

MEMORANDUM

Planning & Neighborhood Services Department



To: Transportation and Land Use Subcommittee
From: Diana Barnhart, Economic Development Manager
By: Janice Spuller, Assistant Transportation Planner
Subject: **Medicinal Marijuana Facilities Land Use and Proposed Work Plan**
Date: January 24, 2012

Background

At the September 27, 2011 Transportation and Land Use Subcommittee meeting, the members discussed the potential for locating Medical Marijuana facilities in Milpitas. Staff was directed to research Medical Marijuana facilities throughout the state of California and report back to the Subcommittee. At the October 25, 2011 meeting, public testimony was received and legal issues were discussed. At the November 29, 2011, meeting further discussion included safety issues with the Milpitas Chief of Police.

Summary of Land Use Regulation Recommendations

Planning staff reviewed and researched other cities that allow Medical Marijuana Facilities (MMF) and, based on that research, recommends the following land use topics for further discussion to be incorporated into a final white paper:

- **Distance:** A 1,000-foot buffer distance from sensitive uses such as schools, public facilities, parks (except Coyote Creek), religious institutions, childcare centers, and residential areas. Another consideration is the minimum distance between any two MMF, which staff recommends being at least 1,000 feet.
- **Quantity of Dispensaries:** Utilizing a one (1) dispensary per 50,000 population formula, staff recommends no more than 2 dispensaries within the City.
- **Zoning Designations:** Medical Marijuana facilities may be considered similar to existing zoning classifications such as “Medical Offices”, “Pharmacy or Drug Store.” Based on the map exhibit, the Highway Services district at the southern end of the city would be an allowable location, although a specific zoning district need not be explicitly stated if other performance standards must be met such as distance requirements.
- Additional Land Use Regulations can be considered as performance standards, such as hours of operation.

Analysis

Definition: Medical Marijuana Facilities are defined as “collective” or “dispensary” and includes any facility or location where the primary purpose is to dispense medical cannabis (marijuana) as a medication that has been prescribed and/or recommended by a physician, and where medical cannabis is made available or distributed by a primary caregiver to a qualified patient in strict accordance with California Health and Safety Code Section 11362.5 et seq.

Number of Potential MMF: At the November 29, 2011 meeting, the Milpitas Chief of Police provided statistics for the City of Los Angeles population per collective standard, which is one (1) dispensary per 50,000 of city population. Other cities researched also used a one (1) per 100,000 population standard. Staff recommends that Milpitas, with a population of 67,000 people, allow no more than two (2) dispensaries within the City limits.

On-Site vs. Off-Site Cultivation: On-Site Cultivation can be regulated through a series of permit conditions and performance standards. These may include number of plants per square foot within an indoor location.. Interior on-site cultivation requires building code compliance for natural and or mechanical ventilation, firewall assembly, as well as water-efficient and environmentally-responsible cultivations practices. The City of Sebastapol, for example, regulates that on-site cultivation can not exceed no more than 750 square feet of interior area for cultivation.

Cities with outdoor cultivation provisions require setbacks, including height and canopy requirements, and a review of noise and odor issues. Additionally, off-site cultivation may require separate permitting if dispensing for treatment is not included at the site. Some cities ordinances do not address cultivation regulations. A city may allow on-site interior and exterior cultivation.

Distance Requirements: Staff recommends that MMF be separated from sensitive uses, namely schools, public facilities such as parks (except the Coyote Creek Trail), community centers, religious facilities that offer childcare, childcare facilities, and residential areas. According to staff’s research, cities that permit MMF require a distance ranging from 500 to 1,000 feet from the aforementioned sensitive receptors. Staff recommends 1,000 feet of distance from MMFs and sensitive uses. It is also suggested that if there are two MMFs, that they also be at least 1,000 feet apart.

Staff also considered a 500’ distance requirement as a comparison and have attached both maps for reference.

