



City of San Leandro

Meeting Date: October 15, 2012

Minutes

File Number: 12-479 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Lianne Marshall
Assistant City Manager

FINANCE REVIEW: Not Applicable

TITLE: ACCEPT: Rules and Communications Committee Highlights of September 25, 2012

CITY OF SAN LEANDRO

CITY COUNCIL RULES AND COMMUNICATIONS COMMITTEE

September 25, 2012

4:30 - 5:30 p.m.

San Leandro City Hall
835 East 14th Street
San Leandro, California
(City Council Chambers)

HIGHLIGHTS

1. CALL TO ORDER

Mayor Cassidy called the meeting to order at 4:34 p.m.

1.A. Attendance

Committee Members present: Mayor Stephen Cassidy, Councilmember Jim Prola and Councilmember Diana Souza

City Staff present: Sally Barros, Senior Planner; Marian Handa, City Clerk; Lianne Marshall, Assistant City Manager; Richard Pio Roda, Assistant City Attorney; Sandra Spagnoli, Police Chief; Ed Tracey, Police Captain

Public present: Chris Crow; Dan Dillman; Ellen Komp; Denise Martellacci

1.B. Announcements

None.

2. DISCUSSION ITEMS

2.A. Continued Discussion Regarding Medical Marijuana Dispensaries in the City of San Leandro

Staff Presentation

Assistant City Manager Marshall:

- This is a continuation of last month's discussion
- Oakland's ordinance was used as a template for our draft ordinance
- Staff is seeking the Committee's input and direction

Assistant City Attorney Pio Roda:

- Presented draft ordinance, which amends San Leandro Municipal Code Chapter 4-33
- Zoning Code would be amended to specify where dispensary(ies) would be allowed, and require any dispensary to obtain a conditional use permit
- Draft ordinance tracks closely with the 2008 (current) Attorney General adopted guidelines for medical marijuana dispensaries
- Ordinance would go to Planning Commission and Board of Zoning Adjustments for recommendation
- Staff recommends that dispensaries be located 1500' away from certain sensitive uses, such as schools, libraries, etc., and 600' from residential zones
- Provides for a dispensary permit application process, and fees to be adopted later by Council
- Ordinance would include operating standards, including recordkeeping requirements; member-operated facility, either a cooperative or collective, employee background checks, facility and security requirements; and provisions for enforcement

Committee Questions

- What are the differences between the draft ordinance and Oakland's?
- Why restrict the sale of other legal items [§4-33-500(a)(5)]?
- How do individuals become members?
- What is rationale for 1500' rather than 1000'?
- Does the ordinance limit the number of dispensaries allowed?
- Can the City be sued for regulating medical marijuana?
- Any limit to size of facility or number of members?

Responses from staff:

- The draft ordinance requires a 1500' radius buffer from sensitive uses, while

Oakland's is 1000'. The City's current restriction for a tobaccoist is 1500'.

- The draft ordinance has a 1000' radius from residential, Berkeley's is 600'.
- The City Manager or designee has the authority to impose additional conditions of approval, which is not contained in Oakland's ordinance. The rationale is to allow input from other departments that would not ordinarily have an opportunity to weigh in.
- Oakland's ordinance has a cannabis tax; ours does not. Cost recovery fees could include the time required by City Manager, Police and City Attorney staff or consultants to administer the process.
- Section 4-33-800 (p. 11 of the draft ordinance) provides that decisions by the City Manager are final; decisions by BZA can be appealed to the City Council.
- Members must be qualified patients and primary caregivers, who are residents of the city or county. The requirement is contained in the Recordkeeping section of the ordinance, but could be made clearer if desired by the Committee.
- Allowing other types of items for sale (ex: T-shirts, hats, CDs, etc.) would detract from the legitimacy and professionalism of the operation.
- The ordinance limits the number of dispensaries to one.
- The risk of being sued exists; however, it has not deterred other agencies.

Public Comments

Chris Crow inquired about business license requirements, and about the County's ordinance; would like to see the regulations be less stringent and more in line with those required for other businesses; and stated that he would like the City to work to remove the stigma surrounding medical marijuana.

Denise Martellacci stated that she would like the City to consider two dispensaries rather than one to promote competition; that the AG guidelines recommend 1000' feet from sensitive uses; commented on having written rules versus City Manager's discretion; agrees with product testing; supports the sale of other legal products to help cover overhead; and commented that other types of businesses do not have customer tracking.

Ellen Komp, California NORML, stated that she would like the opportunity for their lawyers to review the draft ordinance; questioned whether Berkeley has a 600' residential buffer; commented that the 600' and 1500' requirements and the single dispensary were overly restrictive; commented on protection for collective operators; and stated she was unaware of other ordinances that require patients and caregivers to be county residents; and commented that public safety increases when dispensaries open.

Dan Dillman expressed agreement with the previous speakers; suggested allowing more than one dispensary and allowing the sale of other legal items; and expressed appreciation for the Committee's willingness to move the matter forward.

