



# A G E N D A

## PLANNING COMMISSION

Connie Coleman-Lacadie • Don Daniels  
Nancy Hudson-Echols • Robert Estrada  
James Guerrero • Paul Wagemann  
Christopher Webber

### **Regular Meeting**

**Wednesday, January 17, 2018**

**City Hall Council Chambers**

6000 Main Street SW, Lakewood, Washington

**1. Call to Order**

**2. Roll Call**

**3. Approval of Minutes from January 3, 2017**

**4. Agenda Update**

**5. Public Comments**

(Each person will be allowed 3 minutes to speak, to a total of 15 minutes per topic. Groups with a designated speaker may have a total of 10 minutes to speak.)

**6. Public Hearings**

A. Project Files LU-17-00256 & LU-17-00257; City Initiated. A PROPOSED ORDINANCE of the City of Lakewood, Washington, amending Title 18A, the Land Use and Development Code, to broaden the definition of "flea market" to include both new and used items.

B. Project Files LU-17- 00254 & LU-17-00260; City Initiated.

Option1: A PROPOSED ORDINANCE of the City of Lakewood, Washington, enacting a prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

Option 2: A PROPOSED ORDINANCE of the City of Lakewood, Washington, establishing: a Marijuana Business Overlay zoning district that provides for state licensed recreational and medical marijuana retail uses consistent with state law under Title 69 RCW, and subject to requirements of the Washington Administrative Code (WAC) Chapter 314-55; and adding additional local standards to address potential public health, safety and welfare considerations.

- C. Project Files LU-17-00261 & LU-17-262; City Initiated.  
AN ORDINANCE of the City of Lakewood, Washington, amending Title 18A, the Land Use and Development Code, to define "Adult Family Home Business" in the code; prohibit Enhanced Service Facilities in residential zones; and to prohibit the conversion of Adult Family Home Businesses into Enhanced Services Facilities.

## **7. Unfinished Business**

- None

## **8. New Business**

- None

## **9. Report from Council Liaison**

- Mr. Mike Brandstetter

## **10. Reports from Commission Members & Staff**

- Written Communications
- Future Agenda Topics
- Area-Wide Planning/Land Use Updates
- Other

### **Enclosures**

1. Draft Meeting Minutes from January 3, 2017
2. **Star Lite Swap Meet Text Amendment Staff Report**
3. Star Lite Swap Meet Proposed Draft Ordinance LMC 18A
4. Stipulated Conditional Business License Star Lite Swap Meet
5. Hearing Examiner Decision dated June 1, 2017
6. Preliminary Determination of Nonsignificance
7. **Marijuana Regulations Update Staff Report**
8. November 13, 2017 City Council Packet Review of Marijuana Options Memorandum
9. Option 1 Draft Ordinance
10. Option 2 Draft Ordinance
11. Potential Marijuana Overlay, October 27, 2017
12. April 17, 2017 City Council Packet Supplemental Memorandum
13. Legal Opinion Memorandum
14. MRSC Report: Marijuana Regulation in Washington State
15. City of Olympia Marijuana Regulations
16. City of Auburn Marijuana Regulations; Ordinance 6613 and Ordinance 6625
17. November 12, 2013 City Council Packet Memorandum of Executive Summary
18. I-502 Options Memorandum
19. Cole Memorandum Guidance Regarding Marijuana Enforcement dated August 29, 2013
20. Buffer Analysis Map dated September 18, 2013
21. Revised Potential Marijuana Overlay, January 10, 2018
22. Preliminary Determination of Nonsignificance
23. Attorney General Sessions Memorandum Marijuana Enforcement dated January 4, 2018
24. Material relating to Superior Court Case provided by Jordan Michaelson January 3, 2018

Enclosures Continued on Page 3

## **Enclosures, Continued**

### **25. Adult Family Homes Staff Report**

26. AFH Ordinance 1 – ESF

27. Memorandum plus attachments dated November 27, 2017 from Heidi Wachter, City Attorney, and David Bugher, Assistant City Manager for Development Services

- a. Map: City of Lakewood, Oakbrook Adult Family Homes – 500 Foot Buffer
- b. Map: City of Lakewood, Oakbrook Adult Family Homes – 1,000 Foot Buffer
- c. July 20, 2017 Forensic Mental Health Report
- d. Adult Family Homes Disclosure of Services
- e. Draft Ordinance with Exhibits
- f. City of Lakewood Public Disclosure Request, November 7, 2017
- g. Map Showing Locations of Adult Family Homes

28. Memorandum from City Attorney, Heidi Wachter, to City Council, December 11, 2017

29. Memorandum from Building Official, Nancy Craig, December 19, 2017 AFH to ESF

30. TNT News Story, "*Psychiatric Hospital's Proposed Release of Accused Murderer Sidestepped Law Intended to Prevent It*" December 29, 2017 updated January 2, 2018

31. Preliminary Determination of Nonsignificance

32. Public Hearing Written Comments

Judy Swortz dated January 2, 2018

33. DNS Written Comments

Mike Brandstetter dated January 4, 2018

## **Members Only**

Please email Karen Devereaux at [kdevereaux@cityoflakewood.us](mailto:kdevereaux@cityoflakewood.us) or call at 253.983.7767 no later than Tuesday at noon, January 16, 2018 if you are unable to attend. Thank you.



**PLANNING COMMISSION  
REGULAR MEETING MINUTES  
January 3, 2018  
City Hall Council Chambers  
6000 Main Street SW  
Lakewood, WA 98499**

**Call to Order**

Mr. Robert Estrada, Vice - Chair called the meeting to order at 6:30 p.m.

**Roll Call**

Planning Commission Members Present: Robert Estrada, Vice – Chair; Connie Coleman-Lacadie, Paul Wagemann and Nancy Hudson-Echols

Planning Commission Members Excused: None

Planning Commission Members Absent: Don Daniels, Chair; James Guerrero, and Christopher Webber

Staff Present: David Bugher, Assistant City Manager, Community Development; and Karen Devereaux, Administrative Assistant

Council Liaison: Councilmember Mr. Michael Brandstetter

**Acceptance of Agenda**

No changes were requested.

**Approval of Minutes**

**The minutes of the meeting held on December 13, 2017, were approved as written by voice vote, M/S/C Coleman-Lacadie/Hudson-Echols. The motion to approve the minutes passed, 4-0.**

**Public Comments**

Mr. Jordan Michaelson, Lakewood, stated he is a marijuana retail sales business owner. Mr. Michaelson shared a Superior Court of Washington for Pierce County case which cited 2 adult males selling marijuana illegally within the City of Lakewood. Facts were read regarding the drugs sold in a house less than 500 feet from Clover Park High School and the illegal guns kept at the house. Mr. Michaelson commented that the unregulated selling of marijuana creates what the I-502 Market was to eliminate. He urged commissioners to support regulated retail sales with the City of Lakewood which would support jobs and generate tax revenue.

Mr. Glen Spieth, Lakewood, shared that he had voted to approve marijuana retail sales within the City of Lakewood, although he has never had a personal use for marijuana. Mr. Spieth commented it will create another tax opportunity for the City and that he would like to see more tax on marijuana related uses than the tax on car tabs.



Ms. Cynthia Macklin, Lakewood, stated she is a marijuana retail sales business owner, and does not indulge in its use. Ms. Macklin explained she is a lawyer and believes in the regulation of the retail sales of marijuana adding that the correct oversight would make retail marijuana sales a good business.

### **Public Hearing**

None

### **Unfinished Business**

None

### **New Business Update**

#### *Star Lite Text Amendment, Marijuana Regulations and Adult Family Homes Update*

Mr. David Bugher reviewed proper procedures for next week's public hearings. Three separate public hearings will be held in one night. Many attendees are expected for each session. Mr. Bugher emphasized effective practices to handle large crowds as well as efficient disciplines to keep each hearing moving in a timely fashion.

Although commissioners have received and discussed the bulk of background information on each topic, it was explained that possible minor changes may be made to the marijuana overlay map. Mr. Bugher assured the commissioners any new information (including any written comments received) will be provided in next week's agenda packet well in advance of the scheduled public hearings.

### **Report from Council Liaison**

Councilmember Mr. Mike Brandstetter updated the commissioners on the following Council actions:

City of Lakewood Councilmembers were sworn in at Tuesday evening's meeting for the next terms with Mr. Don Anderson being voted in as Mayor and Mr. Jason Whalen as Deputy Mayor for the next two years.

The Capital Improvement Project on Military Rd SW and 112<sup>th</sup> St was awarded.

Additional upgrades to the traffic signals along Steilacoom Blvd are planned. A new signal will be placed at the main entrance to Western State Hospital, as well as a new yellow flashing turn signal for 87<sup>th</sup> Ave SW.

Council approved a vacation of property adjacent to the library on Wildaire Rd SW. This 2,000 sq. ft. piece of land was a former trolley right-of-way. The property owner intends to use it as a driveway.

Over the next month Council will be taking a look at all the committee, boards and commission 2018 work plans then assigning tasks or projects to be completed over the year.

Councilmember Brandstetter expressed his interest in continuing as liaison to the Planning Commission; however the Mayor makes the decision as to where he will be assigned for 2018.

### **Reports from Commission Members and Staff**

#### City Council Actions

At this time there is nothing to report from staff.

#### Written Communications

None

#### Future Agenda Topics

The commissioners will vote on the Chair and Vice-Chair positions in February 2018.

#### Area-Wide Planning / Land Use Updates

None

**Next Meeting: Wednesday, January 17, 2018 at 6:30 p.m. in Council Chambers**

**Meeting Adjourned** at 7:08 p.m.

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Don Daniels, Chair  
Planning Commission 01/17/2018

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Karen Devereaux, Recording Secretary  
Planning Commission 01/17/2018



**CITY OF LAKEWOOD  
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT TO THE PLANNING COMMISSION**

January 17, 2018

<b>Application No(s)</b>	LU-17-00256 (ZOA text amendment) LU-17-00257 (SEPA Checklist)
<b>Applicant</b>	City of Lakewood
<b>Project Description</b>	A PROPOSED ORDINANCE of the City Council of the City of Lakewood, Washington, amending Title 18A, the Land Use and Development Code, to broaden the definition of "flea market" to include both new and used items
<b>Location</b>	Area-wide amendment (Primarily affecting the C2 zone)
<b>Reason for Requested Change</b>	Settlement proposal
<b>Planning Commission Meeting Dates</b>	January 3, 2018 (Study Session) January 17, 2018 (Public Hearing) February 7, 2018 (Tentative date for taking action)
<b>Staff Recommendation</b>	Approve

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## **I. Background**

On May 4, 2015, the City Council adopted Ordinance No. 610 making changes to the City's business licensing regulations. The business license code had not been updated since incorporation. Numerous changes were made. The code was also reorganized. Among the changes were new reporting requirements for pawnbrokers, secondhand dealers, or secondhand precious metal dealers. City also established temporary and regular business license application requirements. A new fee was set for temporary business licenses at \$60.

On April 7, 2016, the City served a Notice of Summary Business License Revocation/ Suspension upon the Star Lite Swap Meet/Garage Sale LLC, located at 8327 South Tacoma Way. The basis for the notice was a report of a lost six year old female and significant traffic congestion. The Star Lite sought injunctive relief which was granted. The Star Lite also appealed the City's Notice. The appeal was heard on April 11, 2016. A stipulated conditional business license was agreed to on July 11, 2016 which remains in place. This license established requirements to submit attendance counts, submission of a traffic management plan, and on Saturdays and Sundays at least one on-duty parking attendant would assist in moving vehicles in and out of the Star Lite's parking lots.

On or about November 21, 2016, various individuals filed an action in Pierce County Superior Court against the City of Lakewood (Pierce County Cause No. 16-2-11339-2). This lawsuit claimed that parts of the City's business licensing code and regulations are excessive or unduly oppressive, or that the City improperly enforces certain regulations and interferes with their respective business operations.

On February 3, 2017, the Star Lite Swap Meet/Garage Sale LLC submitted a business license renewal application. As part of the application, the Star Lite Swap Meet/Garage Sale LLC, changed its name to the Star Lite Market Place, LLC. The description of the business was, "Rental of Retail Space."

On February 17, 2017, representatives of the Star Lite Market Place Square, LLC ("Star Lite") and the City of Lakewood met to discuss the renewal of a general business license. The meeting was in response to the submittal of a general business license application wherein the business was proposing to change its name. During that meeting, the Star Lite conveyed that the reason for the name change was that historically many of the vendors were actually permanent vendors and not temporary, thus, the term swap meet was no longer relevant.

On March 3, 2017, the general business license application renaming the "Star Lite Swap Meet / Garage Sale LLC" to the "Star Lite Market Place Square, LLC" was approved, but it set limitations on the number of permanent vendors. Further, the conditions originally imposed via a Stipulated Conditional Business License dated July 11, 2016 to the Star Lite Swap Meet would remain in effect.

The City concluded that the change in business name did not alter the manner in which the City currently determines whether a business and/or a vendor operating at the above address is deemed permanent or temporary.

The City did recognize that the existing vendors located within the permanent structure at this address are long-term businesses and may have leases to this effect with the applicant. These businesses were treated not as temporary, but as permanent and have been issued general business licenses, provided that they furnish a copy of the lease to the City and that the other legal formalities associated with the leasing of real property are followed. The maximum number of permanent businesses located within the building was not to exceed 100. The current count was/is 65.

On May 19, 2017, the Star Lite filed a timely appeal. The appeal hearing was conducted on May 19, 2017. The Appellant requested three actions:

1. That the limitation on the number permanent vendors listed in the approved license be stricken;
2. That the interpretation in the Notice and Order that only temporary vendors can lease space from the Appellant be reversed; and
3. That the Appellant requested attorney fees and costs.

The appeal was held on March 20, 2017.

#### Hearing Examiner's Decision

1. The Appellant's business was not deemed a flea market by the examiner. The basis for that decision was that both the zoning code and the business license code as an open

market type arrangement where vendors are selling second hand goods. The Appellant's business includes the sale of new goods, so the flea market definition does not apply.

2. The examiner also suggested that the business may qualify as nonconforming flea market. If the business arrangement proposed by the Appellant is not authorized by the zoning code, the use may qualify as a nonconforming flea market if the sale of new goods at the flea market was instituted prior to it becoming unlawful under the current flea market definition. However, current code generally prohibits the expansion of nonconforming uses. This suggests that the number of vendors selling new items should be limited to the number that was lawfully operating at the business premises prior to the prohibition of new sales. The business license application was remanded back to the City for a proper classification of the proposed business use. The examiner suggested that the City may consider the Appellant's business to qualify as a nonconforming use, in which case the City could place limitations on the business. The examiner also suggested that the City could limit the number of vendors based on building code occupancy restrictions.
3. The examiner determined that the current code does not require all vendors in flea markets to operate as temporary businesses. This determination was based on the differing definitions; the zoning code definition is used to limit flea markets to the sale of second hand goods, while the business license definition separately limits the vendors to temporary vendors. The examiner disagreed with the Administrator using a business license definition to limit the scope of a business activity. If the City Council had intended to limit flea markets to temporary businesses, he concluded that the most logical place to have done so would have been in a zoning code definition.
4. The examiner declared that any restrictions placed upon the Appellant's business must be clearly authorized by the municipal code and that the limitation on the number of permanent vendors was invalid since it is not based upon any code provision.
5. The examiner denied the request for award of attorney fees and costs.

In the appeal, neither side got what it wanted. That led to a reassessment and settlement discussions, which has brought about this proposal<sup>1</sup>.

## **II. Text of Proposed Amendment**

Title 18A Lakewood Municipal Code shall be amended as follows:

Section 1. 18A.20.600 Commercial Use Category - Land Use Types and Levels.

The Commercial use category includes establishments, facilities, and individuals proving services and the sale, distribution or rental of goods that benefit the daily needs of the general public, which are not otherwise classified in another use category.

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<sup>1</sup> There are two parts to the settlement. One part amends the land use and development code. This amendment process requires planning commission review and recommendation. There is a second part to the settlement and that is amending Title 5, Business Licenses and Regulations, to clarify the definition of "flea market" to include both new and second-hand items; to remove "flea markets" from the list of temporary businesses; and reference state law in regard to reporting requirements. Title 5 amendments do not require commission review and recommendation, so they have not been included as part of this action. However, after the commission takes action on Title 18A, Title 5 amendments will be 'boot-strapped' and submitted to the city council for action as a package.

....

U. Sales of New and Secondhand Property. Individuals or establishments that sell new and secondhand property. Examples include pawnbrokers; secondhand, antique, junk and/or salvage dealers; and transient traders in secondhand property, including garage sales and flea markets. This use type does not include used or pre-owned automobiles or other vehicles, which are instead treated as Motor Vehicle Sales and Rental Commercial use types, nor wrecking or parts yards, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 1: Antique stores; used bookstores which do not otherwise constitute Sexually Oriented Business Commercial use types; and used clothing, furniture and appliances, jewelry and valuable coins, and valuable collectibles sales.

Level 2: Surplus, military and miscellaneous sales and flea markets. Flea markets include swap meets but does not include antique malls where stalls are leased, which are instead treated as a Level 1 use listed above. This use type does not include junk and/or salvage dealers, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 3: Pawnshops, subject to the provisions of LMC 5.12. Businesses which are engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits, or conditional sales of personal property; or which publicly display, at or near their place of business, any sign or symbol generally used by pawnbrokers or indicating that the business loans money on personal property on deposit or pledge.

Section 2. 18A.90.200 Definitions.

In addition to the definitions under Section 18A.90.200, the definitions in Section 14A.165.010 LMC shall apply.

....

FLEA MARKET. Arrangements whereby a person or persons sell, lease, rent, offer or donate to one (1) or more persons a place or area where such persons may offer or display new, secondhand or junk items.

Section 3. 18A.30.530 Primary Permitted Uses – Commercial Zoning Districts.

The following uses are permitted within the Commercial zoning districts, subject to approval of a zoning certification and all applicable development permits:

....

D. C2 Zoning District.

37. Sales of New and Secondhand Property (Level 1/2/3)

### III. Process

**Public/Agency Notice:** The proposed action is a Process V Permit. A Process V Permit is defined as an extensive text or area-wide map revisions of the comprehensive plan, the land use and development code; zoning of annexed land and/or adoption of new planning-related ordinances. This type of permit requires a public hearing before the planning commission (LMC 18A.02.565).

**Process V Permits have specific notice requirements:** The requirements include: 1) content; 2) publication at least once in the newspaper of record and the City's website; and notice must be mailed, posted and first published not less than fifteen (15) nor more than thirty (30) days prior to the hearing requiring the notice (LMC 18A.02.700). After adoption, the text of the action either in summary form, or the entire ordinance, must be published in the newspaper of record (RCW 35A.12.16).

The public hearing notice was published on December 29, 2017 and placed on the City's website on the same date.

**Environmental Review:** The Responsible Official on behalf of the City of Lakewood has made a determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file. This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2) and will become final on February 7, 2018.

**Public/Agency Comments:** As of January 10, 2018, no comments have been received.

#### **IV. LMC Criteria for Amendment**

**Initiation Process:** This amendment was initiated by the community and economic development director under advisement of the City Attorney (LMC 18A.02.410).

**Review of Pierce County Countywide Planning Policies:** Not applicable with this amendment.

#### **Standards and Criteria to be Used by the Planning Commission and City Council to evaluate a request for an amendment (LMC 18A.02.415):**

A. The proposed amendment is consistent with the Comprehensive Plan.

The proposed amendment is *de minimis* in nature and will simply continue to allow an already existing business to continue operations under a slightly different definition.

B. The proposed amendment and subsequent development of the site would be compatible with development in the vicinity.

The existing business to which this zoning amendment pertains shall continue to operate as usual. The proposed amendment will not result in any changes to development outcomes because no development is being proposed. If development were to occur on this site in the future, the proposed amendment would not impact the site.

C. The proposed amendment will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated.

The proposed text amendment will not alter the existing site and should not burden or negatively impact traffic or circulation in any way.

D. The proposed amendment will not unduly burden the public services and facilities serving the property with significant adverse impacts which cannot be mitigated.

The proposed text amendment is negligible and will not impact public services and/or facilities serving the property in any way. Adequate utilities and services are already

available to this area and site. The minor text changes impact the definition for the Star Lite Market Place only.

E. The proposed amendment will not adversely affect the public health, safety and general welfare of the citizens of the city.

The proposed text amendment is a minor word amendment to the definition for the Star Lite Market Place and will not adversely impact the public health, safety and general welfare of the citizens of the city.

F. The entire range of permitted uses in the requested zoning classification is more appropriate than the entire range of permitted uses in the existing zoning classification, regardless of any representations made by the petitioner as to the intended use of subject property.