Zoning Designations: MMFs may be considered similar to existing zoning classifications, such as “Medical Offices” or “Pharmacy or Drug Store.” Below is a table of Milpitas zones in comparison to a proposed MMF classification:

Use	Residential	Commercial	Mixed Use	Industrial
Medical Offices	Not Permitted	Permitted: CO, C1, C2, TC Not Permitted: HS	Permitted: MXD, MXD2 (second floor only), MXD 3	Permitted in all Industrial Zones (<i>When found necessary to serve and appropriate to the industrial Area</i>)
Pharmacy or Drug Store	Not Permitted	Permitted: C1, C2, HS, TC Not Permitted:	Permitted- All MXD zones	Not Permitted

Use	Residential	Commercial	Mixed Use	Industrial
		CO		
<i>Medical Marijuana Facilities</i>		Permit in HS		Permitted in all Industrial Zones (When found necessary to serve and appropriate to the industrial Area)

Based on the distance and zoning, staff recommends the location closest to Montague Expressway and McCarthy Ranch as possible Medical Marijuana Facility locations. This area is accessible to Montague Expressway, a major thoroughfare, located adjacent to industrial zoning, and has limited to no exposure to sensitive uses such as schools, parks (except Coyote Creek), and residences.

Additional Land Use Regulations or Performance Standards

According to staff’s research, as part of an ordinance, additional performance standards are often applied to Medical Marijuana Facilities, which must be met. These performance standards include:

- Hours of Operation limitation
- Exterior Lighting
- Signage
- Closed Circuit TV Cameras
- Fire & Burglar Alarms
- Odor Restrictions
- Onsite Consumption
- Age Requirements of employees

Permitting: Land use controls and public health and safety prohibitions may be used to determine the placement of medical marijuana facilities. Cities have used the standard land use and zoning process (Planning Commission or Zoning Officer) as a means of approving such uses within their City. Others review such requests through their City Manager’s Office, Public Health Department Officers, or through a special Administrative Permit process. Buffer zones and minimum distance requirements from sensitive uses may also be used, as stated previously.

Public Noticing and Disclosure: Staff recommends using the public hearing and notification procedures in the Zoning code that reference the minimum requirements under State law as well as additional requirements from Milpitas. The City applies a 1,000-foot notification notice to both property owner and occupants utilizing the property owner information from the County Assessors for Conditional Use Permits. In addition to a mailing, the City provides public hearing notices in the Milpitas Post. It is also a requirement that there be a posting on the subject property per 1,000 lineal feet of the property visible from the street. In addition, the City will provide this information on the City Website and the local access television channel(s).

Work Plan

Below is the outline of tasks set forth at the September 27, 2011 meeting?

<u>Task</u>	<u>Review</u>
Zoning and Land Use Regulations <i>Review regulations and make recommendations on locations</i>	January 24, 2012 Meeting
Regulations <i>Staff will present costs associated with a regulation program for Subcommittee consideration.</i>	February Meeting
Taxation and Ballot Measure <i>Review process</i>	
Community Outreach <i>Provide public forum opportunities at public meetings</i>	
Draft Memo to Council <i>The Subcommittee will review the draft policy memo.</i>	March meeting
Policy Memo for approval	April 18 th City Council Meeting

Recommendation

Staff recommends approval of the land use recommendations and direction to move forward with the work plan.

Attachments;

1. Map
2. A table of land use regulations for MMFs from California cities

Medical Marijuana Facilities Land Use Regulations

CITY	ZONING PERMIT REQUIRED	LOCATION	QTY OF DISPENSARY	SCHOOL DISTANCE (FEET)	PUBLIC FACILITIES (FEET)	ANOTHER DISPENSARY (FEET)	RESIDENTIAL ZONE (FEET)	OTHER LOCATION REQUIREMENTS	OPERATION CONDITIONS	ON- OR OFF-SITE CULTIVATION PERMITTED (IF INCLUDED)
Berkeley	Yes	Must comply with distance requirements	no more than 3 dispensaries	1,000	1,000	1,000				on-site and off-site. Outdoor cultivation also permitted with regulation
Long Beach	Yes	Must comply with distance requirements		1,000 feet K-8 school 1,500 high school		1,000	not permitted		closed circuit TV, fire/burglar alarms, ADA, noise/odor restrictions, exterior lighting, required signage	
Los Angeles	Yes	Must comply with distance requirements		1,000	1,000	1,000		1,000 feet- religious institutions, child care facilities, youth center, substance abuse rehab centers	closed circuit TV, hours of operation, age requirements, exterior lightings, windows, doors, signage regulations	
Oakland	Yes	Must comply with distance requirements		600					prohibited public advertising, businesses pay tax and licensing fees, onsite consumption only	on-site cultivation permitted
Redding	Yes- granted by Police	Must comply with distance requirements		1,000	1,000	1,000	300	1,000	can not share a common wall with other businesses	Allows for personal cultivation, outdoor and indoor, with setback requirements
Sacramento	Special Permit- by PC + zoning administrators special permit in specific zones	Must comply with distance requirements		600	600	1,000	300	600 feet of tobacco store, movie theater in addition to those in LA		

