

Medical Marijuana

City Council Study Session: February 10, 2015



Introduction

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- Planning Commission Deliberations & Recommendations
- Tax Revenue Collection
- Sanctioned vs. Unsanctioned Businesses
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- Summary



Marijuana Regulatory Ordinance History

- 1996 - California Voters approve Prop. 215, Compassionate Use Act of 1996 (CUA) to ensure that seriously ill Californians can obtain and use marijuana for medical purposes
- 2004 - Legislature enacted SB420, Medical Marijuana Program Act (MMPA) to clarify the scope of the CUA to promote uniform and consistent application
- 2009 - City begins receiving citizen complaints, Council complaints and information from Police Department about illegal storefront dispensaries
 - 80 +/- storefront dispensaries operating without City permits or approvals
 - Dispensaries located in all zones-Commercial, Institutional, Industrial, and Residential
 - No Business Licenses (or fraudulently obtained), no CUP's or other Land Use Entitlements because City Zoning prohibited these uses



Adoption of Local Regulatory Ordinance

- Local Regulatory Ordinance concept first considered by City Council in August 2009
 - First Ordinance Submitted to City Council for consideration in November 2009
 - City Council had numerous public meetings to discuss Medical Marijuana ordinance throughout early 2010
- Ordinance (LBMC Chapter 5.87) adopted March 2010, effective May 2010



Overview of LBMC Chapter 5.87

- No viable models available to emulate. Most cities had bans or moratoriums or had not yet dealt with issue
- Drafted Ordinance to regulate consistent with CUA & MMPA
 - Defined a collective/dispensary as 4 or more qualified patients
 - Established buffer zones between collectives and sensitive land uses
 - Required application and fee
 - Lottery established
 - Imposed operating conditions, e.g., sound and odor barriers, monitoring, alarms, record keeping, lab testing
- Not part of Zoning Code, so no permit entitlements



Litigation Ensues

- Unsuccessful lottery winners filed suit to contest ordinance
- *Pack v. COLB*:
 - Lawsuit filed August 2010
 - Permanent injunction sought on Federal Preemption Grounds
 - Argued prohibited by the Federal Controlled Substances Act and United States Constitution
 - City prevailed in trial court and case appealed by *Pack*
 - California Court of Appeal reversed trial court and concluded a regulatory ordinance such as City's was preempted
 - December 2011 City petitions California Supreme Court to reverse Appellate Court
 - Supreme Court agrees to hear appeal Spring 2011
 - City fully briefed case for Supreme Court, but in August 2012 Court declines to rule on case



LBMC Chapter 5.89 (Prohibition)

- Adopted February 14, 2012 following *Pack* Court of Appeal decision
- Prohibits operation of dispensaries or cultivation sites in City
- Does not apply to 3 or fewer patients or caregivers who cultivate or dispense in conformity with State law
- Created temporary 6-month exemption to allow lottery winners to wind down (not all closed timely)
- Created criminal and administrative penalties for operating outside of “ban”



City of Riverside v. Inland Empire Patients & Wellness Center

- May 6, 2013 - California Supreme Court rules unanimously that Cities can impose bans
- Most cities retain existing bans or dissolve moratoriums and adopt bans
- At time of decision approximately 200 bans in effect State-wide
- Most Municipal Attorneys believe *Riverside* also allows regulatory ordinances that comply with CUA and MMPA



Tax on Marijuana (Medical Use)

- Measure “A”, placed on April 2014 Ballot by City Council
 - Passed: 74% YES 26% NO
 - Only becomes enforceable if new regulatory ordinance is passed
- Codified under LBMC Section 3.80.261:
 - Gross receipts tax based on a percentage of gross sales initially set at 6%, and by ordinance can be raised by the City Council up to 10%
 - Tax on square footage for grow sites/cultivation facilities set at \$15 per square foot and can be raised by the City Council up to \$50 per square foot
 - Tax of \$10 per square foot for facilities occupied by MMJ Businesses that are certified 501(c)3



Tax on Marijuana (Recreational Use)

- Measure “B”, placed on November 2010 Ballot by Council in anticipation of State Proposition 19
 - Passed: 73% YES 27% NO
- Proposition 19 would have allowed recreational marijuana use. The proposition failed
- Codified under LBMC Sec. 3.80.260:
 - Establishes 15% sales tax and a \$25.00 per square foot cultivation site tax
- Never operative because Proposition 19 failed



City Council Direction

- September 13, 2013 – City Council directed that a new ordinance contain the following parameters:
 - All locations would require a Conditional Use Permit (CUP) and development standards would be established – this means new ordinance would reside in LBMC Title 21 (Zoning Code)
 - Performance standards would include security plans
 - Location restrictions within certain zones, allowing uses in industrial zones but prohibiting them in residential and institutional zones.
 - A cap of 2 locations per City Council district and no more than 18 locations citywide
 - Consideration of “buffers” between dispensaries and schools
- December 17, 2013 – Additional City Council direction:
 - 1,000’ buffers from existing elementary and middle schools and parks
 - 1,500’ buffers from existing high schools
 - Creation of an advisory task force
 - Development of a mechanism to accommodate “previously vetted” dispensaries



Planning Commission Deliberations

- Held a series of study sessions and public hearings
- Struggled to balance City Council directives of 2 businesses per Council District, but only in industrial zones
- Industrial zones not evenly distributed throughout city
 - Largest areas found in Districts 1, 9
 - Smaller areas in District 7 and 8; limited area in District 4
 - Industrial PDs in Districts 3 and 5 too restrictive
 - No Industrial in Districts 2 and 6
- Focused on safe access to dispensaries, along transit routes
- Buffers:
 - 1,000' between any 2 MMJ business locations
 - 1,000' from elementary/middle school
 - 1,000' from a park
 - 1,500' from a high school