The proposed amendment will not change or expand the array of land uses that might be situated within the Commercial 2 (C2) zone in which the Star Lite Market Place is located. The amendment will be appropriate because the minor alteration to the definition will display more compatibility with the existing operations onsite.

G. Circumstances have changed substantially since the establishment of the current zoning map or zoning district to warrant the proposed amendment.

A lawsuit was filed and a hearing examiner decision was rendered which resulted in the need to make changes in zoning code language.

H. The negative impacts of the proposed change on the surrounding neighborhood and area are largely outweighed by the advantages to the city and community in general, other than those to the individual petitioner.

The proposed minor text amendment will benefit the community as a whole because it will establish a clear cut definition to the Star Lite Market Place which has been an outstanding issue for some time. There are believed to be no negative impacts which will arise from these minor text amendments.

## **V. Staff Analysis**

### **Draft Findings of Fact:**

1. The City of Lakewood Planning Commission is responsible for long range planning matters and providing implementation recommendations to assure compliance with the Growth Management Act for the City of Lakewood Urban Growth Area in coordination with Pierce County and within the incorporated boundaries of the City of Lakewood. These measures include updates and amendments to the Comprehensive Plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act.
2. RCW Chapters 36.70 and 36.70A authorize the adoption of development regulations.
3. The City of Lakewood Planning Commission conducted public meetings on proposed marijuana regulations on **December 13, 2017** and **January 3, 2017**.
4. Copies of the SEPA checklist and determination of non-significance (DNS) were submitted to the Department of Ecology SEPA Register on **December 28, 2018**.



5. The proposed amendment is an area-wide text amendment subject to the noticing requirements found in LMC 18A.02.700.
6. Notice of the Planning Commission Public Hearing, DNS, and request for comments was published in *The News Tribune* and on the City's website on **December 29, 2018**.
7. The City of Lakewood submitted its 60-Day Notice of Intent to Adopt Amendment to the Department of Commerce on **December 22, 2017**.
8. The Washington State Department of Commerce acknowledged receipt of the proposal with **Material ID No. 24487**.
9. On **January 17, 2018**, the City of Lakewood Planning Commission conducted an advertised public hearing. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
10. The City of Lakewood Planning Commission has reviewed the entire record and public testimony as it relates to the proposed amendments to the Lakewood Municipal Code.

#### **Draft Conclusions of Law**

1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
2. The procedural requirements of RCW 36.70A have been complied with.
3. The proposed amendments are consistent with the Pierce County Countywide Planning Policies and the City of Lakewood Comprehensive Plan.
4. The proposed amendments are consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.
5. The proposed amendments have been reviewed and processed in accordance with the requirements of Title 14 Environmental Protection, Title 14A Critical Areas, and Title 18A Land Use and Development of the City of Lakewood Municipal Code.

In sum, the proposed amendment resolves an outstanding lawsuit. It has no environmental impact. It complies with the standards by which the City can approve a zoning text amendment. The proposal clearly makes the Star Lite a conforming use under the C2 zoning regulations.

## **VI. Exhibits**

Draft ordinance

Stipulated Conditional Business License dated July 11, 2016

Hearing Examiner decision dated June 1, 2017

Preliminary Determination of Nonsignificance

## ORDINANCE NO. XXX

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Title 18A, the Land Use and Development Code, to broaden the definition of “flea market” to include both new and used items.

WHEREAS, on or about September 23, 2016, Plaintiff Star Lite Garage Sale and Swap Meet (through Hank Bardon), commenced an action in the Superior Court of the State of Washington in and for Pierce County, captioned Complaint for Injunctive Relief, under cause No. 16-2-11339-2 against the City of Lakewood (hereinafter “Complaint” or “Lawsuit”); and

WHEREAS, on or about September, 2016, and over objection of the City of Lakewood, the Pierce County Superior Court entered a Temporary Restraining Order against the City of Lakewood regarding enforcement of certain provisions of the City’s business licensing code; and

WHEREAS, on or about November 21, 2016, the following individuals filed a document captioned Third Party Complaint for Declaratory and Injunctive Relief and Damages and Attorneys Fees against the City of Lakewood, also under Pierce County Cause No. 16-2-11339-2: Dennis Eros, Hubert Young, Victor Lopez, Willbert Illig, Carl Ritmanich, Soo Oh, Jae Park, John Seidl, Gary Wagner, Louis Fontenot, and Ted Bell; and

WHEREAS, the Lawsuit makes various claims and claims for relief against the City of Lakewood, including but not limited to allegations that parts of the City’s business licensing code and regulations are excessive or unduly oppressive or that the City improperly enforces certain regulations and interferes with their business operations; and

WHEREAS, the City of Lakewood denies all responsibility or liability for the claims, damages and actions claimed by Plaintiffs and Intervenors in the Lawsuit, and denies all claims for relief, whether equitable or legal, and all claims for damages, attorneys’ fees and costs; and

WHEREAS, Plaintiffs and the City have engaged in settlement discussions, which discussions have resulted in a settlement proposal which is acceptable to City staff, but which must go through a defined and required approval process and must be considered and approved by the Lakewood City Council following an open public meeting, and the ultimate decision by the Lakewood City Council whether to approve or disapprove of the proposed legislative changes is a discretionary legislative act without assurances of approval or other action; and

WHEREAS, the City finds that minor changes to the City’s code are necessary to better implement the purpose of the code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY ORDAINS, Title 18A Lakewood Municipal Code shall be amended as follows:

### **Section 1. 18A.20.600 Commercial Use Category - Land Use Types and Levels.**

The Commercial use category includes establishments, facilities, and individuals providing services and the sale, distribution or rental of goods that benefit the daily needs of the general public, which are not

otherwise classified in another use category.

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U. Sales of New and Secondhand Property. Individuals or establishments that sell new and secondhand property. Examples include pawnbrokers; secondhand, antique, junk and/or salvage dealers; and transient traders in secondhand property, including garage sales and flea markets. This use type does not include used or pre-owned automobiles or other vehicles, which are instead treated as Motor Vehicle Sales and Rental Commercial use types, nor wrecking or parts yards, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 1: Antique stores; used bookstores which do not otherwise constitute Sexually Oriented Business Commercial use types; and used clothing, furniture and appliances, jewelry and valuable coins, and valuable collectibles sales.

Level 2: Surplus, military, and miscellaneous sales and flea markets. Flea markets include swap meets but does not include antique malls where stalls are leased, which are instead treated as a Level 1 use listed above. This use type does not include junk and/or salvage dealers, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 3: Pawnshops, subject to the provisions of LMC 5.12. Businesses which are engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits, or conditional sales of personal property; or which publicly display, at or near their place of business, any sign or symbol generally used by pawnbrokers or indicating that the business loans money on personal property on deposit or pledge.

## **Section 2. 18A.90.200 Definitions.**

In addition to the definitions under Section 18A.90.200, the definitions in Section 14A.165.010 LMC shall apply.

....

FLEA MARKET. Arrangements whereby a person or persons sell, lease, rent, offer or donate to one (1) or more persons a place or area where such persons may offer or display new, secondhand or junk items.

## **Section 3. 18A.30.530 Primary Permitted Uses – Commercial Zoning Districts.**

The following uses are permitted within the Commercial zoning districts, subject to approval of a zoning certification and all applicable development permits:

....

D. C2 Zoning District.

37. Sales of New and Secondhand Property (Level 1/2/3)

**Section 4. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance

**Section 5. Effective Date.** This Ordinance shall be in full force and effect upon passage and signatures hereon.

PASSED by the City Council this \_\_\_ day of January, 2018.

CITY OF LAKEWOOD

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Don Anderson, Mayor

Attest:

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Alice M. Bush, MMC, City Clerk

Approved as to Form:

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Heidi Ann Wachter, City Attorney

DRAFT



Don Anderson  
Mayor

Jason Whalen  
Deputy Mayor

Mary Moss  
Councilmember

Michael D. Brandstetter  
Councilmember

John Simpson  
Councilmember

Marie Barth  
Councilmember

Paul Bocchi  
Councilmember

John J. Caulfield  
City Manager

## STIPULATED CONDITIONAL BUSINESS LICENSE

Re: STAR LITE SWAP MEET / GARAGE SALE LLC

Mailing Address: 7604 South Tacoma Way, Tacoma WA 98409-3808  
Primary Business Address: 8327 S. Tacoma Way, Lakewood, Washington  
Business License No. BL04-00547  
Pierce County Assessor Parcel No. 0320312046

Tax Description: Section 31 Township 20 Range 03 Quarter 22 : COM NE COR LOT 1 TH S 00 DEG 40 MIN 14 SEC E 582.12 FT FOR POB TH S 89 DEG 15 MIN 40 SEC W 838.62 FT TO A PT 288 FT E OF W LI SD LOT TH S PAR/W SD W LI SD LOT TO A PT 230 FT N OF S LI SD LOT TH W TO W LI SD LOT TH S TO SW COR SD LOT TH N 89 DEG 39 MIN E 1134.47 FT ALG S LI SD LOT TO SE COR LOT 1 TH N 00 DEG 40 MIN 14 SEC W 714.56 FT ALG E LI SD LOT TO POB EXC W 48 FT OF S 230 FT EXC S & E 30 FT EXC N 30 FT LESS S 84TH ST EXC S 75 FT OF E 125 FT THEREOF ALSO EXC POR DEEDED TO P CO UNDER ETN #526382 EASE OF RECORD #2221628 LESS THAT POR CYD FOR ADD R/W PER ETN Q675760 EXC ADD'L R/W CYD TO P CO PER ETN W866975 (DCNFEMS9-29-80 & DC6643SG9-21-87) DC02/28/96CL

### I. RECITALS

1.1 On April 7, 2016, the City of Lakewood prepared and served a Notice of Summary Business License Revocation/Suspension upon the Star Lite Swap Meet / Garage Sale, LLC. This Notice provided for a summary closure of the Swap Meet.

1.2 On Monday, April 11, 2016, a hearing was held on the Notice. This culminated in a Decision on Summary Business License Revocation/Suspension Appeal (dated April 14, 2016).

1.3 The April 14 Decision, was appealed to the City of Lakewood Hearing Examiner. In advance of the June 2, 2016 hearing, the City of Lakewood and the Star Lite Swap Meet / Garage Sale, LLC have reached an agreement, memorialized herewith resolving the issues which would have been heard by the Hearing Examiner.

1.4 Under Lakewood Municipal Code (LMC) 5.02.150, the City has the authority to grant, condition or restrict a business license under various conditions.

Accordingly, the City of hereby imposes the following business license conditions upon the Star Lite Swap Meet / Garage Sale, LLC:



## **II. CONDITIONAL BUSINESS LICENSE TERMS**

The Star Lite Swap Meet/Garage Sale, LLC understands and agrees to fully and completely satisfy all of the conditions outlined below and that the failure or neglect to carry out and fulfill any term or condition of herein shall constitute a violation of this agreement.

2.1 The duration of these conditions are from the date of mutual agreement until expressly terminated in writing by the City of Lakewood. These terms shall expressly survive renewal of any annual business license.

2.2 The business shall be required to provide attendance counts on Saturdays and Sundays, for adults and for children 48" in height or taller. The business shall collect these counts using a mechanical or electronic counting device at all entrances. These counts shall be furnished to the City of Lakewood Community & Economic Development Department on a weekly basis. All reports shall also identify, by entry location, attendance figures. The business shall develop a form detailing these counts for City approval. Nothing contained in this paragraph shall be construed to relieve the business from furnishing separate attendance counts for other purposes (i.e. monthly counts for admissions tax).

2.3 The business shall submit a traffic management plan to the City of Lakewood no later than July 8, 2016 and to abide by the conditions of that plan once approved by the City. The plan should detail the temporary traffic control measures used to control vehicle and pedestrian traffic flow into and out of the business for weekend and other high volume days. The plan should be in compliance with the Manual on Uniform Traffic Control Devices (MUTCD version 2003). Upon receipt of this plan, and prior to acceptance by the City, this plan will be reviewed by the City's Public Work's Department, who may, in turn, have this plan reviewed by an outside consultant for a determination of sufficiency.

2.4 On Saturday and Sundays, the business shall ensure that at least one on-duty parking lot attendant holds a current and valid Washington State Flagger Certification. All parking lot attendants shall wear Performance Class 2 High-Visibility Apparel (per ANSI/ISEA 107-1999) and shall also use some type of handheld signaling device such as stop signs, orange cones, reflective gloves, and/or signal flag. Signage and pavement markings for all parking stalls and pedestrians walkways shall be maintained in accordance with Lakewood Muni. Code 18A.50.500.

2.5 The conditions set forth herein supersede the conditions set forth in the April 14, 2016 Decision on Summary Business license Revocation/Suspension Appeal.

2.6 The terms and conditions set forth herein are personal to Star Lite Swap Meet / Garage Sale, LLC and cannot be transferred or assigned to another party.

2.7 The conditions set forth in herein are subject to appeal under the provisions of LMC 5.02.150 and 5.02.190(A). By entry into this Stipulated Conditional Business License, Star Lite Swap Meet/Garage Sale, LLC and the City of Lakewood each waive the right to appeal the imposition of these conditions.

This Conditional Business License shall become effective upon mutual acceptance by the City of Lakewood and Star Lite Swap Meet/Garage Sale, LLC and effective on the latter of the dates set forth below.

Star Lite Swap Meet / Garage Sale, LLC

City of Lakewood

By: \_\_\_\_\_

Hank Bardon, Manager

By: M. David Bugher

M. David Bugher,

Assistant City Manager

Dated: June 30, 2016

Dated: July 11, 2016

**Starlite Swap Meet-Garage Sale**

8327 S Tacoma Way  
Lakewood, WA 98499

253-588-8090 Tel  
253-588-8929 Fax

# FAX

To: David Bugher Fax: (253) 589-3774.  
From: Hank Burdon. Date: 7-2-14  
Re: Conditional Business Lic Pages: 2 includes cover.  
Cc: \_\_\_\_\_

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This Conditional Business License shall become effective upon mutual acceptance by the City of Lakewood and Star Lite Swap Meet / Garage Sale, LLC and effective on the latter of the dates set forth below.

Star Lite Swap Meet / Garage Sale, LLC

City of Lakewood

By: Hank Banda

By: \_\_\_\_\_

Its: \_\_\_\_\_

M. David Bugher,

Assistant City Manager

Dated: 7-2-16

Dated: \_\_\_\_\_

BEFORE THE HEARING EXAMINER FOR THE CITY OF LAKEWOOD

RE: Star Lite Market Place Square LLC

Appeal of Issuance of Business License

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND FINAL DECISION

**Summary**

This decision addresses the appeal of a Notice and Order issued in conjunction with the approval of a business license application for Star Lite Market Place Square LLC. The appeal is sustained. It is concluded that the Appellant's business does not qualify as a flea market under business regulation definitions and is also not limited to leasing spaces to a maximum of 75 permanent vendors. The business license application is remanded back to the City for a proper classification of the proposed business use. Upon proper classification of the use, the City may again impose conditions via a Notice and Order as necessary to implement applicable regulations. Issuance of a new Notice and Order shall again be subject to appeal to the hearing examiner.

The City's Notice and Order places limitations on the Appellant's business based upon its finding that the business qualifies as a flea market. However, the business does not qualify as a flea market because flea markets are limited to the sale of second-hand goods. The Appellant's business operation includes numerous vendors that sell services and new goods. On remand the City needs to ascertain whether the Appellant's business operation with vendors selling both new and second-hand goods is authorized by applicable zoning and other regulations and from that determination it can condition the business if necessary. In lieu of applying zoning and other regulations outside the City's business license and regulation ordinances, the City may limit its application to regulations within the business license ordinances if that is its practice as outlined in Conclusion of Law No. 5.

1 It is recognized that the City may consider the Appellant's business to qualify as a nonconforming use,  
2 where the flea market was lawfully established at a time when flea markets could have vendors that  
3 sold both new and second-hand goods. If that is the only way that the Appellant's business can be  
4 authorized under City regulations, then it is a proper basis from which to place limitations on business  
5 use. However, the City never identified the Appellant's business as a nonconforming use or identified  
6 how the City's nonconforming use regulations validly serve as a basis for limiting the number of  
7 businesses on the Appellant's property. On remand, if the City wishes to impose license restrictions on  
8 the Appellant's business on the basis that it is a nonconforming flea market, its Notice and Order  
9 should clearly identify how the City's nonconforming use regulations or any other regulations were  
10 applied to impose restrictions on the Appellant's business. Further, if limitations on the number of  
11 vendors is necessary to comply with building code occupancy restrictions as suggested by the City  
12 during the appeal hearing, the Notice and Order should identify how those regulations are applied to  
13 the project.

### 14 **Testimony**

15 See Appendix A for summary of testimony.

### 16 **Exhibits**

- 17 1. March 16, 2017 Appeal of March 7, 2017 Notice and Order
- 18 2. Notice and Order dated March 7, 2017
- 19 3. BL04-00547 Star Lite Business License
- 20 4. Retail Space Lease Agreement
- 21 5. Star Lite Lease Rates
- 22 6. WSDOR Daily Tax Report
- 23 7. Pierce County Superior Court Complaint for Injunctive Relief; 16-2-06850-8
- 24 8. Pierce County Superior Court Complaint for Injunctive Relief; 16-2-11339-2
- 25 9. Property Owner Statement for Temporary Business License Application
- 26 10. Lakewood Temporary Business License Policy Memo dated April 7, 2017

### 27 **Findings of Fact**

#### 28 **Procedural:**

- 29 1. Appellant. Star Lite Market Place Square LLC, 8327 South Tacoma Way, Lakewood, WA 98409.
- 30 2. Hearing. The hearing examiner held a hearing on the appeal on May 18, 2017.

#### 31 **Substantive:**

1 3. Appeal. This is an appeal of a Notice and Order issued by the City of Lakewood associated  
2 with issuance of a business license to the Appellant. The Appellant operates a business that operates  
3 similarly to a public market where up to hundreds of vendors sell goods at indoor and outdoor stalls  
4 leased by the Appellant. The Notice and Order authorizes the business to continue, but limits the  
5 number of permanent vendors to 75. The Appellant requests that the limitation on the number of  
6 permanent vendors be stricken and that an interpretation in the Notice and Order that only temporary  
7 vendors can lease spaces from the Appellant be reversed. The Appellant also requests costs and  
8 attorney fees.

9 4. Business. The Appellant<sup>1</sup> operates the Star Lite, a business that has been at its current location  
10 for over 30 years. The Star Lite is similar to a public market, where outdoor and indoor stalls are leased  
11 to vendors to sell various types of goods and services. The Star Lite commercial building includes 228  
12 vendor spaces on the ground level and there is an additional 10,000 square feet of space on the  
13 mezzanine level. In the open market area located outside the building there are 530 vendor spaces.  
14 Vendors often lease multiple spaces, so the number of spaces does not correlate with the number of  
15 vendors. At the time that the subject Notice and Order was issued, City staff counted 65 permanent  
16 vendors operating at the Star Lite, so based upon this number the Notice and Order authorized up to 75  
17 permanent vendors. The vendors sell new, overstock and/or excess inventory goods, fresh produce and  
18 second-hand goods.

## 14 Conclusions of Law

15 1. Authority. LMC 5.02.190 authorizes the hearing examiner to conduct hearings and issue final  
16 decisions on appeals of conditions placed upon business licenses.

17 2. Appellant's Business Is Not a Flea Market. In its Notice and Order the City has classified the  
18 Appellant's business as a flea market and then used that classification to significantly limit the  
19 Appellant's business operations. The Appellant adamantly argues that it is not operating a flea market,  
20 but doesn't identify what type of business it is operating. It is agreed that the Appellant's proposed  
21 business is not a flea market. A flea market is defined by both the zoning code in LMC 18A.90.200  
22 and the business license code in LMC 5.02.010(E) as an open market type arrangement where vendors  
23 are selling second hand goods. The Appellant's business includes the sale of new goods, so the flea  
24 market definition does not apply.

25 <sup>1</sup> Technically, the Appellant, Star Lite Market Place Square LLC, was recently formed and hasn't been running the  
26 business for 30 years. The business premises has been historically run by Star Lite Swap Meet/Garage Sale LLC.  
The Appellant apparently has formed Star Lite Market Place to run the parts of the business with vendors selling new  
goods, while the Swap Meet/Garage Sale LLC runs the second-hand vendors. At the hearing, the City objected to  
two different business entities operating at the same business premises, but there is nothing in the LMC business  
regulations that prohibits this form of business management.

