

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Angelique Gaeta

SUBJECT: MEDICAL MARIJUANA

DATE: May 9, 2014

Approved

Date

5/9/14

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

This memorandum transmits the following:

1. GIS maps showing the number of eligible sites from which to dispense and/or cultivate medical marijuana based on the scenarios set forth in the Administration's April 29, 2014 memorandum.
2. "Issues Surrounding Marijuana in Santa Clara County" – by Supervising District Attorney Patrick Vanier. Provided to the Administration on May 8, 2014.
3. "Substance-Related Suspensions in the East Side Union High School District" - by Santa Clara County Public Defender Molly O'Neal. Provided to the Administration on May 8, 2014.

/s/

ANGELIQUE GAETA

Assistant to the City Manager

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

Attachments

City Council Option #1 & Staff Recommendation

Zoning Districts

- CIC- Combined Industrial / Commercial
- LI- Light Industrial
- CG- Commercial General
- DC- Downtown Primary Commercial

Sensitive Uses (1,000 Feet Buffer)*

- Public and/or Private Schools
- Child Daycare Centers
- All Houses of Worship
- Community/Recreation Centers
- Parks
- Libraries


Rehabilitation Centers (500 Feet Buffer)* Residential Uses (150 Feet Buffer)*

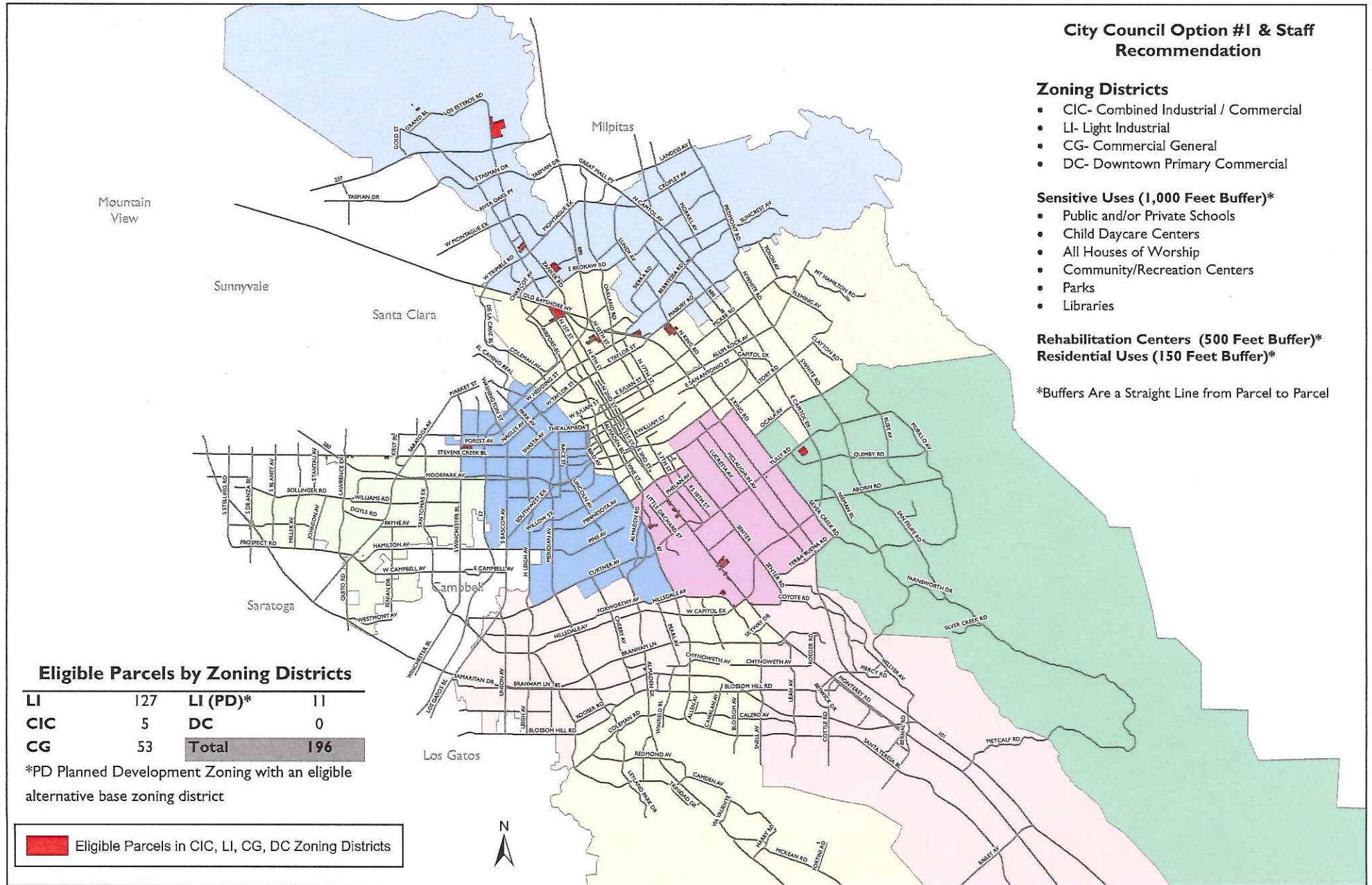
*Buffers Are a Straight Line from Parcel to Parcel

