COMMUNITY DEVELOPMENT DEPARTMENT
OFFICE MEMORANDUM

DATE: **September 14, 2010**

TO: **Mayor and Members of the City Council and Members of the Planning Commission**

FROM: **Hanson Hom, Community Development Director**

THROUGH: **Gary Luebbers, City Manager**

RE: **Medical Marijuana Study Session**

The purpose of the study session is to bring Council and the Planning Commission up to date on the status of the Medical Marijuana study, provide background and gain preliminary feedback on the issue.

The Planning Commission hearing is set for November 22, 2010, and the Council hearing for December 7, 2010.

The documents attached to this memo include a general overview of this complicated issue, including: preliminary feedback from the public during outreach meetings and an on-line survey; possible options the Commission and Council may pursue to address the issue; and, public safety concerns. The attachments include:

Attachment 1: Describes provides background on the subject and describes the legal framework on medical marijuana, especially as it relates to the City's responsibilities.

Attachment 2: Provides a summary of comments received from the public outreach meetings. Also, an up to date snapshot of the on-line survey will be provided at the meeting.

Attachment 3: Shows a list of options available when taking action on the issue. This attachment describes possible guidelines, location limitations and operational requirements to address the issue.

Attachment 4: Two maps showing properties outside a 600 foot and 1,000 foot distance from residential, schools, parks and day care uses.

Attachment 5: List showing how other cities approach to the subject.

Attachment 6: List of public safety concerns from the introduction of medical marijuana facilities in the city.

Cc: Don Johnson, Director of Public Safety
David Kahn, City Attorney

ATTACHMENT 1

Legal Framework and Background

What is included in the study?

- Provide information necessary for the Council to decide whether to allow medical marijuana distribution facilities (MMDs) in the City of Sunnyvale,
- If so, what specific location and operational criteria should apply to their placement?
- What are the concerns or issues related to these facilities?

What does it not include?

- Discussion or comment on Proposition 19 on the November ballot,
- The recreational use of marijuana,
- Proposition 215, and subsequent legislation and guidelines, determined that the use of marijuana for medical purposes is acceptable; therefore, this study does not discuss the value or effectiveness of marijuana for medical purposes.

How do Federal laws affect this issue?

- The Controlled Substance Act (CSA) makes it unlawful to manufacture, dispense, or possess any controlled substance.
- Marijuana is considered a controlled substance and is subject to the CSA.
- The official stance of the Federal Government is that marijuana is considered a drug with "no currently accepted medical use." As a result, it remains a federal offense to dispense or possess marijuana, whether for recreational or medical purposes.
- In 2009, the federal government stated it would no longer enforce the federal laws prohibiting distribution or possession of marijuana for medicinal purposes, but that states would have the final say in the matter.

How do State laws affect this issue?

- The Compassionate Use Act (California Proposition 215) was passed in 1996.
- The purpose of the Compassionate Use Act (CUA) was to give individuals the right to obtain and use medical marijuana as deemed appropriate and as recommended by a physician. The CUA ensures patients and primary caregivers will not be

subject to criminal prosecution for the possession or cultivation of marijuana for medical purposes.

- In 2003, SB 420, the Medical Marijuana Program Act (MMP), was passed. The bill codified the regulations under which the possession, distribution, and use of marijuana for medical purposes would be subject.
- State Attorney General issued guidelines in 2008 to provide greater direction to ensure marijuana used for medical purposes is secure and does not find its way to non-patients or illicit markets, to help law enforcement agencies to perform their duties, and to give patients and primary caregivers an understanding how marijuana may be cultivated, transported, possessed, and used under California law.

Have issues related to MMDs been reviewed by the courts?

- There are several court cases that have tested the CUA and MMP, and generally hold that apart from possession and cultivation, the CUA did not alter any state prohibitions concerning possession and sale. The recent *Anaheim* case rejected that city's claim that cities are justified to prohibit dispensaries because marijuana is illegal under federal law.

