



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** Chris Burton  
Anthony Mata

**SUBJECT:** SEE BELOW

**DATE:** June 21, 2021

Approved

Date

6/21/21

**SUBJECT: FISCAL YEAR 2020-2021 CITY COUNCIL POLICY PRIORITY #7:  
REVIEW OF CANNABIS LAND USE AND REGULATORY PROVISIONS**

## **RECOMMENDATION**

Accept a progress update on Fiscal Year 2020-2021 City Council Policy Priority #7: Review of Cannabis Land Use and Regulatory Provisions and further analysis on the following:

- 1) Assessing allowing current cannabis businesses to open a second retail location;
- 2) Maintaining a 1,000-foot setback from sensitive areas;
- 3) Analyzing options for setback from residential housing, including options for Downtown Core and Urban Villages;
- 4) Prohibiting new cannabis retail storefronts from opening in police beats with crime reports 20% above the average of reported crimes, including options for Downtown Core;
- 5) Requiring a 1,000-foot separation between new retail storefronts; and,
- 6) Assessing allowing five (5) new equity-owned businesses.

## **OUTCOME**

The Community and Economic Development Committee (CED Committee) will be provided an updated analysis on cannabis land use and regulatory options discussed at the CED Committee meeting on April 26, 2021.<sup>1</sup> The Committee will provide input on draft recommendations and next steps regarding policy changes.

<sup>1</sup> April 26, 2021 Community and Economic Development Committee Meeting; Agenda Item (d)3.  
<http://sanjose.legistar.com/gateway.aspx?m=l&id=/matter.aspx?key=8678>

## **BACKGROUND**

### **Existing Regulatory Program**

On June 17, 2014, the City Council approved a Medical Marijuana Regulatory Program (“Program”) to regulate the cultivation, manufacturing, and dispensing of medical marijuana in the City of San José (City) which went into effect on July 18, 2014. Additionally, the City Manager has promulgated regulations for administering the Program. December 18, 2015 marked the City’s deadline for San José collectives to obtain Registration. By the deadline, 16 medical marijuana collectives were registered in San José. Since that time, the City has not accepted new applications for retail storefront, retail non-storefront (delivery only), and cultivation, and only Council action can re-open the registration period. The City’s 16 registered cannabis businesses can conduct medical and non-medical cannabis activities.

Title 6 of the San José Municipal Code limits the number of locations at which a cannabis business may operate. Title 20 of the San José Municipal Code (the Zoning Code) limits where cannabis-related uses may locate. City Council established a set of location criteria that were used in the initial registration process through which the existing 16 businesses were approved. On January 15, 2019, the City Council approved changes to the regulatory program allowing new businesses to apply for registration for cannabis manufacturing, distribution, and testing, including a new set of location criteria.

Prior to receiving a Notice of Completed Registration, cannabis businesses are required to obtain a Zoning Code Verification Certificate (“Certificate”) from the Department of Planning, Building and Code Enforcement. The Certificate is non-transferable to a different location; each location needs its own Certificate to determine the site met the Zoning Code provisions at the time of issuance.

### **City Council Direction**

On January 15, 2019, the City Council considered an item regarding the establishment of manufacturing, distribution, and laboratory testing categories of regulated cannabis businesses. Multiple councilmembers issued memoranda for this item recommending additional work on cannabis regulation, including memoranda from Councilmembers Peralez and Carrasco, Councilmember Esparza, and Councilmember Diep.<sup>2</sup> The City Council approved some of the recommendations in these memos and referred others to the 2019 Council priority setting session.

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<sup>2</sup> January 15, 2019 City Council Meeting, Agenda Item 4.1

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3787065&GUID=5CA18B4F-65EA-4F7D-820A-E57EBBC18561&Options=&Search=>

The City Council conducted priority setting on March 5, 2019.<sup>3</sup> At this meeting, the City Council prioritized two items related to cannabis: then Priority #11 (now Fiscal Year (FY) 2020-2021 Priority #7): Review of Cannabis Land Use and Regulatory Provisions and then Priority #13 (now FY 2020-2021 Priority #8): Cannabis Equity Applicant Program. Priority #7 combined direction from the January 15, 2019 City Council memoranda with a separate priority nomination submitted by Councilmember Foley to comprise a comprehensive review of the current cannabis regulatory program.

### **Community and Economic Development Council Committee Direction**

Staff presented land use and regulatory options to the CED Committee on April 26, 2021. At that meeting, staff was directed to return with an analysis of the following items:

- 1) Assessing allowing current cannabis businesses to open a second retail location;
- 2) Maintaining a 1,000-foot setback from sensitive areas;
- 3) Analyzing options for setback from residential housing, including options for the Downtown Core and Urban Villages;
- 4) Requiring a 1,000-foot separation between new retail storefronts;
- 5) Prohibiting new cannabis retail storefronts from opening in police beats with crime reports 20% above the average of reported crimes, including options for downtown core; and,
- 6) Assessing allowing five (5) new equity-owned businesses.

### **ANALYSIS**

This memorandum provides an update on staff's analysis on cannabis land use and regulatory provisions, including draft recommendations and next steps, based on CED Committee member feedback from the April 26, 2021 meeting. When adopting the initial regulatory program in 2014, the City Council mandated vertical integration. Vertical integration required cannabis businesses to conduct all aspects of the cannabis supply chain (cultivation, manufacturing, distribution, sales, etc.) at one location. This resulted in all storefronts being in industrial zones which is not typical for retail stores.

Since the City has a robust regulatory program to oversee legal cannabis businesses, staff believes there are advantages to allowing retail storefronts to open in commercial areas. Options for allowing cannabis businesses in commercial areas are described in three areas below: 1) Second Retail Storefront Location, 2) Setback Requirements, and 3) Equity Applicants. Additionally, feedback provided to staff during the online survey process is included in this memorandum.