Eligible Parcels by Zoning Districts

LI	127	LI (PD)*	11
CIC	5	DC	0
CG	53	Total	196

*PD Planned Development Zoning with an eligible alternative base zoning district

 Eligible Parcels in CIC, LI, CG, DC Zoning Districts



City Council Option #2

Zoning Districts

- CIC- Combined Industrial / Commercial
- LI- Light Industrial
- CG- Commercial General
- DC- Downtown Primary Commercial
- IP- Industrial Park

Sensitive Uses (1,000 Feet Buffer)*

- Public and/or Private Schools
- Child Daycare Centers
- All Houses of Worship
- Community/Recreation Centers
- Parks
- Libraries

Rehabilitation Centers (500 Feet Buffer)*


Residential Uses (150 Feet Buffer)*

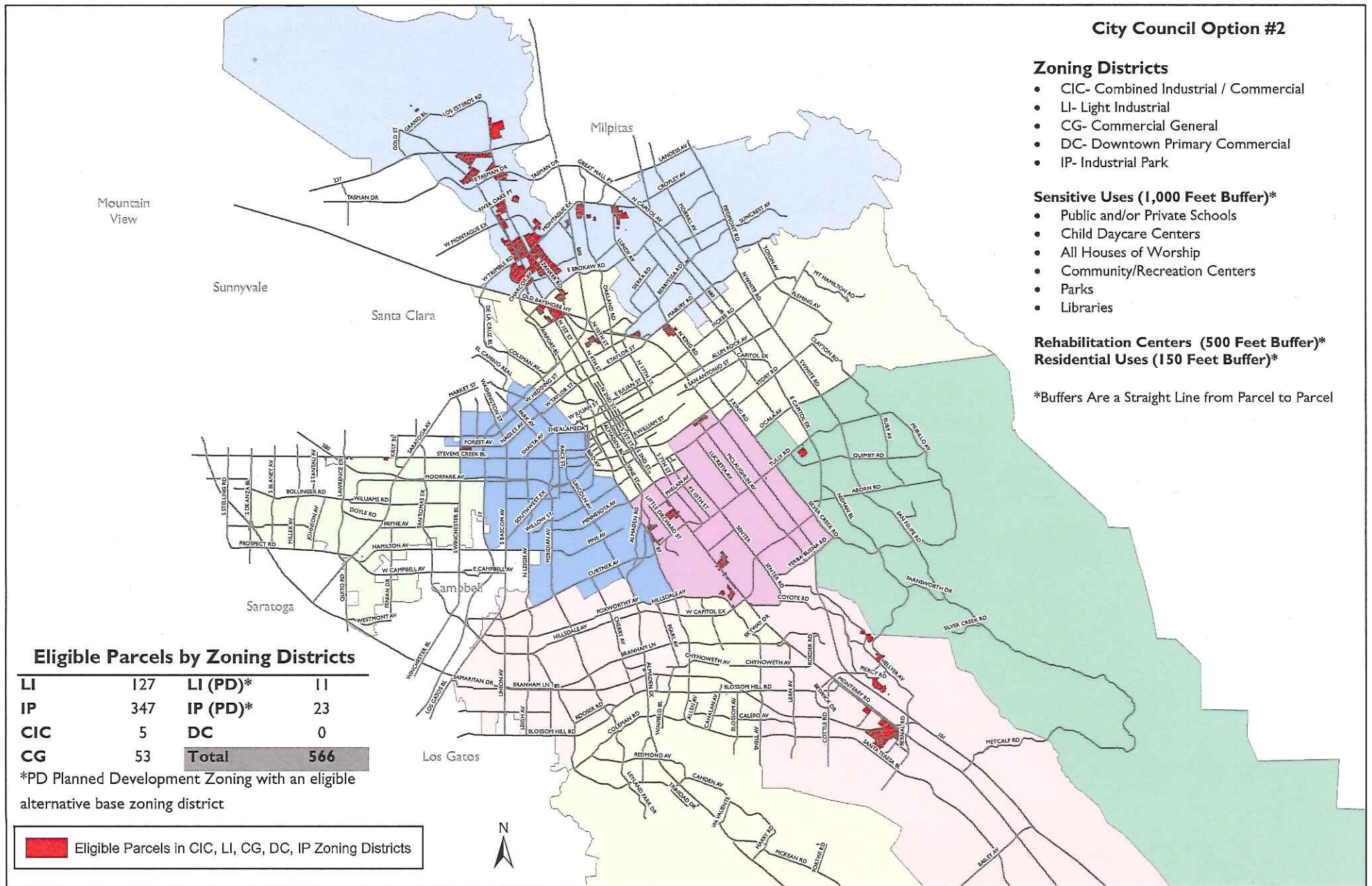
*Buffers Are a Straight Line from Parcel to Parcel