How do City of Sunnyvale laws affect this issue?

- A moratorium that was passed by the City Council prohibits any medical marijuana distribution facility to be located anywhere in the City during the City's study and analysis of the issue.

What are medical marijuana distribution facilities (MMDs)?

- The Attorney General Guidelines refer to places that distribute medical marijuana as collectives, cooperatives and dispensaries.
- The goal of State law is to ensure marijuana is used for medical purposes under a physician's care, not by non-patients.
- Collectives, cooperatives and dispensaries (distribution facilities) are intended to be non-profit entities with membership requirements to be used solely for providing marijuana for those truly in need.

Why is marijuana not dispensed by pharmacies or doctors?

- The Federal law prohibits the use of marijuana for any legal purpose, classifying it as a Schedule I drug, which means it cannot be legally prescribed as medicine by a physician.
- Since no prescriptions are possible, no drug store or pharmacy can dispense it.
- Under California law, doctors can provide patients with recommendations for marijuana for medical purposes, which are required to obtain medical marijuana cards from the county health departments or from the dispensaries.

What is the study considering?

- The City of Sunnyvale considers the issue of MMDs as land use and public safety issues.
- First decision the City Council would need to make:
  - Should any such facility be allowed in the City?
- If so, where and with what operational standards?

How have community members provided feedback on this issue?

- Nearly 200 people have attended different public outreach meetings.
- An on-line survey is available on the City web site.
- E-mail at MedicalMarijuana@ci.sunnyvale.ca.us

What have other cities done to address this issue (see Attachment 5)?

- Currently, no city in the county allows medical marijuana distribution facilities (MMDs).
- Four Santa Clara County cities have banned the facilities (Gilroy, Los Altos, Milpitas, and Palo Alto).
- Six cities in Santa Clara County have a moratorium in place to prevent the opening of these facilities until it is addressed in detail, including Sunnyvale.
- The City of San Jose has approximately 70 MMDs in place throughout the city. Three to four of these dispensaries are located approximately eight miles from north Sunnyvale. Most of the San Jose MMD facilities were opened when no specific regulations existed, although they currently have a moratorium in place prohibiting new facilities to open.
- The County of Santa Clara is the only jurisdiction in the area that allows the MMDs, but in limited locations in the unincorporated areas of county.
- Approximately 35 cities in the State have adopted zoning guidelines for MMDs, although a few of those cities have since repealed, suspended or placed moratorium on them after initial allowance.

ATTACHMENT 2

Public Input

Comments from Outreach Meetings for Medical Marijuana Distribution Facilities (MMD's)

August 19, 2010 (Afternoon Meeting):

- Does Federal Law override State Law?
- Does the City's moratorium go against State law?
  - The City still has the right to apply land use controls on uses.
- What are results from other cities that have allowed MMDs?
- Important to provide safe and secure access and environment to medical marijuana.
- Ensure that there is good access to MMDs by transit lines.
- Locate away from sensitive use areas.
- Do we have enough public safety resources to deal with the use? Specifically police/law enforcement officers.
- Are individuals allowed to grow their own plants?
- DPS is concerned about where the marijuana is coming from- more marijuana may result in additional crimes.
- Can medical marijuana be obtained from pharmacies?
- These facilities tend to draw undesirable types, destroys property values. Overall impact seems negative.
- Good regulations will mitigate any negative situations.
- Not all operators are bad. There are good and bad business models.
- "Best practices" are when operators and neighbors work together.
- Each member grows plants for own use and any excess goes to collective.
- Revenue vs. risk- potential loss of tax dollars which will go to other cities.
- How many members/patients are there in Sunnyvale?
  - One estimate: 10-15% of local population is "qualified."
  - Not truly possible to track due to privacy safeguards
- Many patients are low income and can't afford to buy it. Set up regulations so its accessible to those who really need it.
- If everyone is allowed to grow their own, why do we need these facilities?
- Definition of "collective" is that everyone shares the cost of growing.

