




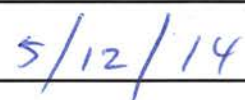
Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: MEDICAL MARIJUANA

DATE: May 12, 2014

Approved  Date 

RECOMMENDATION

Approve both memos signed by the Mayor, Vice Mayor and Councilmembers Liccardo and Oliverio dated May 9, 2014 with the following amendments:

Zoning

1. Prohibit collectives from locating in the CG-Commerical General zoning district
2. Allow collectives to locate in IP-Industrial Park and HI-Heavy Industrial zoning districts, but prohibit them from locating within the following areas:
 - a. The North San Jose Industrial Core Area as defined in the North San Jose Area Development Policy (see Attachment A) as well as any parcels that have frontage on any portion of a public street that serves as a boundary of the Core Area or are within 150 feet of another parcel located within the Core Area.
 - b. Zones 1, 3 and 4 of the Edenvale Redevelopment Project Area (collectively known as "New Edenvale") as defined in the Edenvale Area Development Policy. (see Attachment B)
 - c. The International Business Park
3. Clarify that for the purpose of measuring distance requirements in the zoning ordinance, distances between a collective and all sensitive receptors should be measured from the front door of the collective to the property line of the sensitive receptor, and that distances between collectives should be measured between their respective front doors.

Cultivation

4. Remove cultivation regulations from the proposed ordinance, and direct staff to bring cultivation regulations back to Council in a year's time for consideration and adoption, along with a staffing plan to show how such regulations will be enforced.

Cutoff Dates

5. Establish that the cutoff date to be considered an existing collective shall be August 1st, 2014. (The Council needs to provide direction on this point as the date is referenced but left blank in sections 6.88.300(c) and 6.88.320(e) of the draft Title 6 ordinance.)
6. Establish that the City shall not accept any new registration applications after December 19, 2014, with the exception of renewal applications or applications to change location submitted by a collective that is already registered.

Other Issues

7. Direct staff to analyze the below concerns, raised in a letter from Roberts & Elliott, LLP dated May 9, 2014, and return to the Council before or at the same time as the final ordinance text comes forward for approval with (1) an explanation as to whether each concern is valid and (2) alternative ordinance language that would resolve the concern.
 - a. **Leases:** The letter asserts that the ordinance's provisions around leases would make it impossible for collectives to find landlords willing to lease to them.
 - b. **Cash:** It asserts that the prohibition on cash transactions will make it impossible for collectives to operate, given that they do not have bank accounts.
 - c. **Overhead:** It asserts that the ordinance prohibits salaries.
 - d. **Paraphernalia:** It asserts that prohibition on sale of paraphernalia is an unreasonable restriction on collective operations.
 - e. **Record Keeping:** It asserts that the requirement to keep hard copies of all records is onerous given modern electronic recordkeeping practices.
 - f. **Packaging:** It asserts that the packaging required by the ordinance does not exist.
 - g. **Transferability:** It asserts that the provisions around transferability will eventually result in the closure of all collectives.

ANALYSIS

I agree with many aspects of the recommendations made by staff and by the Mayor—I think we're better positioned now to succeed on this issue than we ever have been in the past. However, as this Council has learned from dealing with other policy matters, it's important to get the details right. I believe there are a few adjustments that still need to be made.

My primary goal on this issue is to solve the compatibility problems our residents have experienced as a result of collectives located in the wrong places. If we want to succeed at this task, however, I think we need to recognize the value of being strategic. The Council has twice failed to establish a regulatory framework on this issue: once in March 2010 and again in 2011. The fact that two ballot initiatives are currently being circulated

