



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

To: Memo to Members, City Council Rules and Communications Committee
From: Richard D. Pio Roda
Re: DRAFT Medical Cannabis Dispensary Ordinance
Date: September 21, 2012
Page: 2

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.

To: Memo to Members, City Council Rules and Communications Committee
From: Richard D. Pio Roda
Re: DRAFT Medical Cannabis Dispensary Ordinance
Date: September 21, 2012
Page: 3

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

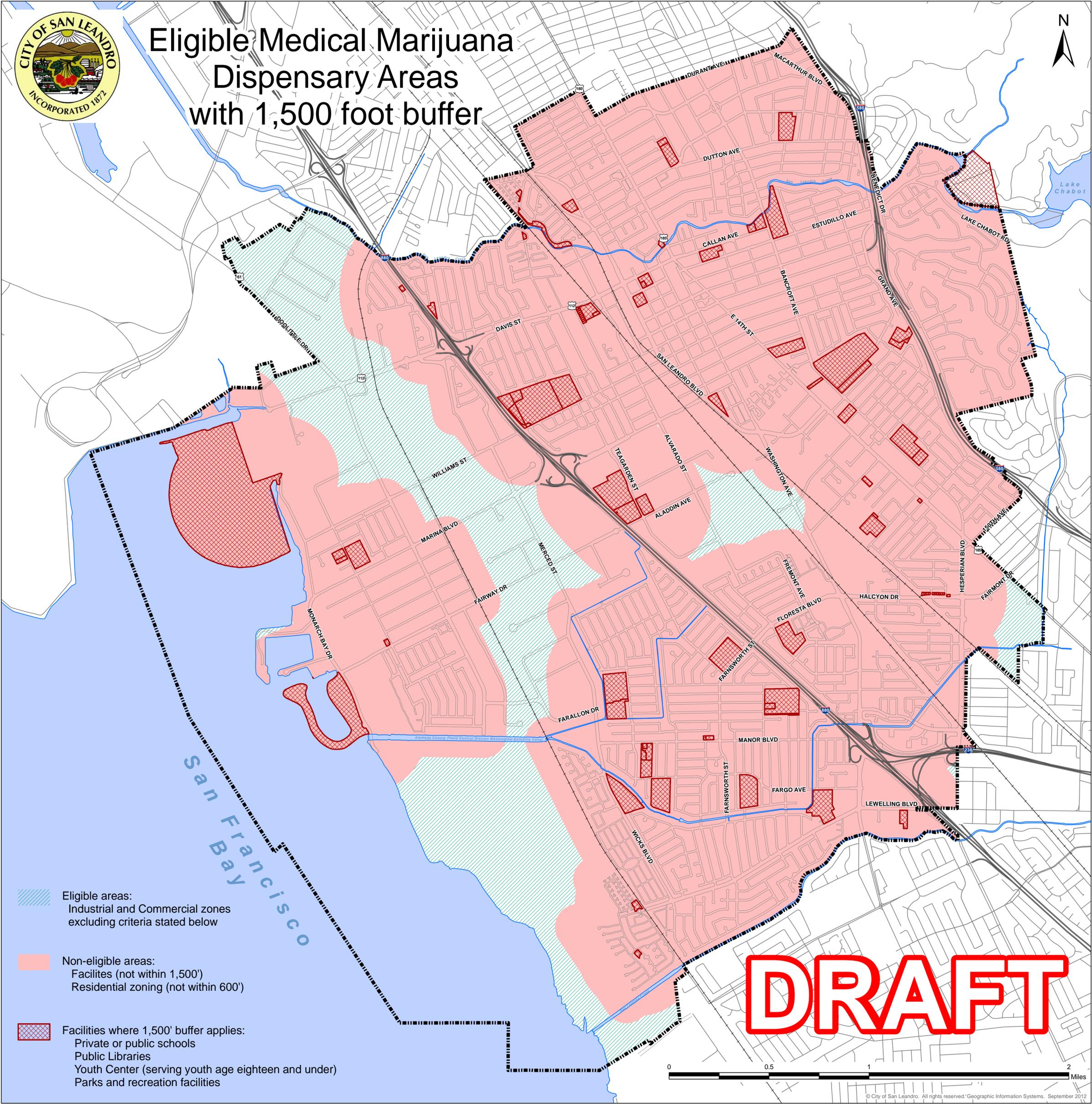
***County of Los Angeles v. Alternative
Medicinal Cannabis Collective*** (July 2,
2012) 207 Cal.App.4th 601 (2d Distr., Div.
1).