Committee Member Comments

Councilmember Prola:

- Believes decisions should be appealable to the City Council.
- Agrees that facilities should be able to sell other products.
- 1000' is probably an adequate distance from sensitive areas.
- Suggested allowing "up to two" dispensaries.
- Would like to see a listing of the differences between the draft ordinance and Oakland's.

Mayor Cassidy:

- Does not appear to be big difference between the 1000' and 1500' buffer zones.
- Would like to see a map with a 500' buffer zone from residential areas.
- Would be helpful to have a memo outlining the differences between the draft ordinance and Oakland's ordinance.
- Would like more information about patient tracking, and whether it's required under Oakland's ordinance.
- Requested that staff verify Berkeley's 600' residential buffer.
- Suggested the following process: bring draft ordinance to full Council for input; then to the public and City commissions (Planning and BZA); then back to Council for adoption.

Councilmember Souza:

- Would like to see limits to the size of facility and number of members, and access restricted to San Leandro residents.
- Would like to engage the entire Council in the process prior to advancing the ordinance, and have a plan for community engagement.

Staff will tally the number of parcels in the eligible areas on both maps, and noted there are probably no commercial zones in the eligible areas.

This matter will be continued to the next meeting.

Committee Recommendation for City Council Consideration

None.

2.B. Review List and Prioritization of Future Agenda Items

The Committee reviewed and prioritized the agenda items as follows:

- **Continued Discussion Regarding Special Event Permits and Processes**
Bring the item back in January or February 2013
- **Update on PEG Funding**
Provide status and fund balance update in November or December 2012
- **Discussion Regarding Consideration for Adding Youth Members to Certain City Boards and Commissions**
Schedule for discussion in October or November 2012

- **Amendments to San Leandro Municipal Code Chapter 3-5 Relating to Animals, Poultry, Etc.**

Per Chief Spagnoli, a preliminary draft ordinance can be brought to the Committee in November 2012

Mayor Cassidy commented that while the delay is understandable, given the reduction in staffing due to the dissolution of the Redevelopment Agency, he has heard frustration expressed by members of the community.

Councilmember Prola stated he has also heard from the community, and would like to see the draft ordinance come forward in October. He excused himself, and left the meeting at 5:42 p.m.

Councilmember Souza commented that she would like to bring something forward soon as a gesture of faith to the community; however, it may not be the most efficient or effective approach in the long run.

Mayor Cassidy suggested that the Committee meet in early November, and consider the animal ordinance at that meeting. He had also suggested a State of the Police Department report at a November work session.

Committee Recommendation for City Council Consideration

None.

3. PUBLIC COMMENTS

Chris Crow: stated the special event permit item is misleading; he would like to know how it was initiated; it will require business owners to navigate more bureaucracy.

4. COMMITTEE MEMBER COMMENTS

None.

5. ADJOURN

The meeting was adjourned at 5:50 p.m.



City of San Leandro

Civic Center
835 East 14th Street
San Leandro, California

Meeting Agenda Rules & Communications Committee

Mayor Stephen H. Cassidy, Chair
Councilmember Jim Prola
Councilmember Diana M. Souza

Tuesday, September 25, 2012

4:30 PM

City Council Chambers

1. CALL TO ORDER

1.A. Attendance

1.B. Announcements

2. DISCUSSION ITEMS

2.A. 12-471 Continued Discussion Regarding Medical Marijuana Dispensaries in the City of San Leandro

Attachments: Staff Report - Summary of Medical Marijuana Cases
San Leandro Dispensary Permit Ordinance
Medical Marijuana Dispensary - 1,500 foot (ver 2)
Medical Marijuana Dispensary - 1,000 foot (ver 2)

2.B. 12-472 Review List and Prioritization of Future Agenda Items

- *Continued Discussion Regarding Special Event Permits and Processes*
- *Update of PEG Funding*
- *Discussion Regarding Consideration for Adding Youth Members to Certain City Boards and Commissions*
- *Amendments to San Leandro Municipal Code Chapter 3-5 Relating to Animals, Poultry, Etc.*

3. PUBLIC COMMENTS

4. COMMITTEE MEMBER COMMENTS

5. ADJOURN

MEMORANDUM

Via E-mail

DATE: September 21, 2012

TO: City Council Rules and Communications Committee
Mayor Stephen Cassidy
Councilmember Jim Prola
Councilmember Diana Souza

FROM: Richard D. Pio Roda, Assistant City Attorney

COPY: Vice-Mayor Michael Gregory
Councilmember Pauline Cutter
Councilmember Tom Dlugosh
Councilmember Ursula Reed
Chris Zapata, City Manager
Lianne Marshall, Assistant City Manager
Sandra Spagnoli, Chief of Police
Luke Sims, Director of Community Development
Tom Liao, Planning Manager

RE: **DRAFT Medical Cannabis Dispensary Ordinance and Request for Synopsis of Cases Related to Medical Marijuana Regulation**

Please find attached a DRAFT medical marijuana dispensary ordinance, which will be presented at the September 25th City Council Rules and Communications Committee meeting.