- How many liquor stores does Sunnyvale have? Why are there no restrictions for them, but people want restrictions for MMDs?
- The State agency ABC controls alcohol sales, especially for over-concentration.
    - At some point, before ABC regulations were established, the same discussions about storefront sales of alcohol probably occurred.
- Take a good business model and create regulations from that example.
- Make holistic centers a part of where medical marijuana is available.
    - Yoga, nutrition advice, massage, etc.
- If MMDs are allowed, how can Sunnyvale enforce the regulations if there are reductions in the police force and there are not enough resources to be effective?
- Some cities collect significant fees at time of application to help defray the enforcement costs.
- Properly run collectives will reduce illegal activity, stimulate the economy, and help those that really need it.
- Allowing MMDs will increase visibility, but will not increase consumption or growing.
- Where does the marijuana come from and how is it tracked?
- San Jose is not the best example of how MMDs because no regulations were in place when these operations started.
- Why isn't this issue on the ballot for Sunnyvale voters to decide?
- How will staff come up with a recommendation to the Council?
- MMDs should be located in "higher end" areas to ensure safety, etc.
- Don't forget about the patients who aren't healthy enough to go out and get medical marijuana- especially if the facilities are limited to north Sunnyvale.
- Why do you have to regulate the facilities from certain uses?
- Distance regulations are good, but allow exceptions for certain cases:
    - Take into account natural barriers (freeways, creeks, etc.).
- Use the existing Use Permit process to handle applications.
- Locate facilities away from schools.
- Dispensaries are a way for patients to meet each other- patients tend to feel isolated.
- City should run a facility or collective.
- City should set up districts where facilities could be allowed- "green light districts?"

August 26, 2010 (Evening Meeting):

- Is there a successful medical marijuana dispensary model available?
- What are the differences between a collective, cooperative and dispensary?
- Harborside Wellness Center may be a good example of a well-run dispensary.
- Has a cost analysis been done showing tax collected vs. enforcement and public safety costs?
- What are the social costs to the community of having these facilities in Sunnyvale?
- What happens if Sunnyvale allows MMDs, then a future Presidential administration changes their policy and begins to enforce Federal laws?
- There should be a back-up plan for that possibility.
- If MMDs are allowed, Sunnyvale public safety officers will be in a conflicting situation- do they enforce State or Federal laws?
- Once the line is crossed, it is hard to go back. Once they are allowed, it's hard to remove the use.
- How will the number of dispensaries compare to the number of liquor stores and smoke shops in the city.
- They may be an increase in the number of homes growing their own marijuana, for which there are risks to the neighborhood and resident. Maybe one distribution center is better.
- Distribution centers tend to attract negative situations and bring down property values and are big public safety issues.
- The City has limited public safety resources.
- The Metro newspaper has nearly 15 pages devoted to MMDs, and is distributed near where children and teenagers congregate. Can advertising be limited?
- Having MMDs in Sunnyvale will affect our schools. How can we prevent our kids from possessing this substance?
- Medical practitioners and pharmacies should dispense marijuana.
- There is a way to meet Federal and/or State guidelines if regulated properly.
- City Council needs a vigorous analysis of the social costs.
- The "systems" can be easily abused.
- Kids are looking to us for guidance, and promoting MMDs sends a wrong message.
- We don't need it in Sunnyvale- let them go elsewhere.
- City should be prepared for legal costs if MMDs are allowed.

- MMDs should be allowed for safe access for those who really need it.
- Collectives can be run properly- people do benefit from medical marijuana.
- MMDs as neighbors can improve properties, clean them up and provide better security.
- What additional taxes would be taken out to go towards public safety?
- This issue is a matter of control- design a system that has adequate controls to protect our youth and the general public.
- What is being done to reclassify marijuana so doctors can prescribe it and pharmacies can dispense it?
- How can we track where medical marijuana is coming from?
- Allow MMDs, but have the appropriate controls, and allow them to be accessible to those that really need it.
- Keep a safe distance from day care centers.
- Is marijuana safe? Is it effective?

