



Non-Industrial Uses in or Near Industrial Zones

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Policy Statement:

It is the policy of the Silicon Valley Leadership Group to advocate for the protection of existing manufacturing, R&D and industrial operations from the encroachment of incompatible non-industrial land uses and occupancies that might impede ordinary business operations, or compromise the future economic viability of industrial enterprises. At the same time, SVLG recognizes that some underutilized industrial or commercial areas may be more appropriately rezoned for other uses, including affordable housing, retail, public or quasi-public uses, provided that remaining industrial areas are safeguarded against non-industrial encroachment. Consequently, it the policy of the Silicon Valley Leadership Group to encourage and facilitate appropriate evaluation of all risks and benefits of industrial/commercial land use re-zoning or re-development to enable other compatible uses to operate in proximity without planting the seeds for future conflict. Background:

One of the core tenants of the Silicon Valley Leadership Group (SVLG) is to preserve and enhance the economic vitality and quality of life of Silicon Valley. Presently, as in the economic downturn of the early and mid-1990's, commercial vacancy rates are high, the mix of technology and business in the valley is changing, and there are pressures to utilize areas zoned for commercial and industrial occupancies in different ways. Additionally, to meet other critical policy goals, it is important that cities zone sufficient land, particularly near transit nodes and downtowns, for affordable housing.

In balancing these important goals, we must not lose sight of how important manufacturing and industrial facilities are for the creation and preservation of good, high paying jobs, for a wide variety of skill-levels and occupations. Since some manufacturing businesses and Research & Development operations utilize large quantities, or particularly dangerous types of hazardous materials, or operate in a manner that would create excessive noise, dust, traffic or other nuisance conditions not compatible with other uses, especially residential, it is especially important that we protect large, contiguous areas zoned exclusively for manufacturing and industrial uses, with appropriate buffers between industrial uses and , residential, public and quasi-public uses.

There are many existing regulatory and zoning restrictions on facilities and operations, which are intended to protect the community from potential hazards. Examples include:

Environmental Justice issues, public safety due to chemical use, heavy traffic, noise, dust, or community comfort due to nuisance smells or light. Historically, the intent of most environmental regulations have been to address concerns associated with existing or new industrial facilities. Aside from zoning reviews, there are few protections to prevent non-

industrial uses from encroaching upon established industrial facilities. When this situation occurs, the requirements of certain environmental regulations usually become more stringent, affecting the facility by adding to their regulatory and engineering costs through more stringent design criteria, and imposing more restrictive operating conditions. Indirectly, the host community is impacted by increasing emergency planning and response requirements. These economic impacts must be weighed against the potential benefit of the proposed land use or occupancy change. Incompatible land uses in proximity to one another may burden a community with controversy that must be managed at great expense to all concerned, or will be resolved by the loss of businesses vital to the economic well-being of the community.

Therefore, the Silicon Valley Leadership Group suggests that the following guidelines or criteria be utilized to evaluate some of the risks and benefits of rezoning commercial/industrial properties to balance these important competing needs.

Guidelines for consideration of non-industrial uses in industrial areas

Some United States cities have experience in establishing districts or defined urban areas where industrial and manufacturing operations that are incompatible with other uses, are given primacy. A good reference to these policy examples can be found at The Pratt Institute Center for Community and Environmental Development (PICCED), (<http://www.picced.org/lowres/index.html>) in their document “New York City Manufacturing Land Use and Zoning Initiative: Making it in New York” (see especially the report’s Appendix B, Appendix B-1 and Appendix B-2). As described in this report, one characteristic of successful industrial zoning is that cohesive or contiguous districts are maintained, where necessary. However, once an industrial area has been broken up by non-industrial uses, significant limits on future industrial and manufacturing (or even R&D) occupancies may be an unintended consequence. Therefore, it is important that existing contiguous industrial or manufacturing areas be safeguarded.

Another useful reference is a tool developed by the City of Santa Clara (attached as Appendix 1), the “Industrial to Residential Conversion Criteria and Potential Sites”, staff report and “Planning Criteria Evaluation Checklist”.

If the proposed project will place into a contiguous manufacturing/industrial area any of the following uses, we strongly urge cities to weigh risks and benefits carefully.

Residential, including:

- Live-work lofts, rental, townhouse/condos, apartments, single-family units, etc.

Places of assembly:

- A Church, Synagogue, Mosque, Temple or other place of assembly associated with worship.
 - With child or adult day-care facilities?
 - With community service operations? (soup kitchen, shelter, etc.)
 - With full or part time on-site instruction?
- A school, public or private, for grades K – 12.
- An entertainment establishment such as a theater or nightclub.

Supporting services:

- A retail establishment such as a restaurant or bar or a store for consumer goods.

