

# *MEDICAL MARIJUANA*

*City Council Study Session*

*April 20, 2015*

# Study Session Agenda

- ❖ History of the City's Medical Marijuana Program
- ❖ Update on Implementation
  - Registration
  - Enforcement
  - Marijuana Business Tax
- ❖ Marijuana Advocates' Initiative

# History Behind San Jose's Program

## Key Dates

- **1996:** State Proposition 215
- **2003:** State Senate Bill 420
- **2007:** State BOE to tax marijuana sales
- **2009:** U.S. DOJ identifies enforcement priorities
- **November 2, 2010:** 78% of San Jose voters vote in favor of Measure U – Marijuana Business Tax
- **September 13, 2011:** Council approves medical marijuana land use and operational regulations

# History Behind Program (cont'd)

## Key Dates

- **October 28, 2011:** Marijuana Advocates' Referendum
- **February 14, 2012:** Council repeals/suspends regulations and establishes priorities for enforcement
- **May 6, 2013:** California Supreme Court rules that local governments have authority to ban or regulate
- **September 2013:** Council directs staff to craft new regulations
- **June 17, 2014:** Council approves Program containing new regulations
- **July 18, 2014:** Program in Effect

# LAND USE ORDINANCE

# Zoning Districts

## *Restricted Use Allowed In:*

- DC (Downtown Primary Commercial)
- CIC (Combined Industrial/Commercial)
- IP (Industrial Park)
- LI (Light Industrial)
- HI (Heavy Industrial)

# Policy Development Areas

## *Cannot Locate In:*

- North San Jose Area Development Policy Boundary
- International Business Park Boundary
- Edenvale Area Development Policy Boundaries

# Sensitive Use Buffers

## *Cannot Locate Within:*

- **1,000 ft** of: schools, child daycares, community centers, parks or libraries
- **500 ft** of: substance abuse rehab facilities or emergency residential shelters
- **150 ft** of: places of religious assembly, adult daycares, or residential uses (including LNC)\*
- **50 ft** of: another dispensary\*