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<sup>3</sup> March 5, 2019 Council Meeting, Item 3.3

<https://sanjose.legistar.com/LegislationDetail.aspx?ID=3865380&GUID=FAC8B6D6-B599-47C3-9E17-F28983DA140A&Options=ID|Text|&Search=priority+setting>

## **1. Second Retail Storefront Location**

The existing 16 businesses are currently limited to dispensing or delivering cannabis from one retail location. These businesses are also allowed to cultivate, manufacture, and distribute cannabis. In staff's memorandum to the CED Committee for the April 26, 2021 meeting, staff recommended allowing the existing 16 businesses to move their retail location to expanded zoning areas. If City Council directs staff to allow the existing 16 businesses to open a second retail location in the expanded zoning areas, additional regulatory staffing will be required.

## **2. Setback Requirements**

Existing regulations require a setback between a business and various sensitive uses. These existing setbacks range from 50 feet to 1,000 feet across a range of uses. The State of California has its own minimum setbacks and requires a minimum setback of 600 feet from K-12 schools, daycare centers, or youth centers. While staff is not currently proposing to align the City's setback distances for these three uses with the State rules, staff has provided recommendations based on CED Committee feedback and further analysis.

### ***A. Setback from Schools, Parks, Other Sensitive Uses***

For retail locations, staff is proposing maintaining the minimum of 1,000 feet from a public or private pre-school, elementary school, or secondary school; child daycare center, community or recreation center, park, or library (outside of Downtown). Alternative setback proposals for Downtown are discussed below. Concern over proximity and exposure of cannabis to children and teens was raised frequently in the comments submitted by the public in the online survey. Staff also proposes maintaining the minimum of 500 feet from a substance abuse rehabilitation center or emergency residential shelter (outside of Downtown).

### ***B. Setback from Residential Use***

The Zoning Ordinance requires that a cannabis business be at least 150 feet from residential use. Cannabis businesses are currently restricted to industrial areas that do not tend to be in close proximity to residential uses, so staff has not found this 150-foot distance requirement to be a significant limiting factor in locating a compliant site.

Currently, the measurement from residential properties is measured in a straight line between the boundary lines of the parcels that are closest to one another. This is commonly referred to as a parcel-to-parcel measurement (see Figure 1).



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*Figure 1: Parcel-to-Parcel Measurement at sample site 991 Saratoga Ave*

Commercial zoning districts tend to be in much closer proximity to residences than industrial districts. Additionally, there are many large shopping centers in San José where the property line of the shopping center may be adjacent to residences, but an individual tenant space can be quite far from the residences depending on where it is situated on the property. The initial analysis presented to the CED Committee in April found that requiring a 150-foot parcel-to-parcel measurement between cannabis businesses and residences significantly limits the number of compliant sites within commercial zoning districts. Upon direction from the CED Committee to explore modifying this requirement, staff evaluated the following alternative residential distance measurements:

1. No distance requirement
2. Requiring a distance between the building containing the cannabis business to the nearest residential property line
3. Measuring the shortest pedestrian path of travel from a cannabis retail public entrance to a residential property line

#### *No Distance Requirement*

Staff found requiring no distance between cannabis businesses and residential properties increases the total number of potentially compliant parcels to 1,211 (see Attachment D). This is the least restrictive option staff evaluated. Concerns around proximity from cannabis businesses to residences was frequently raised in the comments from the online



survey, particularly as this close proximity could expose children to cannabis uses, so staff explored two alternative ways of measuring the distance to residences, discussed below.

*Distance from edge of a building containing a cannabis business*

As a parcel-to-parcel measurement does not necessarily reflect the actual distance between a cannabis business and a residential property (particularly on a large site), staff evaluated setting the distance requirement based on a measurement from the envelope of the building containing the cannabis use to the nearest property line (see Figure 2).



*Figure 2: Parcel-to-Building Envelope Measurement at sample site 991 Saratoga Ave*

Analysis shows this measurement is less restrictive than a parcel-to-parcel measurement. However, due to a lack of GIS data on building envelopes, staff is not able to estimate the total number of parcels that may be available using this distance measurement.

While less restrictive than the current parcel-to-parcel measurement, measuring from a building to the nearest residential property line does not take into account the built environment which may include hard barriers like fences or sound walls that prevent traffic or travel along public access routes. Staff also evaluated measuring from the closest vehicular access on a property containing a cannabis business and found this method had the same issue as the building envelope measurement where the closest vehicular access point does not necessarily reflect the actual distance between a cannabis business and a residential property. Staff is not recommending using a building envelope-

to-residential property measurement, nor is staff recommending measuring using a vehicular path of travel.

*Distance measured along pedestrian path of travel*

Staff analyzed requiring a distance between a cannabis business and residential property based on measuring the shortest path of travel available for a pedestrian from the public entrance of the business to the residential property line (see Figure 3).



*Figure 3- Pedestrian Path of Travel Measurement at sample site 991 Saratoga Ave*

This option best reflects real-world conditions that frequently occur where a barrier between a cannabis business and residence blocks access. Also, this measurement option better addresses large sites where a cannabis business might be in the part of a shopping center far from a residence, even where the properties are adjacent. This option is significantly less restrictive than requiring a property line-to-property line measurement and somewhat less restrictive than a building envelope-to-property line measurement, while still being sensitive to public concerns about the proximity from a cannabis business and residences.

For these reasons, if the Committee provides direction to maintain a distance requirement to residences, staff recommends using the pedestrian path of travel measurement and increasing the distance requirement from 150 feet to 300 feet. As this will need to be

measured on a property by property basis, staff is not able to estimate the number of potentially compliant parcels throughout the City.

### ***C. Downtown and Urban Villages***

#### *Downtown*

The CED Committee directed staff to re-examine the distance criteria for the Downtown area, as using the distance criteria based on the current regulations would largely prohibit cannabis businesses from locating downtown given its dense, compact, mixed-use nature.