Eligible Parcels by Zoning Districts

LI	127	LI (PD)*	11
IP	347	IP (PD)*	23
CIC	5	DC	0
CG	53	Total	566

*PD Planned Development Zoning with an eligible alternative base zoning district

 Eligible Parcels in CIC, LI, CG, DC, IP Zoning Districts



Planning Commission's Recommendation

Zoning Districts

- CIC- Combined Industrial / Commercial
- LI- Light Industrial
- CG- Commercial General
- DC- Downtown Primary Commercial
- IP- Industrial Park
- CN- Commercial Neighborhood
- CO- Commercial Office

Sensitive Uses (1,000 Feet Buffer)*

- Public and/or Private Schools
- Child Daycare Centers
- All Houses of Worship
- Community/Recreation Centers
- Parks
- Libraries

Rehabilitation Centers (500 Feet Buffer)*

Residential Uses (150 Feet Buffer)*

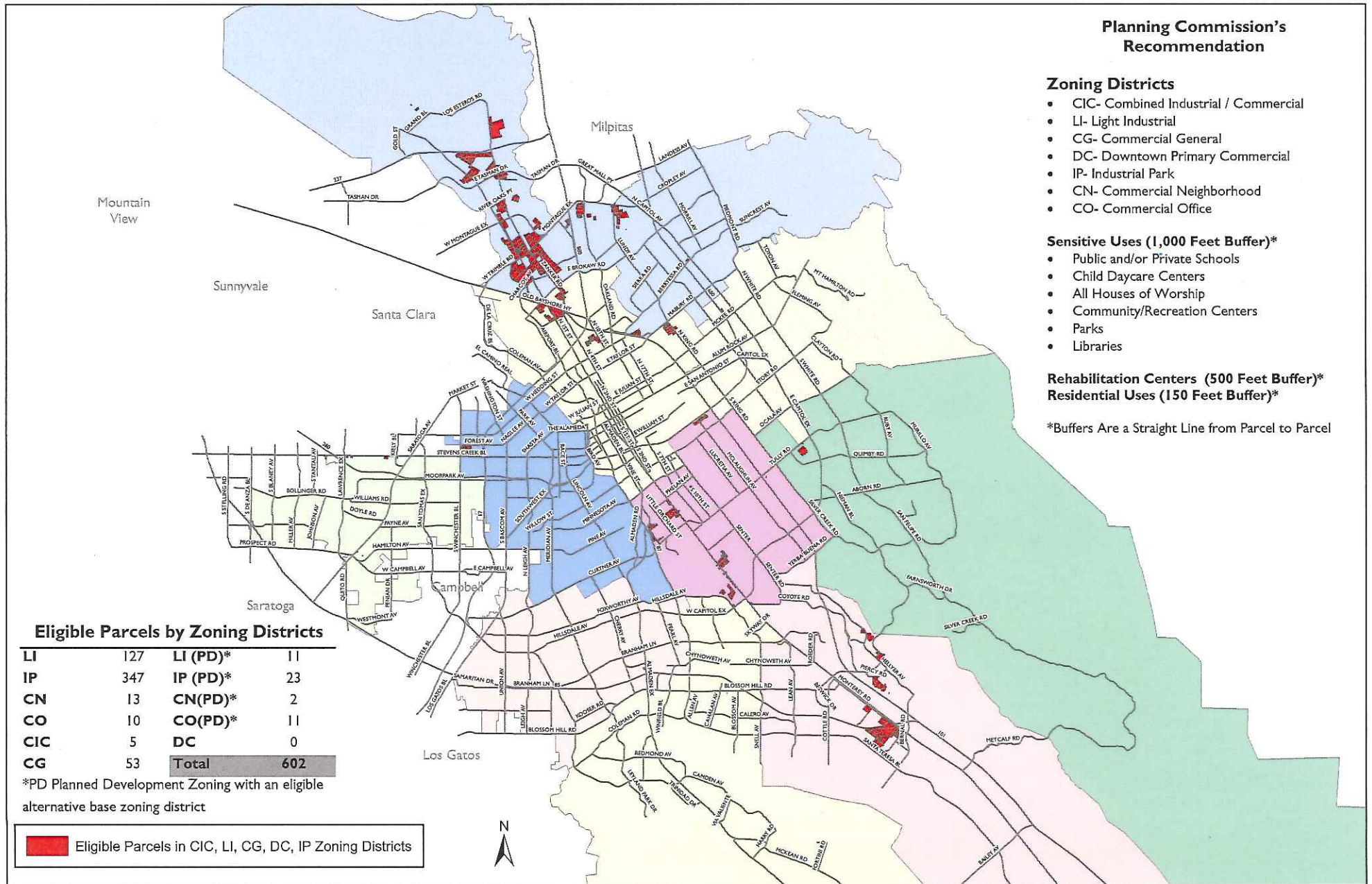
*Buffers Are a Straight Line from Parcel to Parcel