1 3. Business May Qualify as Nonconforming Flea Market. As noted in the Summary of this  
2 Decision, if the business arrangement proposed by the Appellant is not authorized by the zoning code,  
3 the use may qualify as a nonconforming flea market under LMC 18A.02.830 if the sale of new goods at  
4 the flea market was instituted prior to it becoming unlawful under the current flea market definition.  
5 However, LMC 18A.02.835 generally prohibits the expansion of nonconforming uses. This suggests  
6 that the number of vendors selling new items should be limited to the number that was lawfully  
operating at the business premises prior to the prohibition of new sales. If the Appellant is operating  
his business as a nonconforming use, the parties will have to work out how the nonconforming use  
provisions apply in the remand.

7 4. Flea Markets Not Limited to Temporary Businesses. If on remand it is determined that the  
8 Appellant's business operates as a nonconforming flea market, then the vendors should not be limited  
9 to temporary vendors as concluded in the Notice and Order. The City came to this conclusion applying  
a business license regulation, LMC 5.02.010(H). This section provides as follows:

10 *H. "Temporary Business" means all business of a short term or transitory nature. In*  
11 *addition to those activities meeting this definition of a "temporary business," the following*  
12 *business activities shall require a license issued under this chapter:*

13 *1. Any business which occupies a site or operates within the City for no more than seven*  
14 *days per occurrence twice within any 365-day period;*

15 *2. Roving mobile vendors involved in business such as door-to-door sales, sales from ice-*  
16 *cream trucks, or other businesses that do not have a fixed location.*

17 *3. Serving as a vendor at a flea market.*

18 *4. Operating a carnival or circus within the City*

19 From LMC 5.02.010(H), the Notice and Order concludes that all the vendors in a flea market must be  
20 temporary vendors because the definition of temporary business is interpreted to include vendors at a  
21 flea market. The City's interpretation is well taken in that vendors are listed under the definition of  
22 "Temporary Business". However, the wording of the definition is inconsistent with this interpretation  
23 and suggests that the listed businesses are considered similar to but may not qualify as temporary  
24 businesses. The second sentence of the provision provides that "[i]n addition" to activities that qualify  
25 as temporary businesses, the list of business activities below (including vendors at flea markets) must  
26 also acquire business licenses. The "in addition" language suggests that the following list of  
businesses don't necessarily qualify as temporary businesses. Indeed, if the intent were that they do  
qualify, the sentence would have read something like "temporary businesses include the following."  
Further, the second sentence only requires acquisition of a license "required under this chapter," which  
included licenses for permanent businesses. Finally, it strains credibility to conclude that a business  
license definition was intended to be used to limit the scope of a business activity. If the City Council

1 had intended to limit flea markets to temporary businesses, the most logical place to have done that  
2 would have been in a zoning code definition, which is traditionally used to define the limits of a  
3 business operation through a zoning use matrix or lists of authorized uses per zoning district. Business  
4 license definitions are usually used to identify what type of business license, if any, is required of a  
5 business authorized by the zoning code. Indeed, one must question why the zoning code definition is  
6 used to limit flea markets to the sale of second hand goods, while the business license definition  
7 separately limits the vendors to temporary vendors. For all these reasons, it is concluded that LMC  
8 5.02.010(H) does not require all vendors in flea markets to operate as temporary businesses.

9 5. Business License Conditions Must be Based Upon Code Authorization. The Appellant argues  
10 that the Notice and Order restriction to 75 permanent vendors is arbitrary and can't be enforced  
11 because the limitation is not based upon any code provision identified by the City. It is agreed that any  
12 restrictions placed upon the Appellant's business must be clearly authorized by the LMC and that the  
13 limitation to 75 vendors is invalid since it is not based upon any code provision.

14 As repeatedly held by the courts, an administrative decision maker such as a hearing examiner or  
15 county commissioner only has the authority expressly granted by statute and ordinance and those  
16 additional powers impliedly necessary to carry out its responsibilities. *See, LeJeune v. Clallam County*,  
17 64 Wn. App. 257 (1992)(absent an express code provision, County Commissioners have no authority  
18 to reconsider their quasi-judicial decisions); *Chaussee v. Snohomish County Council*, 38 Wn. App. 630  
19 (1984)(hearing examiner has no authority to consider equitable estoppel defense because the examiner  
20 was not given this authority by ordinance or statute); *Exendine v. City of Sammamish* 127 Wn. App.  
21 574 (2005)(hearing examiners do not have the authority to enforce, interpret or rule on constitutional  
22 challenges). There is no reason to distinguish the authority of City staff in imposing conditions upon  
23 business license applications – those conditions must be authorized by the LMC.

24 In this appeal, the City testified that it came up with a limit of 75 permanent vendors because it  
25 determined that the Appellant's business currently leased to 65 permanent vendors. The City never  
26 identified what code provision authorizes it to limit the number of permanent vendors to those  
currently operating at the site. One potential explanation for this lack of clarity is that the City takes  
the position that no permanent vendors are allowed under the flea market definition and that the City is  
simply overlooking a code violation to give the Appellant a break for the vendors that are already there.  
Regardless, all the City's actions must be consistent with and authorized by City code. The restriction  
to 75 permanent vendors is invalid for that reason. If the Appellant's business did qualify as a flea  
market, the result of the Appellant's argument against the restriction would have resulted in no  
permanent vendors allowed, unless a code based nonconforming use argument would apply. That  
result could have fallen under the City's "be careful what you wish for" argument expressed at the  
appeal hearing.

For purposes of remand it is necessary to identify what code authority the City does have to impose  
conditions on a business license application. In this case, the City imposed its conditions pursuant to a  
Notice and Order. The authority to condition via a Notice and Order is governed by LMC 5.02.180.  
LMC 5.02.180(A)(3) authorizes the City to require a license applicant to take "action" that is necessary

1 to avoid a code violation. Imposition of a condition would be consistent with this allowance for  
2 "action." The code violations that merit "action" are, as identified by LMC 5.02.180(2), "violations of  
3 any business license or regulations ordinance." As previously noted, LMC 5.02.080(A) allows a  
4 business license to be denied on the basis that the proposed business violates any local, state or federal  
5 law. This provision arguably transforms "any business license or regulations ordinance" in LMC  
6 5.02.180(2) to any applicable law.

7 At the appeal hearing, the City argued a business license appeal hearing is not the place to resolve a  
8 code violation. This suggests that the city reads "violations of any business license or regulations  
9 ordinance" in LMC 5.02.0290(A) narrowly, and that it doesn't extend to violations of other ordinances  
10 via LMC 5.02.080(A). Many cities do apparently deny business licenses on the basis that a proposed  
11 business is prohibited by the City's zoning code. If it is the City's practice to limit business license  
12 decisions and restrictions to the business license regulations, this decision should not be construed as  
13 prohibiting that practice. The City would then not be required to apply zoning regulations as indicated  
14 in the Summary of this decision, but could limit its review to application of LMC 5.02.180(2) business  
15 license regulations. However, in applying those regulations, on remand the City must apply the  
16 conclusions from this decision that the proposed business is not a flea market and that it is not limited  
17 to leasing spaces to temporary businesses.

18 6. Attorney Fees and Costs. The Appellant has requested attorney fees and costs. That request is  
19 denied. The LMC does not authorize the examiner to award attorney fees and costs.

## 20 Decision

21 The Appellant's business license application is remanded for further review as outlined in this Decision.

22 DATED this 1st day of June, 2017.

23   
24 Phil A. Olbrechts

25 Pro Tem Hearing Examiner for Lakewood  
26

# Preliminary Determination of Environmental Nonsignificance

City of Lakewood proposed Star Lite Market Place  
Amendments to the Lakewood Municipal Code

**Case No. LU-17-00257**

**TO:** All Departments and Agencies with Jurisdiction

**SUBJECT:** Preliminary Determination of Environmental Nonsignificance

In accordance with WAC 197-11-340, a copy of the Preliminary Determination of Environmental Nonsignificance for the project described below is transmitted:

**APPLICANT:** City of Lakewood Community and Economic Development Department  
6000 Main Street SW  
Lakewood, WA 98499-5027

## Proposal:

The proposed action would amend Lakewood Municipal Code, Title 18A, Land Use and Development Code. There is one proposal under consideration:

The proposal would enact two minor word changes in three (3) separate sections of the City's Land Use and Development code which are necessary to better implement the purpose of the code. These word changes include adding "New and [...]" to 18A.20.600.U- Commercial Use Category- Land Use Types and Levels as well as 18A.90.200- Definitions for Flea Market and lastly 18A.30.530- Primary Permitted Uses- Commercial Zoning Districts. The proposed amended code sections shall read as follows:

- *Section 1. 18A.20.600 Commercial Use Category - Land Use Types and Levels.*  
The Commercial use category includes establishments, facilities, and individuals proving services and the sale, distribution or rental of goods that benefit the daily needs of the general public, which are not otherwise classified in another use category.

U. Sales of **New and** Secondhand Property. Individuals or establishments that sell **new and** secondhand property. Examples include pawnbrokers; secondhand, antique, junk and/or salvage dealers; and transient traders in secondhand property, including garage sales and flea markets. This use type does not include used or pre-owned automobiles or other vehicles, which are instead treated as Motor Vehicle Sales and Rental Commercial use types, nor wrecking or parts yards, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 1: Antique stores; used bookstores which do not otherwise constitute Sexually Oriented Business Commercial use types; and used clothing, furniture and appliances, jewelry and valuable coins, and valuable collectibles sales.



Level 2: Surplus, military, and miscellaneous sales and flea markets. Flea markets include swap meets but does not include antique malls where stalls are leased, which are instead treated as a Level 1 use listed above. This use type does not include junk and/or salvage dealers, which are instead treated as Salvage/Wrecking Yards and Vehicle Storage Facilities Industrial use types.

Level 3: Pawnshops, subject to the provisions of LMC 5.12. Businesses which are engaged, in whole or in part, in the business of loaning money on the security of pledges, deposits, or conditional sales of personal property; or which publicly display, at or near their place of business, any sign or symbol generally used by pawnbrokers or indicating that the business loans money on personal property on deposit or pledge.

- *Section 2. 18A.90.200 Definitions.*

In addition to the definitions under Section 18A.90.200, the definitions in Section 14A.165.010 LMC shall apply.

FLEA MARKET. Arrangements whereby a person or persons sell, lease, rent, offer or donate to one (1) or more persons a place or area where such persons may offer or display new, secondhand or junk items.

- *Section 3. 18A.30.530 Primary Permitted Uses – Commercial Zoning Districts.*  
The following uses are permitted within the Commercial zoning districts, subject to approval of a zoning certification and all applicable development permits:

D. C2 Zoning District.

37. Sales of New and Secondhand Property (Level 1/2/3)

Copies of the complete text of the proposed permanent regulations are available from the Community and Economic Development Department at the address below.

**Location:** City of Lakewood

**Lead Agency:** City of Lakewood

**City Contact:** David Bugher  
Community and Economic Development Department  
6000 Main Street SW  
Lakewood, WA 98499-5027  
(253) 512-2261

The lead agency for this proposal has made a determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2). **Comments may be submitted by 5:00 PM on January 17, 2018.** The Responsible Official will reconsider the DNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the DNS. **Unless modified by the City, this determination will become final on February 7, 2018.** There is no

administrative appeal for this determination. Appeals must be filed in conjunction with appeals of the adopted amendments to the Growth Management hearings Board; appeals shall be taken in accordance with procedures and limitations set forth in RCW 43.21C.075 and WAC 242-02. In addition to the Growth Management Hearings Board requirements, a copy of the appeal shall be filed with the City Clerk, 6000 Main Street SW, Lakewood, WA 98499-5027.

Responsible Official: David Bugher  
Position/Title: Assistant City Manager for Development Services

Signature:



Issue date: December 29, 2017  
Comment deadline: January 17, 2018, at 5:00 PM



**CITY OF LAKEWOOD  
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT TO THE PLANNING COMMISSION**

January 3, 2018

<b>Application No(s)</b>	LU-17-00254 (ZOA text amendment) LU-17-00260 (SEPA Checklist)
<b>Applicant</b>	City of Lakewood
<b>Project Description(s)</b>	<p><b>(OPTION 1):</b> A PROPOSED ORDINANCE of the City Council of the City of Lakewood, Washington, enacting a prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.</p> <p><b>OR</b></p> <p><b>(OPTION 2):</b> A PROPOSED ORDINANCE of the City Council of the City of Lakewood, Washington, establishing: 1) a Marijuana Business Overlay zoning district that provides for state licensed recreational and medical marijuana retail uses consistent with state law under Title 69 RCW, and subject to requirements of the Washington Administrative Code (WAC) Chapter 314-55; and 2) adding additional local standards to address potential public health, safety and welfare considerations.</p>
<b>Location</b>	Area-wide amendment
<b>Reason for Requested Change</b>	On November 3, 2017, the Lakewood City Council directed the planning commission to review proposed marijuana regulation.
<b>Planning Commission Meeting Dates</b>	January 3, 2018 (Study Session) January 17, 2018 (Public Hearing)

February 7, 2018 (Tentative date for taking action)

**Staff Recommendation**

No recommendation

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## I. Important Update

On January 4, 2018, Attorney General Jeff Sessions issued a marijuana enforcement memorandum rescinding the Obama administration's guidance, which enabled states to legalize marijuana without federal intervention. This action injects a degree uncertainty into the marijuana industry within Washington State.

So far eight states, including Washington, and the District of Columbia, have legalized the drug for recreational use, and it is now helping to fund schools and even law enforcement. California began selling recreational marijuana in recent days. The new guidance threatens to upend sales by giving federal prosecutors more discretion in how they enforce federal law. A copy of the memorandum is attached to this report.

On the same date, U.S. Attorney for the Western District of Washington, Annette L. Hayes, provided the following statement:

*"Today the Attorney General reiterated his confidence in the basic principles that guide the discretion of all U.S. Attorneys around the country, and directed that those principles shepherd enforcement of federal law regarding marijuana. He also emphasized his belief that U.S. Attorneys are in the best position to address public safety in their districts, and address the crime control problems that are pressing in their communities. Those principles have always been at the core of what the United States Attorney's Office for Western Washington has done – across all threats to public safety, including those relating to marijuana. As a result, we have investigated and prosecuted over many years cases involving organized crime, violent and gun threats, and financial crimes related to marijuana. We will continue to do so to ensure – consistent with the most recent guidance from the Department – that our enforcement efforts with our federal, state, local and tribal partners focus on those who pose the greatest safety risk to the people and communities we serve."*

Also, on January 4, 2018, U.S. Attorney for the Eastern District of Washington, Joseph H. Harrington, made a similar statement:

*"The Attorney General reiterated his confidence in the long-established principles of federal prosecution that guide the discretion of each United States Attorney around the country (U.S. Attorney's Manual, chapter 9-27.000), and directed that those principles shepherd enforcement of federal law regarding marijuana. With those principles in mind, the Attorney General emphasized his belief that United States Attorneys are in the best position to weigh all relevant considerations – to include the nature and seriousness of an offense, the potential deterrence effect of prosecution, a putative defendant's culpability in connection with an offense, a putative defendant's criminal history and other circumstances, and the limited federal resources -- when deciding which cases to prosecute in their respective communities. When weighing those considerations public safety is always at the fore."*

*Those principles have always been at the core of what the United States Attorney's Office for the Eastern District of Washington does – across all threats to public safety, including those that may relate to marijuana. This United States Attorney's Office will continue to ensure, consistent with the most recent guidance from the Department of Justice, that its enforcement efforts with our federal, state, local, and tribal law enforcement partners focus on those who pose the greatest safety risk to the communities in Eastern Washington, by disrupting criminal organizations, tackling the growing drug crisis, thwarting violent crime, and corralling white-collar fraudsters in this District."*

Governor Inslee has made strong statements in opposition to Attorney General Sessions's recent action. Washington State Attorney General Bob Ferguson said it was too soon to say what the state's legal response would be, but that a team of lawyers in his office is weighing options.

## **II. Background**

The subject of marijuana has been before the city council on four occasions: November 12, 2013; March 13, 2017; April 17, 2017; and November 13, 2017.

On November 12, 2013, the city council was provided an executive summary regarding Initiative 502. This summary also included an array of options:

1. Moratorium – a temporary ban to allow for further study. This measure was not deemed necessary in Lakewood, as Lakewood's business code provides for denial of any business license to conduct illegal activity at the federal level. Marijuana is prohibited at the federal level.
2. Ban – an outright ban. This measure was also not deemed necessary in Lakewood, again because the city has code provisions authorizing the denial of any business license to conduct illegal activity at the federal level. Whether cities have the authority to adopt a ban under the language of I-502 had been the subject of some debate.
3. Zoning – restrict sales to specific locations. Cities may zone based on traditional classifications such as commercial or residential but licensing of retail marijuana sales is done by the State.
4. Exercise the City's our authority under the business license code – the City of Lakewood can deny a business license based on illegal conduct at the federal level. This does not prevent an aspiring marijuana entrepreneur from obtaining a retail marijuana license from the State. However, the State process mirrors that of liquor licensing, which includes the subject city in the licensing process. Within this process, the City can object based on licensing regulations, which provides for denial of a business license to conduct illegal activity. If the State approves the license, the City can then appeal, first administratively and, ultimately, through the various court levels. During the pendency of such an appeal issuance of the retail marijuana license is stayed.

On March 13, 2017, the city council had an open discussion on marijuana. The minutes of that meeting have been excerpted:

*"Deputy Mayor Whalen asked Councilmembers for input on their views relative to 1-502 and the marijuana issue.*

*Councilmember Simpson noted that federal law pre-empts State law. He asked if there is a case law in which a State's law has won a case over federal law, and a case where federal law won when a State law says you can't.*

*Councilmember Bocchi indicated that he is willing to look at zoning for such uses.*

*Councilmember Brandstetter commented about the elements of 1-502 such as decriminalizing minor possession of marijuana and the growing and retail of marijuana.*

*He indicated that he was not sure if 54% of Pierce County voters wanted to have retail or growing of marijuana in the city; and with the uncertainty about what the policy of the federal government is going to be, 1-502 didn't say that every place in the state had to allow for the commercialization of cannabis and left that to local control and it didn't provide guarantees that there will be a fine number. He indicated that he was not inclined to modify the business code and when taking the Oath of Office he supported the Constitution and federal, State and City laws.*

*Councilmember Moss commented that letters she received from the youth in the community indicated that the youth already face challenges with available drugs and she would support stopping young people from falling prey to what they have been taught that drugs are not okay.*

*Councilmember Barth indicated that citizens can obtain marijuana and that we will be compromising the City by going against federal law.*

*Mayor Anderson indicated that federal supremacy of the law is in effect and expressed concern that there is potential for the City to issue licenses that is found criminal by federal law. He indicated that the City has been successful in using licensing for code enforcement and the City could potentially be challenged for allowing illegal activity. Also, arguments by opponents can potentially be made regarding regressive taxes, and zoning issues should be carefully considered in the placement of such retail sites. Deputy Mayor Whalen indicated that philosophically he is not supportive of marijuana and philosophically responsive to the voters. He suggested that a copy of the Washington Institute for public policy report for 2017 may be helpful in reviewing the data.*

*The Council asked that information be provided on what Auburn and other cities have done, what might be appropriate zoning and licensing options for retail and what other municipalities have a ban in place to allow the Council to consider all options."*

On April 17, 2017, the city council was presented with a legal opinion from the city attorney. The document reviewed federal law, state licensing requirements, local city business licensing requirements, recent changes in state legislation (SHB 1099 (2017)), and a list of options. The options were the same as those provide to the city council on November 12, 2013.

A supplemental memorandum was also provided to the city council. This memorandum shared information on marijuana regulations for the cities of Auburn, and Olympia; additionally, data was provided from the Municipal Research Services Center (MRSC) on marijuana regulation in Washington State.

Again, there was discussion. The minutes of the meeting state the following:

*City Attorney Wachter provided an update on federal laws and other municipal ordinances relative to marijuana.*

*Discussion ensued on where the federal government would seek enforcement on marijuana; are there cities who have asked for a clarifying advisory vote; and how does it affect tribal trust land.*

On November 13, 2017, the city council took up the topic of marijuana a third time. The city council was provided a review of marijuana options. Information was presented on:

1. The status of marijuana businesses licensing activities in the City;
2. A review of alternatives to the way Lakewood currently addresses the issue of recreational marijuana business activity in the City;
3. Allowing marijuana businesses in appropriate zoning districts;
4. Limiting the number of retail marijuana businesses allowed;
5. Prohibiting marijuana businesses; and
6. A more detailed review of the City of Auburn's marijuana regulations.