*\*Parcel line to parcel line*



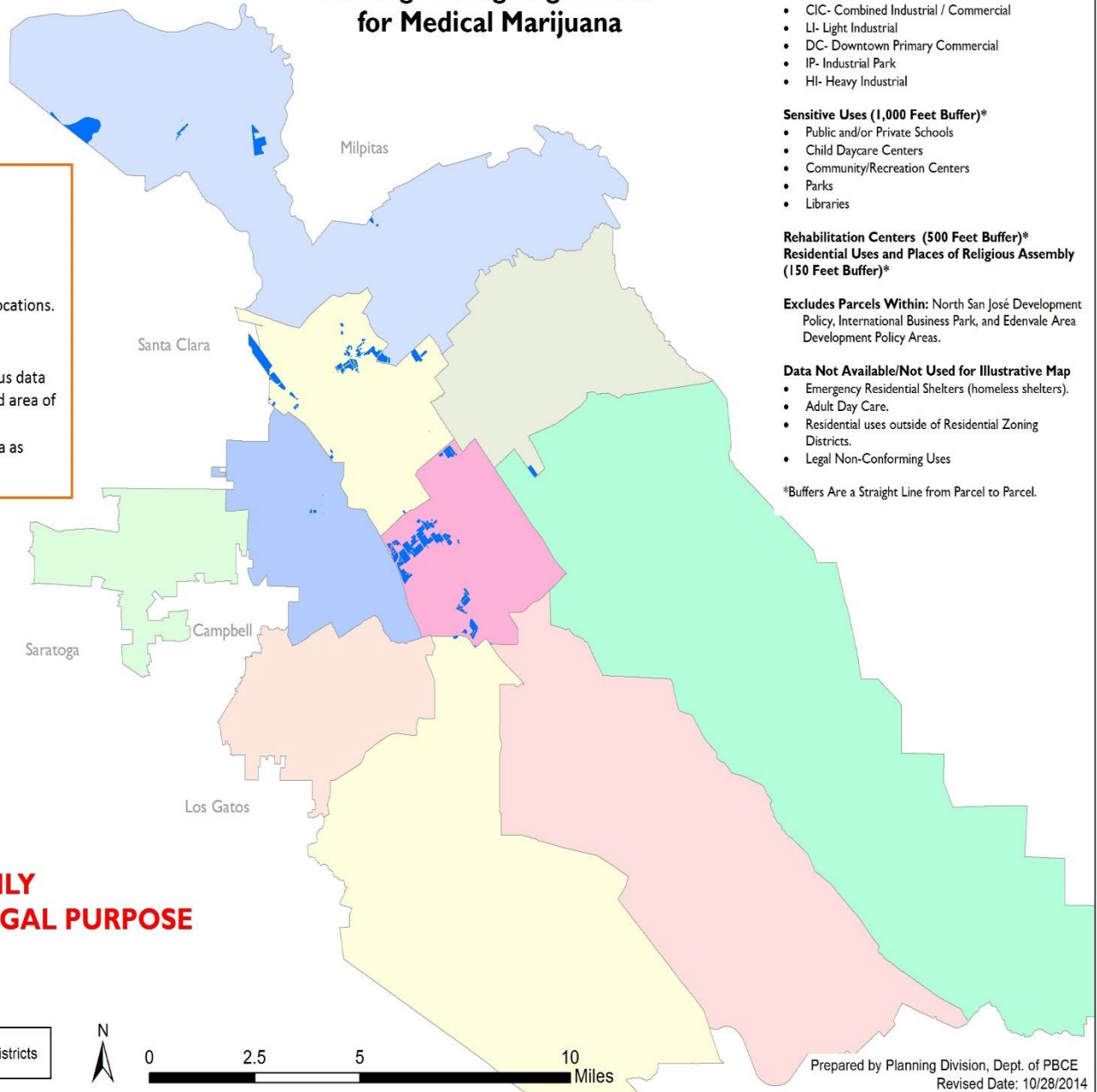
# Approximate Parcels Available

MAP of 623 Parcels

# Existing Zoning Regulations for Medical Marijuana

## Disclaimers

- Map made for **ILLUSTRATIVE** purposes only.
- Map does not illustrate residential uses that are outside Residential Zoning Districts.
- Map does not illustrate Adult Day Care locations.
- Map does not illustrate Emergency Residential Shelters locations.
- Map does not illustrate Drop-In Service Centers.
- Map does not illustrate any Legal Non-Conforming uses.
- Sensitive Uses data/locations are an aggregation of various data sources and exclude locations outside of the incorporated area of the City of San Jose.
- Map is a snapshot in time that reflects best available data as of October 1, 2014.



## Zoning Districts

- CIC- Combined Industrial / Commercial
- LI- Light Industrial
- DC- Downtown Primary Commercial
- IP- Industrial Park
- HI- Heavy Industrial

## Sensitive Uses (1,000 Feet Buffer)\*

- Public and/or Private Schools
- Child Daycare Centers
- Community/Recreation Centers
- Parks
- Libraries

## Rehabilitation Centers (500 Feet Buffer)\*

## Residential Uses and Places of Religious Assembly (150 Feet Buffer)\*

**Excludes Parcels Within:** North San José Development Policy, International Business Park, and Edenvale Area Development Policy Areas.

## Data Not Available/Not Used for Illustrative Map

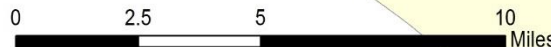
- Emergency Residential Shelters (homeless shelters).
- Adult Day Care.
- Residential uses outside of Residential Zoning Districts.
- Legal Non-Conforming Uses

\*Buffers Are a Straight Line from Parcel to Parcel.

**ILLUSTRATIVE ONLY  
NOT TO BE USED FOR ANY LEGAL PURPOSE**

Approximately 623 Parcels

Approximate Eligible Parcels in CIC, LI, DC, IP, HI Zoning Districts



# REGULATORY ORDINANCE

# Owners & Operators

## *Must Undergo Criminal Background and Not Be:*

- On parole/probation for possession, sale, distribution, or transportation of a controlled substance
- Convicted of moral turpitude crime
- Convicted of violent crime; fraud; or possession, sale, manufacture, use, distribution or transportation of a controlled substance
- Convicted of use of money for criminal activity
- Under 21 years old

# General Operations

- No retail sales (including paraphernalia)
- No on-site consumption
- No alcohol or other controlled substances present
- Hours limited from 9 a.m. and 9 p.m.
- Air scrubbers/air purification system required
- Security measures: personnel and equipment
- Recordkeeping / Auditing

# “Closed Loop”

- Edibles manufactured on-site at dispensing location
- One off-site *cultivation-only* location
- Can only dispense on-site at dispensing location
- Can only dispense what was cultivated by the dispensary

# Child Safety / Good Neighbor

- No outdoor grows
- Opaque packaging
- Childproof containers
- Can't be attractive to children or imitate candy
- No one under 21 years old on site
- Property maintenance: no graffiti, trash
- No public nuisance activity *on or within 300 feet of the premises*

# Registration - Process

- Zoning Application: to confirm allowed zoning district & compliance with buffers
- Registration Application: to background operators & confirm operations comply with Program
- Application Period: **July 18 – Oct 17, 2014**
- Full Compliance By: **July 17, 2015**