Eligible Parcels by Zoning Districts

LI	127	LI (PD)*	11
IP	347	IP (PD)*	23
CN	13	CN(PD)*	2
CO	10	CO(PD)*	11
CIC	5	DC	0
CG	53	Total	602

*PD Planned Development Zoning with an eligible alternative base zoning district

 Eligible Parcels in CIC, LI, CG, DC, IP Zoning Districts



**City Council's Direction
(Eligible Sites for Cultivation)**

Zoning Districts

- CIC- Combined Industrial / Commercial
- LI- Light Industrial
- HI- Heavy Industrial

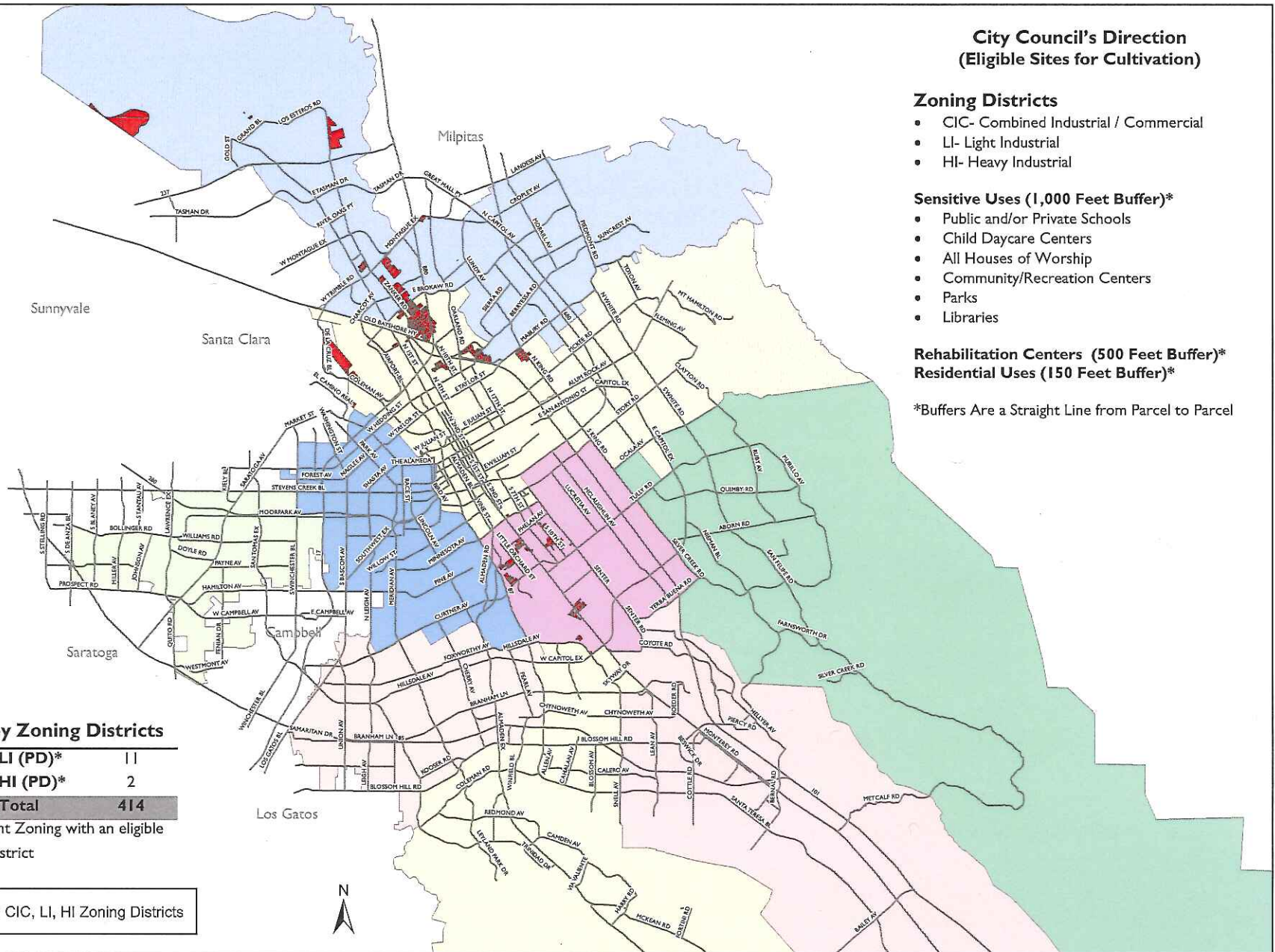
Sensitive Uses (1,000 Feet Buffer)*

- Public and/or Private Schools
- Child Daycare Centers
- All Houses of Worship
- Community/Recreation Centers
- Parks
- Libraries

Rehabilitation Centers (500 Feet Buffer)*

Residential Uses (150 Feet Buffer)*


*Buffers Are a Straight Line from Parcel to Parcel



Eligible Parcels by Zoning Districts

LI	127	LI (PD)*	11
HI	269	HI (PD)*	2
CIC	5	Total	414

*PD Planned Development Zoning with an eligible alternative base zoning district

 Eligible Parcels in CIC, LI, HI Zoning Districts

County of Santa Clara

Office of the District Attorney

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Jeffrey F. Rosen
District Attorney

Issues Surrounding Marijuana in Santa Clara County

By Patrick Vanier, Supervisor of Narcotics Prosecution Team

Business Practices that Epitomize the Problems with the Proliferation of Marijuana Dispensaries

In 2014, the Santa Clara County District Attorney's Office prosecuted a case involving the transportation and possession for sale of six pounds of dried marijuana and twelve pounds of concentrated cannabis. The defendant told investigators he was delivering marijuana from a vendor on behalf of his San Jose-based marijuana club.

During trial, the director of the marijuana club, described as a "marijuana dispensary," testified to the business practice and organization of the club. The club consists of approximately 14,000 members between 2 "stores" in San Jose. 50 "vendors" throughout California sourced this "dispensary" with marijuana. Within the marijuana industry, the term "vendor" refers to a person who supplies marijuana to dispensaries and receives compensation for the product. The director identified the 50 vendors as persons who have marijuana cultivation sites which he has neither visited nor inspected. This particular dispensary does not pay city or state sales tax, or any income tax.