In summary, the ordinance:

(1) Defines the location limits and parameters for a dispensary. Staff includes for your review two maps that show the proposed 1,500' foot radius from the specifically defined uses (a public or private school, public library, youth center (serving youth ages eighteen (18) and

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From: Richard D. Pio Roda
Re: DRAFT Medical Cannabis Dispensary Ordinance
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under), parks and recreation facility), and a separate map that shows a 1000' foot radius from those uses. The ordinance also proposes that dispensaries should be 600' feet from a residential zone; and

(2) Provides for a dispensary permit application process, an application fee, and an annual dispensary permit fee, to be determined by the City Council; and

(3) Standards for the operation of a dispensary including recordkeeping requirements to insure compliance with State law, employee background checks, facilities, and security amongst others; and

(4) Enforcement if the dispensary fails to follow applicable laws or the ordinance, including suspension and revocation processes.

Please also find below a table that explains the current status of relevant medical marijuana litigation, as requested by Councilmember Souza.

Case

City of Lake Forest v. Evergreen Holistic Collective (2012) 203 Cal.App.4th 1413, rev. granted by California Supreme Court, S201454.

- City enacted a ban calling dispensaries a per se public nuisance

Current Status

Appeals court ruled the City's total ban is preempted by the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA).

- The case is before the Cal. Supreme Court, so it is not the law.

People v. G3 Holistic, Inc. (2011); non-published opinion; rev. granted by California Supreme Court, S198395

- City enacted its ban through its zoning ordinance.

City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc. (2011) 200 Cal.App.4th 885; rev. granted by California Supreme Court S198638

- City's local nuisance law bans dispensaries

Appeals court ruled the City's total ban of dispensaries in its zoning ordinance is not preempted by the CUA/MMPA.

- The case is before the Cal. Supreme Court, so it is not the law.

Appeals court ruled that a local public nuisance law that bans dispensaries is not preempted by the CUA/MMPA

- The case is before the Cal. Supreme Court, so it is not the law.

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Pack v. Superior Court (2011) 199
Cal.App.4th 1070; rev. granted, **dismissed**
by Cal. Supreme Court, S197169

***County of Los Angeles v. Alternative
Medicinal Cannabis Collective*** (July 2,
2012) 207 Cal.App.4th 601 (2d Distr., Div.
1).

- Dismissed by California Supreme Court.
- The appeals court ruled that a “Regulatory” ordinance allowing dispensaries with a permit is preempted by federal law.
- Federal preemption is still an issue, and has not been clearly decided.
- Unpublished court of appeal decision, so it is not the law
- A public agency’s total ban is preempted by the CUA/MMPA
- County was the regulatory agency in this case.
- Review before Cal. Supreme Court is pending, but has not been granted.
- This case is the current law

RDP:RDP
Enclosure
1971618.1

CITY OF SAN LEANDRO

CITY COUNCIL

AN ORDINANCE ADDING CHAPTER 4-33 TO TITLE 4 OF THE SAN LEANDRO MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITS

NOW THEREFORE, the City of San Leandro City Council does hereby ordain:

Section I. Amendment to Title 4, PUBLIC WELFARE

San Leandro Municipal Code Title 4 is hereby amended to add the following Chapter, 4-33, as follows:

4-33-100 - Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

(a). "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use," issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

(b). "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant incapable of germination.

(c). "Cannabis Dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 *et seq.*

(d) "City" means the City of San Leandro, and any legislative body granted regulatory authority over Dispensary operations by this ordinance.

(e). "City Manager" means the City Manager of the City of San Leandro or his/her designee.

(f). "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

(g). "Cooperative" means a business organization recognized by the state of California through properly registered articles of incorporation under the Corporations or Food and Agricultural Code that conducts its business for the mutual benefit of its members, as described in the Attorney General Guidelines.

(h). "Medical Marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 *et seq.*, as such sections may be amended from time to time.

(i). "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

(j). "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended from time to time, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(k). "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means a person who is entitled to the protections of

California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 *et seq.*

(l). "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(m). "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

4-33-200 – Dispensary Permit required and Application for Permit.

(a) Except for hospitals, it is unlawful for any owner, operator, collective, cooperative, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any Dispensary in the City of San Leandro unless there exists a valid Dispensary permit in compliance with the provisions of this Chapter.

(b) This Chapter does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a Dispensary permit under this Chapter, but must comply with all applicable State Laws and the Attorney General Guidelines.

(c) The City shall issue no more than one (1) valid permit for the operation of a dispensary in the City.