Staff found requiring any separation from a cannabis business to a residence would be prohibitive. Alternative means of measurement, such as pedestrian path of travel, did not change that. To provide options for cannabis businesses to locate Downtown, the City Council may want to consider removing the distance requirement to residences.

Staff's initial proposal recommended maintaining 1,000 feet distance from K-12 schools, daycares, parks, community or recreation centers (including youth centers), or libraries, and 500 feet from substance abuse rehabilitation center or emergency residential shelter. The distance requirement from all of these uses in the Downtown area resulted in only two potentially compliant parcels, even with no setback to residential uses and no exclusion for police beats. The largest impact came from the 1,000-foot setback from parks, followed by community centers, daycare centers, and libraries. The State of California requires a 600-foot radius from K-12 schools, daycare centers, or youth centers.

To explore more options for allowing cannabis businesses downtown, staff analyzed various scenarios. The options include:

- 1) Maintaining the distance of 1,000 feet from schools, daycare, and youth centers and removing setbacks for parks, community or recreation centers, or libraries, and substance abuse rehabilitation centers or emergency residential shelters.
- 2) Maintaining the distance of 1,000 feet from schools and decreasing the setback from 1,000 feet to 600 feet from daycare and youth centers, and removing setbacks for parks, community or recreation centers or libraries, and substance abuse rehabilitation centers or emergency residential shelters; and
- 3) Using only the State minimum requirement of 600 feet from K-12 schools, daycare centers, or youth centers.

See Table 1 for the chart and Exhibit C for maps of all three scenarios.



*Table 1: Downtown Setback Scenario Options*

	600 feet from K-12 schools, daycare and youth centers	1,000 feet from K-12 schools, 600 feet from daycare and youth centers	1,000 feet from K-12 schools, daycare, youth and community centers
Excluding police beats with Crime 20% above average	190 properties	176 properties	73 properties
No police beat exclusion	453 properties	427 properties	273 properties

Staff notes the 1,000-foot distance requirement from one cannabis business to another may affect eligible locations downtown, but it is not possible to analyze the impacts of this now as it is unknown exactly where a cannabis business might locate in the future. The Committee could consider removing the 1,000-foot distance requirement between cannabis businesses for downtown, or direct staff to retain it to prevent cannabis businesses from concentrating in one area Downtown, with direction to explore modifying this requirement later should it prove to be prohibitive.

### *Urban Villages*

The development of urban villages is the fifth of 12 major strategies embodied within the Envision San José 2040 General Plan (General Plan). Urban villages are walkable, bicycle-friendly, transit-oriented, mixed-use settings that provide both housing and jobs, with many of the same urban characteristics of a small downtown. Based on direction from the CED Committee staff analyzed modifications to the distance criteria to sensitive uses within urban villages.

It is important to note the urban village concept is an ongoing, phased planning process and many urban villages are not going to be planned for development for many years. In total, the General Plan identifies 61 urban villages, of which 13 have undergone the urban village planning process and have adopted urban village plans. Two more urban village plans are currently under development. Staff focused the analysis only on urban villages with an adopted urban village plan (hereafter referred to as planned urban villages). Using the current setback criteria, there are approximately 32 parcels within the planned urban village areas having both a commercial General Plan designation and meet all cannabis distance criteria.

The planned urban villages have a greater mix of both existing and planned development densities and types than downtown, ranging from preservation of existing single-family neighborhoods to high-rise development. Staff determined the best way to differentiate regulations for the portions of urban villages having a more urban character is for the less stringent distance criteria to only apply on properties located within a planned urban

village and zoned Urban Village, Urban Village Commercial, Mixed-Use Commercial, Urban Residential, and Transit Residential. These are the higher-density mixed-use or commercial zoning districts that occur frequently or sometimes solely within urban villages.

Much like downtown, due to the mixed-use nature of development within urban villages, City Council may want to consider eliminating the residential distance requirement for cannabis businesses located on a property in a planned urban village with the above-mentioned zoning districts. This results in approximately 243 additional eligible parcels (see Figure 4). At this time, staff does not recommend any additional modifications to the criteria for urban villages since most urban villages have not yet undergone significant new urban development. Staff can explore various setback requirements in the future as the urban villages continue to develop.<sup>4</sup>

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<sup>4</sup> The Urban Village, Urban Village Commercial, Mixed-Use Commercial, Mixed-Use Neighborhood, Urban Residential, and Transit Residential zoning districts were adopted by Council on May 25, 2021 and have not yet been applied to property within the City. The estimated number of eligible parcels was derived by analyzing sites with General Plan designations conforming with these new zoning districts, as these indicate where they will be applied. The MS-C and MS-G zoning districts within the Alum Rock Urban Village are included in this analysis but may be considered separately for conformance.