Planning Commission Recommendations

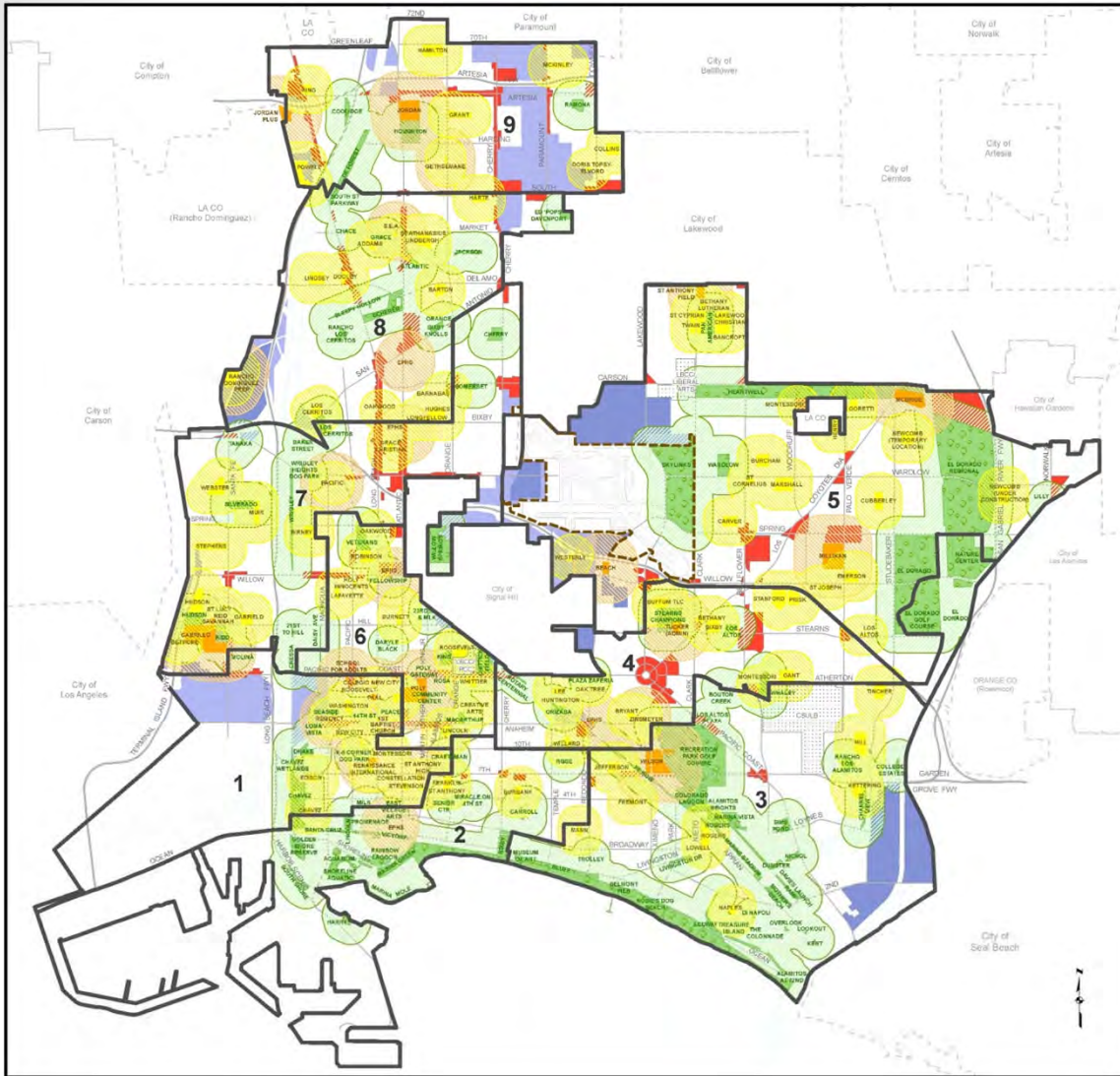
- Defined a **MMJ business** as having **2 components** (cultivation and dispensary), which could be co-located or have separate locations, but be governed by **one CUP**
- Defined 1:1 ratio between **cultivation** and **dispensary**. (i.e., 1 **cultivation** site cannot serve 2 dispensaries)
- **Cultivation** must occur within city boundaries (but not limited to the same district as its companion **dispensary**)
- **Cultivation** only allowed in Industrial zones
- **Dispensary** allowed in Industrial zone (co-located with **cultivation** component OR separate location within Industrial zone); also allowed in CHW or CCA zones to provide safe access



Planning Commission Recommendations

- Capped **dispensaries** at 1 site per district in CHW or CCA zone; second dispensary could be in Industrial zone within that same district. (Both dispensaries now need **cultivation** sites)
- **Cultivation** sites allowed only in Industrial zones. Not every district has industrial zones
- In order to support 18 **dispensaries** citywide, need to allow 18 **cultivation** sites within the limited Industrial areas. Those districts with Industrial zones therefore need to allow more than 2 **cultivation** sites to address zoning disparity
- Maximum of 5 MMJ **components** per Council district to address Industrial zoning disparity:
 - 1 **dispensary** in CHW or CCA zone
 - 1 **dispensary** in Industrial zone
 - Up to 3 **cultivation** sites in Industrial zone





LONG BEACH MEDICAL MARIJUANA ORDINANCE MAP REVISED

LEGEND

SCHOOLS

- Elementary/Middle School
- High School

PARKS

-

SCHOOL & PARK AREAS BUFFERS

- 1000 ft Buffer (Elem/Middle School)
- 1500 ft Buffer (High School)
- 1000 ft Buffer (Parks)

ZONING DISTRICTS

- CCA, CHW
- Industrial (excluding Airport Property & Port-related Industrial Areas)
- Industrial Planned Development Areas