(d) In addition to the requirements specified in Chapter 2-2 related to Business Licenses, the permit application for a Dispensary shall set forth the following information:

(1) Unless it is determined by the City that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such Dispensary is not within fifteen hundred (1,500') feet of a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facility, and six hundred (600') feet of a residential zone. The proposed Dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

(2) A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.

(3) A plan of operations that will describe how the Dispensary will operate consistent with the intent of State law, the provisions of this Chapter, the Attorney General Guidelines, the City's Municipal and Zoning Codes, and conditions of approval including but not limited to:

(i) Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers; and

(ii) controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.

(iii) A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft and or burglary, and patrons and customers from robbery. The security plan shall be reviewed by the Police Department and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

(iv) Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

(e) The City Manager shall be the investigating official to whom an application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager shall give particular consideration to the capacity, capitalization, and history of the applicant and any other factors that in the City Manager's discretion he or she deems necessary to maintain the peace, order and welfare of the public. The City Manager on his or her own power and in addition to any other conditions of approval imposed by any other City departments, boards, commissions or legislative bodies, may impose any conditions on a Dispensary permit he or she deems necessary to maintain the peace, order, and welfare of the public.

(f) At the time of submission of a Dispensary permit application, the applicant shall pay a non-refundable Dispensary permit application fee. The fee amount shall be set by the City Council.

(g) The issuance of a Dispensary permit shall not be effective until the permit applicant has received all other permits and approvals required by the City's ordinances, rules and regulations, including but not limited to any conditional use permit and/or building permit.

4-33-300 – Compliance with State Law and Municipal Code.

(a) A Dispensary must comply with all applicable state and local laws, policies, rules and regulations, including but not limited to the California Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, the San Leandro Municipal Code, the San Leandro Zoning Code, and the San Leandro Administrative Code including any and all rules and regulations related to the land use entitlement process, Dispensary operations, annual Dispensary permit fee, annual business license fee, and the Americans with Disabilities Act to be in compliance with the Dispensary permit.

The Dispensary must comply with any and all Conditions of Approval imposed upon it pursuant to any land use permit or entitlement granted.

Failure to comply with the Conditions of Approval or any conditions imposed upon a Dispensary permit by the City Manager, and all applicable local and state laws or regulations, and failure to pay when due all fees may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City's nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution as defined in San Leandro Municipal Code Chapter 1-12.

4-33-400 – Renewal of Permits

(a) Dispensary Permits must be renewed annually. Permit Holders shall contact the City's Community Development Director in writing no later than forty-five (45) days before the expiration of the current permit to begin the renewal process. At that time, the Dispensary shall submit verification of a current Business License, audited financial statements for the previous permit term, and any other requested financial documents or information as required by the San Leandro Municipal Code or the Dispensary's Permit.

As part of the annual renewal process the Dispensary shall be inspected by the Building Inspector and Fire Marshall or their designees. Violations of the San Leandro Municipal Code shall be corrected within a reasonable time, as determined by the Building Inspector, Fire Marshal or his/her designee. The Dispensary shall provide proof to the City that there are no outstanding violations of the San Leandro Municipal Code.

(b) A Dispensary Permit will not be renewed without payment of the annual renewal fee, as established by the City Council.

4-33-500 - Performance standards.

(a) Operations

A Dispensary shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the Dispensary's Permit to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and this Municipal Code, and to mitigate any potential adverse impacts of the Dispensary on the public health, safety, and welfare.

(1) A Dispensary shall provide the City, the Chief of Police, and all neighbors located within fifty (50) feet of the premises with the name, phone number, facsimile number and email address of an on-site community relations staff person that can be contacted related to Dispensary issues, twenty-four hours a day, seven days a week.

(2) Medical marijuana shall only be distributed by a Dispensary at the property identified and approved as the location for the Dispensary on the Dispensary permit application.

(3) A Dispensary shall only provide, distribute, dispense, or give medical marijuana to qualified patients or primary caregiver members.

(4) With the exception of security guards, only qualified patients and caregivers shall be allowed inside of a Dispensary.

(5) A Dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the Dispensary should only be an amount necessary to cover overhead costs and operating expenses. Retail sales of medical marijuana that violate California law or this ordinance are expressly prohibited. The sale or distribution of pipes, tobacco, cigarettes, cigars, lighters, shi sha, hookahs, hats, clothing, or any items other than medical marijuana is prohibited.

(6) A Dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. A Dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature marijuana plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. For purposes of determining the quantity of marijuana, only the dried mature processed flowers of female cannabis plants or the plants conversion shall be considered.

(7) A Dispensary may operate no later than 7pm daily. A Dispensary is prohibited from operating between the hours of 7 p.m. and 9 a.m. the next ensuing day unless further restricted by the City.

(8) Dispensaries shall disclose the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabinol in medical cannabis to qualified patients before providing medical cannabis.

(9) Dispensaries shall follow the directions of the City Manager or his/her designee regarding any medical cannabis found to be non-compliant with testing standards. These instructions extend to any medical cannabis found to be unsafe on the basis of such testing results, or to the Dispensary's operations and practices generally.