# Registration - Update

*~90 dispensaries operating on October 17, 2014*

- 64 dispensaries submitted applications
- 2 dispensaries withdrew prior to processing
- 32 dispensaries received Zoning Certificate
- 2 surrendered Zoning Certificate
- 24 dispensaries denied
- 5 dispensaries disqualified
- 1 application pending

# Registration Update (cont'd)

*Of the 30 dispensaries that continued through the process after receiving a Zoning Certificate:\**

- 5 dispensaries will remain in their location
- 25 dispensaries will move
- 9 of those 25 dispensaries have submitted to preliminary review with Building
- 1 of those 9 dispensaries has obtained its building permit

*\* 32 sites total*

# City's Marijuana Business Tax (MBT)

- August 3, 2010:** Council votes to place MBT (“Measure U”) on Ballot
- November 2, 2010:** “Measure U” Passes with 78% of vote
- March 1, 2011:** MBT in effect at 7%
- July 1, 2013:** Council increases MBT to 10%
- As of February 28, 2015:** \$19,003,670 collected

# City's Marijuana Business Tax (cont'd)

<b>Fiscal Year</b>	<b>Total Remittance</b>	<b>Average # Remitting</b>
2010-11 <sup>1</sup>	\$ 1,264,478	105
2011-12	4,001,132	107
2012-13	4,216,341	87
2013-14 <sup>2</sup>	6,065,913	73
2014-15 <sup>3</sup>	3,455,815	45
<b>Total</b>	<b>\$ 19,003,679</b>	

<sup>1</sup> March 2011 7% tax rate effective

<sup>2</sup> July 2013 tax rate increased to 10%

<sup>3</sup> Collected through 2/28/2015

# Non-Compliant Dispensaries

## *City Has Taken The Following Actions Against Dispensaries Operating in Violation:*

- Warning letters
- Compliance Orders
- Administrative Citations
- Administrative Hearings
- Court Proceedings: injunctions, writs, collections

# Marijuana Advocates' Initiative

March 21, 2014

**Notice of Intent to Circulate Petition**

September 30, 2014

**Initiative Qualified**

September 30, 2014

**Council directs staff to prepare §9212 Report**

November 4, 2014

**Council sends Initiative to the Voters for the June 2016 ballot**

# Initiative – Zoning/Sensitive Use Implications

## *Zoning Districts*

- A (Agricultural)
- CP (Commercial Pedestrian)
- CN (Commercial Neighborhood)
- IP (Industrial Park)
- LI (Light Industrial)
- HI (Heavy Industrial)
- **All** Planned Development zoning districts, including those with Residential Uses

## *No Sensitive Use Buffers*

# Initiative - Impact On Parcels Available

MAP of 31,517 Parcels



# Initiative Zoning Regulations for Medical Marijuana

## Zoning Districts

- A- Agricultural
- CP- Commercial Pedestrian
- CN- Commercial Neighborhood
- HI- Heavy Industrial
- IP- Industrial Park
- LI- Light Industrial
- PD- Planned Development- where the base district allows the use, regardless of the status of PD district or any associated planned development permit, effectuated or not.

## Sensitive Uses

- Public and/or Private Schools (1,000 Feet)\*
- Community/Recreation Centers (100 Feet)\*
- Any Retail Commercial Shopping Center located on a parcel totaling over 20 acres in size.