ATTACHMENT 3

Options for Action

First Decision:

- Should the City of Sunnyvale amend the Zoning code to allow Medical Marijuana distribution facilities (MMDs) in the city?

If the decision is to <u>not</u> allow in the City:

- Staff will prepare an ordinance specifically banning the facilities in any zone in the City.
- That decision would be comparable to that taken by four other cities in Santa Clara County (see Attachment 5).

If MMDs <u>are</u> allowed in the city:

- Staff will present possible location and operational criteria taking into account overarching goals, such as:
  - How to ensure any guidelines would assist in providing compassionate care for those in need of assistance through the use of medical marijuana,
  - How to limit profit-seeking businesses,
  - Limit the impact to the community by the facilities,
  - Minimize the increase in crime or public safety responses,
  - Find compatible size and design criteria that would ensure the MMDs fit with surrounding area.

Listed below are possible criteria that could be used, should the decision be made to allow them:

Trying to find appropriate requirements, restrictions and conditions for MMDs is extremely difficult. Multiple options are possible. They range from relatively simple permitting requirements to more complex and intensive permits and conditions. Regardless of the approach, enforcement of conditions and assurance that MMDs meet the overarching goals for compassionate care are very difficult.

As seen in San Jose, there are many MMDs that do not meet the expectation of providing that care while minimizing profit motivations. Even those truly committed to providing compassionate care admit there are those that are motivated by profits and personal gain. Finding a permitting path that supports compassionate care, while discouraging profit motivation is extremely difficult. The options vary, and legal challenges may result as a result of more strict requirements.

Listed below are options that could be incorporated into a final ordinance, should Council make that decision:

Approval Process:

- Limit number of facilities in City,
- Require competitive bidding for number of facilities in City (such as a Request for Proposal) so the best operation possible is chosen,
- Issue one year Use Permits, requiring re-approval to ensure facilities operate safely and without problems,
- Specify that renewal of permits would not be approved should Federal law or enforcement practices change,
- Apply a permit fee to allow cost recovery for enforcement activity,
- Public review by Planning Commission and/or City Council.

Location Requirements

- Require separation of MMDs from residential areas, schools, parks, day care centers,
- Require a minimum distance between MMD facilities (eg. 200-500 feet),
- Limit MMDs to specific zoning district (i.e. only allowed in Commercial and/or Industrial zones),
- Require MMDs to be near major arterials, at front of building with easy visual access to street, windows in facility, well lit parking lot, etc.,
- Not allowed in areas identified by DPS as areas of increased or high crime activity.

Operational Requirements

- Limit other services offered and items for sale,
- Require holistic services be available as part of membership in facility,
- Must grow all marijuana on-site or at Sunnyvale members homes, with approval of necessary permits for those grow areas,
- Limit hours of operation,
- Require independent audits to ensure facility maintains non-profit status,
- Require independent testing of safety of product,
- DPS requirements for background checks for owners and employees,
- Require cultivation by members- maintain cultivation records,
- Must be maintained as non-profit operation,
- Provide community relations contact for City and the public,

- Install odor control mechanisms to limit impact to surrounding areas,
- Right of inspection by DPS.