Once again, there was discussion. The minutes of the meeting state the following:

*Assistant City Manager for Development Services Bugher reviewed the options for retail marijuana.*

*Discussion ensued if there is a limitation on the size of the stores by state law; can the ordinance be written where Lakewood can have no more than two businesses and can Lakewood reduce the buffer zones if it is abutting a park; why in the Auburn ordinance are employees held harmless (because of federal law); can the City create a separate marijuana retail classification overlay; can the City have a business licensing fee and a license to operate a marijuana operation; what is the problem with using the status quo business licensing code; can a buffer area be defined as an area where there is a charge for admission for those under 21 .*

*It was the consensus of the Council for the Planning Commission to consider reviewing the proposed option 2 ordinance for retail marijuana stores.*

### **III. Text of Proposed Amendment(s)**

The content of both ordinances is found in attachments to this report.

OPTION 1 ORDINANCE is a ban. This proposal is straightforward. It is a complete prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

OPTION 2 ORDINANCE establishes a Marijuana Business Overlay. The Overlay would allow for recreational marijuana retail businesses only; it would not allow for production and processing anywhere in the City. However, the boundaries of the Overlay have not been provided. The planning commission is requested to make a recommendation as to its location. The recommendation would be forwarded to the city council for review and consideration.

OPTION 2 ORDINANCE would require issuance of a conditional use permit<sup>1</sup>.

The marijuana retail business must comply with the distance separation requirements listed in WAC 314-55-010

There are numerous other restrictions as well. These are listed under the sections listed as "Recreational Marijuana Retail Business Locations" and "Special Regulations for Marijuana Retail Businesses."

Some highlighted requirements:

1. Shall not be located within 300 feet of other state-licensed marijuana retail business;
2. Are not permitted as a home occupation;
3. May not be located within any other businesses, and may only be located in buildings with other uses only if the marijuana business is separated by full walls and with a separate entrance; no more than one marijuana retail business shall be located on a single parcel;
4. Shall not be located in a mobile home or mobile structure or manufactured home;
5. Must maintain documentation demonstrating that all required federal, state, and local taxes, fees, fines, and penalties have been paid and that there are no past due obligations;
6. City may suspend or revoke conditional use permits based on a finding that the provisions of this section have not been met;
7. No more than two marijuana retail businesses shall be allowed within the city;

<sup>1</sup> The zoning ordinance identifies certain land uses which do not precisely fit into existing zones, but may be allowed upon approval of a conditional use permit (CUP). A conditional use permit allows the city to consider uses which may be essential or desirable, but which are not allowed as a matter of right within a zoning district, through a public hearing process.

A conditional use permit can provide flexibility within a zoning ordinance. Another traditional purpose of the conditional use permit is to enable a municipality to control certain uses which could have detrimental effects on the community. Permitting a particular use, subject to certain conditions of approval, may help to make that use more compatible with the neighborhood.

The zoning ordinance specifies those uses for which a conditional use permit may be requested, which zones they may be requested in, and the public hearing procedure. These might include hard-to-classify uses, or land uses with potentially significant environmental or other negative impacts.

A CUP is not a zone change, but rather a project specific change in the uses allowed on a specific property. Conditional use permits do not involve the establishment of new codes, regulations, or policies. Instead, a CUP applies the provisions of the zoning ordinance and its standards to the specific circumstances which characterize a proposed land use. If a CUP is approved, it will usually require that certain "conditions of approval" be adhered to by the applicant. Alternatively, it may deny uses which do not meet local standards or cannot be made compatible with the surrounding neighborhood pending certain conditions of approval.



8. Shall not sell marijuana, marijuana-infused products, or marijuana paraphernalia or otherwise be open for business before 10:00 AM or after 10:00 PM on any day;
9. Marijuana retail businesses are subject to all applicable requirements of the LMC Title 15A, including but not limited to the Building Code as now exists or may be amended; and
10. Special security requirements.

## IV. Process

**Public/Agency Notice:** The proposed action is a Process V Permit. A Process V Permit is defined as an extensive text or area-wide map revisions of the comprehensive plan, the land use and development code; zoning of annexed land and/or adoption of new planning-related ordinances. This type of permit requires a public hearing before the planning commission (LMC 18A.02.565).

**Process V Permits has specific notice requirements:** The requirements include: 1) content; 2) publication at least once in the newspaper of record and the City's website; and notice must be mailed, posted and first published not less than fifteen (15) nor more than thirty (30) days prior to the hearing requiring the notice (LMC 18A.02.700). After adoption, the text of the action either in summary form, or the entire ordinance, must be published in the newspaper of record (RCW 35A.12.16).

The public hearing notice was published on December 29, 2017 and placed on the City's website on the same date.

**Environmental Review:** The Responsible Official on behalf of the City of Lakewood has made a determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file. This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2) and will become final on February 7, 2018.

**Public/Agency Comments:** As of January 10, 2018, no public/agency comments have been received.

## V. LMC Criteria for Amendment

**Initiation Process:** This amendment was initiated by the Lakewood City Council (LMC 18A.02.410).

**Review of Pierce County Countywide Planning Policies:** There are no specific policies pertaining to marijuana. There are commercial policies that may generally apply to the subject:

- Ec-1. The County, and each municipality in the County, will work to achieve a prospering and sustainable regional economy by supporting business and job creation, investing in all people, sustaining environmental quality, and creating great central places, diverse communities, and high quality of life. This will involve assuring consistency between economic development policies and adopted comprehensive plans by:
  - 1.1 considering the future development of commercial and industrial facilities [RCW 36.70A.210(3)(g)] and creating in the land use element of each comprehensive plan a designation of areas for "commerce" and "industry"

[RCW 36.70A.070(1)];

Ec-2. The County, and each municipality in the County, shall promote diverse economic opportunities for all citizens of the County, especially the unemployed, disadvantaged persons, minorities and small businesses. The following measures may be used in accomplishing this policy, where appropriate:

2.4 encouraging redevelopment of underutilized commercial areas;

UGA-9. The County and each municipality shall provide for conveniently located, appropriately scaled commercial development to serve the immediate local needs of the surrounding community by encouraging revitalization of underused commercial areas before establishing new areas.

**Standards and Criteria to be Used by the Planning Commission and City Council to evaluate a request for an amendment (LMC 18A.02.415):**

A. The proposed amendment is consistent with the comprehensive plan.

The proposed amendments would either: 1) allow for marijuana retail sales only, prohibiting marijuana collective gardens, and marijuana production and processing; or 2) outright prohibit all marijuana activity within the incorporated limits of the City of Lakewood.

Lakewood's Comprehensive Plan is silent as it relates to the subject of marijuana. There are, however, general commercial and economic goals and policies that are worth mentioning:

LU-16.1: Ensure that commercial development and redevelopment contributes to Lakewood as a community and to the vitality of individual commercial areas within the City.

LU-17.1: Address each type of commercial land with unique development standards appropriate to each.

LU-17.5: Promote the neighborhood business districts as limited commercial nodes supporting a concentrated mix of small scale retail, service commercial, and office development serving the daily needs of residents in the immediate neighborhood at a scale compatible with surrounding neighborhoods.

LU-18.1: Concentrate commercial development within existing commercial areas.

LU-21.1: (In commercial corridors) Provide for varying intensities and types of employment, services, retail, and business/light industrial uses along designated commercial corridors based on physical characteristics of the roadway network and adjoining land uses.

ED-1.1: Increase the retail sales tax base of the City.

ED-1.4: Review and respond to emerging issues, pending legislation, and provide guidance with regards to special projects and economic development initiatives.

Lakewood's Comprehensive Plan does not address where marijuana should be sited within the City. It does not stipulate that it should be permitted in any specific land use designation and respective zoning district. Taken as a whole, these policies

would seem to suggest that retail marijuana sales would not be suited in neighborhood commercially designated areas, and would appear to be best suited along primary commercial corridors. If retail marijuana sales were allowed, a review of the comprehensive plan and land use maps would indicate that marijuana retail sales could be located along South Tacoma Way and/or Pacific Highway SW.

B. The proposed amendment and subsequent development of the site would be compatible with development in the vicinity.

It depends on the location. The State of Washington has made requirements that marijuana licenses shall not be issued if the proposed license is within 1,000 feet of an: 1) elementary or secondary school; 2) playground; 3) recreation center or facility; 4) child care center; 5) public park; 6) public transit center; 7) library; or 8) any game arcade (where admission is not restricted to persons age twenty-one or older).

Recent legislation allows local governments to reduce the 1000-foot buffer requirements to 100 feet around all entities except elementary and secondary schools and public playgrounds.

These limitations place significant restrictions on locations. Further, as part of the City's Downtown Plan, which includes a new public park, the placement of a marijuana establishment is unlikely anywhere within the CBD zoning district. Marijuana establishments would be difficult to site along Steilacoom Boulevard SW and Washington Boulevard SW given the locations of existing schools, parks, and other related restrictive receptors.

If retail marijuana were allowed, possible locations include the South Tacoma Way, and Pacific Highway SW, corridors, Custer Road SW between Bridgeport Way and Lakewood Drive SW, and small islands of commercially zoned property located on Bridgeport Way.

C. The proposed amendment will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated.

The tables below show the traffic rates at marijuana dispensaries as compared to pharmacies and other small size retail operations as reported in the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 9th Edition.

WEEKDAY	Rate – Trips per KSF			
	Marijuana Dispensary	ITE 880: Pharmacy with drive-through	ITE 881: Pharmacy with drive-through	ITE 826: Specialty retail
Daily	402.27	90.06	96.91	44.32
AM Generator	37.31	7.71	8.36	6.84
AM Adjacent Street (7 – 9 AM)	16.86	2.94	3.45	N/A
PM Generator	63.61	11.07	9.72	5.02
PM Adjacent Street (4 – 6 AM)	54.64	8.40	9.91	2.71

WEEKDAY	Rate – Trips per KSF			
	Marijuana Dispensary	ITE 880: Pharmacy with drive-through	ITE 881: Pharmacy with drive-through	ITE 826: Specialty retail
From the Institute of Transportation Engineers' Trip Generation Manual, 9 <sup>th</sup> Edition				

SATURDAY	Rate – Trips per KSF			
	Marijuana Dispensary	ITE 880: Pharmacy with drive-through	ITE 881: Pharmacy with drive-through	ITE 826: Specialty retail
Daily	418.25	N/A	N/A	42.04
AM Generator	58.28	10.68	8.20	N/A
AM Adjacent Street (7 – 9 AM)	9.02	N/A	N/A	N/A
PM Adjacent Street (4 – 6 AM)	55.92	N/A	N/A	N/A
From the Institute of Transportation Engineers' Trip Generation Manual, 9 <sup>th</sup> Edition				

Should retail marijuana sales be permitted, the proposed ordinance would require the issuance of a Conditional Use Permit (CUP). A CUP shall only be granted after the Hearing Examiner has reviewed the proposed use and has made written findings that certain standards and criteria have been met or can be met. Two of the conditions are:

That traffic generated by the proposed use will not unduly burden the traffic circulation system in the vicinity; and

An adequate site layout is proposed for on-site circulation and transportation activities, considering the potential impacts of the proposed use on traffic flow and control, emergency vehicle movements and safety associated with the suitability of access points, on-site drives, parking, loading and unloading areas, ... sidewalks, bike paths, or other transportation facilities required by Title 18A or desired by the applicant. All conditions necessary to lessen any impacts of the proposed use have been included in the project design or will be required as conditions of approval pursuant to LMC 18A.10.160 (LMC 18A.10.150).

D. The proposed amendment will not unduly burden the public services and facilities serving the property with significant adverse impacts which cannot be mitigated.

Retail cannabis facilities are not positively associated with increased criminality<sup>2</sup>. However, due to the high monetary value placed upon marijuana, areas may

<sup>2</sup> RESOURCES: LAPD Chief: Pot clinics not plagued by crime, Los Angeles Daily News | Springs finds no tie between crime and marijuana shops, Denver Post | Medical dispensaries effect on crime unclear, Denver Post | No, legalizing medical marijuana doesn't lead to crime, according to actual crime stats, Washington Post | Have medical marijuana dispensaries increased crime in other towns? The Suffolk Times | Medical marijuana stores impact neighborhoods in Denver no more than coffee shops, study says, Westword | Medical marijuana dispensaries and their effect on crime, MPP factsheet | Do medical marijuana dispensaries increase crime? California NORML factsheet

experience a number of home invasion robberies, thefts, and potentially murders which impacts law enforcement/services.

E. The proposed amendment will not adversely affect the public health, safety and general welfare of the citizens of the city.

Retail bans appear to affect youth marijuana use albeit slightly. In Oregon, the percentage of 11th graders who had used marijuana within the past 30 days was 22.1 percent in communities without bans, and 19.6 percent in communities with bans. Also in Oregon, where there's no cap on the number of retail licenses granted by locale, higher density of retail marijuana shops correlates to higher use of marijuana by young people. In Washington, Oregon and Colorado, however, the percentage of young people statewide using marijuana hasn't changed much following legalization.

Researchers in Colorado used a scientific literature review to monitor the public health effects of legalized marijuana (Ashley Brooks-Russell, PhD, MPH and an assistant professor at the Colorado School of Public Health at the University of Colorado).

Among the report's findings:

- There is substantial evidence that second-hand exposure to marijuana would not show up in a urine screening;
- There is substantial evidence that marijuana use increases the risk of a motor vehicle crash; and
- And there is moderate evidence that using marijuana during pregnancy is associated with reduced cognitive function in children months or years after they are born.

In September, 2017, the Washington State Institute for Public Policy published, *I-502 Evaluation and Benefit-Cost Analysis, Second Required Report*. The Institute is to conduct benefit-cost evaluations of the implementation of I-502 by examining outcomes related to: public health; public safety; substance use; the criminal justice system; economic impacts; and administrative costs and revenues. WSIPP is required to produce reports for the legislature in 2015, 2017, 2022, and 2032. The September report examined the effects of I-502 implementation on youth and adult substance use, treatment admissions for cannabis abuse, and drug related criminal convictions.

A copy of the report is available online at:

[http://www.wsipp.wa.gov/ReportFile/1670/Wsipp\\_I-502-Evaluation-and-Benefit-Cost-Analysis-Second-Required-Report\\_Report.pdf](http://www.wsipp.wa.gov/ReportFile/1670/Wsipp_I-502-Evaluation-and-Benefit-Cost-Analysis-Second-Required-Report_Report.pdf)

F. The entire range of permitted uses in the requested zoning classification is more appropriate than the entire range of permitted uses in the existing zoning classification, regardless of any representations made by the petitioner as to the intended use of subject property.

If approved, regulations allowing for marijuana sales are considered no different than any other retail-type establishment allowed within an appropriate underlying zoning district. Based on the siting limitations established by the state, and current

comprehensive plan policies, if marijuana were to be permitted, the most likely zones would be C1, C2, and *maybe* NC2 is selected locations.

G. Circumstances have changed substantially since the establishment of the current zoning map or zoning district to warrant the proposed amendment.

On November 6, 2012, I-502 passed with 55.7% approval in Washington State, legalizing limited adult possession and private consumption of non-medical cannabis as well as its licensed production and sale. I-502 mandated the Washington State Liquor and Cannabis Board (LCB) to oversee the recreational market.

In October 2013, the LCB adopted the first set of rules regarding cannabis licenses, the application process, requirements, and reporting. License applications were accepted from November to December 2013. The LCB initially capped the number of retailer licenses at 334; there is no cap on producer or processor licenses. The first producer and processor licenses were issued in March 2014. Retailer licenses were allotted for each city and county based on estimates of cannabis demand and incorporated random selection when the number of applicants exceeded the allotment. The first non-medical cannabis retail stores opened on July 8, 2014.

At the state level the regulatory system for marijuana is based on the Cole memorandum<sup>3</sup>. The document was originally drafted by former US Attorney General James M. Cole in 2013. Cole issued a memorandum to all US attorneys that was published through the Department of Justice on August 29, 2013. The memorandum indicated that prosecutors and law enforcement should focus only on the following priorities related to state-legal cannabis operations:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

City and county governments have enacted their own policies concerning regulation of licensed cannabis businesses. In January 2014, the Washington State Attorney General released a memo affirming that local jurisdictions may regulate and/or ban

<sup>3</sup> The Cole Memo represented a significant shift in the federal government to de-prioritize the use of funds to enforce cannabis prohibition under the Controlled Substances Act.

I-502-related businesses. Generally, multiple cities are located within a given county boundary; city governments can legally regulate businesses within city boundaries, and county governments can regulate businesses in unincorporated areas. A recent study found that as of June 30, 2016, six of Washington's 39 counties (15%), and 54 of 142 cities (38%) with populations of 3,000 or more had passed permanent bans on legal retail cannabis sales—approximately 30% of the state's population lived in these areas.

To-date, the City of Lakewood has used its business licensing provisions to prohibit marijuana sales, processing, and production. However, on November 13, 2017, the City Council directed the Planning Commission to review marijuana land use and zoning regulation, in addition to a possible ban.

H. The negative impacts of the proposed change on the surrounding neighborhood and area are largely outweighed by the advantages to the city and community in general, other than those to the individual petitioner.

Marijuana retail sales are fairly well-established in the greater Tacoma urban area which is where Lakewood is located. Allowing for retail establishments may create greater convenience for Lakewood residents or those traveling along the I-5 Corridor. Some reports also suggest that marijuana may have some level of medicinal value.

## **VI. Distribution of Tax Revenue**

In 2017, the state is estimated to collect \$300,635,000 marijuana excise taxes. The distribution shared with the cities and counties will be \$6 million for the state fiscal year 2017, and additionally for each fiscal year in the next state biennium for 2018 and 2019. There is a caveat in the state budget that, if general fund revenues exceed state forecasts, local governments may receive an additional \$18 million in the 2017-19 biennium. However, the legislation states that it is the intent to reduce future state shared distributions back to \$6 million per fiscal year beginning with fiscal year 2020.

Of the total marijuana excise tax shared with cities and counties, counties will receive slightly more than cities. The expectation was that counties would have less retailers and, therefore, would receive a larger portion of the per capita distribution (60%). However, the amount changes with the volume of business at the retail locations, and varies as more jurisdictions change to allowing licensed marijuana businesses to open in their jurisdictions.

The portion of state distribution attributed to retail sales (30% of the \$6 million annual state distribution) is certified by the LCB by September 15 of each year for distribution in the forthcoming fiscal year. The state treasurer will make the transfers to local governments in four installments, by the last day of each fiscal quarter (RCW 69.50.540).

## **VII. I-502 & Local Advisory Votes on Marijuana**

The City Manager's Office collected voter information on those cities and counties that supported I-502 (2012) and then compared these votes against local advisory ballot measures which occurred between 2015 through 2017. The results of the comparison are surprising:

**Green** indicates support for marijuana businesses. **Rose** indicates voters did not support.

	State I-502 (2012): Vote Results		Advisory Local Ballot Measures: Vote Results		
Jurisdiction	For MJ	Against MJ	Year	For MJ	Against MJ
City of Snohomish	54%	46%	2017	30%	70%
City of Bonney Lake	53%	47%	2017	36%	64%
Yakima County	42%	58%	2017	41%	59%
Benton City	52%	48%	2016	53%	47%
Pierce County	54%	46%	2016	48%	52%
City of Federal Way	53%	47%	2015	39%	61%

Most cities and the two counties approved I-502, but then their respective voters rejected marijuana businesses operating locally.

(One observation is that I-502 was about decriminalizing marijuana. The local measures were about whether it should be legal to grow and sell in that jurisdiction. These are two related but different questions.)

## VIII. Changing Federal Policy? (Also, See Section I.)

On August 29, 2013, the Department of Justice (DOJ) announced an update to its federal marijuana enforcement policy in light of recent state ballot initiatives that legalize, under state law, the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale.

In a written press statement, the following comments were made:

*"In a new memorandum outlining the policy, the Department makes clear that marijuana remains an illegal drug under the Controlled Substances Act and that federal prosecutors will continue to aggressively enforce this statute. To this end, the Department identifies eight (8) enforcement areas that federal prosecutors should prioritize. These are the same enforcement priorities that have traditionally driven the Department's efforts in this area.*

*For states such as Colorado and Washington that have enacted laws to authorize the production, distribution and possession of marijuana, the Department expects these states to establish strict regulatory schemes that protect the eight federal interests identified in the Department's guidance. These schemes must be tough in practice, not just on paper, and include strong, state-based enforcement efforts, backed by adequate funding. Based on assurances that those states will impose an appropriately strict regulatory system, the Department has informed the governors of both states that it is deferring its right to challenge their legalization laws at this time. But if any of the stated harms do materialize—either despite a strict regulatory scheme or because of the lack of one—federal prosecutors will act aggressively to bring individual prosecutions focused on federal enforcement priorities and the Department may challenge the regulatory scheme themselves in these states."*

## IV. Business Licensing

In the event that the City approves marijuana activity within its incorporated limits, the City will also have to address its business licensing regulations. The current code prohibits the



City from issuing a business license, whole or in part, to any activity (including marijuana) that is illegal under local, state or federal law (LMC 5.02.080 (A.)).