If such uses are allowed, there may be public safety issues associated with:

Hazardous Materials Storage and Management.

Many manufacturing/industrial facilities, including Research and Development (R&D) operations, utilize hazardous materials. The risk to surrounding businesses or occupants from these materials depends on the types and quantities of hazardous materials present now or potentially present in the future. Issues that cities may wish to consider in their evaluations include: evacuation routes, emergency responder (hazmat, fire, police, medical) resources available, location of hazardous materials transportation routes such as rail lines and sidings.

There may be public health and facility compliance burdens associated with:

Air Emissions.

R&D facilities, as well as manufacturers, may emit materials classified as ‘Toxic Air Contaminants’ under the Bay Area Air Quality Management District’s Regulations and the California Health and Safety Code. Facilities with such emissions are required to abate those emissions using ‘Best Available Control Technology’. However, if there are ‘sensitive receptors’ nearby, facilities may be required to eliminate these operations or to radically re-engineer their operations at significant cost, to prevent exposures. ‘Sensitive Receptors’ are defined as public or private schools grades K – 12 with 7 or more students (day care centers and instruction associated with religious centers can be considered ‘schools’) and residential areas.

There may be public safety and facility cost burdens associated with:

Facility Security and Liability Issues.

Industrial and manufacturing facilities may be concerned about liability issues, which arise when unauthorized personnel have access to (or could easily gain access to) their facilities. Examples include: curious children walking through industrial business parks on their way from or to school, unauthorized parking in business park parking lots. Certain non-industrial land uses may increase manufacturing and industrial facilities’ perception of increased liability and security concerns.

There may be community good-will and public safety issues associated with:

Community Comfort and Safety Issues.

Facilities may emit other types of materials, which are not toxic, but which may cause concern to those unfamiliar with industrial operations. People who are unfamiliar with industrial or manufacturing operations may be concerned or annoyed by nuisance odors, water vapor, dust or other emissions from these facilities.

Manufacturing or industrial facilities often utilize equipment such as water chillers or air compressors in their operations. While this equipment is not hazardous, it may create sounds or benign water vapor clouds which neighboring non-industrial occupants may find annoying, even if these are entirely safe or within regulatory limits.

Many manufacturing or industrial facilities keep their facilities lit around the clock for security purposes. Brightly lit facilities may be annoying to non-industrial uses, especially residential occupants.

Non-Industrial uses within industrial areas may either impact, or be impacted by vehicular traffic associated with those uses. Some commercial, industrial and manufacturing operations have large vehicles or heavy traffic associated with their operations. This traffic may be both a perceived nuisance and a hazard to non-industrial land uses. Conversely, if a non-industrial use brought a significant increase to vehicular traffic, this increase may impact the ability of existing businesses to move their employees and product and to safely evacuate the area in the event of a hazardous materials release or other emergency.

There may be 'good neighbor' conflicts due to:

Parking Demand.

Cities typically have specified parking ratios based on the size of the manufacturing or industrial facility and/or the number of anticipated employees. These ratios are likely to be different, or the timing of use of parking will be different for different occupancies. In the best of possible outcomes, mixed-use occupancies have opportunities to share parking areas through creative and mutually beneficial agreements, which cities can and should encourage, maximizing use of urban land and minimizing the creation of impervious surfaces. In some circumstances, shared parking will not be a viable option (due to liability concerns, timing, logistics or facility security concerns) and the increased parking demand will create conflicts between neighboring facilities and occupancies.

Other city requirements for landscaping, equipment screening or other cosmetic issues, may increase in areas where non-industrial uses are co-located with more traditional industrial land uses. If these requirements are imposed on existing industrial occupancies, it will further increase their costs.

Examples of Successful Zoning Conversions and Mixed Use Developments

There are a number of examples where former industrial/commercial areas have been successfully converted to other uses in Silicon Valley. One such example is the award-winning mixed-use development in Mountain View called “The Crossings.” The development was built on an underutilized 1960s-era strip mall. Today, a mixture of homes from condos to small lot single-family homes, occupies the site. The development is located right next to a Caltrain station, a grocery store, and a large shopping mall and is walking distance to schools and parks. Other higher-density developments have also been built close by. The end result is a high-quality development that merges successfully with surrounding uses.

Traveling south one stop on the Caltrain line, at Mountain View’s downtown station, excess commercial property owned by a hardware store/lumberyard on Evelyn Avenue was rezoned to permit the construction of a higher-density residential development. The cluster of small lot single-family homes is located across the street from the station, which is also the terminus for the county’s light rail line, and two blocks from the city’s downtown. The re-designed hardware store/lumberyard buffers the new residents from the predominantly service/industrial operations on the far side of the lumberyard.