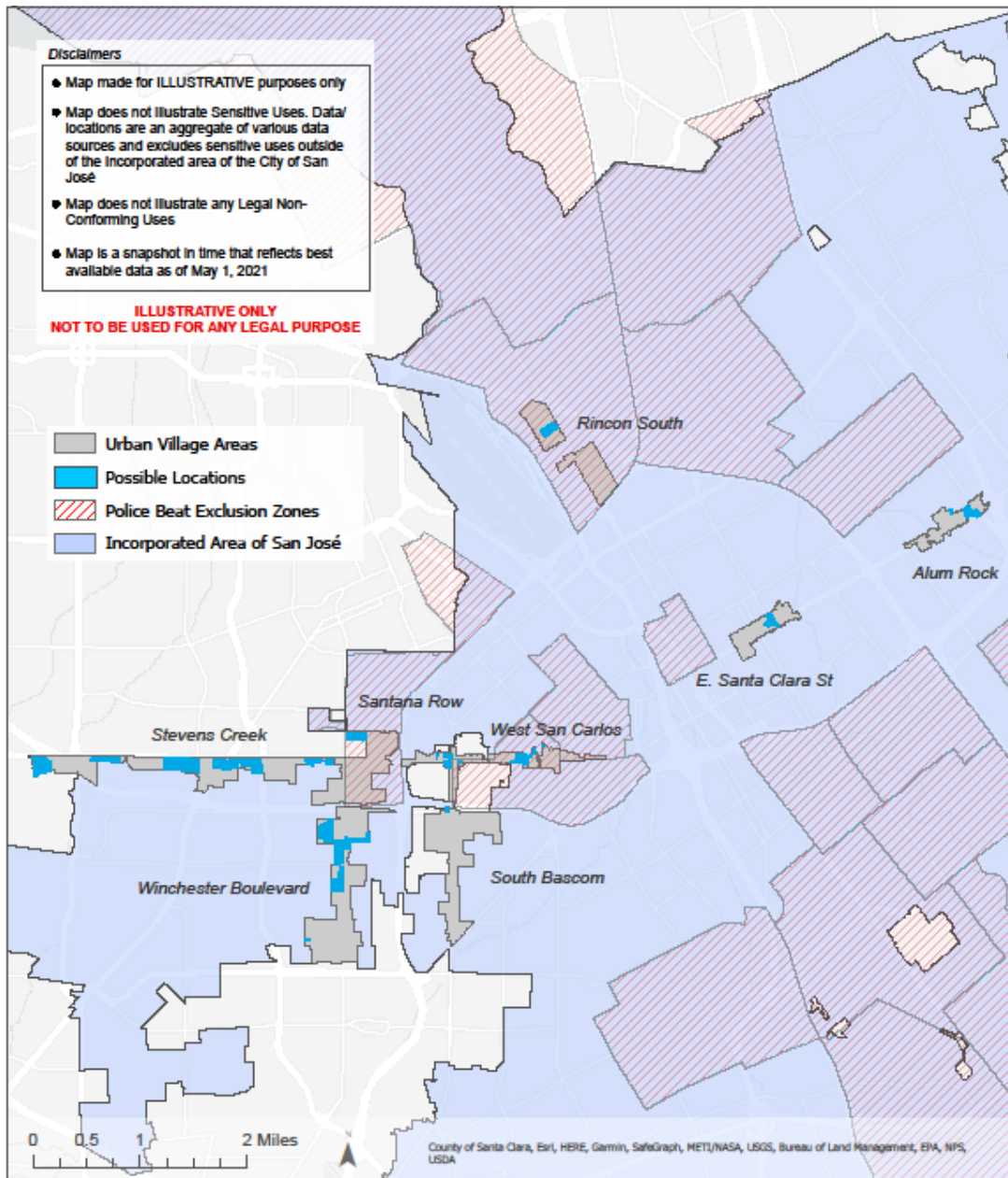


Figure 4: A map showing the estimated number of parcels in Urban Villages if the residential distance requirement were excluded from cannabis uses

#### ***D. Police Beats with a Concentration of Reported Crimes 20% Above the City Average***

In the April CED Committee Memorandum, staff proposed prohibiting new cannabis retail storefronts from opening in police beats with crime reports 20% above the average of reported crimes. Staff updated the Police Beat exclusion zones map to reflect the most up-to-date information from the 2020 calendar year and found some of these areas have changed (see Figure 5).



Based on updated 2020 data, only a portion of downtown is within an excluded police beat. However, in previous years downtown police beats have consistently reported 20% above average crime. Staff suspects the drop in 2020 was related to a lack of activity downtown due to the COVID-19 pandemic. The City Council will need to decide if they want to remove the police beat exclusion within the downtown area to facilitate cannabis

businesses downtown, as these police beats may return to reporting 20% or more above average crime after the pandemic restrictions are lifted.

Excluding properties in police beats within urban villages had a minimal effect. The Police Beat exclusion only affects 32 parcels so a total of 288 would be eligible if this exclusion is removed and 243 if it remains. Staff recommends retaining the police beat exclusion within urban villages.

### **3. Equity Applicants**

Staff proposes to allow a maximum of five new equity applicants to register as a retail storefront or non-storefront (delivery only) business. Under this proposal, the number of retail storefront and delivery locations could expand from the current 16 to a maximum of 21.

When staff held outreach meetings with the City's existing 16 cannabis businesses, some of the existing businesses mentioned they are in support of allowing new registrations for true equity business owners; however, they raised a concern San José may experience what they said other California equity programs may have seen. The concern is "big business" non-equity owners financially back and use equity applicants to establish retail locations in cannabis business-friendly cities. Then, those non-equity business owners buy out the equity applicant once the approval process has been completed thus negating the goal to see equity business owners thriving in San José. According to the industry feedback, this buy-out issue has been experienced less in delivery-only businesses; therefore, some of the existing businesses requested the City only allow equity businesses to open retail non-storefront (delivery only) locations. Staff will work on an application process that will address these concerns.

The City is currently accepting applications to manufacture, distribute, or test cannabis from any equity or non-equity applicant; staff is not proposing any changes for those three business types. When new equity retail businesses are registered, licensed by the State, and fully operational, additional staff will be required on an ongoing basis to monitor, inspect and ensure regulatory compliance of these new businesses.

Staff recommends waiting to consider allowing new non-equity retail businesses to register. Staff would like the opportunity to assess problems or respond to community concerns after a smaller number of new locations have been allowed, rather than discovering concerns after many new locations are operating. After an analysis is completed on the effects of any changes to the program resulting from additional retail locations established by the current 16 cannabis businesses and additional equity businesses, if adopted by City Council, staff will return to City Council with potential program expansion options.