## **X. Staff Analysis**

### **Draft Findings of Fact:**

1. The City of Lakewood Planning Commission is responsible for long range planning matters and providing implementation recommendations to assure compliance with the Growth Management Act for the City of Lakewood Urban Growth Area in coordination with Pierce County and within the incorporated boundaries of the City of Lakewood. These measures include updates and amendments to the comprehensive plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act.
2. RCW Chapters 36.70 and 36.70A authorize the adoption of development regulations.
3. The City of Lakewood Planning Commission conducted public meetings on proposed marijuana regulations on **December 13, 2017** and **January 3, 2017**.
4. Copies of the SEPA checklist and determination of non-significance (DNS) were submitted to the Department of Ecology SEPA Register on **December 28, 2018**.
5. The proposed amendment is an area-wide text amendment subject to the noticing requirements found in LMC 18A.02.700.
6. Notice of the Planning Commission Public Hearing, DNS, and request for comments was published in *The News Tribune* and on the City's website on **December 29, 2018**.
7. The City of Lakewood submitted its 60-Day Notice of Intent to Adopt Amendment to the Department of Commerce on **December 22, 2017**.
8. The Washington State Department of Commerce acknowledged receipt of the proposal with **Material ID No. 24486**.
9. On **January 17, 2018**, the City of Lakewood Planning Commission conducted an advertised public hearing. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
10. The City of Lakewood Planning Commission has reviewed the entire record and public testimony as it relates to the proposed amendments to the Lakewood Municipal Code.

### **Draft Conclusions of Law**

1. Provided the State of Washington strictly adheres to the most recent DOJ advisory instruction, wherein strong, state-based enforcement efforts are made and adequately funded, then DOJ will defer its right to challenge legalization laws at this time. In the event DOJ does challenge marijuana regulatory system, the City of Lakewood reserves the right to rescind marijuana business licenses, in addition to deleting any associated land use regulations.

2. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
3. The procedural requirements of RCW 36.70A have been complied with.
4. The proposed amendments are consistent with the Pierce County Countywide Planning Policies and the City of Lakewood Comprehensive Plan.
5. The proposed amendments are consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.
6. The proposed amendments have been reviewed and processed in accordance with the requirements of Title 14 Environmental Protection, Title 14A Critical Areas, and Title 18A Land Use and Development of the City of Lakewood Municipal Code.

## **XI. Exhibits**

November 13, 2017 city council packet  
Memorandum

- Option 1 Draft Ordinance
- Option 2 Draft Ordinance
- Potential Marijuana Overlay

April 17, 2017 city council packet  
Supplemental memorandum  
Legal opinion  
MRSC report: Marijuana Regulation in Washington State  
City of Olympia marijuana regulations  
City of Auburn marijuana regulations (2)

November 12, 2013 city council packet  
Memorandum – executive summary  
Memorandum – I 502 options  
Cole memorandum  
Buffer analysis map

Revised Potential Marijuana Overlay, January 10, 2018

Preliminary Determination of Nonsignificance

Attorney General Session January 4, 2018 memorandum

Planning Commission minutes, January 3, 2017

Materials provide by Jordan Michaels, January 3m 2018



To: Mayor and City Councilmembers

From: Heidi Ann Wachter, City Attorney

Through: John J. Caulfield, City Manager

Date: November 13, 2017

Subject: Review of Marijuana Options

This memo is to inform the Council about options for regulating marijuana businesses in the City of Lakewood. It follows and supplements previous briefings on [11/12/2013](#), 3/13/2017 and [4/17/2017](#).

#### **Status of Marijuana Business in the City of Lakewood**

**While there are no marijuana businesses, recreational or otherwise, currently operating in the City of Lakewood, Washington State Liquor and Cannabis Board (WSLCB) records reflect interest in establishing such businesses.**

To date, there are no operating marijuana businesses in the City, medicinal or recreational. There have been six state issued licenses, two of which remain viable, one is listed by the WSLCB as “active” and the other as “pending.” **Table 1** reflects all of the requests to the WSLCB for businesses that would locate in the City of Lakewood.

<b>Table 1 REQUEST TO WSLCB FOR MARIJUANA BUSINESS LICENSES IN LAKEWOOD</b>				
<b>Address</b>	<b>Business Name</b>	<b>WSLCB Number</b>	<b>WSLCB status</b>	<b>Date requested</b>
9608 40 <sup>th</sup> Ave SW	S&K	414526 – 7B	CLOSED (PERMANENT)	9/25/14
10901 Bridgeport Way SW Ste A (mailing: 12837 Pac Hwy SW Ste A)	S&K	414526 – 7B CORRECTED	CLOSED (PERMANENT)	11/10/14
10901 Bridgeport Way SW Ste A	WSQ @Union Gap	414526 – 7A	CLOSED (PERMANENT)	7/8/16
12837 Pacific Hwy SW	WSQ @ Union Gap	414526 – 7V	CLOSED (PERMANENT)	9/15/16
12837 Pacific Hwy SW Ste A	J&K	355804 – IT	ACTIVE/ISSUE D	3/20/17
11016 Bridgeport Way SW	PMR	422290	PENDING/NOT ISSUED	7/26/17

Each of the businesses with a viable license from the WSLCB has been denied a City business license and that denial has been upheld by the City’s Hearing Examiner.

Current law requires that a marijuana business obtain not only a state license to cultivate, process or sell marijuana but also comply with applicable local regulations as administered and enforced by the local jurisdiction.<sup>1</sup> **Table 2** reflects the above listed WSLCB license applicants at the City of Lakewood level

<b>Table 2</b> <b>WSLCB LICENSE APPLICANTS AT THE CITY OF LAKEWOOD LEVEL</b>				
<b>Business Name</b>	<b>Administrative Status</b>	<b>Pierce County #</b>	<b>WSLCB Status</b>	<b>Relevant dates</b>
S&K	N/A	15-2-0923-0*	CLOSED (PERMANENT)	Order entered 4/15/16
S&K	N/A	15-2-0923-0*	CLOSED (PERMANENT)	Order entered 4/15/16
WSQ @Union Gap	N/A	N/A	CLOSED (PERMANENT)	N/A
WSQ @ Union Gap	N/A	N/A	CLOSED (PERMANENT)	N/A
J&K	<a href="#">Business license denied 12/23/15; HX upheld denial 3/27/17</a>	17-2-07083-7	ACTIVE/ISSUED	3/20/17
PMR	<a href="#">Business license denied 2/21/17; HX upheld denial 5/2/17</a>	N/A	PENDING/NOT ISSUED	N/A

\*The litigation indicated was between the City and the WSLCB. It is not further discussed here because the state issued license has since permanently closed.

**There are several alternatives to the way the City of Lakewood currently addresses the issue of recreational marijuana as a business in the City.**

Since the enactment of I-502 in 2012 a variety of approaches have been developed and utilized to address how cities exercise local control in this area. The City of Lakewood has relied on the provision in the Municipal Code which provides for denial of a business license for a business that is prohibited by federal law.<sup>2</sup> Despite the fact that the administrative decision maker retains the authority to grant or deny a license the City has been labeled as a “ban” city.<sup>3</sup>

**Table 3** lists the potential methods for exercising local control with regard to marijuana businesses.

<sup>11</sup> See *In the Matter of: The Petition of Kittitas County for a Declaratory Order*, a WSLCB decision affirming that local jurisdictions retain regulatory authority over permitting and zoning although the State issues licenses to sell recreational marijuana.

<sup>2</sup> Lakewood Municipal Code 5.02.080.

<sup>3</sup> This memo does not address the absurdity of labeling the City as a ‘ban’ City in order to specifically respond to Council’s inquiry, which is to explore other options.

<b>Table 3</b> <b>POSSIBLE METHODS FOR EXERCISING LOCAL CONTROL OF MARIJUANA BUSINESSES</b>	
<b>Method<sup>4</sup></b>	<b>Potential for the City of Lakewood</b>
Reduce buffer zones	Used citywide increases available locations; used in conjunction with zoning can improve control over locations <sup>5</sup>
Allow medical marijuana cooperatives	N/A
Prohibit medical marijuana cooperatives	N/A
Allow marijuana businesses in appropriate zoning districts	Can improve control over locations; should be mindful of proximity to places with distance requirements
Adopt interim zoning regulations of marijuana businesses	Probably not necessary given current Code (City has ability to deny and/or condition licenses during pendency of any new regulation)
Adopt a moratorium on marijuana businesses	Probably not necessary given current Code (City has ability to deny and/or condition licenses during pendency of any new regulation)
Prohibit marijuana businesses	Will remove any administrative discretion that could allow this business currently

Issues and concerns indicated by the City include the following:

- Cost of litigation to deny licenses at the local level
- Risk of missing revenue associated with marijuana businesses albeit the amount is unknown at this time
- Impact on federal neighbor JBLM
- Intentional violation of Federal law given preemption
- Ability to control where marijuana businesses will locate
- Correlation with criminal activity

Of the above-listed methods for exercising local control, methods related to zoning and prohibition are the two general alternatives recommended for consideration. Medical marijuana cooperatives have not been established in the City of Lakewood and are to be consolidated into WSLCB licensed operations under I-502. Interim zoning and moratoria are not necessary to address any period between today and new legislation due to the City's current ability to regulate this business. That leaves zoning and prohibition. Reduction of buffer zones should also be considered to the degree it could facilitate desired zoning.

#### **Discussion of issues and concerns.**

Initiative 502 did not contain a provision local revenue sharing of the exercise tax on marijuana. In 2015 legislators passed House Bill 2136, which provided comprehensive marijuana market reforms, including a provision for local revenue sharing and flexibility for cities. Per HB 2136, at least \$6

<sup>4</sup> <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Marijuana-Regulation-in-Washington-State.aspx>

<sup>5</sup> For example, the City adopts an overlay that inadvertently places a marijuana business too close to a single family residential area. To address the situation, the City places restrictions on proximity to residential areas, but reduces buffers areas in selected commercial zoning districts.

million in marijuana revenue was slated to be distributed to counties and cities in FY 2017, with revenue sharing increasing to a maximum of \$15 million in FY 2018 and a maximum of \$20 million in FY 2020. However, in light of the 2012 McCleary school-funding Supreme Court ruling, new state budget proposals may restrict local marijuana revenue sharing in the 2017-2019 biennium to \$6 million.

While there is no official response from JBLM regarding this issue in Lakewood, federal prohibitions and military law likely carry more weight, preempting state law.

**Each of the recognized approaches is in use in a Washington City.**

Jurisdictions in Washington with zoning provisions regarding recreational marijuana are as follows:

- 93 jurisdictions allow for recreational marijuana under permanent zoning laws
- 78 jurisdictions prohibit recreational marijuana under permanent zoning laws or business license laws
- 2 jurisdictions allow for recreational marijuana under interim zoning laws
- 38 jurisdictions made no actions pertaining to recreational marijuana zoning laws
- 2 jurisdictions adopted moratoriums on recreational marijuana businesses<sup>6</sup>

Municipalities in Washington can ban state-licensed marijuana businesses within a city's boundaries despite I-502. Similarly, local authority allows the imposition of zoning and other land use regulation pertaining to such businesses. In the wake of I-502, many municipalities allowed marijuana businesses and imposed zoning and other land use regulations to meet local needs. Other municipalities have banned marijuana through zoning and other land use regulation and business license regulation.

**Allow Marijuana Businesses in Appropriate Zoning Districts:** Jurisdictions allowing for recreational marijuana businesses often use zoning laws to add additional local standards on top of state law RCW Title 69. **Table 4** provides examples of various zoning regulations that establish permanent zoning regulations for state-licensed marijuana businesses.

<b>Table 4</b> <b>Allow Marijuana Businesses in Appropriate Zoning Districts</b>	
<b>Zones / CUP</b>	<b>Municipal Examples</b>
Requires Conditional Use Permit (CUP)	<ul style="list-style-type: none"> <li>▪ Newport</li> </ul>
Limits product / processing to light industrial or heavy industrial zones	<ul style="list-style-type: none"> <li>▪ Vancouver</li> <li>▪ Shelton</li> </ul>
Limits Marijuana retail businesses to general commercial or community commercial zones	<ul style="list-style-type: none"> <li>▪ Vancouver</li> <li>▪ Spokane Valley</li> <li>▪ Shelton</li> <li>▪ Shoreline</li> <li>▪ Everett</li> </ul>

<sup>6</sup> <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Marijuana-Regulation-in-Washington-State.aspx#local-zoning-approaches>

- **CUP:** This allows for a special degree of review and control to assure that retail marijuana businesses are compatible with the comprehensive plan and adjacent uses. A CUP would require that an applicant provide sufficient facts and evidence to enable the hearing examiner to make a decision. The hearing examiner would need to hold an open record public hearing and provide notice pursuant to LMC 18A.02.700.
- **Limitations on Zoning Districts:** This would allow for stricter regulation of location possibilities. In addition to meeting the spatial requirements of RCW 69.50, retail marijuana businesses could be regulated to very specific zoning designations throughout a municipality.
- **Limit on Number of Retail Marijuana Businesses Allowed:** The LCB adopted regulations on the maximum number of retail store licenses that will be issued for each county, and for some of the cities and towns in each county. The City of Lakewood has a maximum of two (2) retail store licenses per LCB.

**Limit on Number of Retail Marijuana Businesses Allowed:** Some jurisdictions, such as the ones listed below, adopted ordinances that limit the number of retail marijuana business licenses/stores at a number below the maximum LCB appropriates. There are varying viewpoints about whether state law allows such regulations. **Table 5** lists cities which uses this approach.

Table 5 Limit on Number of Retail Marijuana Businesses Allowed	
Municipal Examples	Limitations
Everett	<ul style="list-style-type: none"> <li>▪ Five (5) retail stores, review after certain period of time (June 2018)</li> </ul>
Renton	<ul style="list-style-type: none"> <li>▪ Five (5) retail stores</li> </ul>
Vancouver	<ul style="list-style-type: none"> <li>▪ Nine (9)</li> </ul>

**Prohibit Marijuana Businesses:** Jurisdictions prohibiting marijuana businesses primarily do so through two means, 1) an outright ban, or 2) through other local enactments, such as adopting licensing regulations prohibiting businesses that do not comply with federal laws, such as LMC 5.02.080(A), or through land use regulations prohibiting all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State LCB. **Table 6** lists cities which uses this approach.

Table 6 Prohibition of Recreational Marijuana Business	
Method	Municipal Examples
Outright Prohibition through Zoning regulations	<ul style="list-style-type: none"> <li>▪ Poulsbo</li> <li>▪ Kent</li> <li>▪ Gig Harbor</li> </ul>

Licensing regulations prohibiting businesses that do not comply with federal law	<ul style="list-style-type: none"> <li>▪ Lakewood</li> <li>▪ Leavenworth</li> <li>▪ Pomeroy</li> <li>▪ Puyallup</li> </ul>
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**Auburn’s Approach to Regulating Marijuana:** Auburn’s approach to regulating marijuana is confusing. Under Auburn’s authority to adopt code, it states that any action, use or conduct which is prohibited by state or federal law is prohibited, and then calls out marijuana as exempt from local zoning control since it is permitted and licensed by Washington State. The authority to regulate marijuana is found in Section B; please see the ‘box’ below:

18.02.020 Authority to adopt code.

A. The city of Auburn comprehensive zoning ordinance is adopted by city of Auburn ordinance, pursuant to Article XI, Section 11 of the Washington State Constitution, the State Growth Management Act, RCW Title 35A, Optional Municipal Code, and Chapter 36.70B RCW. In accordance with ACC 1.04.060.

B. Notwithstanding any provisions otherwise, this title does not permit or allow any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any action, use or conduct which is prohibited by state or federal law is prohibited hereby. It is provided, however, that the provisions of this subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana-infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to RCW 69.50.301 through 69.50.369, and WAC 314-55-005 through 314-55-540. In such instances, the state of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under RCW 69.50.301 through 69.50.369, and WAC 314-55-005 through 314-55-540 occurs within the city of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this section only, the provisions of RCW 69.50.325 through 69.50.369, and WAC 314-55-515 through 314-55-535 are hereby adopted by reference and incorporated herein.

Nevertheless, Auburn does have in place development standards for marijuana related businesses. These are found in Title 18 (Zoning), Chapter 18.59. Worth noting is that it took Auburn several tries to promulgate regulation. Ordinances were submitted in 2014, 2016, and in 2017. The zoning regulations were not adopted until June 8, 2017. In the midst of all this, there was also a moratorium.

Combined, the Auburn marijuana zoning and business licensing regulations are lengthy. These rules are outlined below.

1. Each application for a marijuana related business shall be accompanied by a current, valid license to operate issued by the Washington State Liquor and Cannabis Board.
2. Each application for a marijuana related business shall be accompanied by documentation of compliance with the security requirements of WAC 314-55-083(2) and (3).



3. Each application for a marijuana related business shall be accompanied by a complete set of fingerprints of all managers and owners of the business, utilizing fingerprint forms as prescribed by the chief of police.
4. Each application for a marijuana related business shall be required to complete a CPTED review by the Auburn police department and to implement any CPTED measure directed. Each applicant shall be required to provide certification of CPTED completion, as well as evidence of compliance with required CPTED measures.
5. Each application for a marijuana related business shall be required to provide certification that the proposed location complies with all applicable provisions of the Auburn Zoning Code:
  - A marijuana retailer authorized by the Washington State Liquor and Cannabis Board and the city to operate within the city shall be sited a minimum of one mile from another similarly authorized marijuana business.
  - A marijuana retailer business shall be sited a minimum of 1,320 feet from any properties zoned and utilized for single-family residential or multifamily residential land uses.
  - All marijuana related businesses shall not be located within the distances identified for the following uses or any use included in Chapter 314-55 WAC now or as hereafter amended:
    - 2,640 feet for:
      - Elementary or secondary school that is existing or that is planned and has a site-specific location identified in an adopted capital facilities plan;
      - Public or private playgrounds inclusive of those located within a multifamily residential complex;
      - Public or private recreation center or facility;
      - Child care centers;
      - Public or private parks;
      - Any game arcade; and
    - 1,320 for:
      - Public trails;
      - Public transit centers;
      - Religious institutions;
      - Public libraries;

- Transit center or park-and-ride facility operated by a sovereign nation on trust or non-trust designated properties.
- All marijuana related businesses and marijuana cooperatives, marijuana shall be grown in a structure. Outdoor cultivation is prohibited in all instances.
  - Marijuana odor shall be contained within the marijuana related business so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana related business shall be required to implement measures, including, but not limited to, the installation of the ventilation equipment necessary to contain the odor.
  - Special rules for change in ownership, relocation and abandonment for marijuana retail stores (nonconforming uses).
  - Special security requirements (All marijuana producers, processors, and retailers shall store all marijuana concentrates, usable marijuana, marijuana-infused products, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For usable marijuana products that must be kept refrigerated or frozen, these products may be stored in a locked refrigerator or freezer container in a manner approved by the director, provided the container is affixed to the building structure.)
  - Specific standards for marijuana producers, processors, research and transportation businesses.
  - Pre-application conference meeting with the city of Auburn and other relevant parties is required prior to the submittal of a formal business license application for all marijuana related businesses within the city.
  - A minimum of one public review meeting shall be conducted by applicant for any marijuana related business in the city. The purpose of the public review meeting is to allow adjacent property owners (residential and nonresidential) and adjacent business owners an opportunity to become familiar with the proposal and to identify any associated issues. Public review meetings shall occur prior to submitting a formal business license application to the city of Auburn.
6. Each application for a marijuana related business shall be required to provide an executed release in a form approved by the Auburn city attorney's office to the city of Auburn, for itself, its agents, officers, elected officials and employees, from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution or seizure of property, or liabilities of any kind that result from any arrest or prosecution for violations of federal or state law relating to operation or siting of a marijuana related use and business. Additionally, within the release document, the permittee of a marijuana use shall indemnify and hold harmless the city of Auburn and its agents, officers, elected officials, and employees from any claims, damages, or injuries brought by adjacent property owners or other third parties due to operations at the marijuana use and for any claims brought by any of the marijuana use's members, employees, agents, guests, or invitees for problems, injuries, damages, or liability of any kind that may arise out of the operation of the marijuana use.

7. All city officials including law enforcement officers shall have free access to marijuana related businesses.
8. Prohibitions against certain persons (under age, lewd behavior, intoxicated).
9. All marijuana related businesses licensed under the Auburn's business license provisions shall comply with state statute.

**With all of these regulations, how marijuana related businesses are found in Auburn?**

Based on information from the Washington Liquor and Cannabis Board (LCB), as of November 1, 2017, Auburn has:

5 marijuana producers (all 5 active/issued);  
12 marijuana processors (8 active/issued; 4 pending/not issued);  
6 marijuana retailers (3 active/issued; 1 closed; 2 pending/not issued); and  
1 marijuana transporter (1 active/issued).