The club generates approximately \$1 million a year in annual sales involving approximately 100 pounds of dried marijuana bud, 30-40 pounds of wax (a form of concentrated cannabis) and varying quantities of cannabis products in other forms. The concentrated cannabis products are primarily manufactured using butane or other chemical solvents. This method of manufacturing is a crime under California Health and Safety Code section 11379.6 because of the hazards associated with production.

The business practices and organization of this club epitomize the many problems resulting from the proliferation of marijuana clubs in Santa Clara County. Illegal marijuana cultivation operations generate a significant number of collateral crimes on the supply side. For example, marijuana clubs and dispensaries self-monitor in the absence of government oversight. Therefore, there is no way to be sure how and from whom the clubs are acquiring their inventory of cannabis products. Law enforcement agencies have gathered valuable intelligence that some clubs are selling marijuana harvested by illegal cultivation operations. This intelligence has been documented through arrested individuals, "vendor" membership agreements or Prop 215 notices referencing local dispensaries, and subpoenaed club records.

Marijuana Case Trends

The District Attorney's Office observed the following trends based on recent cases prosecuted by the Office. The following statistics include only issued cases, not pending investigations. Between 2011 and 2013, the Office issued criminal charges against 172 illegal marijuana growing operations. Of these cases, 118 were

identified as “indoor grows” and 54 were classified as “outdoor grows.” Once again, these numbers only reflect a representative sample of cultivation operations within Santa Clara County.

Indoor Grow Operations

While indoor marijuana grow operations can be found in a variety of settings, including warehouses, barns, and back rooms of business establishments, the most common locations were single family homes in residential neighborhoods. These are locations where entire rental properties or vacant foreclosed homes are converted into clandestine greenhouses. The interior rooms for these homes are typically modified without construction permits, without permission from the banks (usually involving squatters) or knowledge of the rental property owners. With no regard to safety, structural integrity or value to the property, these former residences are generally ransacked.

