORDINANCE *(Suspended 11/8/11)*
Zoning Districts *(Collectives Can Be Located In...)*	• CG-Commercial General • DC-Downtown Primary Commercial • LI-Light Industrial • CIC-Combined Industrial Commercial
Distance Requirements *(Collectives Shall Not Be Located Within...)*	• 600 feet from Public and Private Schools (AB2650) • 500 feet from child daycares, churches with child daycare, community/recreation centers, parks, libraries, substance abuse rehab. centers and other Collectives • 150 feet from residential uses
Pedestrian Area Restrictions *(Collectives Shall Not Be Located On...)*	• Floors of buildings with active pedestrian use
Additional Criteria for Light Industrial Parcels	• No Collectives within the Enterprise Zone or other Incentive Zones

ATTACHMENT "A"

MEDICAL MARIJUANA
(Summary of Ordinances Previously Adopted Then Suspended/Repealed by Council)

Key Provisions	REGULATORY ORDINANCE *(Repealed 2/14/12)*
Maximum Number of Collectives	• 10 Citywide • No More than 2 per Council District
Registration Process	• First-come, first-served
Off-Site Cultivation	• None allowed
Security	• Security Officers • Security Alarm System • Lighting • Fire Alarms
Ownership/Management/ Grow	• No one with prior felony conviction
Alternative Delivery Systems	• Affirmative defense for edibles, ointments and non-smoke based products as well

Attachment B

Business Name	Business Address	Council District	Compliant with SJMC 4.66
Buddy's	4140 Stevens Creek Boulevard San José, CA 95051	1	Yes
Herbs SSVVC	1420 S. Winchester Boulevard. San José, CA 95128	1	Yes
South Bay Healing Center	991 Saratoga Avenue; Ste 140 San José, CA 95129	1	Yes
YB Saratoga	4211 Barrymore Drive San José, CA 95117	1	Yes
Total for District 1		4	
South Bay CRC	90 Great Oaks Boulevard; Ste 202 San José, CA 95119	2	Yes
Total for District 2		1	
All American Cannabis Club	1082 Stockton Avenue San José, CA 95110	3	No
ARC Healing Center	246 East Gish Road San José, CA 95122	3	Yes
Golden State Care Collective	623 N.1st Street San José, CA 95110	3	Yes
Leaf Lab	847 Commercial Street San José, CA 95112	3	Yes
NorCal Care	25 N. 14th Street; Ste 60 San José, CA 95112	3	No
Palliative Health Center	1670 Zanker Road Suite A San José, CA 95112	3	No
Papadon's 420 Collective	931 Commercial Street San José, CA 95112	3	Yes
Purple Lotus Patient Center	903 Commercial St. #50 San José, CA 95112	3	Yes
Pyramid Medicinal	90 E. Gish Road, Suite 250 San José , CA 95112	3	Yes
San José Medicinal Group	52 S. 1st Street; Ste 220 San José, CA 95113	3	Yes
Sanative Solutions	581 E. Taylor Street San José, CA 95112	3	No
Santa Cruz Naturally	93 N. 14th Street; Ste 4 San José, CA 95112	3	Yes
Sensi Herbal Care	21 Post Street San José, CA 95113	3	Yes
YB Pyramid	1324 N. 10th Street San José, CA 95112	3	Yes
Total for District 3		14	
Elemental Wellness	711 Charcot Avenue San José, CA 95131	4	Yes
Fortune Welness Foundation	2231 Fortune Drive; Ste A San José, CA 95131	4	Yes
Harborside Health Center	2106 Ringwood Avenue San José, CA 95131	4	Yes