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San Francisco	Yes	Must comply with distance requirements		1,000			1,000			On-Site permitted no more than 99 plants to 100 square feet of total garden canopy measured by the combined vegetative growth area
San Jose	Administrative Permit Required	Commercial General, downtown primary commercial, light industrial, combined industrial commercial	10	600	500	500	150	500 ft of daycare, churches with daycares, substance abuse rehab centers, on any floor of shopping centers located on a parcel(s) over 40 acres, ground floors of buildings with downtown primary commercial		On-site permitted with Administrative Permit
Santa Barbara	Permit by a Staff Hearing Officer and/or Planning Commission on an appeal of the decision by the staff hearing officer.	Must comply with distance requirements		500	500		prohibited	certain streets and intersections are prohibited		Dispensing only
Santa Cruz	Yes March 2010 Administrative Use Permit	Community commercial, thoroughfare commercial or General Industrial Zones		600	600		600 ft, but 50 ft with special approval	600 children's play area, private schools, rehab centers (but can be granted with exceptions by the planning commission)		

CITY	ZONING PERMIT REQUIRED	LOCATION	QTY OF DISPENSARY	SCHOOL DISTANCE (FEET)	PUBLIC FACILITIES (FEET)	ANOTHER DISPENSARY (FEET)	RESIDENTIAL ZONE (FEET)	OTHER LOCATION REQUIREMENTS	OPERATION CONDITIONS	ON- OR OFF-SITE CULTIVATION PERMITTED (IF INCLUDED)
Sebastapol	Yes			500	500					Both
Stockton	Use Permit approved by Commission. Alternate Permit approved by Police Department		1 per 100,000 population, 3 total	600	600	600	300 (including religious institution)	500 feet from transitional housing	Security standards, Preparation of medicine standards, ingestion regulations, age requirements, hours of operation	Not Permitted



Update on Medical Marijuana Dispensaries

- Transportation and Land Use Subcommittee Meetings
- Discussion topics
 - Compassion and Need
 - Taxation and Regulation Fees
 - Legal Developments
 - Land Use & Regulatory Issues (future meetings)



Local Ordinances

- Santa Clara County
 - San Jose
- Bay Area
 - Oakland: Estimated Revenue \$1.4 M
 - San Francisco: \$550,000 in permit fees
 - Sacramento: Estimated Revenue \$1.5M

Land Use Conversions for Residential Development

■ Sewer Capacity Concerns

- 2006 & 2009 sewer purchases to cover TASP & Midtown development
- Per Acre of R-2: 8,505 GPD; R-4: 12,150 GPD generated
- Industrial: 400 – 600 GPD per acre

TASP & Midtown

- TASP Allowed= 7,109 dwelling units
- Midtown Allowed= 2,860 dwelling units

- TASP Approved – 2,773; 645 in process
- Midtown: 2,215 constructed, under construction or in process