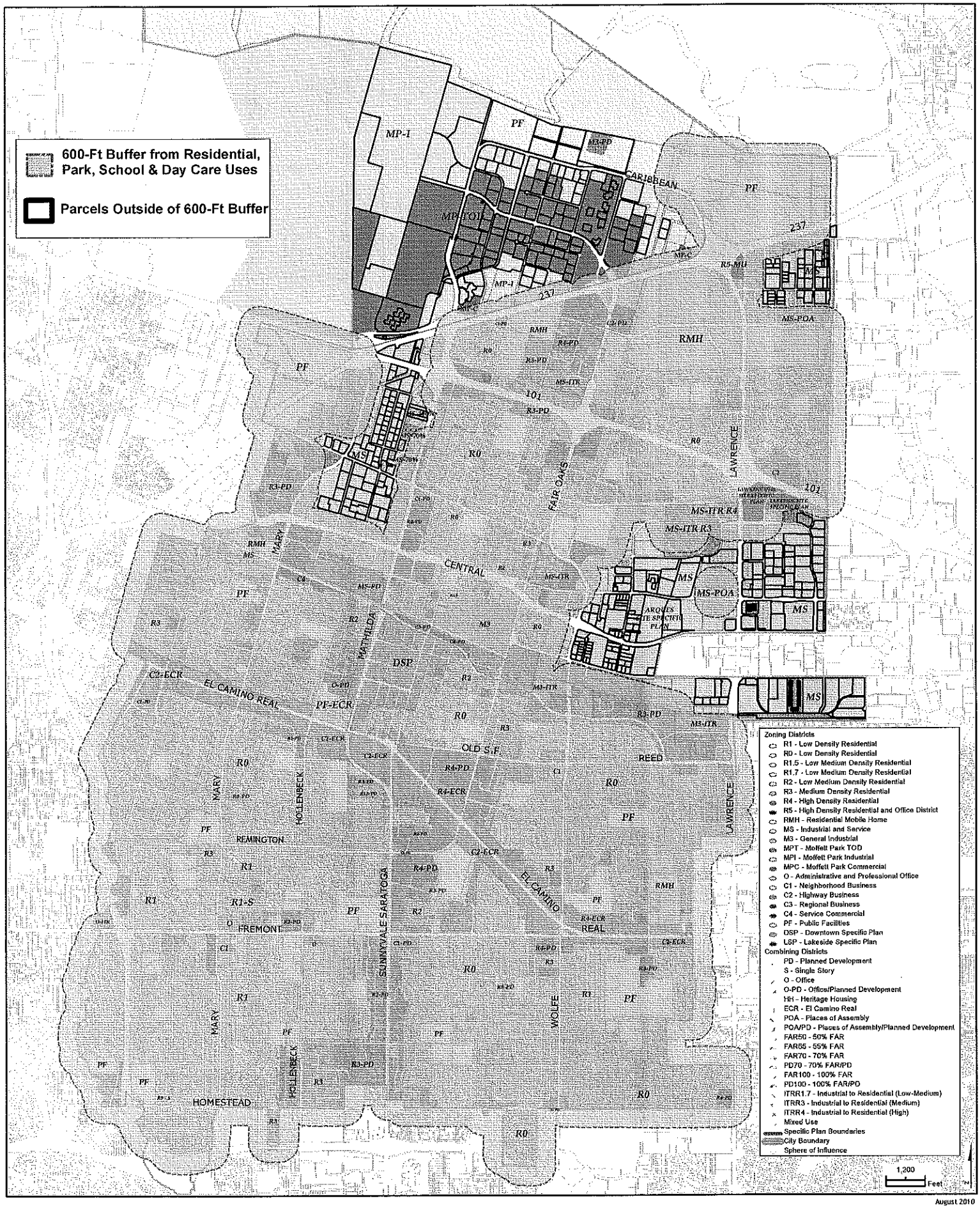
Business Limitations

- Have age restrictions to require persons under 18 to be accompanied by a parent or guardian,
- Limit size- using square footage and/or maximum number of customers allowed,
- Restrict signs that include "marijuana" in the title,
- No ancillary uses: happy hours, barbecues on site, etc.
- Closed-loop system only to ensure the facility is not used as a profit-making business,
- Do not allow doctor referrals to be made at the MMD location,
- No delivery from facility to members,
- Limit retail sales- no drug paraphernalia,
- Limit maximum number of members,
- No doctor referrals allowed on site,
- Require County medical card or other entity approved by DPS.