AIRPORT PROPERTY

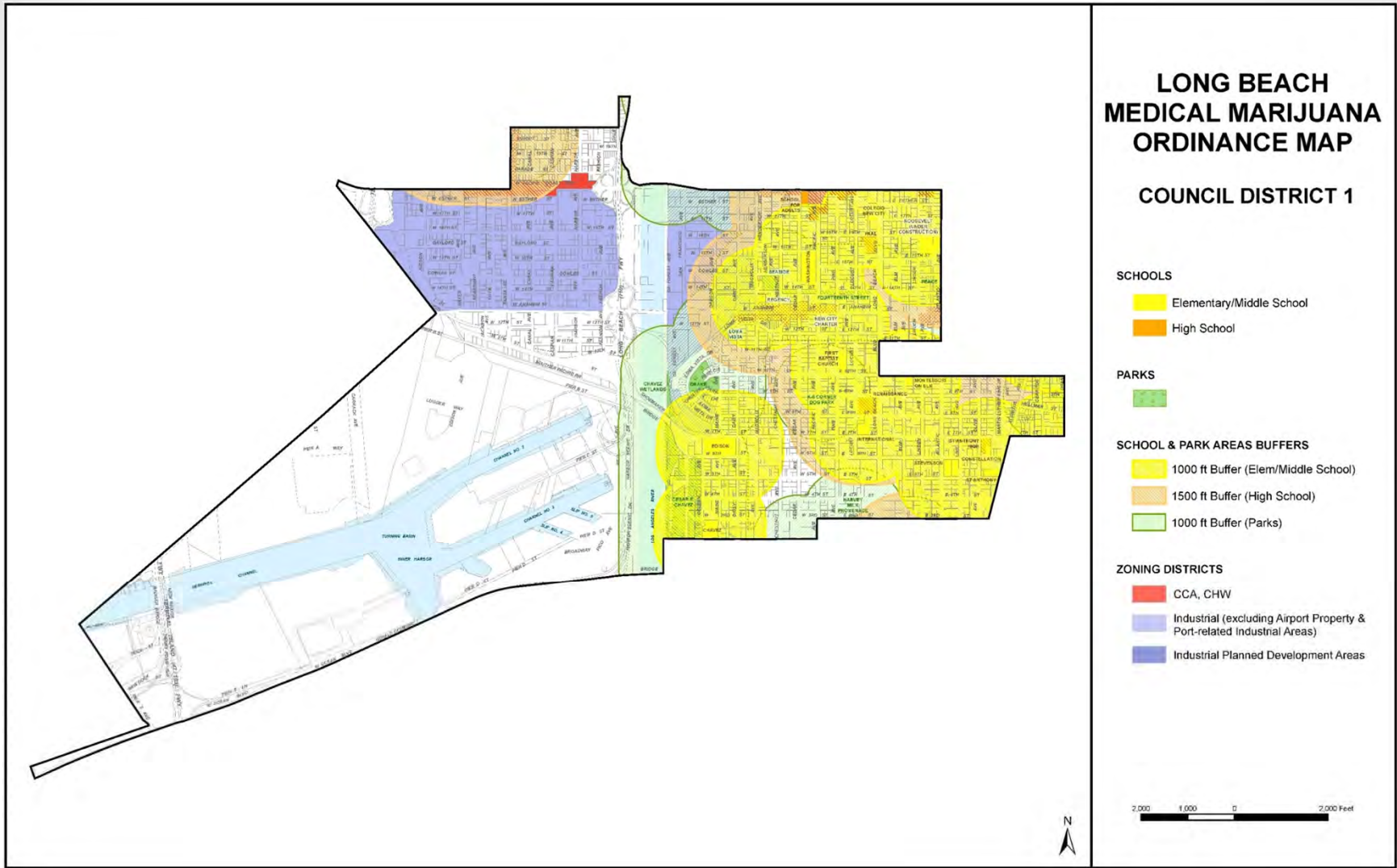
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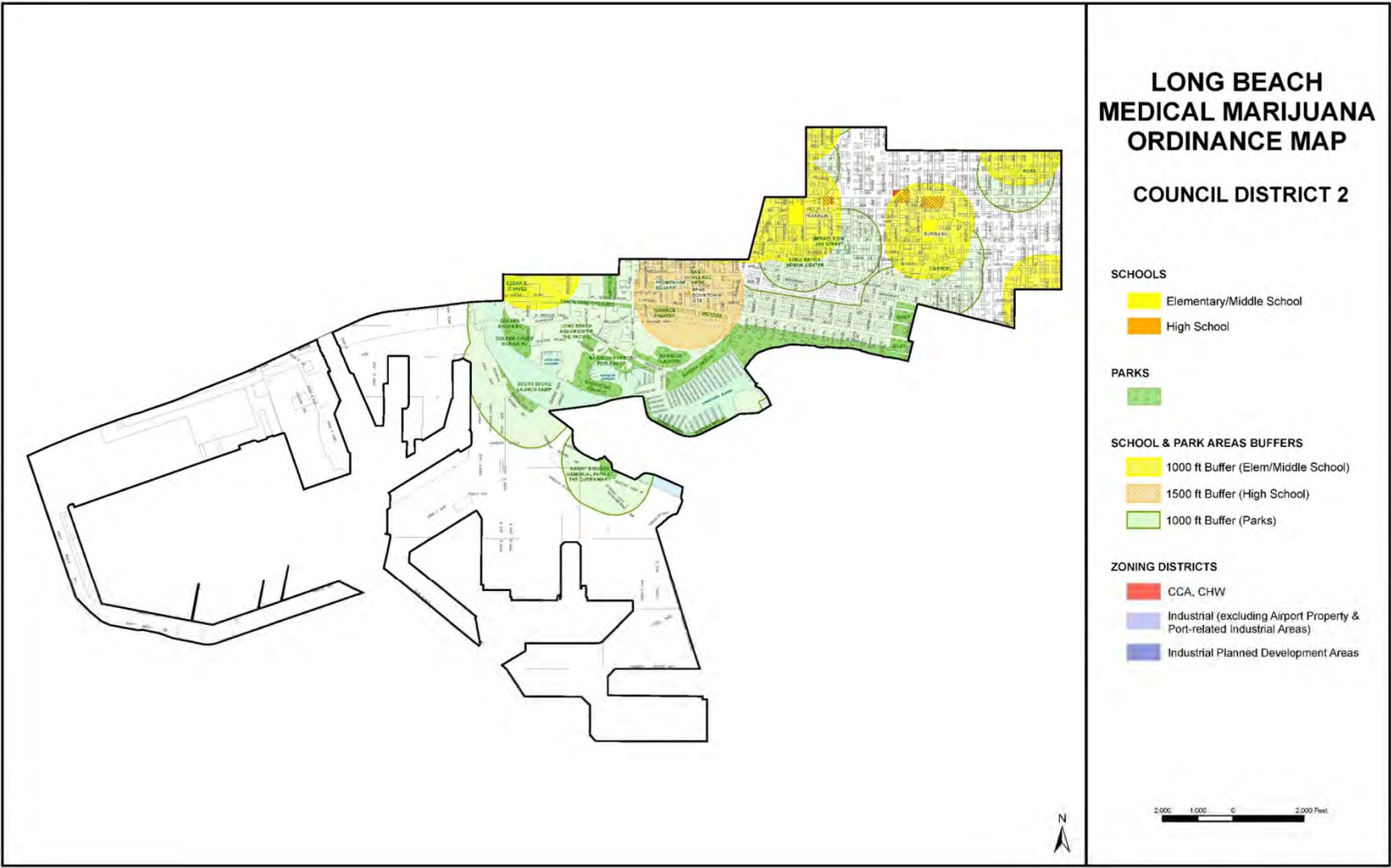
Citywide Map