(10) Representative samples of medical marijuana distributed by a collective or cooperative shall be analyzed by an independent laboratory to ensure it is free of harmful pesticides and other contaminants regulated by local, state or federal regulatory statutory standards. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level that exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith.

(11) Any medical marijuana provided to collective members shall be properly labeled in strict compliance with state and local laws, regulations and policies.

(12) Dispensaries shall not allow cannabis to be smoked, ingested or otherwise consumed on the premises. The term premises includes the actual building, as well as any accessory structures, parking areas, or other immediately surrounding areas.

(13) Dispensaries shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Dispensaries shall not cook, heat, re-heat or warm food or drink products or operate as a restaurant, cafe or lounge serving food and or drinks. There shall be no kitchen within a Dispensary. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of patients or primary caregivers. Edible marijuana products must be prepared and pre-packaged for consumption outside of the premises.

(14) A Dispensary shall post a copy of the Business License Certificate issued by the City's Finance Department and a copy of the Cannabis Dispensary Permit issued by the City in a conspicuous place on the premises.

(15) Dispensaries that offer edible marijuana products shall keep and display the edible marijuana products separate from non-edible marijuana products. Edible marijuana products must be clearly labeled pursuant to state or local law, rules or regulations.

(16) Dispensaries that distribute edible medical marijuana products, including but not limited to drinks, infused water, cookies, candy or baked goods, shall distribute the edible products for the sole consumption by qualified patient members in compliance with all applicable state and local laws, including any requirements of the Department of Health.

(17) All employees responsible for the handling, processing, dispensing, providing and cultivation of marijuana must be members of the Dispensary. Prior to employment, the employee members must be fingerprinted (through a Live Scan) for the purpose of conducting a background check. The purpose is to determine whether the employee has been convicted or plead guilty, plead or was granted entry into a diversion program in lieu of conviction for, or plead *nolo contendere* to the following criminal offenses, or their equivalent if arising out of state:

- i) Health and Safety Code Sections 11350 *et al* (pertaining to controlled substances, with the exception of marijuana related offenses)
- ii) Penal Code Section 187 (homicide)
- iii) Penal Code Section 207 (kidnapping)
- iv) Penal Code Section 211 (robbery)
- v) Penal Code Sections 240-248 (assault & battery)
- vi) Penal Code Section 261 (rape)

- vii) Penal Code Section 314 (indecent exposure)
- viii) Penal Code Section 450 (arson)
- ix) Penal Code Sections 458-464 (burglary)
- x) Penal Code Sections 470-483.5 (forgery)
- xi) Penal Code Sections 484-502.9 (larceny)
- xii) Penal Code Sections 503-515 (embezzlement)

The employee applicant must contact the Chief of Police for information related to the processing and cost of the fingerprinting, and any costs must be paid for in advance by the employee applicant. The background check shall review the employee applicant's criminal history. If the background investigation determines the employee has been convicted of one of the above offenses, the Dispensary shall no longer employ the member as an employee.

(b) Recordkeeping

The Dispensary shall maintain records of its members using only the State of California Medical Marijuana Identification Card number issued by the county or the County's designee, pursuant to California Health and Safety Code Section 11362.7 *et seq.*, or a copy of the written doctor's recommendation, as a protection for the confidentiality of the cardholders. The Dispensary shall track when members' medical marijuana recommendations and/or identification cards expire and enforce conditions of membership by excluding members whose identification cards or recommendations are invalid or expired. The Dispensary shall maintain member records in a manner to protect confidential information in the records if the records contain information protected by applicable law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Public Law 104-191. A Dispensary shall exclude members who are caught diverting marijuana for non-medical use. All membership records shall be maintained on site.

(1) A Dispensary shall, by using the patient or caregiver's identification number keep an accurate account of the number of members that visit the Dispensary each month, and also for the entire permit year.

(2) Within thirty (30) days of the end of a calendar quarter, the Dispensary shall provide the City a count of the total number of members of the Dispensary and the number of Dispensary visits by each member during the previous calendar quarter.

(3) Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City a listing of the medical marijuana products for sale during the previous calendar quarter, the prices of such products, and the end of quarter quantity on hand, listed in the applicable units, for each product.

(4) The Dispensary shall keep accurate records, follow accepted cash handling practices and maintain a general ledger of cash transactions. The Dispensary shall maintain records of all members' contribution of labor, resources or money to the Dispensary.

(5) The Dispensary shall allow the City to access the books, records, accounts and all data relevant to its operations for purposes of conducting an audit or examination to determine compliance with the Municipal Code, Administrative Regulations and applicable laws. Books, records, accounts and all relevant data shall be produced no later than twenty-four (24) hours after receipt of the City's request.

(6) The Dispensary shall maintain a log of patient complaints and shall make the log available to the City upon request. The log shall contain at a minimum the date of the complaint, the complaining patient's identification number or reference to his/her written recommendation, the nature of the complaint, and the action taken by the Dispensary to address the complaint.