Sunnyvale has also sought to maximize the potential of its light rail stations by rezoning an industrial area next to the Fair Oaks light rail station “industrial to residential.” In doing so, the city realizes that over time this older industrial pocket will gradually transform to other purposes. But the city has chosen to allow this area to change, while prohibiting any residential development in the Moffet business park, just down the road from this parcel.

In an attempt to better integrate jobs and housing and transit in the city, in 1998 San Jose rezoned a 97.4 acre former ranch to encourage the development of a mixed-use high-density residential development next to the city’s North San Jose employment center. The more than 3,000 apartments built at North Park, which were completed in 2003, are located next to numerous major employers, including Cisco, Sony, and Altera corporations. However, the vast majority of these employers are offices and do not engage in operations that would be incompatible with residential neighbors. In fact, commercial office uses can provide a buffer between residential and other “sensitive receptors,” and incompatible industrial/commercial uses.

That is precisely the design concept Greenbelt Alliance utilized in proposing a “smart growth” vision for the eventual development of San Jose’s Coyote Valley. Their 89-page report published in June of 2003, “Getting it Right: Preventing Sprawl in Coyote Valley,” envisioned the creation of a new urban community west of Monterey Highway and the existing Caltrain line between Bailey and Scheller Avenues, with higher-density development—residential and commercial—clustered around a Town Center and several neighborhood centers. Rather than segregating commercial development into an industrial park, Greenbelt Alliance proposed mixing jobs into this new community fabric to create more

walkable neighborhoods. However, recognizing the incompatibility of some industrial, manufacturing or bio-tech operations with residential uses, the organization proposed creating two discrete commercial districts specifically for these types of uses. The districts would be located at either end of the new town, near highway and rail lines, and would be “separated from residential uses by less sensitive employment activities,” such as office buildings and open space. Greenbelt Alliance’s proposal is one of many ideas being considered by San Jose as it develops a specific plan for Coyote Valley.

Environmental Regulations Relevant to Hazardous Materials, Industrial Uses and Proximity to Non-Industrial Land Uses.

The following environmental regulations may be applicable to manufacturing and industrial facilities. Most are applicable depending upon materials present or type or amount of emissions, regardless of neighboring uses. RMPP, RPM, and AQMD Water's Act compliance requirements change depending upon proximity of schools or residential populations to regulated facilities.

Health and Safety Code Section 25534.1 (Re. RMPP Preparation)

Requires consideration of proximity of facility to schools, residential areas, hospitals, long-term health care facilities, and day care facilities. This code does not define 'proximity'. However, the County of Santa Clara has indicated that a day care facility within one-quarter mile (1,320 feet) would trigger a required notice of an RMPP (Risk Management and Prevention Program) plan.

Title 40 FCR Chapter 1, part 68.1, Subchapter C. (RMP)

An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must prepare a Risk Management Plan (RMP) which describes the planning and response appropriate to mitigate a possible release of a regulated substance.

Health and Safety Code Section 42301.6 (Re. Hazardous Air Emission Permits/ Water's Act Compliance)

Requires the applicant within 1,000 feet of a school to distribute a public notice of the permit application to parents or guardians of children enrolled in any school (K-12) public or private, within one-quarter mile and to each address within a radius of 1,000 feet.

Health and Safety Code Section 42301.7 (Re. Threat of Air Contaminant Release)

Requires air pollution control officer to notify the administering agency having jurisdiction over a school within 1,000 feet if there is a reasonably foreseeable threat of a release. Administering agency may then require preparation of or modification to a Risk Management Plan (if required under Title 40 FCR Chapter 1, part 68.1, Subchapter C.) or a state-required Risk Management and Prevention Program (RMPP). Also provides provisions for air pollution control officer to issue an immediate order to prevent the release or mitigate the release.

Health and Safety Code Section 44300 (re. Air Toxics “Hot Spots” Information Act of 1987)

Requires manufacturers or users of listed substances (above a certain threshold quantity) to prepare a site-specific inventory of toxic substance air emissions. When required by the agency, the report must include information on the proximity of the substance source to potential receptors, including those at schools.

Health and Safety Code Section 25507.10 (Re. Acutely Hazardous Materials Release)

Requires emergency response personnel to advise the superintendent having jurisdiction over a school within one-half mile of a release or threatened release of an acutely hazardous material.

Health and Safety Code Section 25221 and 25232 (Re. Hazardous Waste Disposal Site)

Defines ‘hazardous waste property’ as a site where a “significant disposal of hazardous waste has occurred”, and a “border zone property” as one within 2,000 feet of a hazardous waste property. Prohibits residences, hospitals, schools for persons under 21 years of age, day care or any permanently occupied human habitation other than those used for industrial purposes on land that is designated a “hazardous waste property” or a “border zone property”.