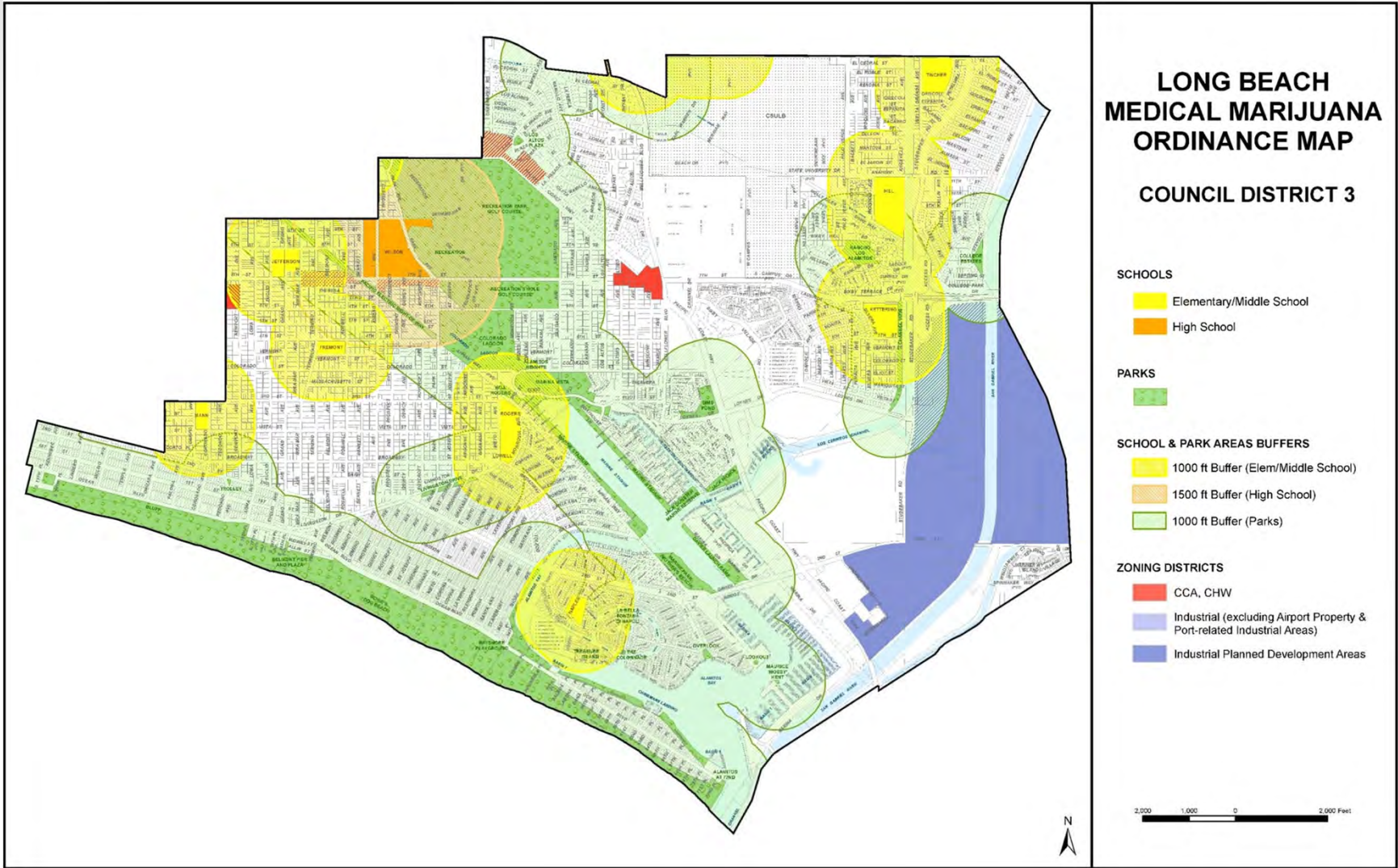
Council District 1





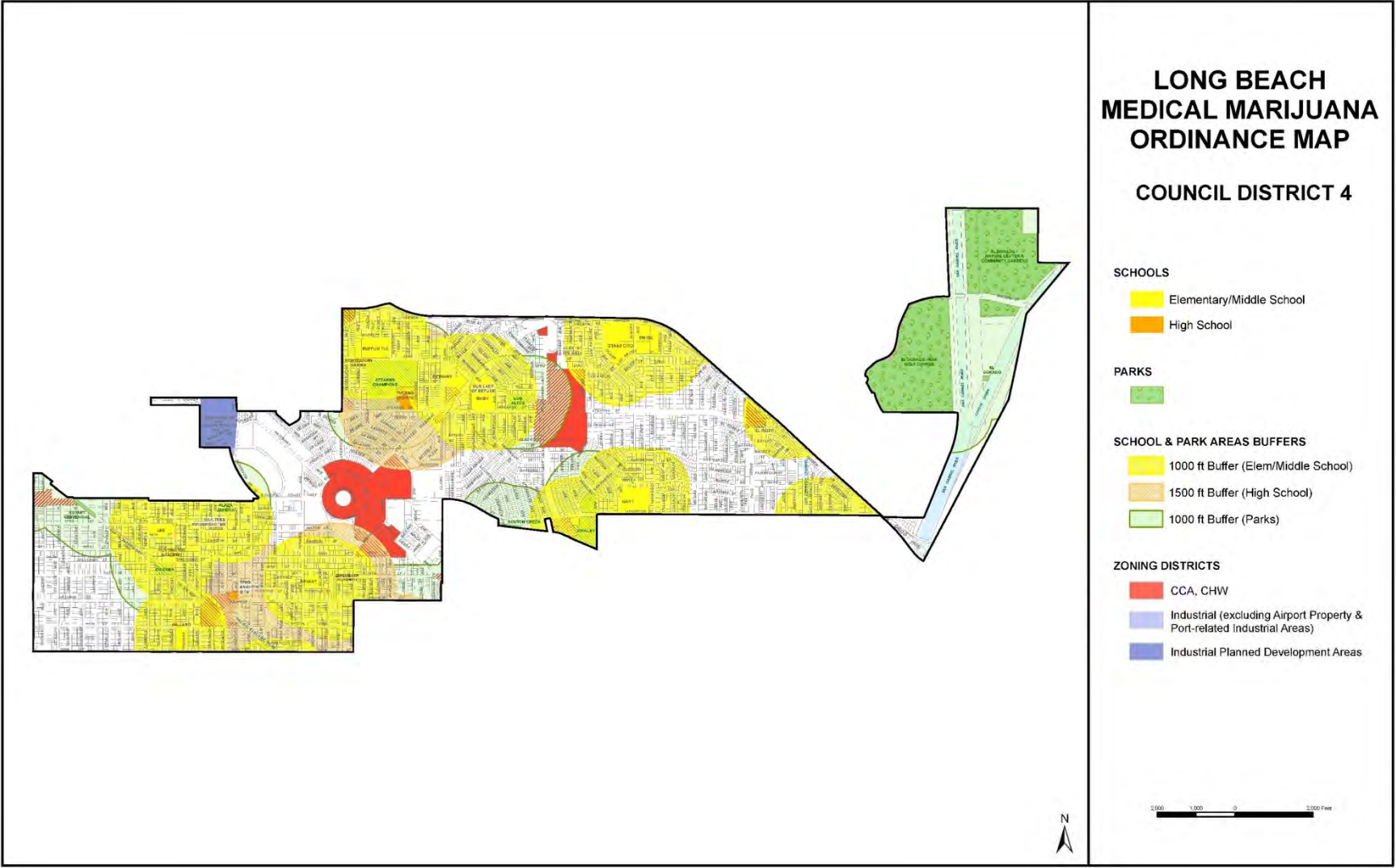
Council District 2





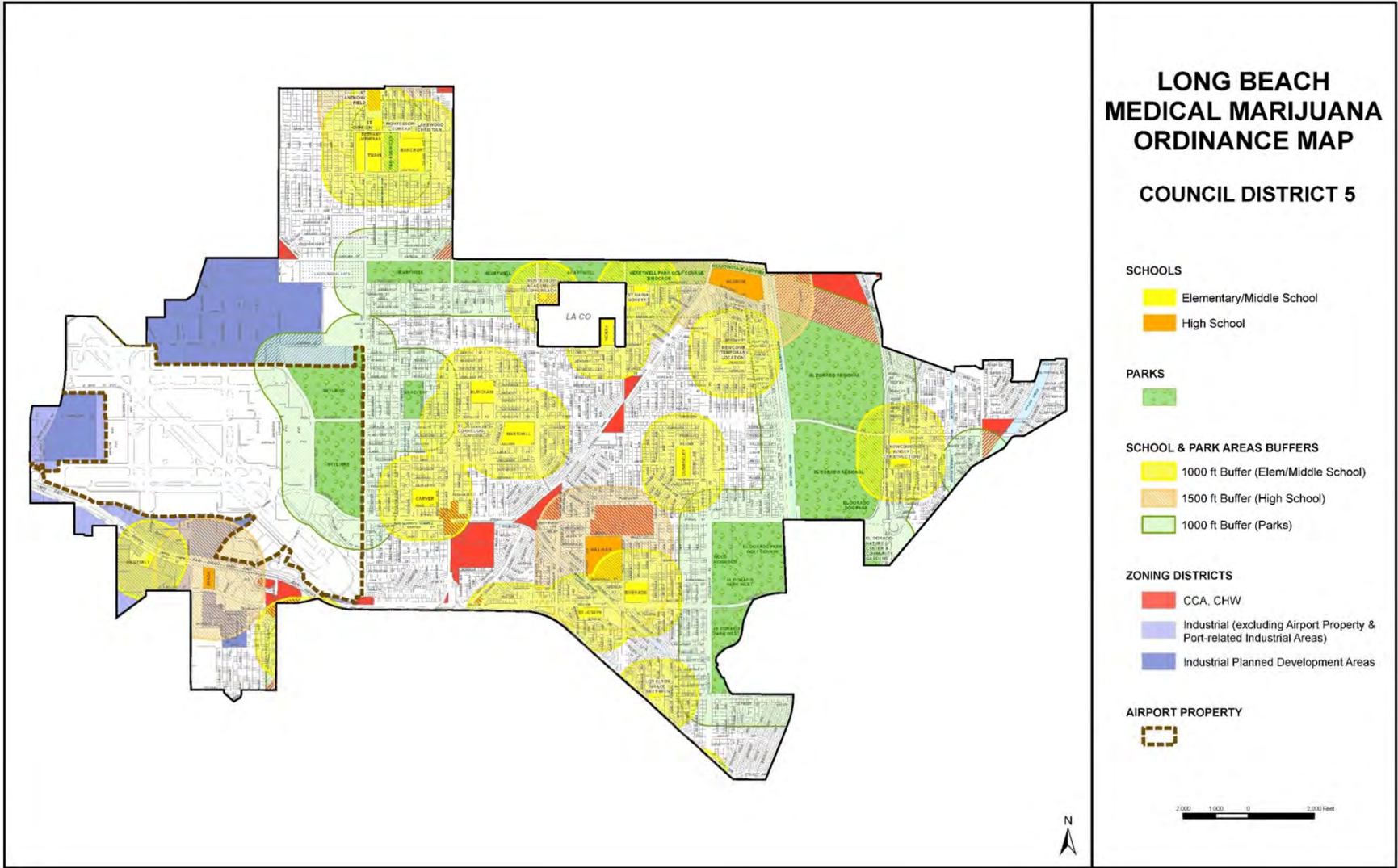
Council District 3





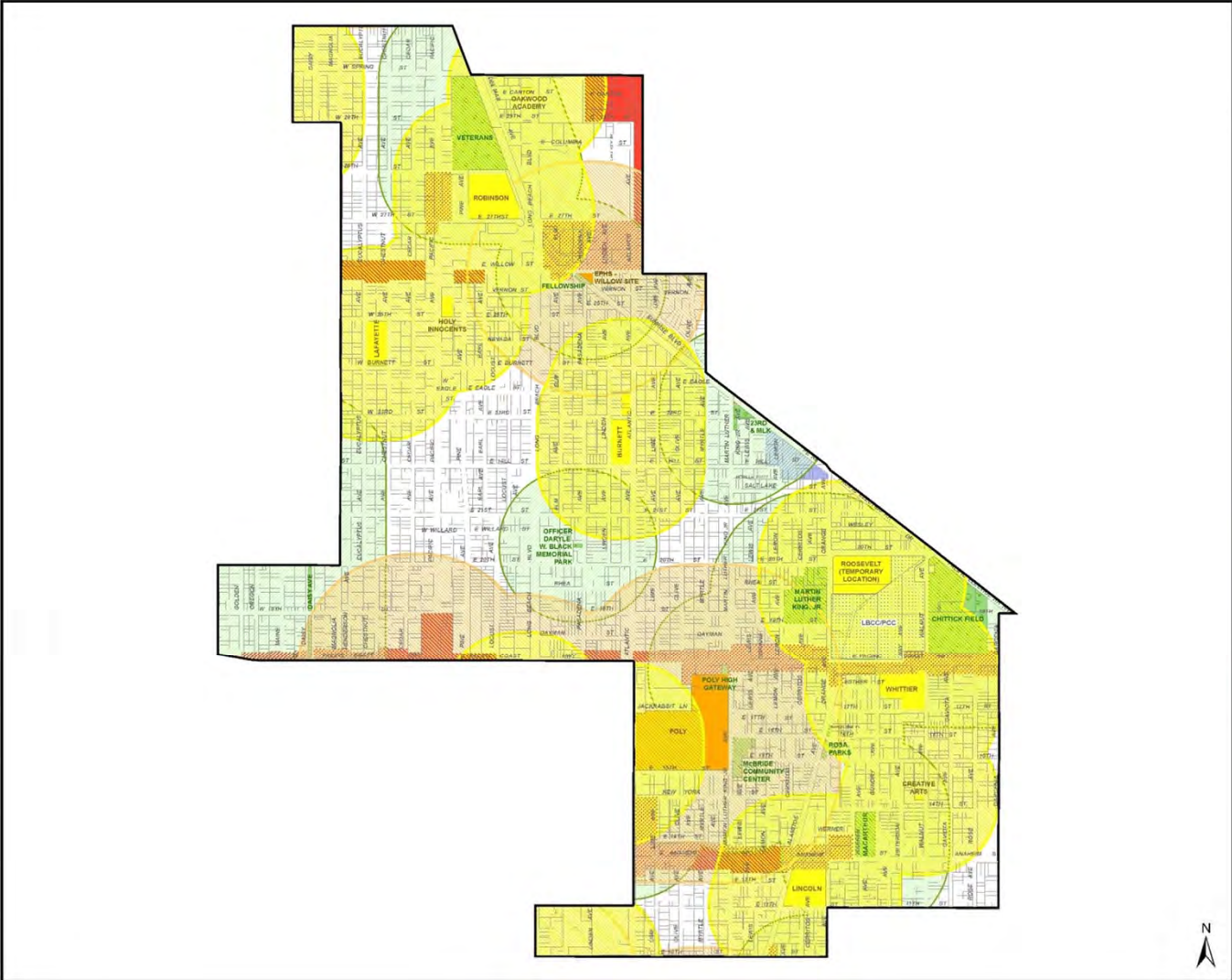