(c) Facilities

(1) A Dispensary must be located fifteen hundred feet (1,500') from a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facility, and six hundred feet (600') from a residential zone.

(2) The Dispensary shall not permit any breach of peace inside of the Dispensary or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct.

(3) The Dispensary shall be designed with sufficient sound absorbing insulation so that the noise generated inside the Dispensary is not audible on the premises, beyond that of normal commercial offices, or public rights-of-way, or any other building or other separate unit within the same building as the Dispensary.

(4) The Dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the Dispensary is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the Dispensary, if the use only occupies a portion of a building.

(5) The Dispensary shall provide litter removal services twice (2) each operating day on and in front of the premises and, if necessary, on public sidewalks within one hundred feet (100') of the Dispensary.

(d) Security

(1) Security cameras shall be installed and maintained in good condition, and the camera and recording system must be of adequate quality, color rendition and resolution to allow the identification of an individual. The cameras shall be in use 24 hours a day, 7 days per week, and shall cover the marijuana dispensing areas, storage areas, all doors and windows to the Dispensary, parking areas and other areas as determined by the Chief of Police. The recordings shall be maintained at the Dispensary property for a period of sixty (60) days.

(2) The Dispensary shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 *et seq.* and whose agents are properly licensed and registered under applicable law.

(3) During Business Hours, the Dispensary shall provide a minimum of three (3) security guards duly licensed by the State of California, Department of Consumer Affairs. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms or tasers.

(4) Security guard duties shall include, but are not limited to, ensuring no person smokes any substance within twenty-five feet (25') of any building entrance, exit, window and air intake vent of service buildings.

(5) The Dispensary shall direct its security guards to monitor the outside of the premises for loitering and unlawful sale of medical marijuana by members. Security guards shall be directed to report to the Dispensary all unlawful sales of medical marijuana by members. The Dispensary shall immediately cease providing medical cannabis to the reported member, and make a report within twenty-four (24) hours to the Chief of Police, and the Alameda County Health Department and/or the doctor that issued the medical marijuana recommendation for the member. The Dispensary shall keep a record of all incidents where members unlawfully provided marijuana to non-members. The Dispensary shall inform patients and primary caregivers about this condition and remind them that it is unlawful for them to sell medical cannabis to non-members.

(6) Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry and also equipped with latches that may be released quickly from the inside to allow exit in the event of an emergency.

(7) The Dispensary shall maintain adequate exterior lighting in the parking areas to help provide safety for members and employees.

(e) Signage

(1) Exterior signage for a Dispensary shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated.

(2) The Dispensary shall, within sixty (60) days of the issuance of the Dispensary permit, post and thereafter maintain signs inside the Dispensary where they may be easily read by members. Each sign shall be white with black lettering, and shall comply with the following regulations regarding text, size and content:

Sign 1: Font size at least 1 inch; Overall size at least 18" by 33"

PATIENT NOTICE

1. YOU HAVE THE RIGHT TO HAVE YOUR PRODUCT REWEIGHED AND SUPPLEMENTED IF IT IS UNDER THE STATED WEIGHT AT THE TIME OF PURCHASE.

2. IF YOU DO NOT HAVE A VALID STATE OF CALIFORNIA IDENTIFICATION CARD ISSUED BY ALAMEDA COUNTY HEALTH DEPARTMENT, THIS DISPENSARY MUST CONFIRM YOUR MEDICAL NEED FOR MARIJUANA. IF YOU HAVE A VALID IDENTIFICATION CARD, YOU SHOULD NOT BE ASKED FOR ADDITIONAL INFORMATION, UNLESS OTHER HEALTHCARE SERVICES ARE BEING PROVIDED.

Sign 2: Font size at least 1 inch; Overall size at least 18" by 33"

TO REGISTER COMPLAINTS ABOUT THIS DISPENSARY PLEASE CONTACT _____

Sign 3: Font size at least 1 inch; Overall size at least 23" by 32"

THE DIVERSION OF MARIJUANA FOR NONMEDICAL PURPOSES IS A VIOLATION OF STATE LAW.

Sign 4: Font size at least 1 inch

THE USE OF MARIJUANA MY IMPAIR A PERSON'S ABILITY TO DRIVE A MOTOR VEHICLE OR OPERATE HEAVY MACHINERY.

Sign 5: Font size at least 1 inch

LOITERING AT THE LOCATION OF A MEDICAL CANNABIS DISPENSARY FOR AN ILLEGAL PURPOSE IS PROHIBITED BY CALIFORNIA PENAL CODE SECTION 647(h).

Sign 6: Font size at least 1 inch

THIS MEDICAL CANNABIS DISPENSARY HAS RECEIVED A PERMIT TO OPERATE FROM THE CITY OF SAN LEANDRO

4-33-600 – Seller's Permit Requirement.