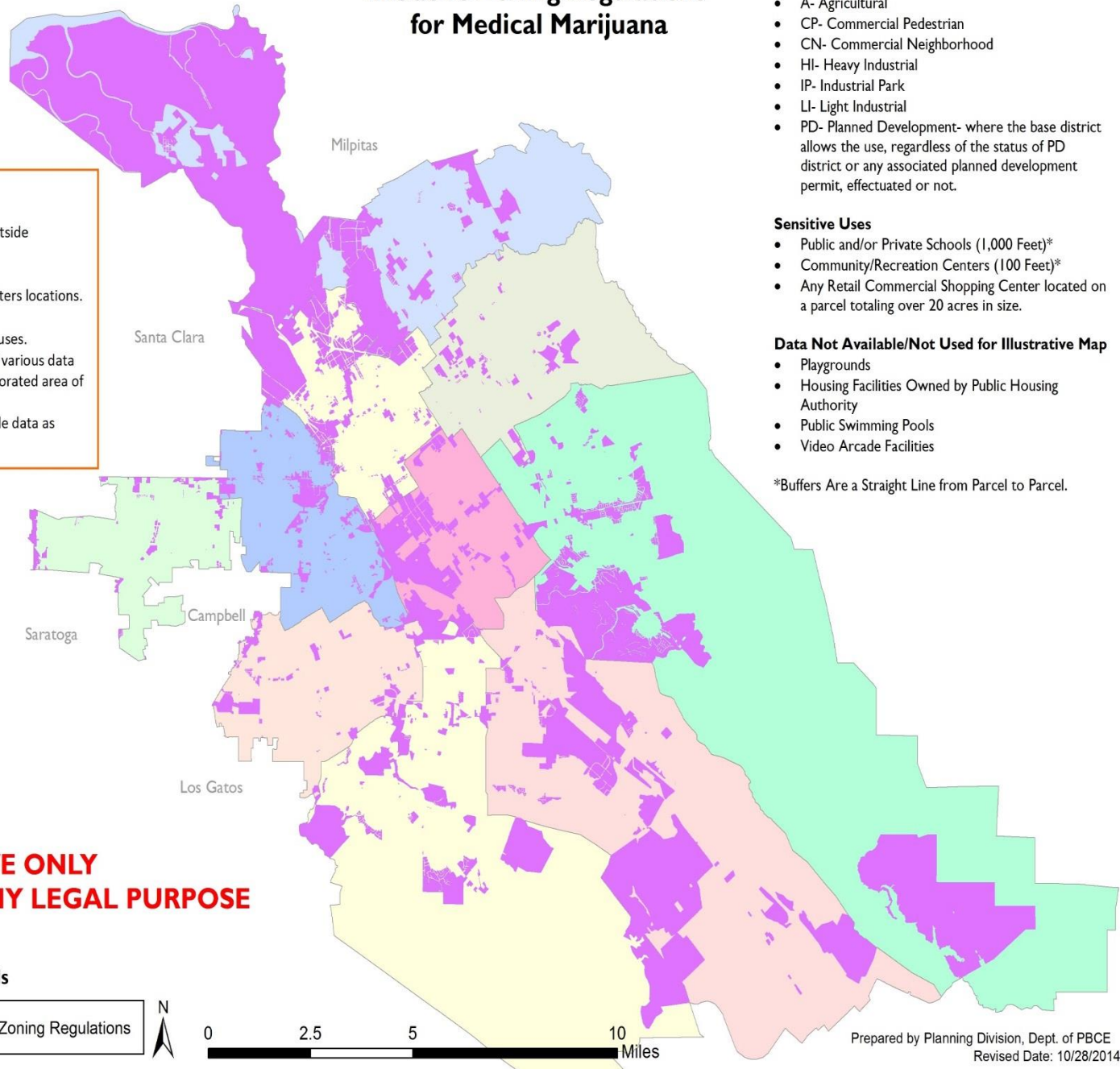
## Data Not Available/Not Used for Illustrative Map

- Playgrounds
- Housing Facilities Owned by Public Housing Authority
- Public Swimming Pools
- Video Arcade Facilities

\*Buffers Are a Straight Line from Parcel to Parcel.

## Disclaimers

- Map made for **ILLUSTRATIVE** purposes only.
- Map does not illustrate residential uses that are outside Residential Zoning Districts.
- Map does not illustrate Adult Day Care locations.
- Map does not illustrate Emergency Residential Shelters locations.
- Map does not illustrate Drop-In Service Centers.
- Map does not illustrate any Legal Non-Conforming uses.
- Sensitive Uses data/locations are an aggregation of various data sources and exclude locations outside of the incorporated area of the City of San Jose.
- Map is a snapshot in time that reflects best available data as of October 1, 2014.



**ILLUSTRATIVE ONLY**  
**NOT TO BE USED FOR ANY LEGAL PURPOSE**

Approximately 31,517 Parcels

 Approximate Eligible Parcels Per Initiative Zoning Regulations



0 2.5 5 10 Miles

# Initiative - General Plan Implications

## *Envision San Jose 2040 General Plan:*

- **Form Based Plan** – Initiative would prohibit modifications that could address neighborhood concerns
- **Innovation/Employment** – Initiative would allow dispensaries in all Development Policy Areas
- **Fiscally Strong** – Initiative would result in City subsidizing dispensary operations
- **Natural Resources** – Initiative would allow Cultivation in protected areas of the City

# Initiative - Operational Implications

- On-site consumption allowed
- Delivery services allowed
- Source of Marijuana not restricted
- No tracking of Marijuana
- Outdoor grows in City allowed
- No criminal backgrounding
- Registration: 30 days for zoning, 60 days for operations or deemed approved

# Initiative - Fiscal Implications

## *Fiscal Implications:*

- Annual Operating Fee:
  - Program (\$74,000) vs.
  - Initiative (\$2,000)
- Fines for Noncompliance:
  - Program (\$2,500 - \$50,000 per incident) vs.
  - Initiative (\$100 per incident)

# Amendments to Initiative

## *If Voter Approved, Amendments Require:*

- San Jose voter approval;
- State Legislation;
- California voter approval; or
- The passage of 3 years from the effective date of the Initiative

# *Discussion...*