Council District 4





Council District 5





LONG BEACH MEDICAL MARIJUANA ORDINANCE MAP

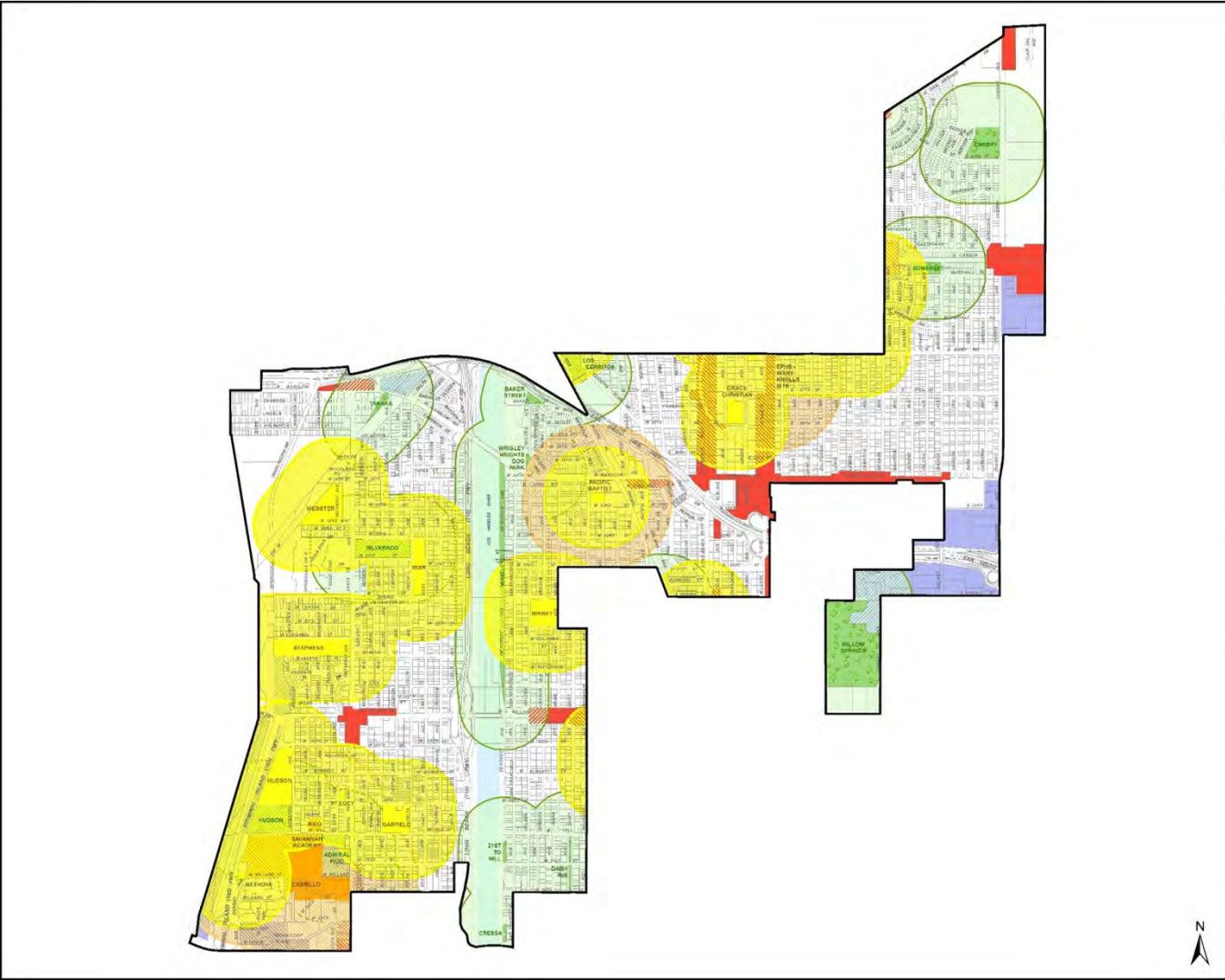
COUNCIL DISTRICT 6

- SCHOOLS**
- Elementary/Middle School
 - High School
- PARKS**
-
- SCHOOL & PARK AREAS BUFFERS**
- 1000 ft Buffer (Elem/Middle School)
 - 1500 ft Buffer (High School)
 - 1000 ft Buffer (Parks)
- ZONING DISTRICTS**
- CCA, CHW
 - Industrial (excluding Airport Property & Port-related Industrial Areas)
 - Industrial Planned Development Areas