The projected sales & excise taxes for Auburn in 2017 is estimated at \$39,329. The anticipated revenue from marijuana in 2018 is \$72,841.

LCB also states that Auburn is a "full" jurisdiction; no retail allotments remain at this time.

**The City can prohibit marijuana businesses in the City.**

An ordinance that prohibits all marijuana uses through the Land Use and Development code could include all medical marijuana dispensaries, collective gardens, cooperative or marijuana production, processing facilities, research facilities, and individual or group marijuana cultivation anywhere in the city, regardless of whether such individual or group cultivation is addressed in Chapter 69.51A RCW or other state law.

**The City can adopt zoning that would allow marijuana businesses in specific sections of the City.**

An ordinance that could include an allowance for retail marijuana and the prohibition of all other marijuana, such as medical, cultivation, processing, and wholesale, through a marijuana overlay district (MOD) within the Land Use and Development Code. With a MOD, retail marijuana businesses would meet all the requirements of RCW 69.50 and would allow for the establishment of additional local restrictions through a conditional use permit (CUP) approval process. Further local regulations that could be used include placing restrictions on zoning districts, i.e., allowing for use in specific zoning districts.

This ordinance could include the following elements:

1. Prohibits medical marijuana dispensaries, collective gardens, cooperative or marijuana production, processing facilities, research facilities, and individual or group marijuana cultivation anywhere in the city, regardless of whether such individual or group cultivation is addressed in Chapter 69.51A RCW or other state law;

***IMPORTANT NOTE:*** The attached ordinance allows retail sales only. It would not allow for the individual cultivation on residential properties or use of industrial warehousing for

the production and processing of marijuana. There are about 49 marijuana producers in Tacoma already. In urban settings, marijuana production and processing tends to locate in industrial warehousing buildings. According to information out of Denver, Colorado, industrial lease rates have correspondingly increased two or three times the current market rate. It is possible that marijuana businesses of this type, if allowed in Lakewood, could displace some existing industrial or service commercial businesses. This has already happened in Tacoma and as a result some businesses relocated to Lakewood. Factors which would determine the real estate impact are changes in the regulatory environment and market saturation. If the marijuana market matures, the production and processing of marijuana will centralize. The number of producers will likely decline.

2. Requires a marijuana business to obtain a CUP;

*(By requiring a CUP, the permitting of any retail marijuana businesses would require a special degree of review and control to assure that retail marijuana businesses are compatible with the comprehensive plan and adjacent uses. A CUP would require that an applicant provide sufficient facts and evidence to enable the hearing examiner to make a decision. The hearing examiner would need to hold an open record public hearing and provide notice pursuant to LMC 18A.02.700. This would allow the general public increased participation.)*

3. Places restrictions on the number of recreational marijuana retail businesses to a maximum of two, limits the hours of operation from 10:00 AM to 10:00 PM, and place distance requirements between recreational marijuana retail businesses (300 feet);
4. Imposes restrictions on businesses building type, i.e., prohibiting mobile or residential structures; and
5. Imposes limitations where marijuana businesses could locate in commercial and industrial zoning districts. For example, the City could require that retail establishments be located in specific zones, for example, C2, and I1, and restrict the business activity in the NC, CBD, TOC, IBP, and Air Corridor zoning districts.

This ordinance could vary in degree of restrictiveness based on the inclusion or omission of the elements listed above. An ordinance could be tailored by adding desired features and/or removing existing undesired features.

The State requires certain minimum buffer distance from specific use types. Some Cities have reduced these requirements at the local level in order to accommodate allowable locations for marijuana businesses. If the City of Lakewood allows marijuana uses and the desired locations conflict with such buffer zones, consideration of a reduction in buffer zone is suggested.

The details of buffer distances found in state law require licensed marijuana producers, processors or retailers to be located at least 1,000 feet from the following use types:

- Elementary or secondary school;
- Playground;
- Recreation center or facility;
- Child care center;
- Public park;
- Public transit center;
- Library; or

- Any game arcade (where admission is not restricted to persons age 21 or older).<sup>7</sup>

The 1,000 feet buffer distance must be measured as the shortest straight line distance from the property line of the proposed business location to the property line of any of the entities listed above<sup>8</sup>. A specific marijuana buffer map is attached.

**IMPORTANT NOTE:** In the past, DSHS provided the locations of child daycare centers. For reasons of privacy, that information is no longer available. The City, therefore, has to come up with the information on its own which can be difficult since many family daycares come and go.

## Options

- 1. Retain local administrative discretion by addressing licensing of marijuana businesses under the City's business license code.**
- 2. Ensure certainty with a prohibition on marijuana throughout the City.**  
In the adoption of a prohibition it is strongly recommended that one of the bases for such regulation is the Federal prohibition. Federal law preempts State law in this area and it appears that despite a variety of theories, formal challenges to Federal preemption have failed to surface.
- 3. Adopt appropriate zoning for marijuana businesses designed to locate the business in the place of most benefit to the City.**  
Adoption of such zoning should start with the desired location and then address potential impediments to the desired zone. Buffer zones can be reduced if necessary to accommodate the desired zones.

In order to control the concentration of these businesses in the identified zones, a cap on the number of businesses allowed is recommended. Local restriction on number of businesses allowed protects the City from changes in the number allowed by the State.

## Recommendation

The City should select the option that best reflects the value the City places on this business type.

<sup>7</sup> RCW 69.50.331(8)

<sup>8</sup> WAC 314-55-050(10)

## OPTION 1 ORDINANCE

### MARIJUANA LAND USES PROHIBITED

#### Sections:

**18A.XX.010 Finding.**

**18A.XX.020 Purpose.**

**18A.XX.030 Definitions.**

**18A.XX.040 Prohibited activities.**

**18A.XX.050 Use not permitted in any zone.**

**18A.XX.060 No vested or nonconforming rights.**

**18A.XX.070 Violations.**

#### **18A.XX.010 Findings.**

The City Council finds that nothing in this chapter 18A.XX LMC shall be construed to supersede Washington State or federal law pertaining to the acquisition, possession, manufacture, sale or use of marijuana. No use that is illegal under, or contrary to, any city, county, state or federal law or statute shall be allowed in any zoning district within the city unless otherwise specifically allowed for in the Lakewood Municipal Code (LMC).

#### **18A.XX.020 Purpose.**

A. The purpose of this chapter is to enact a prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

B. No part of this chapter is intended to or shall be deemed to conflict with federal law, including but not limited to the Controlled Substances Act, 21 U.S.C. Section 800 et seq., or the Uniform Controlled Substances Act (Chapter 69.50 RCW).

#### **18A.XX.030 Definitions.**

For purposes of this chapter, the following definitions apply:

“Collective garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of marijuana for medical use as set forth in Chapter 69.51A RCW and subject to the limitations therein, and to be phased out effective July 1, 2016.

“Cooperative” means an entity with up to four members located in the domicile of one of the members, registered with the Washington State Liquor and Cannabis Board, and meeting the requirements under Chapter 69.51A RCW.

“Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

“Dispensary, medical marijuana” means any location that does not meet the definition of a “collective garden” and does not have a license from the Washington State Liquor and Cannabis Board for a marijuana producer, processor or retailer pursuant to I-502, where marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell, barter, trade or give away marijuana.

“Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; 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. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, 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 which are incapable of germination.

“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant cannabis and having a THC concentration greater than 60 percent.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration no greater than 10 percent. The term “marijuana-infused products” does not include either usable marijuana or marijuana concentrates.

“Marijuana processor” means a person licensed by the Washington State Liquor and Cannabis Board to process marijuana into usable marijuana, marijuana-infused products, and marijuana concentrates, package and label usable marijuana, marijuana-infused products, and marijuana concentrates for sale in retail outlets, and sell usable marijuana, marijuana-infused products, and marijuana concentrates at wholesale to marijuana retailers.

“Marijuana producer” means a person licensed by the Washington State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana researcher” means a person licensed by the State Liquor and Cannabis Board to produce and possess marijuana for limited research purposes.

“Marijuana retailer” means a person licensed by the Washington State Liquor and Cannabis Board to sell usable marijuana, marijuana-infused products, and marijuana concentrates in a retail outlet.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

“Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include either marijuana-infused products or marijuana concentrates.

#### **18A.XX.040 Prohibited activities.**

A. It is unlawful to own, establish, site, operate, use or permit the establishment, siting, operation, or use of a medical marijuana dispensary, collective garden, cooperative or marijuana production,

processing, research facility, or retail facility, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the city, regardless of whether such individual or group cultivation is addressed in Chapter 69.51A RCW or other state law.

C. It is unlawful to lease to, rent to, or otherwise allow the operation of any medical marijuana dispensary, collective garden, cooperative, marijuana production, processing, research, or retailing business, whether it is located outdoors, indoors, in any building, structure, premises, location or on land in the city and regardless of whether the activity has been licensed by the Washington State Liquor and Cannabis Board.

D. The city shall not issue any business license for any marijuana businesses regardless of whether the business has been licensed by the Washington State Liquor and Cannabis Board. Any business license obtained in error or through misrepresentation of the activities conducted by the individual business shall be invalid and of no force and effect

**18A.XX.050 Use not permitted in any zone.**

The use of any building, structure, premises, location or land for a medical marijuana dispensary, collective garden, cooperative, marijuana production, processing, research, or retailing is not allowed in the city, and such uses and activities are not permitted uses in any zone.

**18A.XX.060 No vested or nonconforming rights.**

Neither this chapter nor any other city ordinance, city action or failure to act, statement, representation, certificate, approval, or permit issued by the city or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any marijuana business, collective garden, cooperative or marijuana producer, processor, researcher or retailer, even if licensed by the Washington State Liquor and Cannabis Board.

**18A.XX.070 Violations.**

Any violations of this chapter may be enforced as set forth in LMC Title 1.44, General Penalties, or, as applicable, the Uniform Controlled Substances Act, Chapter 69.50 RCW. In addition, violations of this chapter may be deemed to be a public nuisance and may be abated by the city under the procedures set forth in state law for the abatement of public nuisances.



## OPTION 2 ORDINANCE

### MARIJUANA BUSINESSES OVERLAY

#### **Chapter 18A.XX**

#### **Sections:**

**18A.XX.010 Purpose and intent.**

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**18A.XX.030 Applicability- Recreational Marijuana Retail Business.**

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**18A.XX.070 Prohibited Activities.**

**18A.XX.080 Enforcement of Violations.**

**18A.XX.090 No Non-Conforming Uses.**

**Section 18A.XX.010 Purpose and intent.** The purpose of the Marijuana Business Overlay is to establish zoning regulations that provide for state licensed recreational and medical marijuana land uses consistent with state law under Title 69 RCW, and subject to requirements of the Washington Administrative Code (WAC) Chapter 314-55, adding additional local standards to address potential public health, safety and welfare considerations.

#### **Section 18A.XX.020 Marijuana Retail Business Overlays Created.**

There are hereby created Marijuana Retail Business Overlays (MRBOs) within the C1 and I1 zoning districts.

#### **Section 18A.XX.030 Applicability- Recreational Marijuana Retail Business.**

This section applies to all marijuana retail business land uses, as defined herein or as may be hereafter defined, located within the City of Lakewood.

#### **Section 18A.XX.040 Definitions**

For purposes of this chapter, the following definitions apply:

“Collective garden” means any place, area, or garden where qualifying patients engage in the production, processing, and delivery of marijuana for medical use as set forth in Chapter 69.51A RCW and subject to the limitations therein, and to be phased out effective July 1, 2016.

“Cooperative” means an entity with up to four members located in the domicile of one of the members, registered with the Washington State Liquor and Cannabis Board, and meeting the requirements under Chapter 69.51A RCW.

“Cultivation” means the planting, growing, harvesting, drying or processing of marijuana plants or any part thereof.

“Dispensary, medical marijuana” means any location that does not meet the definition of a “collective garden” and does not have a license from the Washington State Liquor and Cannabis Board for a marijuana producer, processor or retailer pursuant to I-502, where marijuana is processed, dispensed, selected, measured, compounded, packaged, labeled or sold. It also includes any vehicle or other mode of transportation, stationary or mobile, which is used to transport, distribute, deliver, sell, barter, trade or give away marijuana.

“Marijuana” means all parts of the plant cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; 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. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plants, 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 which are incapable of germination.

“Marijuana concentrates” means products consisting wholly or in part of the resin extracted from any part of the plant cannabis and having a THC concentration greater than 60 percent.

“Marijuana-infused products” means products that contain marijuana or marijuana extracts, are intended for human use, and have a THC concentration no greater than 10 percent. The term “marijuana-infused products” does not include either usable marijuana or marijuana concentrates.

“Marijuana processor” means a person licensed by the Washington State Liquor and Cannabis Board to process marijuana into usable marijuana, marijuana-infused products, and marijuana concentrates, package and label usable marijuana, marijuana-infused products, and marijuana concentrates for sale in retail outlets, and sell usable marijuana, marijuana-infused products, and marijuana concentrates at wholesale to marijuana retailers.

“Marijuana processing facility” means a facility operated by a marijuana processor licensed by the Washington State Liquor and Cannabis Board to process marijuana into usable marijuana, marijuana-infused products, and marijuana concentrates, package and label usable marijuana, marijuana-infused products, and marijuana concentrates for sale in retail outlets, and sell usable marijuana, marijuana-infused products, and marijuana concentrates at wholesale to marijuana retailers.

“Marijuana producer” means a person licensed by the Washington State Liquor and Cannabis Board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

“Marijuana researcher” means a person licensed by the State Liquor and Cannabis Board to produce and possess marijuana for limited research purposes.

“Marijuana research facility” means a facility operated by a marijuana researcher licensed by the State Liquor and Cannabis Board to produce and possess marijuana for limited research purposes.

“Marijuana retailer” means a person licensed by the Washington State Liquor and Cannabis Board to sell usable marijuana, marijuana-infused products, and marijuana concentrates in a retail outlet.

“Marijuana retail business” means a business operated by a marijuana retailer licensed by the state liquor and cannabis board to sell usable marijuana, marijuana-infused products, and marijuana concentrates in a retail outlet.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision of agency or any other legal or commercial entity.

“Usable marijuana” means dried marijuana flowers. The term “usable marijuana” does not include either marijuana-infused products or marijuana concentrates.

#### **Section 18A.XX.050 Conditional Use Permit.**

A. To operate within the City, each marijuana retail business is required to have a current Conditional Use Permit subject to the procedures and requirements of LMC 18A.10, Discretionary Permits, Conditional Use Permits.

#### **Section 18A.XX.060 Recreational Marijuana Retail Business Locations.**

A. A marijuana retail business shall not be located on parcels located within one thousand feet of parcels containing any of the following uses, as officially defined in WAC 314-55-010. The distance shall be measured as the shortest straight line from property line to property line, as set forth in WAC 314-55-050(10).

1. Elementary or secondary school, public or private;
2. Playground, publicly managed;
3. Recreation center or facility, providing a broad range of activities intended primarily for minors and managed by a public or charitable non-profit entity;
4. Child care facility, licensed by the Department of Early Learning providing child care regularly for less than 24 hours;
5. Public park, having facilities for active or passive recreation, exclusive of trails;
6. Public transit center where several transit routes converge;
7. Library; or
8. Game arcade where admission is not restricted to persons age 21 and older.

D. Marijuana retail businesses shall not be located within 300 feet of other state-licensed marijuana retail business, as measured from property line to property line as specified in LMC 18A.XX.XXX(A).

E. Marijuana retail businesses are not permitted as a home occupation under LMC 18A.70.200 and shall not operate at a dwelling as defined by LMC 18A.90.200.

F. Marijuana retail businesses may not be located within any other businesses, and may only be located in buildings with other uses only if the marijuana business is separated by full walls and with a separate entrance. No more than one marijuana retail business shall be located on a single parcel.

G. Marijuana retail businesses shall not be located in a mobile home or mobile structure or manufactured home.

H. Marijuana retail businesses must maintain documentation demonstrating that all required federal, state, and local taxes, fees, fines, and penalties have been paid and that there are no past due obligations.

K. The City may suspend or revoke conditional use permits based on a finding that the provisions of this section have not been met.

**Section 18A.XX.070 Special Regulations for Marijuana Retail Businesses.**

A. To operate within the City, each marijuana retail business is required to have a current license issued by Washington State under the provisions of WAC Chapter 314-55 and a current business license issued by the City under the provisions of LMC Title 5. No application for a business license for a marijuana business shall be accepted unless the applicant has a current license issued as set forth in WAC 314-55.

B. Marijuana Retail Businesses may only locate within the BLANK and BLANK zoning districts.

C. A marijuana retail business shall not sell marijuana, marijuana-infused products, or marijuana paraphernalia or otherwise be open for business before 10 am or after 10:00 pm on any day.

D. For signage, marijuana retail businesses shall be subject to the substantive requirements set forth in WAC 314-55-155 and LMC 18A.50.600, whichever is more restrictive. No off-premises signage is permitted.

E. No more than two marijuana retail businesses shall be allowed within the city.

F. Marijuana retail business must take place within a fully enclosed secure indoor facility with rigid walls, a roof, and doors.

G. Marijuana retail businesses are subject to all applicable requirements of the LMC Title 18A.

H. Marijuana retail businesses are subject to all applicable requirements of the LMC Title 15A, including but not limited to the Building Code as now exists or may be amended.

I. Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the marijuana business is located.

J. Security. In addition to the security requirements set forth in WAC Chapter 315-55 during non-business hours, all recreational marijuana producers, processors, and retailers shall store all useable marijuana, marijuana-infused product, and cash in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached thereto. For useable marijuana products that must be kept refrigerated or frozen, these products may

be stored in a locked refrigerator or freezer container in a manner approved by the Community Development Director provided the container is affixed to the building structure.

K. Marijuana businesses are subject to all applicable requirements of Title 69 RCW and WAC Chapter 314-55 and other state statutes, as they now exist or may be amended.

L. Marijuana businesses shall incorporate odor control technology and provisions, and ensure that emissions do not exceed Southwest Washington Clean Air Agency regulations, including but not limited to those specified for odors at 400.040(4).

#### **Section 18A.XX.080 Prohibited activities.**

A. It is unlawful to own, establish, site, operate, use or permit the establishment, siting, operation, or use of a medical marijuana dispensary, collective garden, cooperative or marijuana production, processing facility, or research facility, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

B. It is unlawful to perform any individual or group marijuana cultivation activities anywhere in the city, regardless of whether such individual or group cultivation is addressed in Chapter 69.51A RCW or other state law.

C. It is unlawful to perform any individual or group marijuana processing activities anywhere in the city, regardless of whether such individual or group cultivation is addressed in Chapter 69.51A RCW or other state law.

D. It is unlawful for marijuana retail businesses to be located within any zone other than the C1 and I1 zoning districts, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

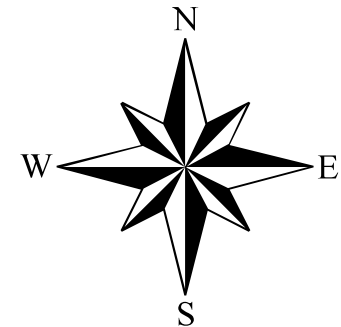
#### **Section 18A.XX.090 Enforcement of Violations.**

Violations of this Chapter shall be subject to enforcement action as provided in the Uniformed Controlled Substances Act, Title 69 RCW. In addition, violations of this Chapter shall be subject to the enforcement provisions set forth in LMC Title 1.44, General Penalties. Furthermore, violations of this chapter may be deemed to be a public nuisance and may be abated by the city under the procedures set forth in state law for the abatement of public nuisances.

#### **Section 18A.XX.100 No Non-Conforming Uses.**

No use that constitutes or purports to be a marijuana producer, marijuana processor, or marijuana retailer, as those terms are defined in this ordinance, that was engaged in that activity prior to the enactment of this ordinance shall be deemed to have been a legally established use under the provisions of LMC 18A.02.805 and that use shall not be entitled to claim legal non-conforming status.





DRAFT

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# City of Lakewood Potential Marijuana Overlay

0 0.5 1 Mile

This product was prepared with care by City of Lakewood GIS. City of Lakewood expressly disclaims any liability for any inaccuracies which may yet be present. This is not a survey. Datasets were collected at different accuracy levels by various sources. Data on this map may be shown at scales larger than its original compilation. Call 253-589-2489 for further information.

Map Date: October 27, 2017 \\Projects\CD\Licensing\Marijuana\PMO\_PL.mxd

- Possible locations of retail marijuana establishments in commercial zoning districts
- 1,000' Buffer from Select Features\*
- Child Care Facility
- Library
- School or Recreation Facility
- Transit
- Tax Parcel
- Commercial Zoning Boundary\*\*
- Lakewood City Limit

\*See GIS for specific information on creation of buffer.  
\*\*Commercial zoning consists of ARC, C1, C2, C3, CBD, NC1, NC2 & TOC.