- 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

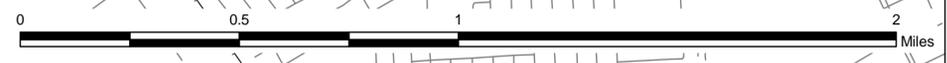
RDP:RDP
Enclosure
1971618.1



Eligible Medical Marijuana Dispensary Areas with 1,500 foot buffer



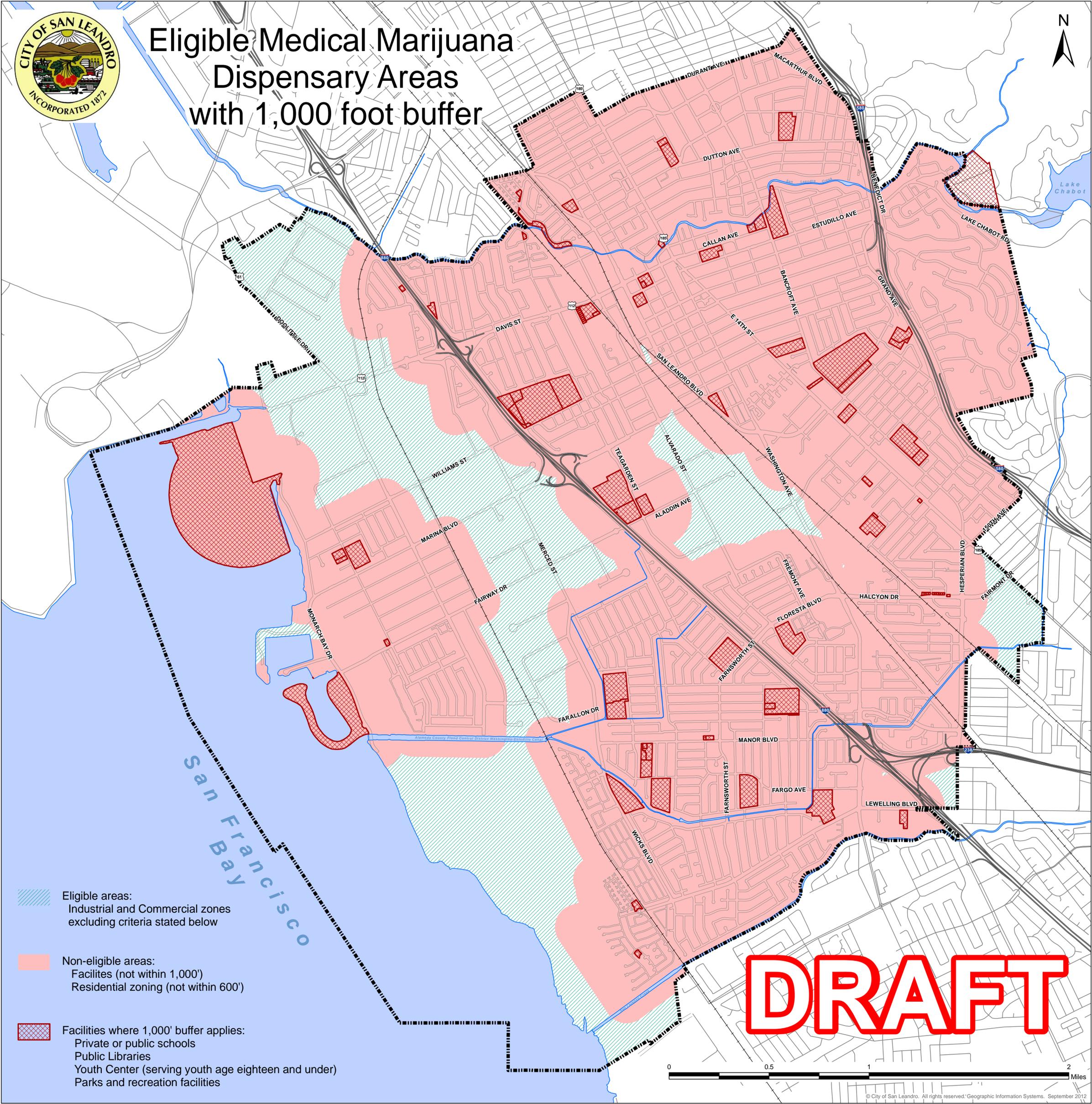
-  Eligible areas:
Industrial and Commercial zones
excluding criteria stated below
-  Non-eligible areas:
Facilities (not within 1,500')
Residential zoning (not within 600')
-  Facilities where 1,500' buffer applies:
Private or public schools
Public Libraries
Youth Center (serving youth age eighteen and under)
Parks and recreation facilities



DRAFT



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



DRAFT