Often times the electricity to homes where cultivation operations are present have been haphazardly rewired or compromised in other forms to accommodate the equipment – e.g. grow lights, fans, irrigation pumps, timers. Electrical circuit boxes are modified to bypass electricity from the power company’s meters (usually PG&E) resulting in the theft of millions of dollars in energy. House fires associated to residential marijuana gardens are frequently caused by the theft of power. Investigators also report tremendous amounts of moisture and standing water inside these indoor grows from leaking water sources, as well as humidity associated with the indoor process. Standing water is a breeding ground for caustic spores, black mold and fungus. Puddles of water combined with extension cords and exposed wiring create electrical hazards. First responders typically wear protective gear and respirators to avoid these dangers.

Of 118 indoor marijuana grows over the last three years:

- 76 involved converted homes,
- 2 involved converted warehouses, and
- 41 of these locations were identified as rental properties.

In at least 61 of these cases, electrical bypasses were observed where theft of power was deemed present and there were 5 house fires associated to indoor cultivations. The victim homeowners for these vandalized properties are by and large burdened with hundreds of thousands of dollars in clean up costs from indoor grows.

Outdoor Grow Operations

The other source of harvested marijuana comes from outdoor marijuana gardens. A large number of outdoor cultivation operations reviewed by the District Attorney’s Office were investigated by the Santa Clara County Marijuana Eradication Team (MET). Over the last three years, the MET team reported the removal of 355,005 marijuana plants and the seizure of 1,838 pounds of processed marijuana bud derived mostly from outdoor grow locations. These outdoor grow sites were typically discovered by detectives in remote areas of unincorporated Santa Clara County – eastern foothills of Milpitas and San Jose, Gilroy and Morgan Hill foothills, the base of the Santa Cruz mountains and the eastern foothills of Los Gatos, Los Altos and Saratoga. Marijuana gardens have been found on public lands (e.g. Henry Coe State Park and Midpeninsula Regional Open Space District) and private property in varying sizes. These grows can have a few hundred plants over a small plot of land or tens of thousands of marijuana bushes spread over many acres.

The number of marijuana plants will determine the yield potential for an operation. Most law enforcement experts conservatively estimate that a single marijuana plant can produce about 1 to 2 pounds of marijuana valued at \$1,500 to \$3,000 per pound (wholesale pricing). During harvesting periods for outdoor cultivations, May through October, the number of individual harvests for a single location can also impact

the profitability of the enterprise. Experienced growers can get two or three harvests on a single plot of land each year. The same is true for indoor marijuana locations, however, such locations can obviously grow year round.

The level of sophistication of these outdoor grows can vary as well. Some outdoor operations have only one or two experienced cultivators, while others have teams of migrant farm workers tending to the crop. The single most important variable for any outdoor grow is a nearby water source. Many outdoor operations are set up near creeks, rivers or reservoirs. Water is diverted without regulatory permits or permission from landowners. There have been numerous instances of water diverted to illegal marijuana grows from nearby legitimate farms. Illegal outdoor marijuana cultivators pollute waterways with pesticides, rodent poisons, human feces, trash, and soil erosion. Wardens with the California Department of Fish and Wildlife assist MET detectives with these investigations and recommend the charging of environmental crimes associated with marijuana cultivation. Of the 54 outdoor marijuana gardens charged between 2011-2013, at least 24 of the grow sites were on private land and 11 were on public property/open space. Environmental crimes were charged in 21 of these cases.

Other Associated Crimes

In addition to the crimes and social impacts unique to the two styles of marijuana cultivation, other alarming trends have been noted. Within the sample size of the 172 cases referenced above, firearms were located in 36 investigations. Other controlled substances, e.g. methamphetamine, were found in 25 cultivation sites. Children were reported present in 10 instances. Serious or violent felony crimes, e.g. burglary, robbery or assaults using deadly weapons, were reported in 8 investigations. In 2012, one investigation of an outdoor marijuana garden resulted in an officer involved shooting when one of the marijuana growers pointed a loaded .22 caliber semi-automatic rifle at a Fish and Wildlife Warden.

Organized Crime

Probably one of the least talked about issues involving marijuana grows has been the influence of organized crime. Law enforcement has documented numerous instances of organized crime controlling the cultivation of marijuana. Conservatively, at least 8 documented instances of Mexican National Drug Cartels and/or criminal street gangs have been tied to marijuana grows. At one outdoor marijuana operation, investigators found written references to the Sinaloa Drug Cartel and a drawing of "Jesus Malverde," the patron saint of drug traffickers. At another indoor-marijuana grow, officers found a "Santa Muerte" statute, a Mexican cult figure associated with violence, criminality, and the illegal drug trade.