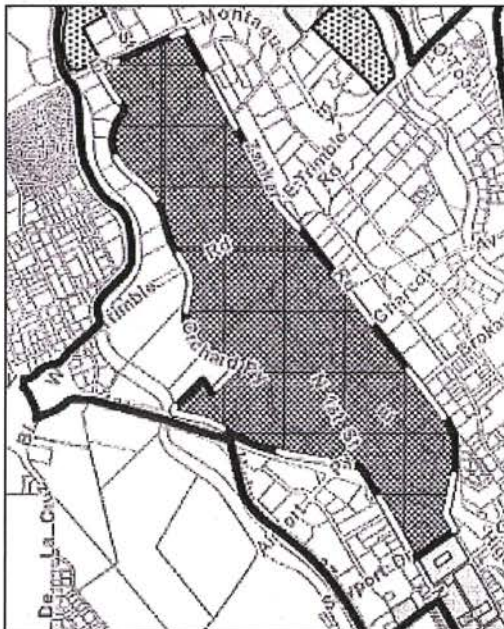
by collective-backed groups may suggest that our third attempt won't be all smooth sailing.

I'm not overly worried about the initiatives—voters may be less sympathetic to their cause given the bad behavior of some collectives in our neighborhoods—but we should appreciate that if one or both makes it on the ballot there's at least some risk that the regulations passed by the Council could be overturned. That scenario would not be good for San Jose: if their initiative passed, the collectives would effectively be writing the City's marijuana regulations. We can't make every collective happy, but if we can stake out a reasonable middle ground that attracts at least some support from collectives, we may make it easier to fend off a challenge at the ballot. My recommendations in this memo are intended to move towards a reasonable compromise position without sacrificing the core goal of protecting residents.

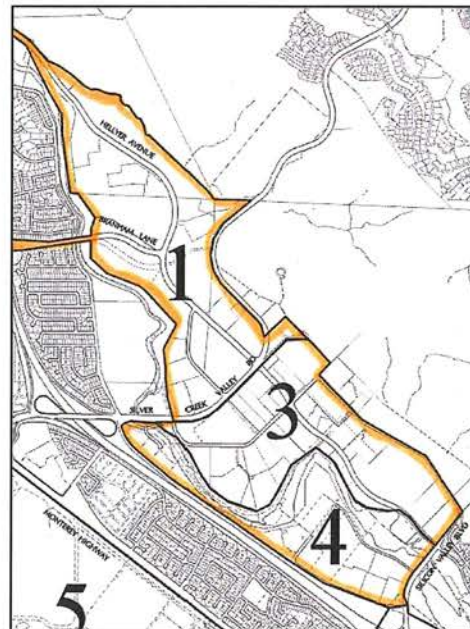
Industrial Park Zoning District

The Mayor and his cosigners have moved in the right direction on zoning; it does make sense for collectives to be allowed in industrial areas. I would offer a few additional amendments, however. First, given that we are allowing them in industrial areas, I think it may make sense to disallow them in the CG zoning district, which can be located near residential and which also tends to be heavily trafficked by our residents.

Second, I generally agree with the Mayor's approach of allowing collectives in HI and IP, but believe it can be further refined. Specifically, instead of prohibiting collectives in the entire North San Jose Area, I believe we should prohibit them within the Industrial Core Area, parcels directly across the street from the Core Area, and parcels within 150 feet of parcels within the Core. I also believe that instead of prohibiting them in the entire Edenvale Redevelopment Area, we should prohibit them exclusively in New Edenvale. These recommendations, which are slightly less restrictive than the ones recommended by the Mayor, strike a better balance between protecting premier corporate development sites and providing a reasonable number of sites for collectives to operate.



North San Jose Industrial Core Area



New Edenvale

I recognize the Mayor's concern that marijuana collectives may impair development in IP zones. I would offer a few points in response. First, it's slightly odd that there isn't a similar concern about HI zones given that collectives are arguably less compatible with that designation than IP. HI may not host corporate headquarters or have the glamorous cache of big name tech companies, but it still provides jobs to our residents.