ATTACHMENT 4

Council Study Issue: Medical Marijuana Facilities
600-Ft Buffer from Residential, Park, School and Day Care Uses

1 OF 2



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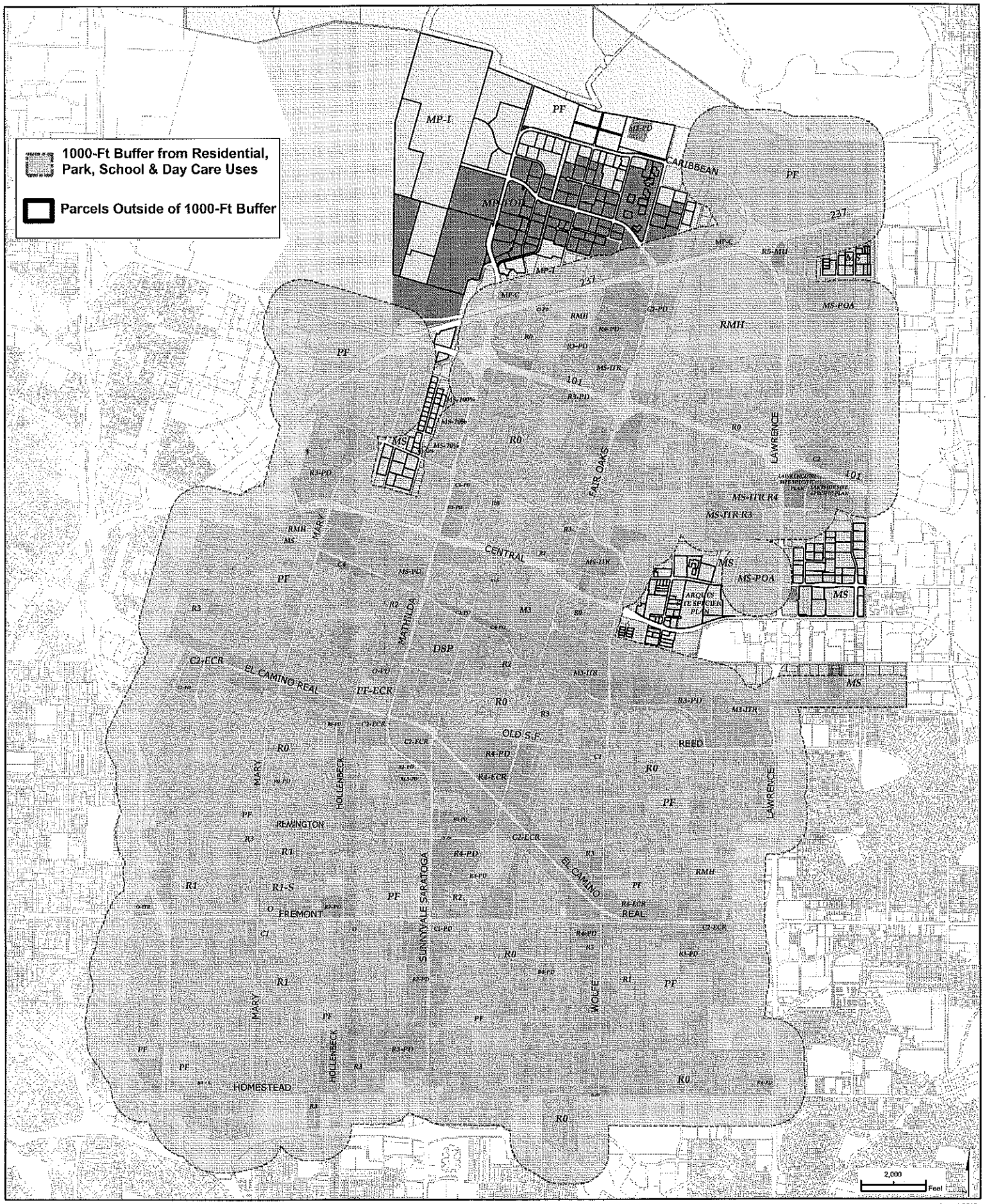
ATTACHMENT 4