Previous Conversions

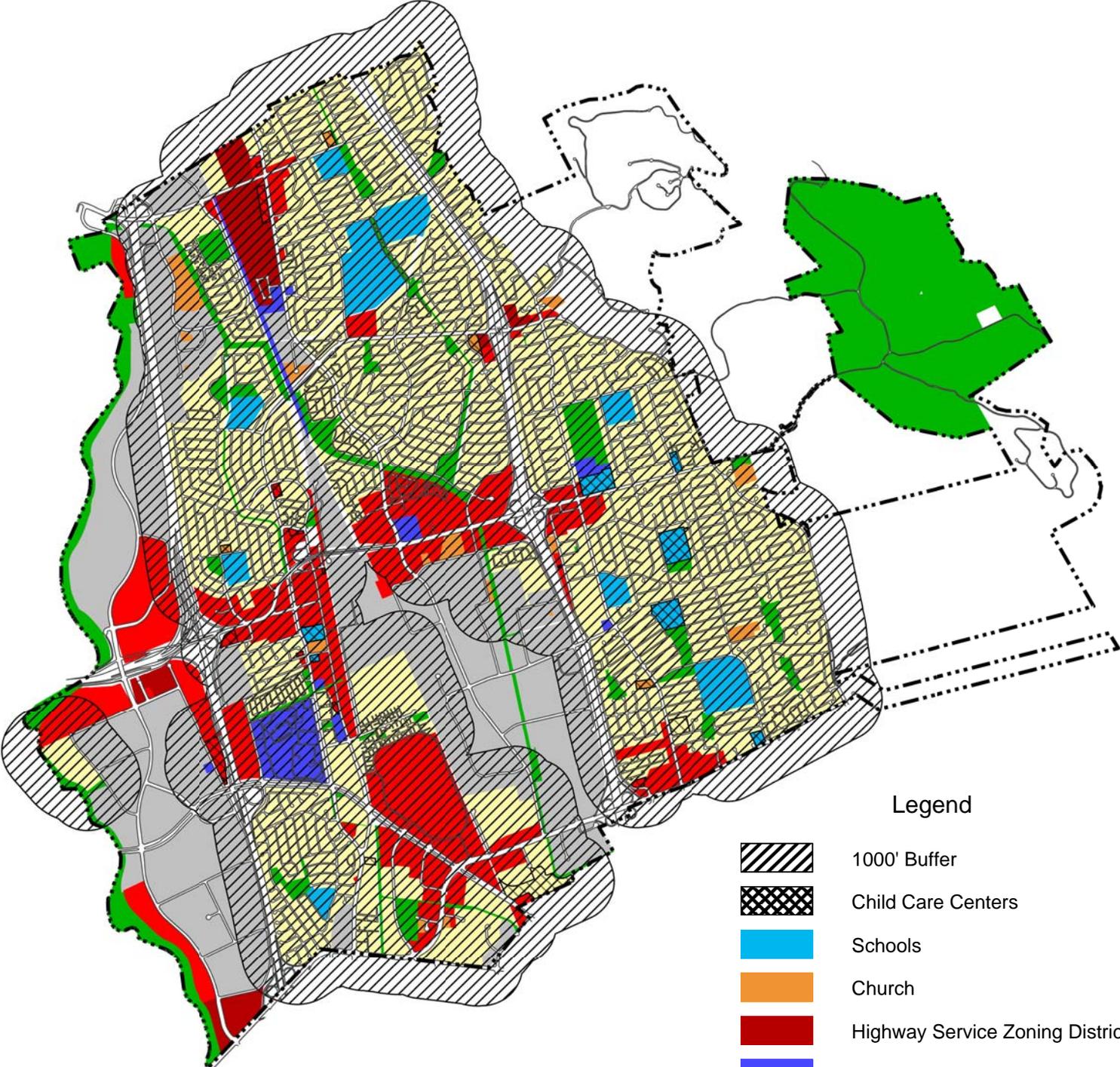
- Fairfield @ Murphy Ranch: 28 acres (Industrial to Residential)
- Landmark Towers: 3 acres (Commercial to Residential)
- Los Coches Avenue: 50 acres (Industrial to Town Center)

Recommendations

- Proceed with a moratorium to prevent further conversions
- Continue to process the two applications received: CA Circle and Preston Pipeline
- Recommend to City Council to consider property purchase for South Main Senior Lifestyle project

Medical Marijuana Restriction Map Exhibit

1000' Buffer



Legend

-  1000' Buffer
-  Child Care Centers
-  Schools
-  Church
-  Highway Service Zoning District
-  Institutional Zones
-  Residential Zones
-  Commercial Zones
-  Industrial Zones
-  Parks and Open Space