### **4. Public Survey Comments**

An online opinion survey for cannabis dispensary locations was available for approximately one month from March 3 until April 9, 2021. The survey was available in English, Simplified



Chinese, Spanish, and Vietnamese. There were 953 respondents to the survey. The purpose of the survey was to gather opinions from the public on how appropriate they feel retail cannabis establishments would be in a variety of locations often occurring within commercial zoning districts. At the April CED Committee meeting, staff provided a summary of how the public ranked various land-use scenarios for appropriateness of cannabis businesses and shared 46% of respondents were in favor of increasing the number of cannabis dispensaries and 52% were opposed.

Four hundred fifty-four (454) respondents provided a total of 1,708 written comments in the survey, and staff has reviewed and analyzed these comments. The responses to the comments were approximately half supportive comments and half negative comments. The following is a summary of the top themes of the comments, in general order of frequency with the most frequent first:

- Cannabis dispensaries should be treated the same as alcohol sales and allowed anywhere alcohol sales are allowed.
- Cannabis dispensaries should be kept away from anywhere children and teens congregate (including residential areas)/concern about access to children.
- Support for cannabis dispensaries in convenient and walkable areas where people shop.
- General opposition to cannabis; the City should not facilitate and support its sale unless strictly for medical purposes.
- General support of deregulation of cannabis and treating cannabis like any other business.
- Concerns that cannabis dispensaries will attract crime and/or will negatively impact neighboring businesses.
- Cannabis dispensaries are acceptable in commercial areas as long as they are inconspicuous.
- Concerns about public consumption of cannabis near dispensaries.

## **CONCLUSION**

Staff recommends the CED Committee provide direction on modifying the residential distance criteria and criteria for cannabis business locations downtown and in urban villages. Staff will incorporate the Committee's direction into the analysis of the ordinance for full City Council consideration in the future. Should the City Council approve changes to cannabis zoning or the regulatory program, the Administration will develop a work plan and budget for implementing the regulatory program changes as well as include the Cannabis Equity Program as part of the overall program changes.

## **EVALUATION AND FOLLOW-UP**

Staff anticipates bringing forward the final draft program proposal to the Planning Commission in July 2021 and to City Council for final action in August/September 2021.

## **CLIMATE SMART SAN JOSE**

The recommendation in this memorandum has no effect on Climate Smart San José energy, water, or mobility goals.

## **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

## **CEQA**

Not a project. Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. Public Project number PP17-009.

/s/  
CHRIS BURTON  
Director,  
Planning, Building and Code Enforcement

/s/  
ANTHONY MATA  
Chief of Police

For questions, please contact Wendy Sollazzi, Division Manager, Division of Cannabis Regulation, San José Police Department, at (408) 537-9890 or [wendy.sollazzi@sanjoseca.gov](mailto:wendy.sollazzi@sanjoseca.gov); or Martina Davis, Supervising Planner, Planning, Building and Code Enforcement, at [martina.davis@sanjoseca.gov](mailto:martina.davis@sanjoseca.gov).

## **Attachments:**

Attachment A.1-A.3: Maps of Potential Cannabis Storefront Locations Downtown (3 scenarios)