Within the last five years, the U.S. Drug Enforcement Administration (DEA) and the Santa Clara County Sheriff's Office Multi-Jurisdictional Methamphetamine Enforcement Team (CAL-MMET) have identified multiple cartel drug trafficking cells operating within the county. These organizations are poly drug traffickers distributing methamphetamine, cocaine, heroin and marijuana. Through a variety of investigative techniques, DEA and CAL-MMET have learned that both indoor and outdoor marijuana cultivation is just one of many lucrative businesses operated by cartels to supplement the trafficking of methamphetamine and cocaine from Mexico. Mexican drug distributors will engage in human trafficking to bring farm workers up from the territorial regions the cartels control – Sinaloa or Michoacan – to tend to the cultivations. DEA and CAL-MMET investigations have resulted in the arrest of several high ranking drug distributors who have described to investigators firsthand how marijuana cultivation is a significant component to their overall business.

Law enforcement has also seen the rise of multiple Vietnamese criminal street gangs distributing marijuana within Santa Clara County. In 2010, California Department of Justice, Bureau of Narcotics Enforcement, investigated the Insane Viet Thugs (IVT), a documented street gang distributing marijuana and other

narcotics, as well as firearms. Agents learned through the investigation that IVT was managing a network of grow houses and distributing drugs throughout the Bay Area – San Jose to Vallejo. The investigation of IVT resulted in the service of 22 search warrants throughout the Bay Area and the prosecution of 22 validated or associate gang members, the seizure of approximately 1,500 marijuana plants from 5 indoor grow houses (a total of 7 grow houses were identified during the investigation) over 71 lbs of harvested marijuana, 16 firearms (including 3 assault weapons), over \$110,000 in U.S. Currency and various quantities of heroin, cocaine, methamphetamine and ecstasy.

The information provided in this narrative demonstrates how the lack of any significant regulatory schemes to control the supply of marijuana to dispensaries is impacting public safety and quality of life within the county. DA Jeff Rosen supports Santa Clara County's efforts to establish comprehensive guidelines designed to prevent the dangerous and illegal activities from illegal cultivation and distribution of marijuana.



Molly O’Neal
 Public Defender

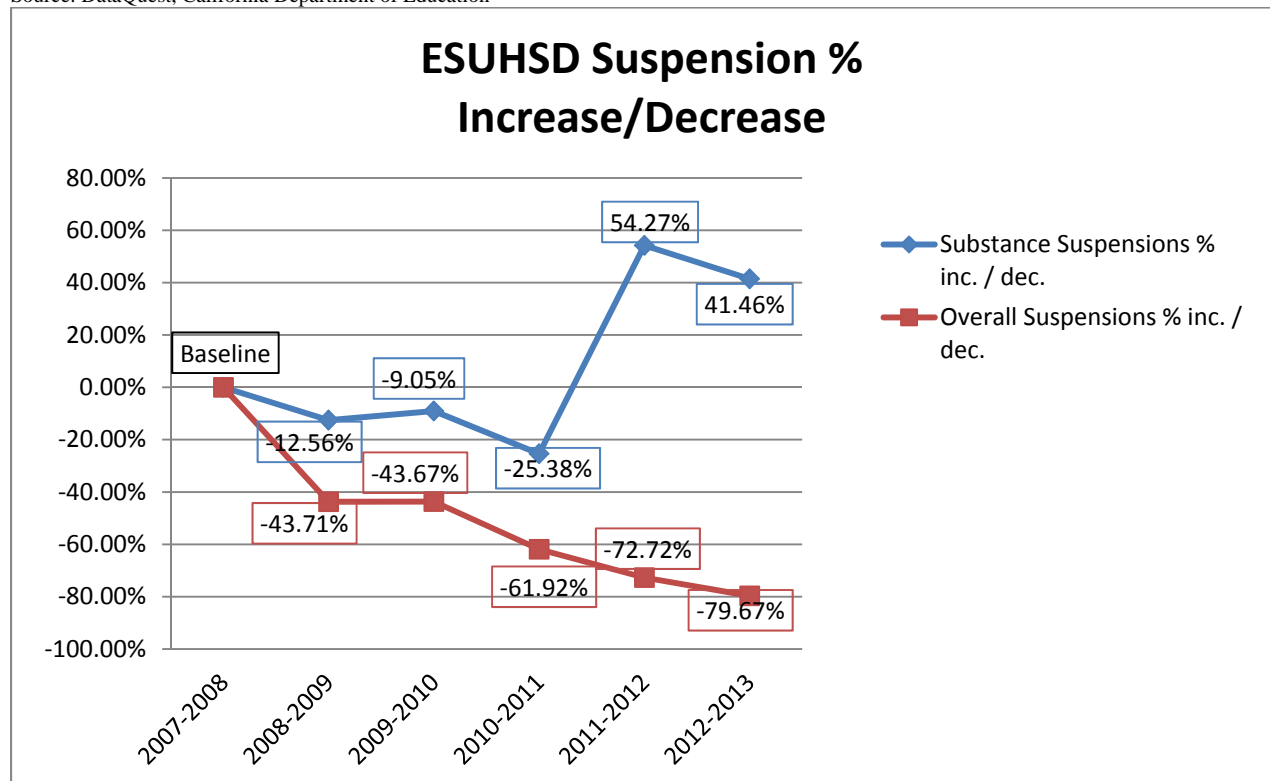
Substance-Related Suspensions in the East Side Union High School District