Attachment B

Business Name	Business Address	Council District	Compliant with SJMC 4.66
Indicare Group	2171 Del Franco Street San José, CA 95131	4	No
Nirvana Wellness Center	1926 O'Toole Avenue San José, CA 95131	4	Yes
Portal Herbal Health Co, The	1141 Ringwood Court; Unit 100 San José, CA 95131	4	Yes
Premium Fire	2081 Bering Drive; Ste Y San José, CA 95131	4	Yes
Total for District 4		7	
Capitol Collective	459 S. Capitol Avenue, Suite 11 San José, CA 95127	5	Yes
Delta Health Center	3114 Story Road San José , CA 95127	5	Yes
Garden House Remedies	2348 Alum Rock Avenue San José , CA 95116	5	Yes
I & I Collective	1530 Alum Rock Ave San José, CA 95116	5	No
Modern Wellness Collective	156 S. Jackson Avenue San José , CA 95116	5	Yes
Total for District 5		5	
Amsterdam's Garden	2142 The Alameda San José, CA 95126	6	Yes
California Care Collective	551 Stockton Avenue San José, CA 95126	6	Yes
Compassionate Care Clinics	265 Meridian Avenue #9 San José, CA 95126	6	Yes
Herbs SSVVC	1641 W. San Carlos Street. San José, CA 95128	6	Yes
La Vie MMX	945 S. Bascom Avenue; Unit B San José, CA 95128	6	Yes
MedMar Healing Center	170 S.Autumn Street San José, CA 95110	6	Yes
Northern California Natural Collective	973 Park Avenue San José, CA 95126	6	No
Papadon's 420 Collective	590 Lincoln Ave San José, CA	6	Yes
Peace of Mind	471 Willow Street San José, CA 95125	6	Yes
Platinum Society	1174 Lincoln Avenue; #11 San José, CA 95125	6	Yes
San Jose Health Center/iMeds	396 S. Bascom Avenue San José, CA 95128	6	Yes
SJ Patients Group	824 The Alameda San José, CA 95126	6	Yes
SLM Collective	2417 Stevens Creek Boulevard San José, CA 95128	6	Yes
SVCare	1711 Hamilton Avenue ; Ste B San José, CA 95125	6	Yes

Attachment B

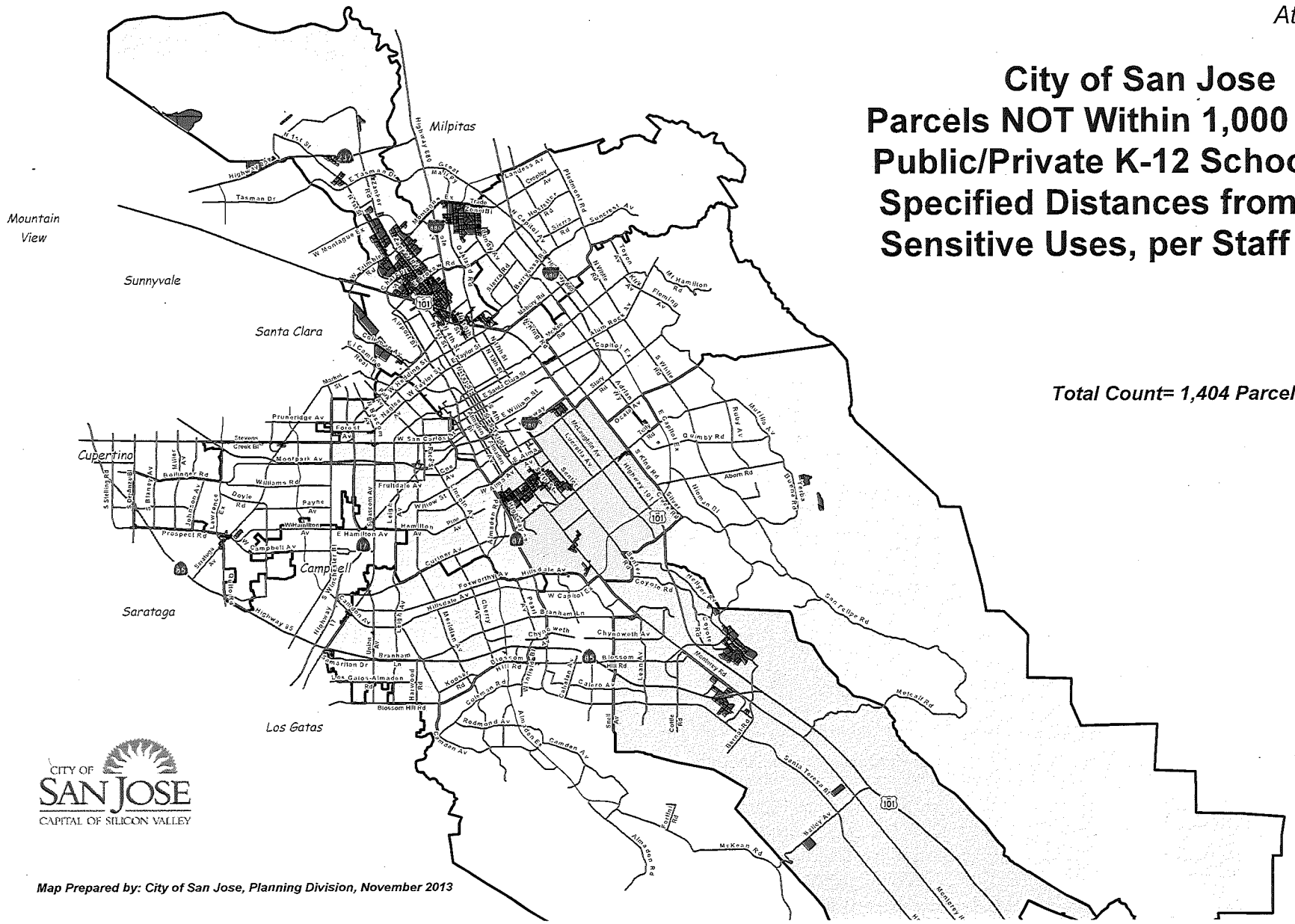
Business Name	Business Address	Council District	Compliant with SJMC 4.66
YB Valley Fair	325 S. Monroe Street San José, CA 95128	6	Yes
Total for District 6		15	
Blue Sky Care Center	3039 Monterey Road San José, CA 95111	7	Yes
Deals 4 Less Collective	1999 Monterey Road # 130, San José, CA	7	Yes
Herbs SSVVC	282 San José Avenue San José, CA 95125	7	Yes
Holistic Health Care Co-op	88 Tully Road; Unit 107SJ San José, CA 95111	7	Yes
Magic Health	1999 Monterey Highway; Ste 100 San José, CA 95112	7	Yes
MediMarts	1851 Little Orchard Street San José, CA 95125	7	No
MINT Alternative Healing	2322 Senter Road, San José, CA 95112	7	Yes
Natural Herbal Pain Relief	519 Parrott Street San José, CA 95112	7	Yes
NC3	2175 Stone Avenue; Suite 1 San José , CA 95125	7	Yes
Patient to Patients Group I	1692 Tully Road, Ste 6 San José, CA 95122	7	Yes
Revolution Health Center	1621 Almaden Road San José, CA 95125	7	Yes
San Jose Bay Leaf	1692 Tully Road #3 San José, CA 95122	7	Yes
San Jose Bay Leaf	3894 Monterey Highway San José, CA 95111	7	Yes
San Jose Organic	88 Tully Road; Ste. 100 San José, CA 95111	7	Yes
Serenity Collective	2601 Senter Road San José, CA 95111	7	Yes
South Bay Natural Remedies	2943 Daylight Way San José, CA 95111	7	Yes
Story Wellness	1221 Story Road, Suite 40 San José, CA 95122	7	Yes
YB Amber Pearl/I Dragon	2129 S. 10th Street San José, CA 95112	7	Yes
Total for District 7		18	
408 Collective	2435 S. Bascom Avenue Campbell, CA 95008	9	No
All American Cannabis Club	3131 S. Bascom Avenue #220 Campbell, CA 95008	9	No
Cookies	3000 South Bascom Avenue San José, CA 95128	9	Yes
Garden House Remedies	1814 Hillsdale Avenue; Ste A San José , CA 95124	9	Yes