**FROM:** Heidi Wachter, City Attorney

**TO:** Mayor and Members of the City Council

**THROUGH:** John C. Caulfield, City Manager

**MEETING DATE:** April 17, 2017

**SUBJECT:** Marijuana Supplemental Materials

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After the initial memorandum to the Council was finalized, a request was made for specific zoning examples.

As a starting point the Municipal Research Service Center maintains an on-line repository of many jurisdictions have addressed marijuana. The MRSC website contains an interactive map, which in some instances incorrectly classifies the jurisdiction's specific response, but nonetheless provides a useful resource.<sup>1</sup>

As it relates to zoning-related solutions, we identified two jurisdictions whose codes provide a starting point for discussion.

Auburn.

The City of Auburn has passed two different Ordinances of note. It's first, Auburn Ordinance 6613 allowed I-502 licensed producers, processors and retailers to operate within City limits. At the time, Auburn was allotted two retail stores, and this provision was expressly included within the Ordinance. The Ordinance also amended its general conflicts of law section to provide a specific exemption for marijuana businesses. Auburn also imposed a moratorium prohibiting the acceptance or processing any permits or applications related to marijuana related activities excepting those expressly provided by the municipal code and the ordinance.

After the legislature increased the maximum number of marijuana retailers, Auburn was allotted two additional stores (bringing the total to four). Auburn then passed a second Ordinance modifying this limit to adjust the limit, not to four, but to allow any retailers operating under "priority one selection ... if it operates more than two (2) such businesses." Auburn reports that one additional business was allowed to operate. It also reports that it successfully obtained an injunction prohibiting another store from operating, and that this matter has been subject to litigation.

<sup>1</sup> <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Marijuana-Regulation-in-Washington-State.aspx>. The on-line version contains the interactive map. In printing this page for the packet, this map did not print. We anticipate having audio-visual equipment available to demonstrate this map for the benefit of the Council.

Copies of both Auburn Ordinances are attached.

Olympia.

The City of Olympia regulates the matter as a zoning issue. Under chapter 18.51 of the Olympia Municipal Code, marijuana businesses are allowed to operate provided (1) that they are state-licensed; (2) operate within a zoning district appropriate to their use; and (3) obtain a conditional use permit from the Olympia Hearing Examiner. Olympia, as now allowed by state law, has also reduced the 1000' buffer to 500' for certain sensitive uses.

A copy of chapter 18.51 Olympia Municipal Code is attached.





**FROM:** Heidi Wachter, City Attorney

**TO:** Mayor and Councilmembers

**THROUGH:** John C. Caulfield, City Manager

**DATE:** April 17, 2017

**SUBJECT:** Legal Opinion on Marijuana

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Initiative 502, passed in 2012 (but effective the following year), “legalized” recreational marijuana. The City of Lakewood, relying on federal preemption and prohibition, has administratively denied requested business licenses for marijuana businesses. This has resulted in occasional litigation in the form of administrative hearings and court action.

The four years of “legal” marijuana in the State of Washington provide information upon which to base the City’s future vision for what role, if any, there is for marijuana production and/or retail sale in the City. This memo details the current federal law and municipal legislative approach along with available options and potential municipal legislative changes based on experiences in other cities.

Marijuana is illegal under Federal law.

The Controlled Substances Act (CSA), which states, “it shall be unlawful for any person knowingly or intentionally to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance”, prohibits the distribution and possession of marijuana for nearly all uses.<sup>1</sup> Under federal law, marijuana is classified as a Schedule I controlled substance, meaning that it has no acceptable medical use and cannot be legally prescribed.<sup>2</sup> There is no exception for marijuana use for medical purposes, nor is there an exception for use in compliance with state law.<sup>3</sup> As the Raich Court emphatically noted, “[t]he CSA designates marijuana as contraband for any purpose[.]”<sup>4</sup>

In the wake of states such as Colorado and Washington “legalizing” marijuana, questions regarding federal preemption arise. Such questions invariably involve reference to an assumed federal deference to states in terms of enforcement of federal law, sometimes citing particular statements

<sup>1</sup> 21 U.S.C. § 841(a)(1)(2012).

<sup>2</sup> 21 U.S.C. sec. 812(c) [(Sched. I)](c)(10)(2012); see also 21 U.S.C. sec. 812(b)(1)(A)-(C)(2012).

<sup>3</sup> See, Gonzales v. Raich, 545 U.S. 1, 14 (2005); see also, United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001).

<sup>4</sup> 545 U.S. at 27 (Emphasis in original).

made along the way.<sup>5</sup> These questions have had little traction with the Courts. In unequivocal language, last summer, the Ninth Circuit Court of Appeals has held:

The CSA prohibits the manufacture, distribution, and possession of marijuana. Anyone in any state who possesses, distributes, or manufactures marijuana for medical or recreational purposes (or attempts or conspires to do so) is committing a federal crime. The federal government can prosecute such offenses for up to five years after they occur. *See* 18 U.S.C. § 3282. Congress currently restricts the government from spending certain funds to prosecute certain individuals. But Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding. Moreover, a new president will be elected soon, and a new administration could shift enforcement priorities to place greater emphasis on prosecuting marijuana offenses.

Nor does any state law “legalize” possession, distribution, or manufacture of marijuana. Under the Supremacy Clause of the Constitution, state laws cannot permit what federal law prohibits. U.S. Const. art VI, cl. 2. Thus, while the CSA remains in effect, states cannot actually authorize the manufacture, distribution, or possession of marijuana. Such activity remains prohibited by federal law.<sup>6</sup>

The Colorado Supreme Court has similarly recognized federal preemption when confronted with the question of whether law enforcement must return medical marijuana seized from a person later acquitted of a state drug charge. Marijuana is legal under Colorado state law but prohibited by the CSA. In a split decision, the Court noted that the CSA prohibits the distribution of marijuana, with limited exceptions. One exception applies to those who are “lawfully engaged,” in the enforcement of laws relating to controlled substances. Colorado has held that an act is “lawful” only if it complies with both state and federal law, and because the return of marijuana would violate federal law, the exception could not apply.<sup>7</sup>

To reach this conclusion, the Colorado Supreme Court evaluated the preemption language contained within the CSA. That language requires that the CSA will not preempt state law on the same subject matter unless there is a positive conflict between a provision of the CSA and the State law so that the two cannot consistently stand together. The Colorado Constitution requires law enforcement to return seized marijuana. The CSA prohibits the distribution of marijuana without regard to whether state law permits its use. An officer returning marijuana necessarily distributes marijuana in violation of the CSA. Because compliance with one law necessarily requires non-compliance with the other, there is a conflict and the state law must yield to the CSA.

<sup>5</sup> U.S. Dep’t of Justice, Office of the Deputy Attorney General, Guidance Regarding Marijuana Enforcement (2013) (the “Cole Memo”).

<sup>6</sup> United States v. McIntosh, 833 F.3d 1163, 1179 n.5 (9th Cir. 2016).

<sup>7</sup> People v. Crouse 2017 CO 5 (Jan. 23, 2017).

1.

Permits for marijuana producers and/or retailers must be licensed by the State.

Arguments supporting disregard for federal preemption are based, in part, on the theory that if the State handles the illegal activity responsibly the federal government will at least decline enforcement or possibly even legalize the activity at the federal level. Thus the question turns to what regulations are in place at the state level to ensure responsible control for “legal” marijuana.

The method for ensuring this control is through licensing; “legal” marijuana retailers and producers must obtain a state license. The license issues from the Washington Liquor & Cannabis Board (WSLCB) based on the applicant clearing a criminal background, the number of establishments allotted to the jurisdiction identified in the application and proximity to parks and/or schools.

Any regulatory assurance provided by this process is challenged by its implementation. One press accounts reports a retail license issued to a convicted murderer.<sup>8</sup> According to the article, he disclosed the conviction and the WSLCB concluded it was not disqualifying. Based on a review of retailer’s licenses via the WSLCB website, that license remains active.

Similarly, although for a far less serious history, the City of Lakewood has documented undisclosed criminal history on the part of a marijuana business applicant who was granted a state license. The history was found by the City and not disclosed by the state. In that case, the state’s failure served as the basis for remand back to the state to consider the application and document consideration of the criminal history.<sup>9</sup>

The current practice of the WSLCB, in disclosing applications requested pursuant to the Public Records Act (PRA), is to redact any criminal history disclosed by the applicant. The basis for exemption from disclosure is alleged to be the Criminal Records Privacy Act, although that exemption arguably would not apply in this context particularly given the PRA’s slant toward disclosure. This redaction hinders the local jurisdictions ability to provide full comment as part of the WSLCB application process.

Beyond the issues with the way the WSLCB is treating applicant criminal history is the redefining of “public park.” By rule, the WSLCB has redefined “public park.” The Washington Controlled Substance Act contains one definition of “public park,” which is “land, including any facilities or improvements on the land, that is operated as a park by the state or a local government.”<sup>10</sup> By rule, the WSLCB constricted the definition to require specific improvements and exclude trails.<sup>11</sup> The result is less disqualification for licensing on the basis of proximity to a “park.”

The City of Edgewood was denied a hearing on the issue of proximity to a park when challenging issuance of a license within 1000 feet of a park. The Superior Court reversed the decision and

<sup>8</sup> [http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/04/convicted\\_murderer\\_granted\\_pot.html](http://www.oregonlive.com/pacific-northwest-news/index.ssf/2016/04/convicted_murderer_granted_pot.html)

<sup>9</sup> Order on City of Lakewood’s Petition for Review, City of Lakewood v. Wash. State Liquor Control Bd., Pierce Co. Superior Ct. Case No. 15-2-09523-0 (April 15, 2016).

<sup>10</sup> RCW 69.50.435(6)(d).

<sup>11</sup> WAC 314-55-010(25).

remanded it back to the WSLCB.<sup>12</sup> The case has since continued back and forth and has recently dismissed with the applicant relocating to another jurisdiction.<sup>13</sup>

The City of Lakewood has objected to issuance of a license within the City for a location proximate to the 512 Park and Ride. The applicant ended up relocating, but documents acquired after-the-fact via public disclosure suggested that the WSLCB had a difficult time measuring the 1000 foot buffer so as to allow the applicant to potentially locate within the City.

With regard to the limitation on number of establishments per jurisdiction (Lakewood has been designated two), there is evidence that those jurisdictions which allowed the original number are receiving additional establishments. When the legislature increased the maximum limits for retailers following the 2015 legislative session, the WSLCB allotted new retailers only in those jurisdictions which it did not classify as having either a “ban,” or a “moratorium.”<sup>14</sup> Those jurisdictions which the WSLCB deemed to have a “ban,” or a “moratorium,” were not allocated any new locations.

All businesses within the City must also be licensed by the City.

Determination to issue a business license is an administrative decision made by the City. The Federal prohibition of marijuana can serve as the basis for denial of a business license.

The applicable language of the Lakewood Municipal Code provides:

Any of the grounds below provide a basis for license denial, revocation or suspension; provided that no business license issued pursuant to this Code shall be denied, revoked, or suspended without cause.

A. Any application to conduct, in whole or in part, activity that is illegal under local, state or federal law.

Lakewood Muni. Code 5.02.080(A)(Emphasis added).

The purpose behind this provision of the municipal code is quite obvious: activity which is illegal under any law, whether local, state or federal should not be allowed to operate within the City of Lakewood. The Code makes no reference to cannabis.

The language “provide[s] a basis,” authorizes the City to exercise administrative discretion whether to allow such businesses to enter. The Federal prohibition of marijuana, while providing a basis for denial, does not mandate denial of a business license. Administrative discretion can be exercised to simply issue a business license. Administrative discretion can be exercised to place conditions on the issuance of a business license. Marijuana is substantially different than other federally

<sup>12</sup> Order Granting Motion for Summary Judgment, City of Edgewood v. Butts Tobacco, Pierce Co. Superior Ct. Case No. 14-2-13848-8 (May 29, 2015).

<sup>13</sup> Stipulation for and Order of Dismissal With Prejudice, City of Edgewood v. Butts Tobacco, *supra*. (April 6, 2017).

<sup>14</sup> [https://lcb.wa.gov/publications/Marijuana/MJ\\_Retail\\_Allocation\\_3-8-16.pdf](https://lcb.wa.gov/publications/Marijuana/MJ_Retail_Allocation_3-8-16.pdf)

prohibited activities in that the state is actively attempting to legalize it. This can be considered within the legitimate administrative discretion of the permitting authority.

If the administrative authority were to issue a business license to a marijuana business, under the City's current zoning, the business can locate in any commercial zone. Arguably such business could not locate near parks and schools, but the State is supposed to deny permits for such locations. This does present some question in the event the City denies a license for a reason that should have prevented the state permit to issue, such as criminal background and/or proximity to parks and schools.

### Recent Legislation: SHB 1099 (2017)

In the 2017 legislative session, (Substitute) House Bill 1099 was filed. This legislation seeks to accomplish two things:

1. Establishes that effective January 1, 2018, a municipality that refuses to allow the siting or operation of retail marijuana businesses absent the formal adoption of an ordinance or resolution explicitly prohibiting the operation of such businesses within its jurisdictional boundaries forfeits the following: (1) 70 percent of the municipality's share of the monies in the Liquor Revolving Fund and (2) all of its share of state marijuana excise tax revenues to which it might otherwise be entitled.

2. Makes a city, town, or county subject to the revenue forfeiture provisions of the act if it has an ordinance or regulation that authorizes a specific number of state-licensed marijuana retail outlets that is less than the number of such outlets allotted or approved for operation within that jurisdiction by the Liquor and Cannabis Board.

As of this writing, SHB 1099 is considered dead although it is not unusual for legislative efforts to succeed over a course of years. In this particular instance, however, state preemption was exhaustively discussed in the 2015 legislative session, and ultimately rejected. Although there are a number of infirmities with this legislation which could trigger grounds to invalidate it should it ever pass. For current purposes, it is worth noting that attempts to revisit the comprehensive amendments and compromises reached in 2015 over such traditionally local issues will a perennial one.

### OPTIONS

When the Council was last briefed on this issue in November 2013, Staff identified four options: (1) a moratorium; (2) zoning (restricting sales to specific locations); (3) an outright ban; and (4) exercising authority under the municipal license code.<sup>15</sup> Although there are been multiple legal developments since November 2013, these options have not changed. Commentary on these options are outlined below.

<sup>15</sup> In the original memorandum, the moratorium and zoning discussions were identified as Options 1 & 3. For ease of discussion, the order of zoning and the outright ban have been swapped. A discussion of all options borrow heavily from the November 2013 memo.

## Options No. 1 & 2: Moratorium and Zoning.

The retail sale of marijuana is state regulated. City zoning regulates use types such as commercial or residential. Regardless of our zoning, all marijuana retailers must also obtain licenses to sell marijuana through the state.

Zoning in its most fundamental form decides where certain activities may be sited. A “moratorium” is an emergency zoning measure designed to preserve the status quo. In the early wake of I-502, a number of jurisdictions adopted moratoriums, and then evaluated whether to keep the prohibition in place or implement zoning measures. For the sake of discussion, this memorandum focuses principally on zoning measures. Siting such businesses is guided both by state law and local code.

### ***State Administrative Requirements***

Under WSLCB administrative regulations, the State is to consider location in issuing licenses to marijuana producers, processors, and retailers. The variety of rules, either found in state law or in administrative code, as to location can be summarized into four basic rules. Taken as a whole, these “rules” place tight constraints on the siting, and operations of any type of marijuana business.

*First Rule:* Before the state liquor control board issues a new (or renewed) license to an applicant it shall give notice of the application to the chief executive officer of the incorporated city, in this case the City Manager. Lakewood then has the right to file with WSLCB within 20 days after the date of transmittal of the notice of application (or at least 30 days prior to the expiration date for renewals), written objections against the applicant or against the premises for which the new (or renewed license) is requested. WSLCB may extend the time period for submitting written objections.<sup>16</sup>

*Second Rule:* There are a limited number of locations. The current allotment for Lakewood is two stores. These numbers are specific to retail outlets only; producers and processors are unlimited.

*Third Rule:* A new marijuana license (whether producer, processor or retailer) is prohibited if the proposed licensed business is within 1,000 feet<sup>17</sup> of the perimeter of the grounds of any of the following uses:

- Elementary or secondary school;
- Playground;
- Recreation center or facility;

<sup>16</sup> This process is the exact same process used for liquor control licenses. When an application is filed with WSLCB, it is transmitted to the City Manager’s Office. From there, it goes to the Assistant City Manager for Development Services/Community Development Director. Here, the request is either approved, conditionally approved, or denied. Depending on the location of the license, or the history of the applicant, CSRT may also be contacted.

<sup>17</sup> The 1,000 feet is measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of use types listed herein.

Child care center;  
Public park;  
Public transit center;  
Library; or  
Any game arcade (where admission is not restricted to persons age twenty-one or older).

*Fourth Rule:* WSLCB will not approve a retail license for retail marijuana sales within another business.

Within those available areas, the City has the authority to restrict based on zoning. The space available under state law, if residential, remains unavailable to a marijuana retailer because retail sales are a commercial use.

### ***Local Zoning for Marijuana Retail Activities***

Zoning regulates height, bulk and use. This can include building size, shape, and placement. It can also include regulation of density. Zoning also controls uses within districts. There are permitted uses, which are allowed as of right (subject to meeting other permit requirements) and conditional uses, which are allowable uses within a district subject to administrative approval (usually before a planning commission or through an administrative officer) to ensure their compatibility and appropriateness.

Lakewood's zoning distinctly regulates activities and intensities; it generally stays away from regulating specific items, objects or substances. For example, cigarette and alcohol sales are retail activities. Retail sales activities are permitted uses in numerous commercial zoning districts. Under Lakewood's current zoning regulations, a marijuana retailer meets the definition of "retail trade," meaning the sale or rental of goods and merchandise for final use or consumption. (LMC 18A.90.220) Retail trade is a commercial use category. The current zoning code does not specifically list marijuana retailing, but based on the how the state is regulating marijuana in the same manner as alcohol, it is best described as sales of general merchandise<sup>18</sup>. General merchandise sales are primary permitted uses in the ARC, NC1, NC2, TOC, CBD, C1, and C2 zoning districts. Sales of general merchandise in residential and industrial zoning districts are prohibited. Once you apply the WSLCB's requirements, and keeping a 1,000 buffer away from certain uses, the number of potential locations to house the two allocated retail outlets and any producers or processors dwindles substantially.

While not purely a "zoning," issue, the State has offered revenue sharing as an inducement for local jurisdictions to permit retailers to operate within their jurisdictions. Thirty percent (30%) of the state marijuana excise tax goes to cities and counties where retailers are located, and the balance goes to cities and counties, with counties receiving 60% of this portion (but "Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.)"<sup>19</sup> For FY 2017, the total distributions to all jurisdictions totaled \$6M.<sup>20</sup> For

<sup>18</sup> When liquor sales were privatized, a land use determination was made to allow liquor sales as general merchandise.

<sup>19</sup> <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/October/Unconfusing-Marijuana-Tax-Distribution.aspx>; RCW 69.50.540(8). Because the 2017 Legislative Session is underway, this discussion does not account for any potential changes to this distribution regime.

municipalities, 70 received funds, with the average distribution being \$45,655.24 – Lakewood received the lowest (\$49.76)<sup>21</sup>, while five cities received more than \$100K. The shared amount increases to \$15M for FY 2018 and 2019, and then to \$20M annually thereafter.<sup>22</sup>

### ***Local Zoning for Marijuana Production, Processing, and Warehousing***

These activities are essentially manufacturing processes that would be typically located in industrial zoning districts. For Lakewood, this would be in the I1, I2, or IBP zoning districts. The production of marijuana is essentially a horticultural activity. Horticulture is not described or listed in I1, I2, or the IBP zoning districts. Further, the processing of marijuana does not fit into the three manufacturing processes listed in the code - primary manufacturing, secondary manufacturing or major assembly, or limited manufacturing/assembly. Nor is it a match with food and related products. Current regulations also specifically prohibit the warehousing, distribution, and freight movement of illegal substances. LMC 18A.20.700.

One area of zoning regulation to be mindful of is the production of marijuana in the CZ, AC1, and AC2. All three zones allow for agricultural production as a permitted use, meaning, the growing, producing, or harboring of plants. These same zones also allow for nurseries. Technically, there are large sections of the AC1 zone outside the mandated WSLCB buffer (generally east of South Tacoma Way and south of 92<sup>nd</sup> Street SW) that could be used to grow marijuana only (no processing and no distribution).