Council Study Issue: Medical Marijuana Facilities
1000-Ft Buffer from Residential, Park, School and Day Care Uses

2 of 2



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Cities with Medical Marijuana Codes in Place

Santa Clara County	Current Status	Specific Aspects of Code
Campbell	No ordinance	
Cupertino	No ordinance	
Gilroy	Banned	13.65 Medical marijuana dispensary as a prohibited use (1/25/10)
Los Altos	Banned	4.45.010 Medical marijuana dispensary as a prohibited use (12/8/09)
Los Altos Hills	No ordinance	
Los Gatos	Moratorium	
Milpitas	Banned	XI-5-2.00 - Medical marijuana dispensaries are prohibited in all zones (6/19/07)
Monte Sereno	No ordinance	
Morgan Hill	No ordinance	
Mountain View	Moratorium	
Palo Alto	Banned	Medical marijuana operations banned several years ago through an "uncodified" ordinance.
San Jose	Moratorium	
Santa Clara	Moratorium	1854 12/8/2009 Extends moratorium on medicial marijuana dispensaries (Special)- back to Council in November
Saratoga	Moratorium	
Sunnyvale	Moratorium	
California City	**Current Status**	**Specific Aspects of Code**
Albany	x	
Angels Camp	x	
Arcata	x	
Atascadero	x	
Citrus Heights	x	
Cotati	x	
Elk Grove	Repealed	Agenda Item No. 6.9: Ordinance No. 28-2009 adopted repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries"
Fort Bragg	x	Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries" (Second Reading)
Jackson	Repealed	4/26/10- City adopted an ordinance prohibiting MMD in city
La Puente	Pending	Closed session set for 7/13 and PH for 7/20- original hearing was to ban facilities
Laguna Woods	x	
Long Beach	x	Looking to tax sales
Los Angeles	x	Recent action limits # to 70 (now 150) and sets distance requirements
Malibu	x	Decision to reduce distance limits from 1,000' to 500' set for 7/26
Martinez	x	Looking to revise code simplifying process for dispensary
Palm Springs	x	
Placerville		Moratorium in place suspending allowed MMDs pending decision in Anaheim case
Plymouth	x	
Redding	x	
Ripon	x	
Santa Barbara	Suspended	New ordinance passed 6/29/10 with greater limitations
Santa Rosa	x	
Sebastapol	x	
Selma	Repealed	January 2010 new ord appears
Sutter Creek		
Tulare	x	
Visalia	x	
West Hollywood	x	Moratorium passed in 6/2010 re operating w/o permit
Whittier	Moratorium	1/12/10 a 10 m 15 d moratorium passed banning MMDs in city- Ord 2947
Santa Cruz	Moratorium	On March 9, 2010, banned the opening of additional MMD in city
Berkeley	x	
Oakland	x	
San Francisco	x	

Millbrae	Moratorium	
San Carlos	In Study	
Atherton	Nothing	
Redwood City	Moratorium	1/25/10 for 22 months 15 days
San Mateo	x	With Use Permit
South SF	Moratorium	
Burlingame	x	
Daly City	Moratorium	

ATTACHMENT 6

Public Safety Concerns

- Social costs that result from increased use of marijuana,
- Enforcement costs for DPS due to the increase in calls for service for fire and police,
- Increase in crime in and around distribution locations,
- Unreported crime,
- The impact on surrounding businesses,
- Concerns about where the marijuana is grown and transported- specifically influence of organized crime in the production of marijuana,
- Size and number of dispensaries,
- Federal law has not changed- it is still considered an illegal drug.