Second, experience shows that well run collectives are compatible with major corporate development. Consider the 2 million square foot Peery Arrillaga development, which staff offers up in their report as the kind of development that needs to be protected from collectives. Ironically, there's *already* a collective located nearby, and the development is proceeding anyway. I think this is strong evidence that there's no necessary conflict between collectives and corporate development. It's worth noting that collectives would be prohibited from locating near the Peery project under my proposal given that it's in the Core Area—I don't have a problem with being extra cautious given the importance of economic development—but I don't think we need to keep collectives out of the entire NSJ policy area.



Cultivation

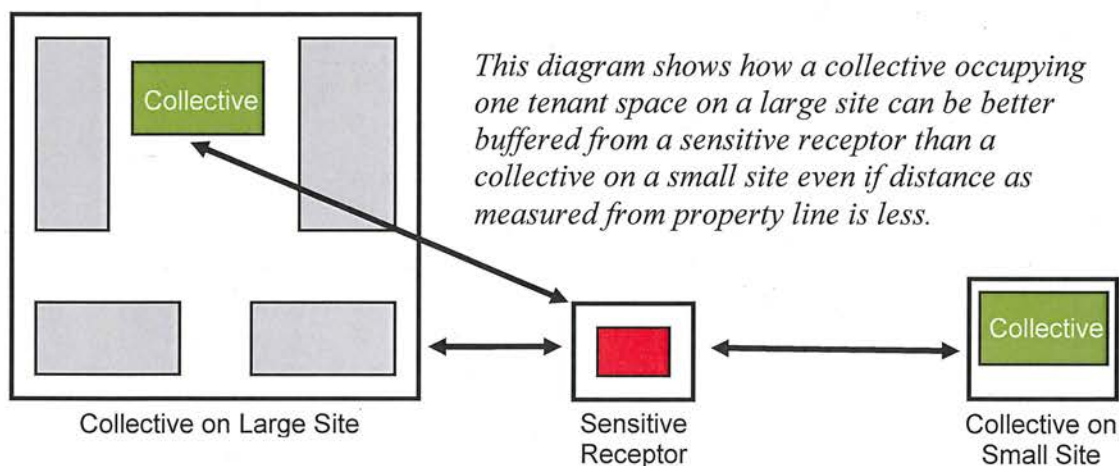
I understand staff's desire to regulate cultivation. I don't disagree that in a perfect world, we would pass cultivation regulations on the front end. In the real world, however, my opinion is that this issue is not yet ripe. Effectively enforcing a closed-loop cultivation process would require a substantial investment of resources from the Police and other Departments that I believe we should walk up to carefully. We don't have a full enforcement plan in front of us, and neither do we have a staffing plan. Before we commit ourselves to a labor-intensive regulatory endeavor, we should have a full conversation about how we're going to staff it and what the impact will be on our other services. If, for example, the plan is to pull officers off of patrol to regulate pot cultivation, I think we'd probably all agree that we're making a mistake. The Council

will remember I gave a similar warning when we were considering opening the Police Substation a year ago. As with the Substation, if the Council makes decisions without regard to staff resources and practical implementation concerns, we probably won't succeed.