For the past two school years, the Santa Clara County Public Defender Office has been working with five schools East Side Union High School District (ESUHSD) to find alternatives to suspensions through its School Engagement and Suspensions Alternatives Project (SESAP). One of the issues that the schools have grown concerned with is the abundance of substance-related incidents on campus, and at least one school attributed it to the growth and proximity of marijuana dispensaries in San Jose.

A closer look at the data shows the connection of this growth to the number of suspensions at ESUHSD schools. Below is a table and a chart relating to the overall rise in suspensions for substance-use-related incidents at the in the ESUHSD compared to the decrease in overall suspensions in the district:

ESUHSD	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Substance Suspensions	398	348	362	297	614	563
Substance Suspensions % inc. / dec.	Baseline	-12.56%	-9.05%	-25.38%	54.27%	41.46%
Overall Suspensions	7900	4447	4450	3008	2155	1606
Overall Suspensions % inc. / dec.	Baseline	-43.71%	-43.67%	-61.92%	-72.72%	-79.67%

Source: DataQuest, California Department of Education



Assistant Public Defenders: Jose G. Guzman, JJ Kapp, Nona Klippen

The data above pertains to the annual number of substance-related suspensions and overall suspensions from the 2007-2008 school year to the 2012-2013 school year, the most recent time period that data is available, at schools in the East Side Union High School District (ESUHSD). The substance-related suspensions are for violations of the following education codes:

- 48900(c) Possession, Use, Sale, or Furnishing a Controlled Substance, Alcohol, Intoxicant
- 48900(d) Offering, Arranging, or Negotiating Sale of Controlled Substances, Alcohol, Intoxicants
- 48900(j) Offering, Arranging, or Negotiating Sale of Drug Paraphernalia
- 48915(a)(3) Possession of Controlled Substance
- 48915(c)(3) Sale of Controlled Substance

From 2007-2008 to 2010-11 school years, the ESUHD schools saw small decreases in the number of substance-related suspensions, but not as significant as the overall decrease in suspensions the schools were having (25.38% v. 62.92%). However, in the 2011-12 school year, there was a huge increase in the number of suspensions for substance incidents. While the schools exhibited a 72.72% decrease in the overall number of suspensions compared to the baseline year of 2007-2008, the substance-related suspensions saw an increase of 54.27%. Furthermore, there was an increase of 106% in substance-related suspensions in 2011-2012, compared to the previous school year; but the schools saw a decrease of 28.36% in overall suspensions in 2011-2012, compared to the previous school year. This is also the same time period when the dispensaries were proliferating and at their highest numbers within the City of San Jose—between 90-100. These violations were not all for marijuana specifically as the education code does not require the schools to track the type of substance. However, based on the Public Defender's Office's (PDO) work with four of the ESUHSD high schools in the 2012-2013 school year, it was reported anecdotally that the vast majority of these incidents did in fact involve marijuana. Furthermore, associate principals of discipline reported that students were coming onto campuses with baggies, pill bottles, and in some cases medical marijuana cards from the dispensaries. The APs were reporting that the problems regarding marijuana use among students persisted last school year, which can be seen by the continued high number of substance-related violations in the 2012-2013 school year.

While the possession of small amounts of marijuana is an infraction, it is a misdemeanor if the possession is on a school campus. So the impact is not only disciplinary related to the suspension, but in many cases can result in a referral to the Juvenile Probation Department in the form of a citation/ticket. Although, the percentage of drug related offense citations and arrests coming through the Probation Department has hovered between 18-20% over the last three calendar years.

The schools involved in the PDO School Engagement and Suspension Alternatives Project (SESAP) have developed some innovative ways to work with students who are caught on campus under the influence or in possession of marijuana including no-citations policies, in-house suspension programs and referrals to drug and alcohol treatment services. Nevertheless, with the easy access to marijuana that the dispensaries are creating, these incidents require resources that these schools will have to deploy towards dealing with substances on campus, which would otherwise go towards educating the youth.