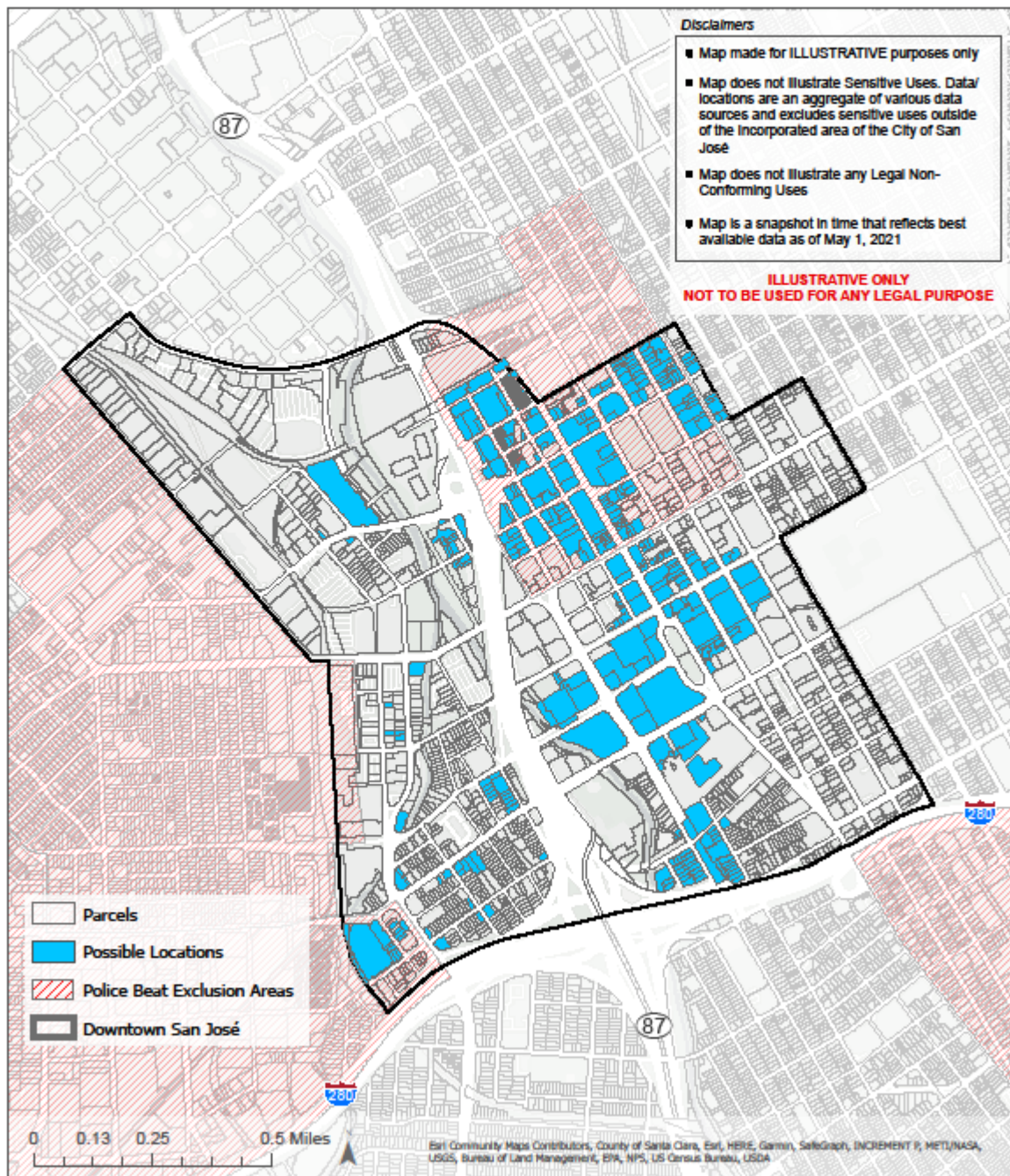
Attachment B: Updated Police Beat Map

Attachment C: Urban Village Map

Attachment D: Retail Cannabis Map

Attachment A.1

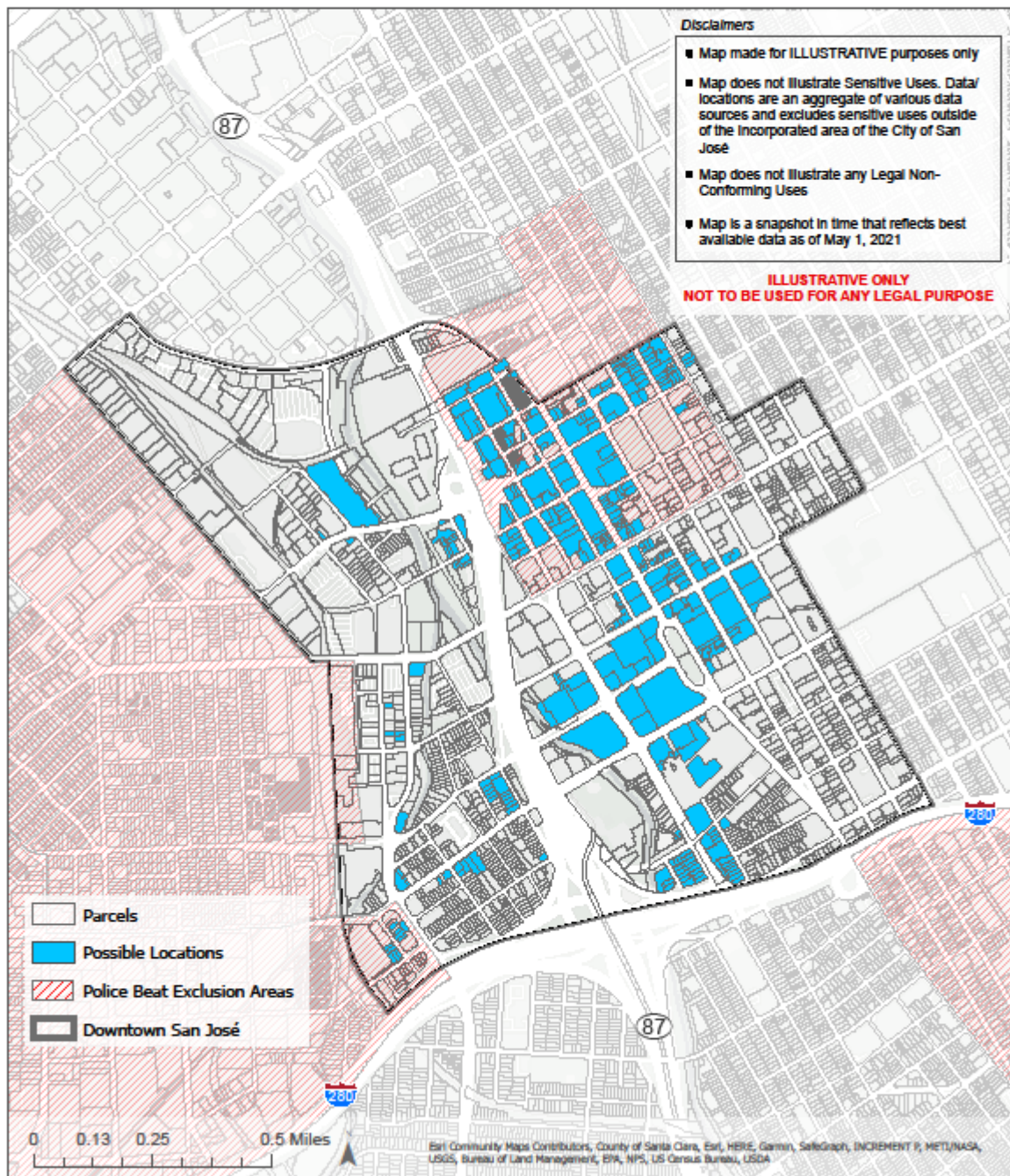
## Downtown Retail Cannabis Analysis: 600 feet from Youth and Child Daycare Centers, and Schools (K-12)