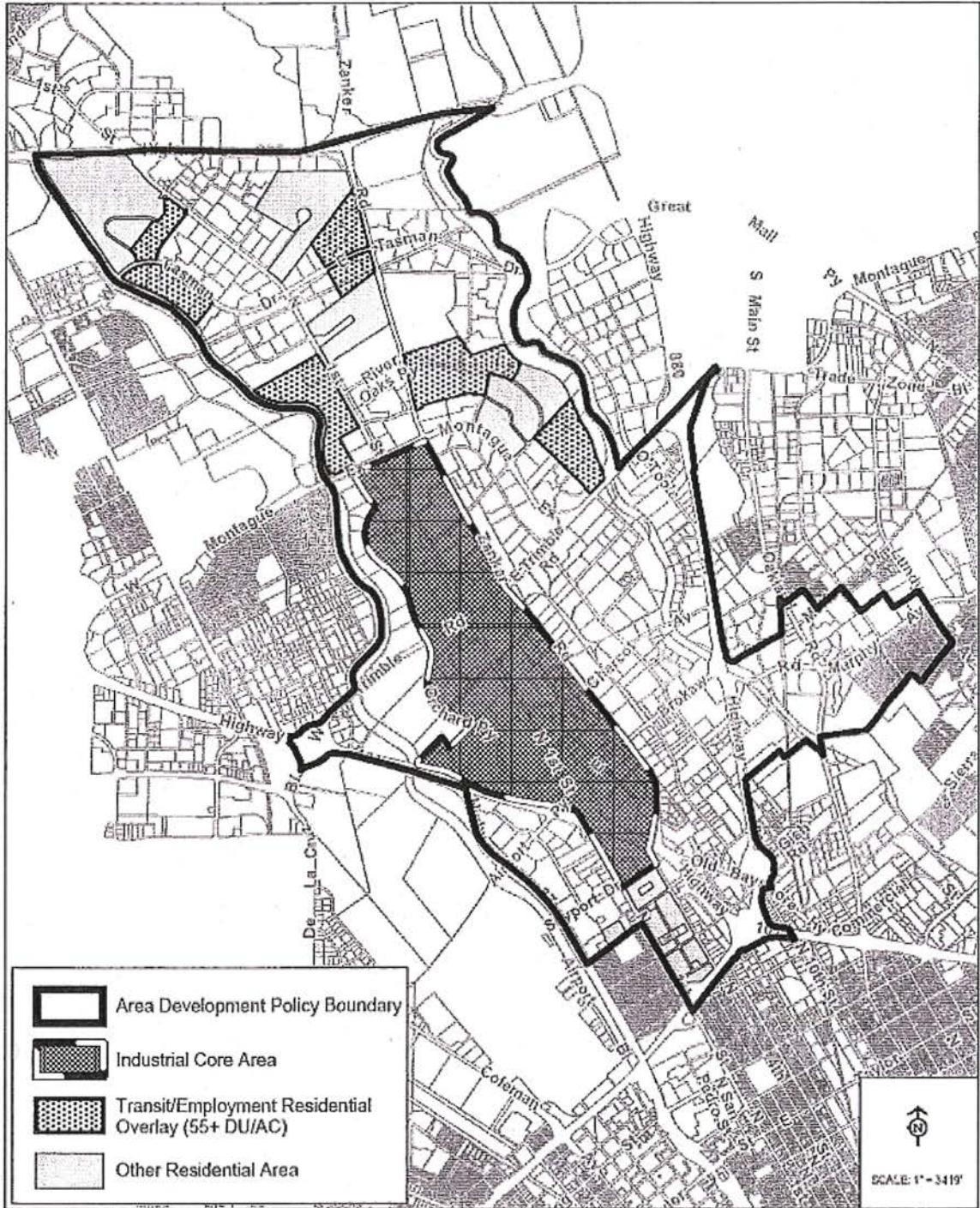
That's not to say that we shouldn't regulate cultivation, just that we should make decisions in a thoughtful and deliberate way that doesn't have unintended consequences for our already stretched Police Department. Accordingly, I recommend we direct staff to bring back cultivation regulations to Council in a year's time, along with a full staffing plan that shows where staff resources for enforcement will come from. Sometimes breaking decisions up into more manageable pieces is the wiser approach.

Distance Measurement

My recommendation is that we measure from the front door of the collective to the property line of a sensitive receptor. I recommend this option instead of the other alternative—measuring property line to property line—because measuring between property lines would penalize collectives located on large parcels and reward collectives located on smaller sites. There are advantages to having collectives on large parcels: they are potentially less visible from the street and more effectively buffered from neighboring uses. One of the benefits of allowing collectives in industrial areas is that there are many large parcels available that are naturally buffered from residential. Measuring to the collective's front door would make it easier to locate on large parcels while still preserving setbacks from sensitive receptors.



Attachment A – North San Jose Policy Area Map



Attachment B – New Edenvale (zones 1, 3, & 4)