The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit from the State Board of Equalization. Such permit shall be conspicuously displayed at the Dispensary. Failure to maintain the Seller's Permit is grounds for revocation of the Dispensary permit.

4-33-800 Revocation, Suspension and Appeals.

Any decision by the City Manager concerning a Dispensary shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations of Dispensary permits, the City shall follow the procedures set forth in San Leandro Zoning Code section 5-2906, unless the suspension shall be effective immediately by order of the City Manager or his or her designee pursuant to section 4-33-900 of the Municipal Code.

4-33-900 - Prohibited operations; Nonconforming Use and Immediate Suspension of Permit.

All dispensaries in violation of California Health and Safety Code Section 11326.7 *et seq.* and 11362.5, this Chapter, or any other applicable State law are expressly prohibited. It is unlawful for any Dispensary in the City, or any agent, employee or representative of such Dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the Dispensary, or to violate any State law, or this Chapter. Any person arrested for violation

of law, or acts expressly prohibited herein while upon, inside, or within 10 feet of the premises shall be just cause for immediate suspension of the Dispensary permit for a period of time determined by the City Manager or his or her designee.

No use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the San Leandro Zoning Code, the San Leandro Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

4-33-110 - Liability.

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the city of San Leandro.

Section II. Severability.

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

Section III. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

PASSED BY THE FOLLOWING VOTE:

AYES-
NOES-
ABSENT-
ABSTENTION-

Attest: _____

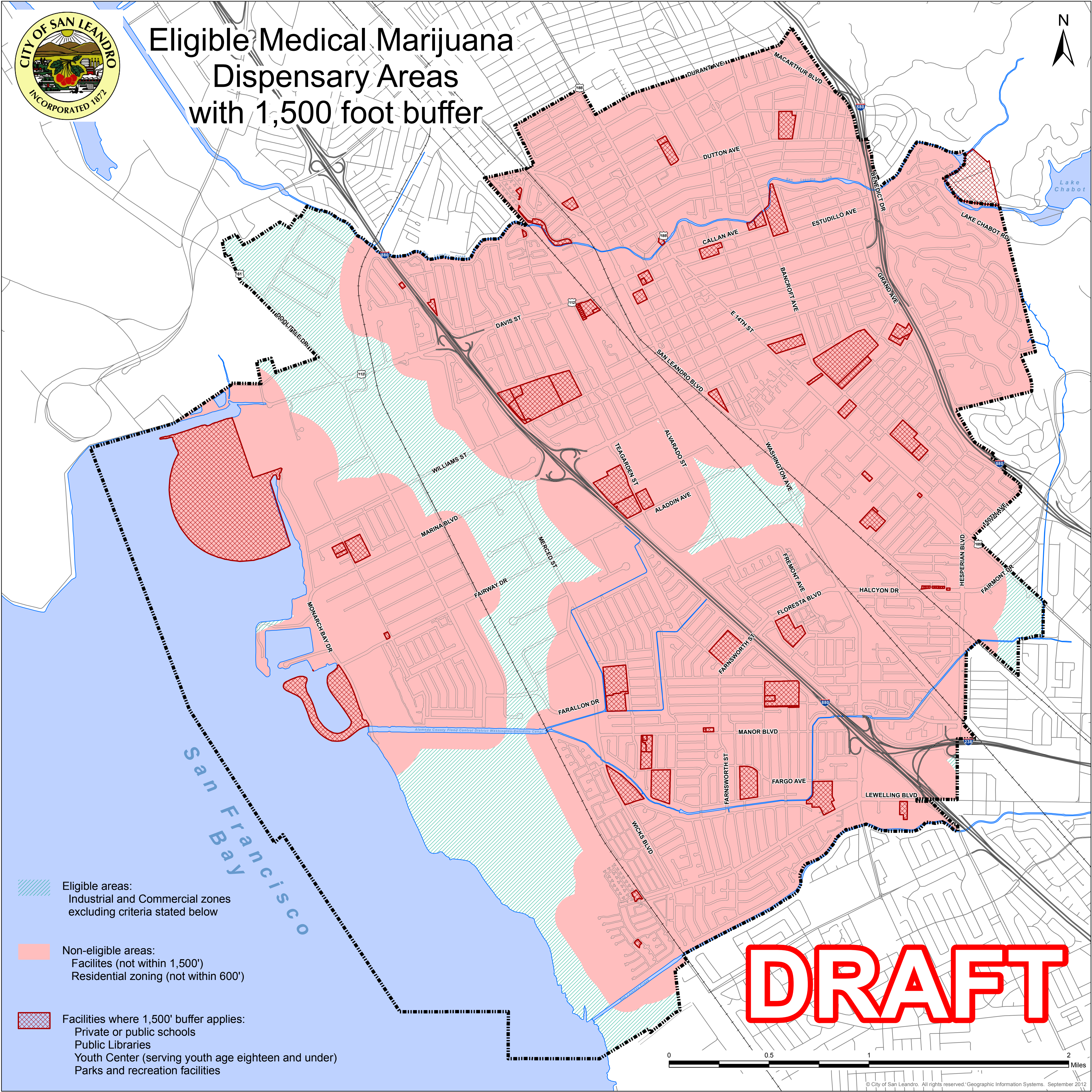
Marian Handa
City Clerk
City of San Leandro, California