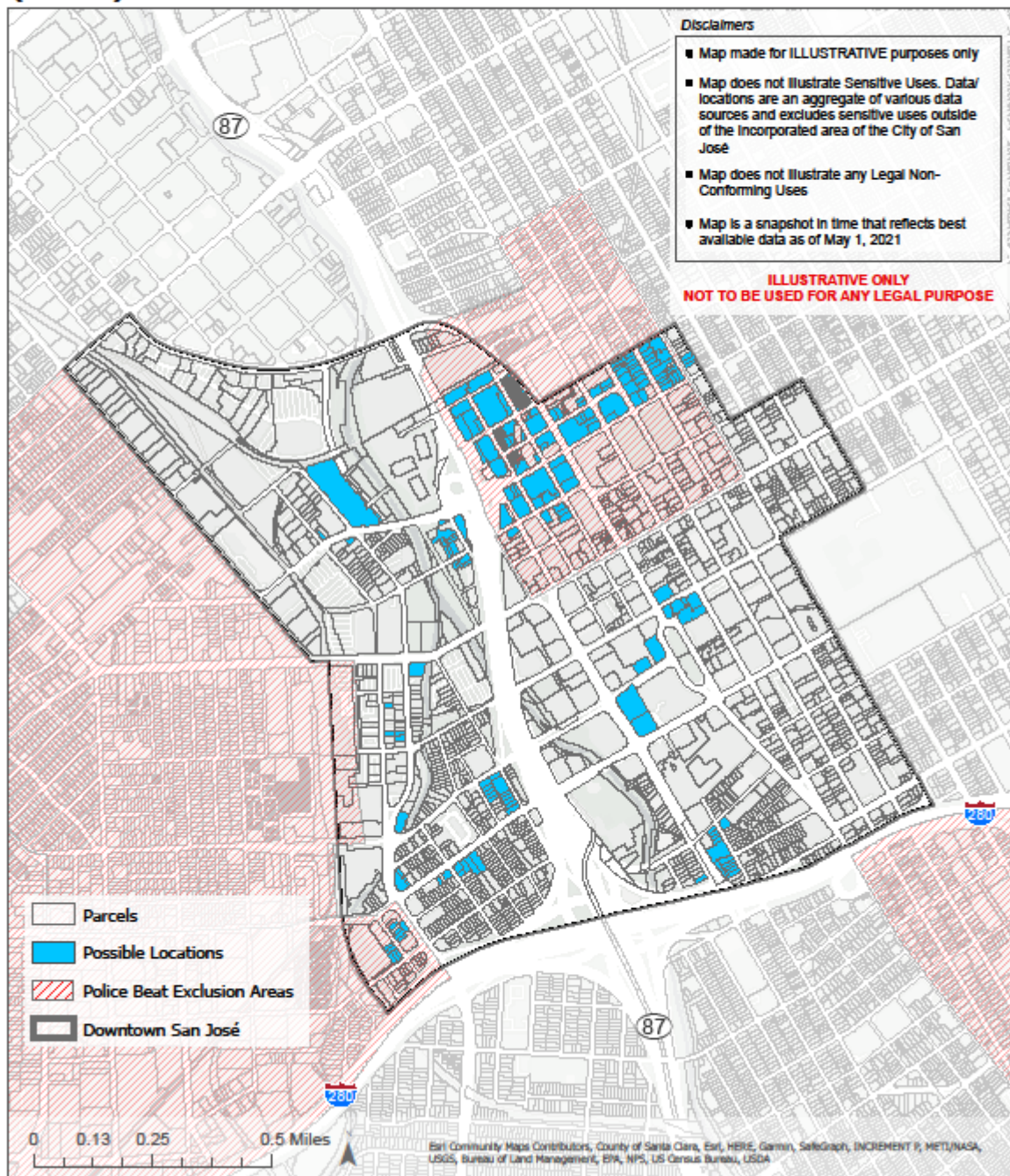
Attachment A.2

## Downtown Retail Cannabis Analysis: 600 feet from Youth and Child Daycare Centers, 1,000 Feet from Schools (K-12)



Attachment A.3

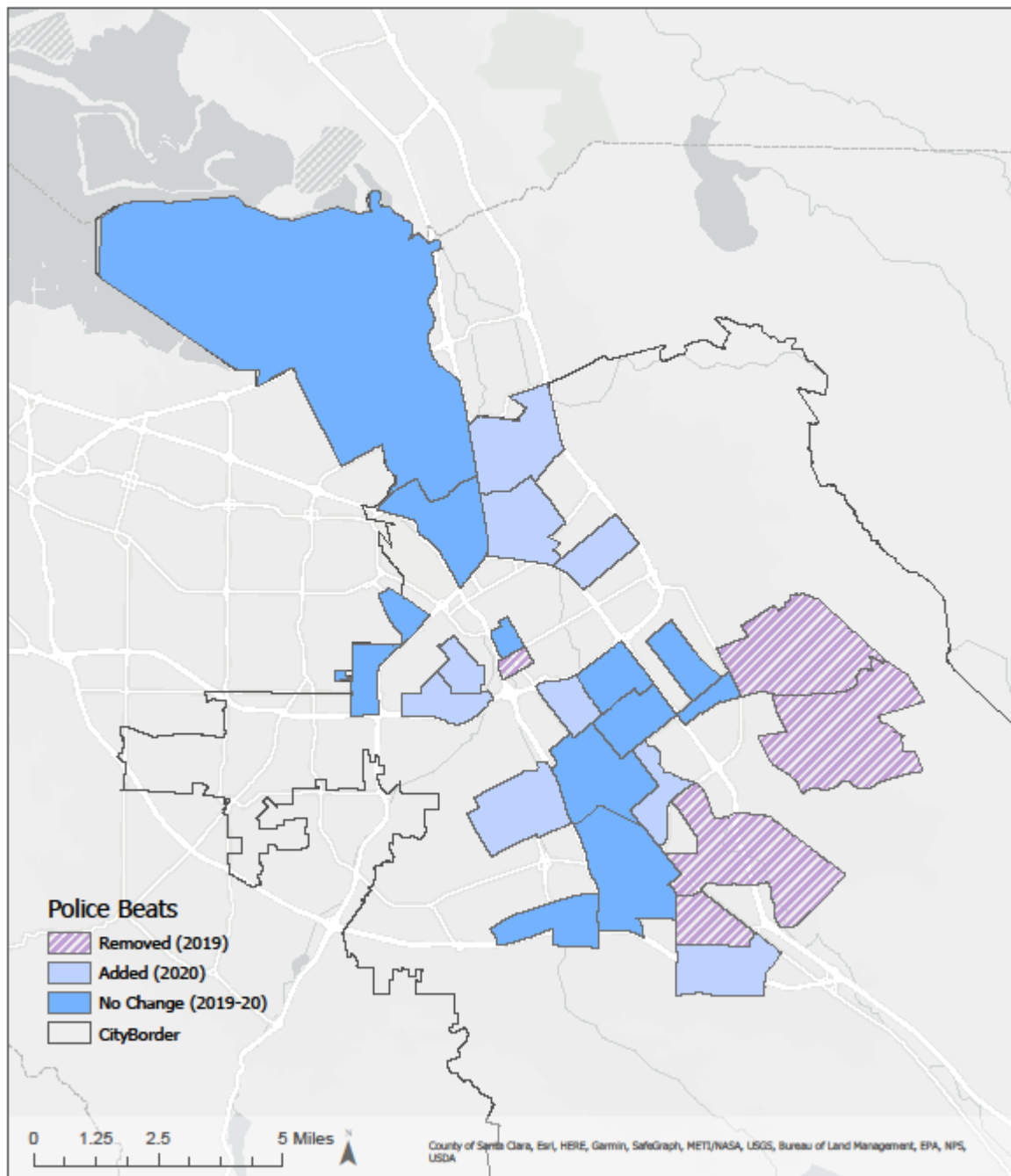
## Downtown Retail Cannabis Analysis: 1,000 feet from Youth and Child Daycare Centers, and Schools (K-12)