Attachment B

Business Name	Business Address	Council District	Compliant with SJMC 4.66
Greenjeans Place	3229 S. Bascom Avenue Suite A San José, CA 95124	9	No
I & I Collective	2630 Union Avenue San José, CA 95124	9	Yes
Medicinal Gardens	2559 S. Bascom Avenue Campbell, CA 95008	9	No
SVCare	2591-1 S. Bascom Avenue San José, CA 95124	9	Yes
YB Blossom Hill	4464 Pearl Avenue San José, CA 95136	9	Yes
Total for District 9		9	
A Better Way	3851 Charter Park Drive; Ste Q San José, CA 95136	10	No
Canna Culture Collective	3591 Charter Park Drive San José, CA 95136	10	Yes
South Valley Farmacy	5591 Snell Avenue San José , CA 95123	10	No
Total for District 10		3	
Alternative Natural Remedies	5752 Country Club Parkway San José, CA 95138	N/A	No
Care Givers of San José	5701 Condor Circle San José, CA 95118	N/A	Yes
John Bartolero	PO Box 821 Aptos, CA 95001	N/A	Yes
Larry, Daryl & Daryl (Formerly The Bud Barber)	1729 Galewood Court San José, CA 95133	N/A	Yes
MC Bakes	2480 Valley View Road Hollister, CA 95023	N/A	No
Purple Frost, Inc.	1300 Clay Street #600 Oakland, CA 94612	N/A	Yes
Total for Delivery Service		6	
Total Active Marijuana Businesses		82	
Total Collectives Non Compliant with SJMC 4.66		16	