Council District 6





LONG BEACH MEDICAL MARIJUANA ORDINANCE MAP

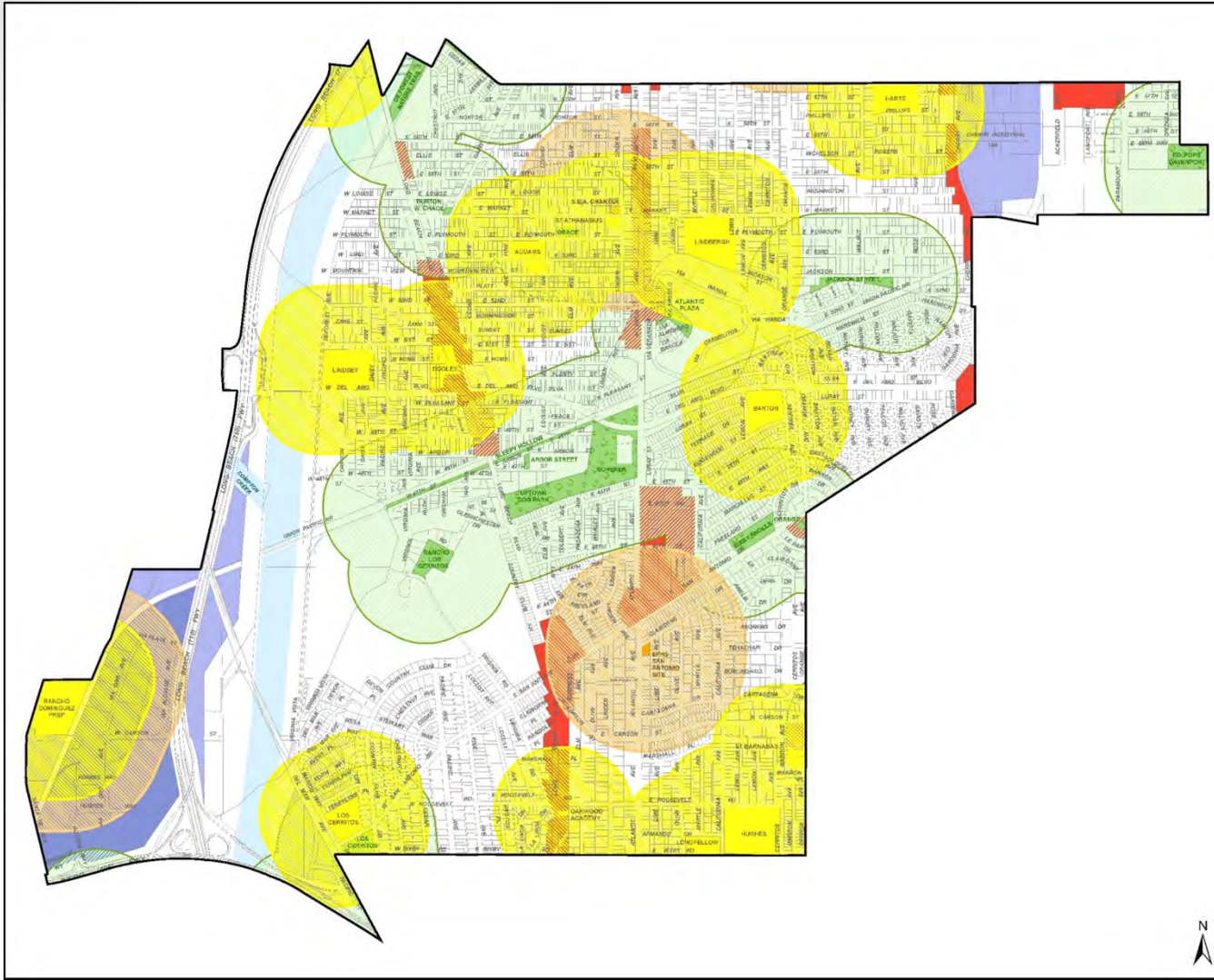
COUNCIL DISTRICT 7

- SCHOOLS**
- Elementary/Middle School
 - High School
- PARKS**
-
- SCHOOL & PARK AREAS BUFFERS**
- 1000 ft Buffer (Elem/Middle School)
 - 1500 ft Buffer (High School)
 - 1000 ft Buffer (Parks)
- ZONING DISTRICTS**
- CCA, CHW
 - Industrial (excluding Airport Property & Port-related Industrial Areas)
 - Industrial Planned Development Areas