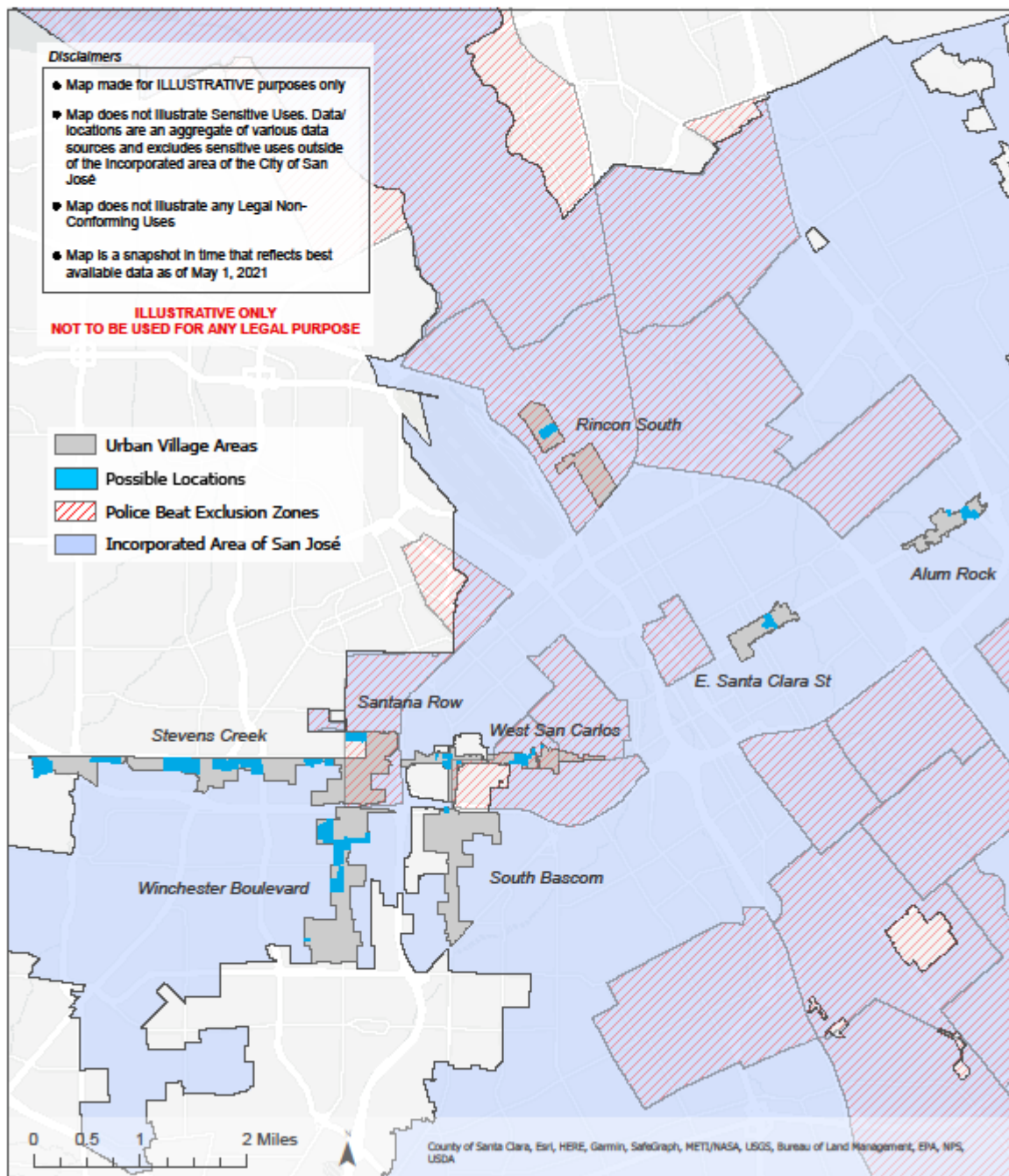
Attachment B

# Updated Police Beat Map



Attachment C

## Urban Village Parcels with no Residential Distance Criteria for Cannabis Use



Attachment D

## Estimated Retail Cannabis Locations without Residential Distance Criteria