Attachment C

City of San Jose
Parcels NOT Within 1,000 Feet of Public/Private K-12 Schools and Specified Distances from Other Sensitive Uses, per Staff Memo

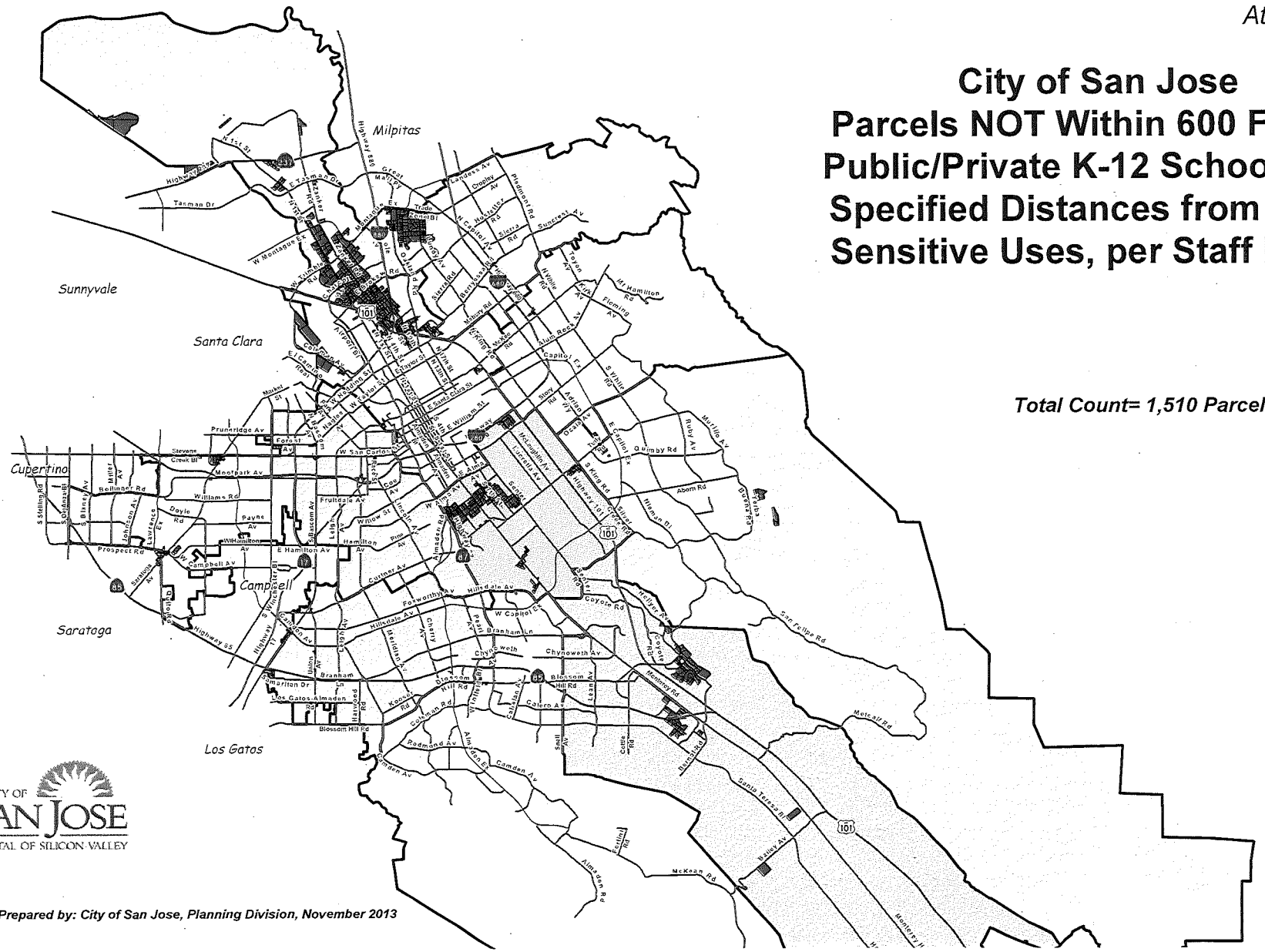


CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Map Prepared by: City of San Jose, Planning Division, November 2013

Attachment D

City of San Jose
Parcels NOT Within 600 Feet of Public/Private K-12 Schools and Specified Distances from Other Sensitive Uses, per Staff Memo



Total Count= 1,510 Parcels

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Map Prepared by: City of San Jose, Planning Division, November 2013

Scale: 1 inch = 2 miles