Health and Safety Code Section 25149 (Re. Hazardous waste facility operations)

Requires that no city, county or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from wastes at that facility unless, after public notice and hearing, the operation of the facility is deemed to pose an imminent and substantial endangerment to the health and the environment.

Health and Safety Code Section 41700 (Re. Public Nuisance)

States that no person shall discharge from any source any air contaminant which causes nuisance or annoyance to any considerable number of persons of the public or endangers the comfort, health or safety of such persons or public.

California Regulations Title 22, Division 4.5, Chapter 16, Section 66266.8 (re. Series B Resource Recovery Facility Permit)

Requires consideration of proximity of facility to public structures and recreational facilities, businesses, private recreational facilities, hospitals, schools and residences in determining

whether to solicit public participation in the issuance of a Series B Resources Recovery Facility Permit. This code does not define “proximity”.

Public Resources Code Section 21151.4 (Re. Environmental Impact Reports and Hazardous Materials)

Requires written notification to, and consultation with, the school district before approval of an environmental impact report of negative declaration for construction or alteration of a facility involving reasonable anticipation of air emissions or handling of acutely hazardous material within one-quarter mile of a school.

Public Resources Code Section 21151.8 (Re. School Siting and Construction)

Requires identification of facilities within one-quarter mile, which might reasonably be anticipated to emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste and a finding that such a facility does not and will not constitute an actual or potential endangerment for approval of an environmental impact report or negative declaration for acquisition or construction of a school site.

Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1, Section 412 (Re. Toxic Air Contaminant Permit, Public Notice Schools)

Requires applicant within 1,000 feet of a school to prepare and distribute a public notice of the proposed new and modified source and the related proposed emissions. The notice must be distributed to the parents of the children in any school within one-quarter mile of the source and to each address within a radius of 750 feet.

Bay Area Air Quality Management District (BAAQMD) Regulation 2, Rule 1, (General Requirements)

Sources emitting Toxic Air Contaminants (TACs) must conduct a Health Screen Risk Assessment if their emissions are above a specified trigger level. The results of this assessment indicate chronic (cancer) and acute health risks to sensitive populations from the facility’s emissions of TACs. The list of TACs includes many common and familiar materials, including: toluene and xylene (found in many adhesives) and methyl alcohol (also known as denatured alcohol), a common solvent, as well as some 70 additional materials known for their chronic and acute health hazards. Facilities plan their abatement devices and engineering controls based upon the outcome of their HSRA’s, which are dependent upon distances from sensitive receptors. If non-industrial uses encroach upon an industrial facility emitting a TAC, the facility will very likely be required to re-engineer its facility, or cease its operations, to comply with this regulation.

Bay Area Air Quality Management District (BAAQMD) Regulation 1, Section 301 (Re. Public Nuisance)

State no person shall discharge from any source any air contaminant, which causes nuisance or annoyance to any considerable number of persons or the public or endangers the comfort, health or safety of such persons or the public. Three or more violations issued within a 30 day period shall give rise to the rebuttable presumption that the violations result from negligence.

Education Code Section 39003 (re. Acquisition of School Sites)

Prohibits the governing board of a school district from approving a project involving acquisition of a school site by a school district if the site is a current or former hazardous or solid waste disposal site, a "hazardous substance release site" or a site containing under or above ground piping carrying hazardous substances, acutely hazardous materials or hazardous wastes. Further requires consultation with any air pollution control district or air quality management district having jurisdiction to identify and make specific findings concerning facilities within one-quarter mile of the proposed school site which might reasonable be anticipated to emit hazardous air emissions or to handle hazardous or acutely hazardous materials, substances or waste.

County Hazardous Waste Management Plans (Required under AB2948 (Tanner))

Siting criteria for hazardous waste treatment facilities mandated under the 'Tanner Bill' require a 2,000 foot buffer zone between an industrial transfer/storage/treatment facility and any immobile populations, such as schools, hospitals, convalescent homes, prisons, facilities for the mentally ill, etc.

Title 49 of the Code of Federal Regulations (49 CFR) Section 117. 825 (Re. Designated Hazardous Materials Shipping Routes)

49 CFR 177.825 identifies the guidelines for use in preparation of hazardous materials shipping routes. Routes are not limited to highways but include designated surface streets or portions thereof. Locating a school nearby could affect the approved shipping route for materials. The current approved route is available from the California Department of Transportation, Hazardous Materials Shipping Division.

Local Zoning Ordinances

Local zoning may not permit siting of a school, Group E (Educational) Occupancy, next to a Group H (Hazardous) Occupancy without a zoning change.