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1972407.1



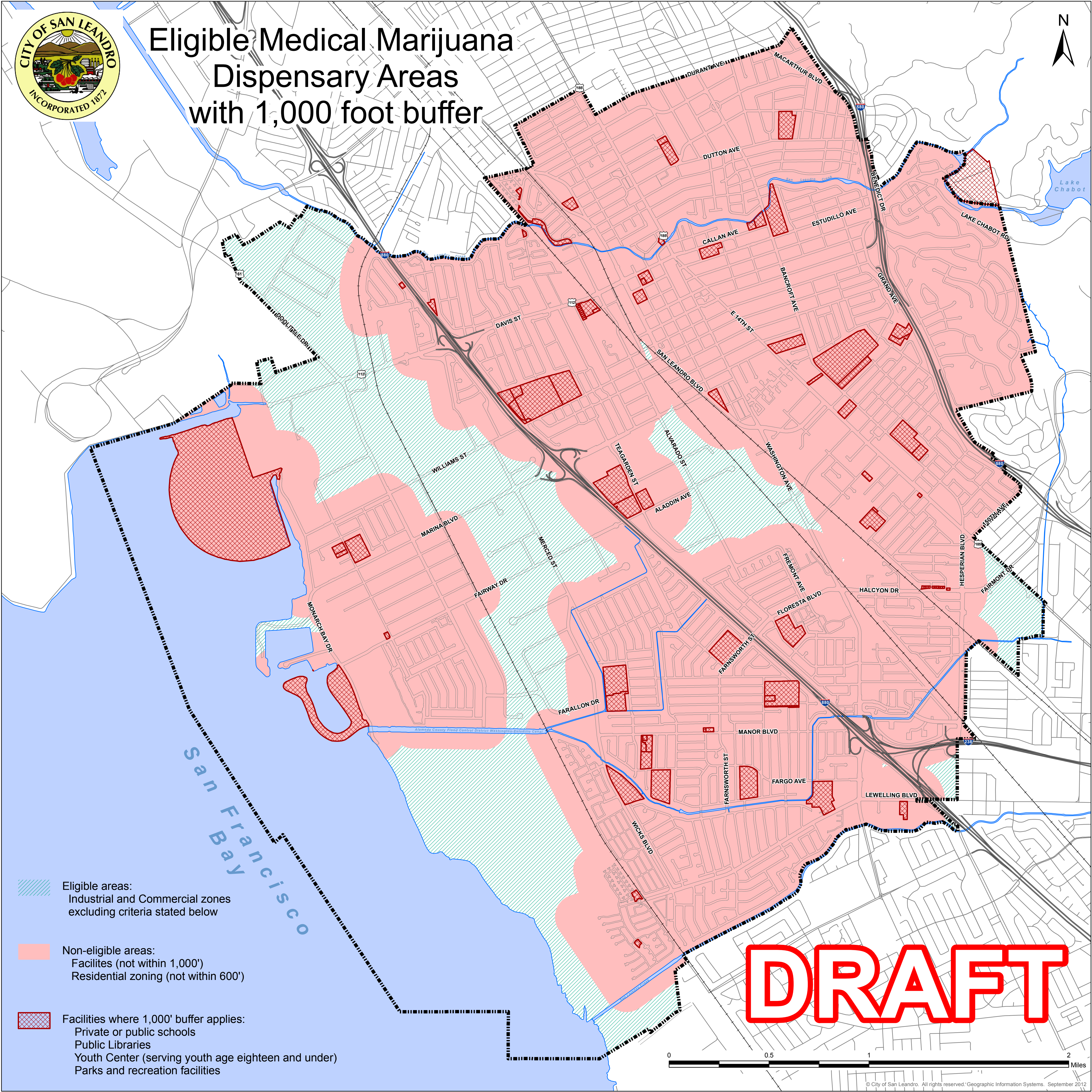
Eligible Medical Marijuana Dispensary Areas with 1,500 foot buffer


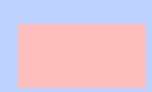
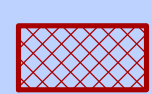


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Eligible Medical Marijuana Dispensary Areas with 1,000 foot buffer



-  Eligible areas:
Industrial and Commercial zones
excluding criteria stated below
-  Non-eligible areas:
Facilities (not within 1,000')
Residential zoning (not within 600')
-  Facilities where 1,000' buffer applies:
Private or public schools
Public Libraries
Youth Center (serving youth age eighteen and under)
Parks and recreation facilities

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