Council District 7





LONG BEACH MEDICAL MARIJUANA ORDINANCE MAP

COUNCIL DISTRICT 8

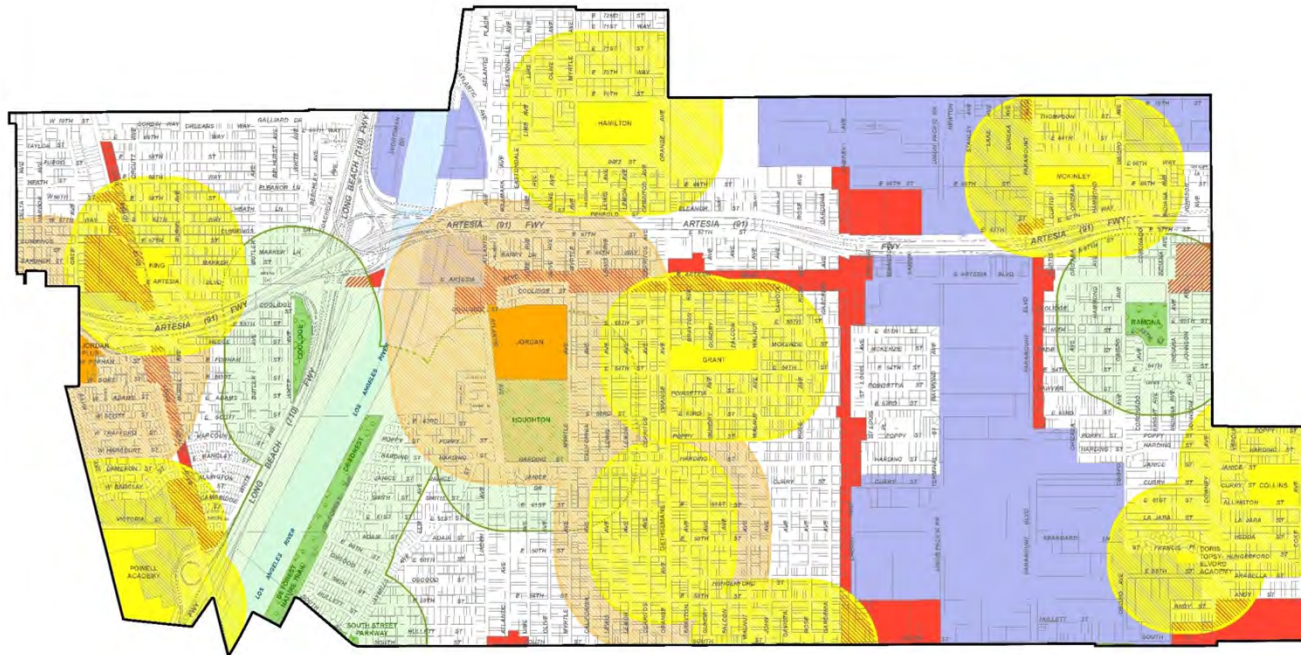
- SCHOOLS**
- Elementary/Middle School
 - High School
- PARKS**
-
- SCHOOL & PARK AREAS BUFFERS**
- 1000 ft Buffer (Elem/Middle School)
 - 1500 ft Buffer (High School)
 - 1000 ft Buffer (Parks)
- ZONING DISTRICTS**
- CCA, CHW
 - Industrial (excluding Airport Property & Port-related Industrial Areas)
 - Industrial Planned Development Areas

Council District 8



LONG BEACH MEDICAL MARIJUANA ORDINANCE MAP

COUNCIL DISTRICT 9



SCHOOLS

- Elementary/Middle School
- High School

PARKS

-

SCHOOL & PARK AREAS BUFFERS

- 1000 ft Buffer (Elem/Middle School)
- 1500 ft Buffer (High School)
- 1000 ft Buffer (Parks)

ZONING DISTRICTS

- CCA, CHW
- Industrial (excluding Airport Property & Port-related Industrial Areas)
- Industrial Planned Development Areas



Council District 9



Planning Commission Recommendations

- CUP shall be valid for a period of 5 years. CUP can be renewed for another 5-year term
- All MMJ businesses are required to submit an application detailing compliance with city performance standards, which include a security plan, background checks, nuisance abatement measures and record management/retention plans
- Applicants meeting all requirements shall have priority based on the accumulation of points (up to 18 possible points) based on specific criteria including security measures, criminal history of applicant(s), previous violations of LBMC, etc.
- All MMJ businesses required to maintain records detailing monetary and in-kind transactions, subject to inspection and audit



Planning Commission Recommendations

- Security plans require video cameras with links to LBPD, have safe storage of MMJ, incorporate an alarm system and hire a full time security guard
- All MMJ-infused products required to meet packaging and labeling standards
- Usable MMJ must be tested for pesticides, mold, mildew, tetrahydrocannabinol (THC) and Cannabidiol (CBD)
- Ordinance creates a task force to recommend operational and safety standards
- Hours of operation limited to 8:00 a.m. to 7:00 p.m.
- City residency requirement – dispensaries must verify and maintain proof of residency for members



MMJ Tax Revenue Collection

- Staff is anticipating that taxes will be paid in the form of cash delivered to City Hall
 - Concern: Potential security problem and an increased risk for employees and customers and challenge of banks accepting deposits
 - Proposed solution: Working with PD to identify security enhancements along with one-time and ongoing costs
- The tax relies on a self-reporting methodology to determine the amount of tax owed
 - Concern: Underreporting may be a significant issue and that it may be very difficult to ensure that taxes are reported and paid accurately
 - Proposed solution: Staff researching technology or external audit solutions with potential significant associated costs



Revenue & Cost Impacts on Budget

- New revenue sources may not result in the anticipated level of revenue due to timing delays and other implementation issues
- City normally does not include the first year of a new revenue source in the budget
 - This is strongly recommended in the case of Medical Marijuana tax revenue which is highly uncertain
- City costs, including enforcement, will be substantial. It is not known whether the new revenue will fully offset these costs
- As staff gets more information on this topic, we will have a more specific fiscal impact analysis



Sanctioned vs. Unsanctioned Businesses

- Based on our prior experience and those of other cities, the existence of sanctioned (Compassionate Use) businesses will lead to the existence of unsanctioned businesses
 - In Los Angeles, it is estimated that unsanctioned businesses outnumber sanctioned businesses by a margin of 7 to 1
- A tremendous amount of staff time and resources was devoted to the regulation of unsanctioned businesses and to managing the effects of their existence
- Shutting down an unsanctioned business is not an easy task. It may take many months, requiring efforts on multiple fronts



Impacts From Unsanctioned Businesses

- City Attorney responded to 34 lawsuits (18 still active)
- City Attorney held 23 Administrative Hearings
- City Attorney has dealt with more than 150 discrete Medical Marijuana issues/advice matters
- City Prosecutor filed approximately 180 criminal cases
- Police Department served 142 search warrants
- Police Department made more than 600 arrests
- Fire Department inspected and red-tagged 7 buildings used for illegal grow operations
- Business License issued 4,307 admin. citations totaling \$3,320,330 in fines and penalties (most of which is uncollected)



Conclusion

- The existence of sanctioned MMJ businesses means the existence of unsanctioned MMJ businesses
- Costs of intangibles cannot be fully anticipated
- Possible State ballot measure in 2016 to legalize marijuana
- Additional direction from City Council is needed prior to the consideration of an ordinance



Medical Marijuana

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