Under WSLCB administrative law, marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must also meet certain security requirements.

Marijuana production applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

Tier 1 – Less than 2,000 square feet;

Tier 2 – 2,000 square feet to 10,000 square feet; and

Tier 3 – 10,000 to 30,000 square feet. (WAC 314-55-075)

### **Option No. 3: A ban**

The City of Lakewood has Code language providing for the denial of a business license based on violation of federal law. Because Lakewood can deny the business license under existing Code, a

<sup>20</sup> <http://lcb.wa.gov/publications/Marijuana/FY16-FY17-MJ-Distributions.xlsx>

<sup>21</sup> We discuss the citations issued to these retailers below.

<sup>22</sup> <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/October/Unconfusing-Marijuana-Tax-Distribution.aspx>



ban does not appear to offer greater protection. As previously discussed, other cities may need a ban due to their specific existing Code language.

#### Option 4: Use of the City's Business Code.

Like any other business, a marijuana entrepreneur must apply for a City of Lakewood business license and it is processed in the same way as any other business license. The business must, however, also obtain a state license, but the WSLCB and multiple superior courts have recognized that a state license does not displace local control.<sup>23</sup>

In November 2013, Staff identified three “sub-options” at that time: (1) obtaining federal assent for such activity; (2) denying a city business license; and (3) opposing within the State licensing process, the WSLCB license. Lakewood has employed the latter two options, and thus, emphasis on those options are discussed.<sup>24</sup>

The City has received, and denied applications by three proposed retailers to operate within the City of Lakewood. Two of those three challenges have been adjudicated by the City's Hearing Examiner and, relying principally on LMC 5.02.080(A), the appeals were denied.<sup>25</sup> The third is set for hearing before the Hearing Examiner on April 20, 2017.

The City has also objected to the issuance of licenses by the WSLCB. The WSLCB has issued two licenses over the City's objections (it does not appear to have denied any licenses based on the City's objections; the applicants did not receive their licenses for other reasons). The City judicially challenged the issuance of these licenses.

The WSLCB vigorously opposed Lakewood's challenges. But, relevant here, it expressly conceded that Lakewood's “own laws are sufficient to prevent the marijuana licensed business J&K Cannabis from ever operating in Lakewood, regardless of what the [WSLCB] does, Lakewood is not an aggrieved party under the [Washington Administrative Procedures Act] ...”<sup>26</sup>

One additional note: the City has successfully used its enforcement authority under the municipal code to stop two retailers from operating without municipal business licenses. Two retailers opened for two (and, possibly more) days in February 2016. Code Enforcement issued citations

<sup>23</sup> WAC 314-55-020(15)(“The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.”). The issue of local control post-I-502 has not been meaningfully tested before a Washington appellate court. It had been widely believed that a challenge to the City of Fife's zoning regulations would decide the issue, but the city and the retailer settled (a separate portion of this case has been appealed to the State Supreme Court on procedural grounds). There is another case which is partially briefed, [Emerald Enterprises v. Clark County](#), Wash. Ct. App. 47068-3, which presents similar issues. An argument date has not yet been set.

<sup>24</sup> The first option is not discussed at length because, as the Ninth Circuit stated in [United States v. McIntosh](#), *supra*, state marijuana licensing regimes violate the CSA. 833 F.3d at 1179 n.5. Although I-502 itself was not the subject of the [McIntosh](#) decision, if a bona fide challenge to our Code were brought, the federal vs. state preemption discussion may be an issue which a court would necessarily have to decide.

<sup>25</sup> As of this writing, the time period within which these applications may seek judicial review of the Hearing Examiner's decision has not yet expired.

<sup>26</sup> *Response Brief of the Washington State Liquor and Cannabis Board, City of Lakewood v. Wash. State Liquor Control Bd.*, Pierce Co. Superior Ct. Case No. 15-2-05334-1 (Sept. 25, 2015) at p. 1.

totaling \$1,500.00 to each of the businesses. The retailers sought to mitigate (i.e., admit wrongdoing, but seek reduction) these fines. These infractions were deemed “committed,” by the Lakewood Municipal Code and each business was eventually fined \$1,250.00. To our knowledge, the fines have been paid.

In concluding the November 2013 Memorandum, Staff wrote and this Memorandum likewise concludes on the same words:

In setting the course for the City of Lakewood, the City must first establish what the desired outcome is; make a statement, change law, keep this type of business out of the City?

Current consensus appears to be that because the federal government is choosing to “wait and see” cities should simply proceed on the assumption that the federal prohibition is not part of the analysis. By accepting this position, the federal government is free to take whatever course is politically convenient based on anything or nothing at all. The better course is to at least document acknowledgement of the federal prohibition and an effort to follow it without incurring undue liability to the City.

The City has the Code necessary to deny a business license to marijuana retailers due to the federal prohibition. Such action may trigger litigation. Within the business licensing options evaluated here is the underlying question as to which is the preferred opponent- the federal government, private counsel for the would-be marijuana entrepreneur or the State of Washington.



# Marijuana Regulation in Washington State

This page provides an overview of the recreational and medical marijuana laws that local and state government agencies must comply with and enforce in Washington State. It also includes a [map of local ordinances](#) zoning for state-licensed marijuana businesses across the state, and examples of the various zoning approaches.

## Overview

With the passage of [Initiative 502](#) in 2012, the state of Washington moved to a comprehensive regulatory approach on marijuana, with state-licensed producers, processors, and retailers. As of **July 1, 2016**, the production and marketing of medical marijuana is also incorporated into the same regulatory framework as recreational marijuana, with some variations such as the allowance of medical marijuana cooperatives.

Under the new legislation, all marijuana licensing is regulated and enforced by the [Washington State Liquor and Cannabis Board](#) (LCB). To assist with the legislative changes, the LCB has published on their website a [Medical Marijuana Transition](#) webpage that provides access to many useful resources, among them: [Medical Marijuana FAQs](#) and [Cooperatives FAQs](#).

Any sale of recreational marijuana or medical marijuana **after July 1, 2016**, other than by a state-licensed retailer is criminal, as is any production or processing of marijuana for sale outside the state-licensed regulated system.

The primary statutes for recreational marijuana are codified in [chapter 69.50 RCW](#), beginning with [RCW 69.50.325](#); the medical marijuana statutes are located in [chapter 69.51A RCW](#). The Liquor and Cannabis Board regulations for marijuana are found in [chapter 314-55 WAC](#).

## Land Use and Zoning Law

Cities, towns, and counties in Washington State can choose to prohibit or to designate appropriate zones for state-licensed marijuana businesses because Washington local governments have authority to enact legislation regulating land uses within their jurisdictions. However, it is the [State Liquor and Cannabis Board](#) (LCB) that has final authority over whether to grant or deny the license to operate in Washington State.

Cities, towns, and counties can file objections to the granting of a state license at a particular location and the Liquor and Cannabis Board must “give substantial weight to objections,” but it is still up to the LCB to make the state license decision. See [RCW 69.50.331\(10\)](#).

This section provides an overview of the land use related statutes regulating marijuana businesses.

## Minimum Buffer Distance

RCW 69.50.331(8) requires licensed marijuana producers, processors or retailers to be **located at least 1,000 feet** from the following entities:

- Elementary or secondary school;
- Playground;
- Recreation center or facility;
- Child care center;
- Public park;
- Public transit center;
- Library; or
- Any game arcade (where admission is not restricted to persons age 21 or older).

The 1,000 feet buffer distance must be measured as the shortest straight line distance from the property line of the proposed business location to the property line of any of the entities listed above. See WAC 314-55-050 (10). Definitions for the entities are found at WAC 314-55-010.

Local governments may **reduce the 1,000 feet buffer to 100 feet** around all entities except elementary and secondary schools, and public playgrounds by enacting an ordinance authorizing the distance reduction. See RCW 69.50.331(8)(b).

## Residential Properties and Small Rural Parcels

The State Liquor and Cannabis Board (LCB) will not issue licenses for marijuana producers, processors, and retailers on property that is used as a residence because law enforcement officials must have access to the premises for inspections without a warrant (WAC 314-55-015(5)). However, note that state law still allows a medical marijuana patient or caregiver to have a designated number of marijuana plants located within a residence. See RCW 69.51A.040.

Local governments are specifically **authorized to prohibit** licensed marijuana businesses on lands zoned for residential use or rural use with a minimum lot size of five acres or smaller. See RCW 69.50.331(9).

## Medical Marijuana Cooperatives

The statutes on “collective gardens” are repealed **effective July 1, 2016** and replaced by a statute authorizing “cooperatives” for the growing of marijuana for medical use (RCW 69.51A.250).

The statutes on cooperatives are more restrictive than the prior collective gardens provisions. Below is a list of some of these restrictions:

- Cooperatives must be located in the domicile of one of the participants. See RCW 69.51A.250(7).
- Cooperatives may have up to a maximum of four qualifying patients or providers as members. See RCW 69.51A.250(1).
- Participants may grow up to a maximum of 60 plants and possess up to 72 ounces of usable marijuana. See RCW

69.51A.250(6)(a).

- None of the marijuana from a cooperative can be sold to others. See RCW 69.51A.250(6)(e).

Local governments are **authorized to prohibit** medical marijuana cooperatives. See RCW 69.51A.250(3)(c).

## Local Zoning Ordinance Approaches across Washington State

City and county zoning measures adopted since initiative 502 was approved are diverse. Some jurisdictions have enacted total prohibitions, while others have allowed marijuana businesses in appropriate zoning districts (retail marijuana businesses in retail zones, outdoor marijuana production in agricultural zones, and indoor marijuana production and marijuana processing in industrial zones). See the statewide map below with links to ordinances, to learn which jurisdictions are zoning for marijuana businesses and which have prohibited them.

Most jurisdictions that allow indoor marijuana production in warehouse-type structures, such as Moses Lake or Ellensburg, have limited them to manufacturing and/or industrial zones. Some urban jurisdictions, like Vancouver, have chosen to allow all marijuana businesses only in industrial or light industrial zones – to keep them tucked away where they will be less obvious or controversial. Additionally, some cities, like the city of Newport, require a conditional use permit process and impose conditions concerning issues such as odors emanating from the property.

Counties have also adopted a variety of minimum lot sizes and setback requirements for marijuana production, which MRSC has compiled in a comprehensive list. The data was gathered from online county codes and ordinances November 2016. See List of Washington County Minimum Lot Sizes and Setback Requirements for Marijuana Production (xls).

## Map of Zoning Ordinances

The state map below contains a wealth of information regarding how local governments across the state have zoned for state-licensed marijuana businesses. MRSC attempts to provide accurate and complete data from all jurisdictions in Washington. For questions or comments regarding this map, please email MRSC.

Undo

[Learn About Tableau](#)

## Examples of Zoning Ordinances

### Reduce Buffer Zones

The following ordinance examples are from jurisdictions that have **reduced the 1,000 feet buffer** around selected entities (except elementary and secondary schools, and public playgrounds) as allowed by [RCW 69.50.331\(8\)\(b\)](#).

- [Shelton Municipal Code Sec. 20.72.020](#) – Reduces buffers to 500 feet for researchers, processors, and producers (not retailers) for child care centers, arcades, libraries, public parks, public transit centers, and rec. facilities. Keeps 1000 foot buffer for other entities (schools, etc.).
- [George Ordinance No. 2016-02](#) (2016) – Reduce buffers to 100 feet for parks, recreational/community centers, libraries, childcare centers, game arcades, and public transit centers.
- [Seattle Ordinance No. 124969](#) (2016) – Reduces the buffer zones differently for retail outlets and other marijuana activities, fluctuating it between 350 and 500 feet.
- [Olympia Ordinance No. 6988](#) (2015) – Implements interim zoning changes that reduce marijuana retail buffers to

500 feet except for elementary and secondary schools which remain at 1,000 feet.

- **Tacoma Amended Ordinance No. 28361** (2016) – Reduces marijuana retail buffer zones to 500 feet for correctional facilities, court houses, drug rehabilitation facilities, substance abuse facilities, detoxification centers, parks, recreational centers, libraries, childcare centers, and game arcades only within downtown districts; the 1,000 feet buffer zone remains effective for those same facilities located outside the downtown district.

## Allow Medical Marijuana Cooperatives

- **Buckley Municipal Code Sec. 19.35.050** – Does not require a business license to operate.
- **Electric City Ordinance No. 515-2016** (2016) – Requires a registration of the cooperative from the city, in addition to any other permits or registration required by state or federal law. Cultivation and Processing should not be seen nor smelled from a public place or the private property of another housing unit.
- **Tacoma Amended Ordinance No. 28361** (2016) – Provides that cooperatives must be operated in a manner that is clearly secondary to the primary use of the property as a residence so as to not affect the character of the neighborhood. Cooperatives shall not generate nuisances such as traffic, on street parking, noise, etc.

## Prohibit Medical Marijuana Cooperatives

Below are ordinances from jurisdictions that have applied prohibitions on cooperatives as allowed by RCW 69.51A.250(3)(c).

- **Anacortes Ordinance No. 2964** (2015) – Adopts a moratorium prohibiting the licensing and establishment of medical marijuana cooperatives in the interest of the protection of public safety and health and to provide time to evaluate alternatives.
- **Chelan County Ordinance No. 2016-14** (2016) – Prohibits all marijuana production and processing, including marijuana cooperatives, in unincorporated Chelan County and declares all said uses public nuisances. Lawfully established businesses in operation prior to September 29, 2015 must terminate by March 1, 2018.
- **Shelton Municipal Code Sec. 20.72.040** – Prohibits marijuana cooperatives in all zoning districts; violations may be abated as nuisances.

## Allow Marijuana Businesses in Appropriate Zoning Districts

The following jurisdictions have establish permanent zoning regulations for state-licensed marijuana businesses.

- **Shoreline Ordinance No. 735** (2016) – Incorporates development regulations relating to marijuana retail, processor, and producer businesses, as well as medical cooperatives into the city's unified development code.
- **Newport Municipal Code Sec.17.03.140** – Requires that facilities associated with marijuana production, processing, transportation and/or sale acquire a conditional use permit in the industrial zone.
- **Vancouver Municipal Code Ch. 20.884** – Limits marijuana production or processing to light industrial or heavy industrial zones, and marijuana retail business to general commercial or community commercial zone districts. Prohibits marijuana businesses as a home occupation, outdoors or in a mobile structure.
- **Spokane Valley Municipal Code Ch. 19.85** – Limits marijuana production in regional and community commercial zones to indoor production, and also limits marijuana processing in regional and community commercial zones to packaging and labeling of usable marijuana.

## Limit Number of Retail Marijuana Businesses Allowed

Through the state agency rulemaking process the Liquor and Cannabis Board has adopted regulations on the maximum number of retail store licenses that will be issued for each county, and for some of the cities and towns in each county. The data is available on the LCB website's document: [Retail Store Allocations](#).

Some jurisdictions, such as the ones below, have adopted ordinances that limit the number of retail marijuana business licenses/stores at a number below what the LCB allows. There are varying viewpoints about whether state law allows such regulations.

- **[Everett Municipal Code Sec. 19.39.130\(13\)](#)** – Limits the number of retail marijuana stores allowed in the city to a maximum of five. The city shall review the maximum number of retail marijuana stores allowed before June 1, 2018, to determine whether this maximum number should be changed.
- **[Renton Ordinance No. 5770 \(2015\)](#)** – Adopts interim zoning regulation limiting the number of recreational marijuana retail uses to no more than five until further action by council.
- **[Vancouver Municipal Code Ch. 20.884.030](#)** – Limits retail marijuana businesses to no more than nine within the city.

## Adopt Interim Zoning Regulations of Marijuana Businesses

These ordinances adopt provisional zoning regulations for licensed marijuana businesses, subject to review and amendment within a designated time period, as allowed by [RCW 35A.63.220](#).

- **[Thurston County Ordinance No. 15371 \(2016\)](#)** – Renews ordinances which adopted interim regulations for marijuana producers, processors, and retailers until May 8, 2017. Includes a six-month work plan.

## Adopt a Moratorium on Marijuana Businesses

Licensed marijuana businesses in these ordinances are prohibited for a designated time, while the legislative body gives the matter further consideration, as allowed by [RCW 35A.63.220](#) and [RCW 35.63.200](#).

- **[Castle Rock Ordinance No. 2017-01 \(2017\)](#)** – Extends a moratorium for six months on retail sale, growing, production and processing of medical and recreational marijuana. Moratorium ends September 11, 2017.
- **[Eatonville Ordinance No. 2016-25 \(2016\)](#)** – Extends for six months a moratorium on the production, processing, or retail sale of recreational marijuana. In effect until May 28, 2017 or unless earlier terminated.

## Prohibit Marijuana Businesses

The list below provides examples of jurisdictions that have prohibited marijuana businesses either through an outright ban, such as the city of [Poulsbo](#), or through other local enactments, such as adopting licensing regulations prohibiting businesses that do not comply with federal laws (e.g. [Pomeroy](#) or [Leavenworth](#)).

- **[Leavenworth Municipal Code Sec. 5.04.170\(B\)](#)** – Provides that every business licensee must comply with all federal, state, and city statutes, laws, regulations, and ordinances relating to the business premises and the conduct of the business thereon.
- **[Poulsbo Ordinance No. 2014-12 \(2014\)](#)** – Prohibits production, processing, and retailing of marijuana.
- **[Pomeroy Ordinance No. 880 \(2015\)](#)** – Adopts license regulation prohibiting businesses that do not comply with



federal law.

- **Othello Ordinance No. 1473** (2016) – Prohibits marijuana production, processing, and retailing, and includes a clause permitting possession or use for personal consumption as allowed by the Revised Code of Washington.
- **Richland Municipal Code Sec. 23.08.100** – Prohibits marijuana-related land uses allowed under state law. Furthermore, no land use that is determined by a planning manager to be in violation of any local, state, or federal law is permitted.

## Regulatory Compliance

All licensed marijuana businesses operating in Washington State must comply with a wide range of local, state, and federal regulations and codes. To ensure and enforce compliance, local government officials and building inspectors must understand which regulations and codes apply and which agency has the authority to enforce them.

The Interagency Resource for Achieving Cooperation and a partnership of Washington Municipalities and industry representatives have created some guidelines to facilitate the process of understanding these regulations in the document Regulatory Guidance for Cannabis Operations. With the same goal, MRSC has prepared the following list of applicable regulations and codes clarifying which government agency is responsible for enforcing them.

### Local Government

- **Building, plumbing, electrical and fire codes** are enforced by the local government jurisdiction where the business is located.
- **Smells and fumes** are generally a nuisance issue handled by local government.

### State and Local Government

- **Wastewater discharge** is managed through the agency operating the local treatment plant. Procedures used for disposal of marijuana solid waste that is not "dangerous waste" must be handled properly (WAC 314-55-097(4)). Disposal of solvents, pesticides, fertilizers and materials classified as "dangerous waste" will need to be done in accordance with state regulations (WAC 314-55-097).
- **Exterior signage** is normally a matter of local concern, but state law places strict limits on signage for marijuana businesses (WAC 314-55-155). The local government will enforce local signage requirements. Violations of state signage regulations should be brought to the attention of the Liquor and Cannabis Board. Local governments could adopt the WAC signage requirement as a local regulation and then also enforce that stricter standard. There are also state regulations for signs that must be placed within marijuana businesses (WAC 314-55-086). Enforcement is the responsibility of the Liquor and Cannabis Board.
- **Fencing** is normally a local concern, but state law places special requirements for marijuana producers who grow plants outside (WAC 314-55-075). Enforcement of the WAC fencing requirement is the responsibility of the Liquor and Cannabis Board, though a local government could adopt the WAC standard and also enforce that regulation.

### State Government

- **Security requirements** for licensed marijuana businesses are set out in state regulations (WAC 314-55-083). The State Liquor and Cannabis Board staff will inspect and make sure that all requirements are met.

### Federal Government

- **Safety issues** raised by the use of volatile compounds by processors will be dealt by the Occupational Safety and Health Board Administration (OSHA).

## Taxing Marijuana and Revenue Sharing

The State currently taxes marijuana through a **single excise tax of 37%** at the time of retail sale, in addition to the regular state and local sales tax. The revenue from the excise tax is shared with cities, towns, and counties (RCW 69.50.540). This tax took effect in June 2015 when the legislature passed HB 2136 and fully replaced the previous excise tax of 25% at three different phases (production, processing, and retail sale) established by the original marijuana initiative of 2012.

For details regarding the amount of marijuana being sold through licensed retailers, and the number and locations of licensed marijuana businesses, check out the latest LCB Weekly Marijuana Report.

## Medical Marijuana Exemption

The normal retail sales tax for each jurisdiction has always applied to retail sales of marijuana at licensed stores, and that has not changed, but RCW 82.08.9998 provides that, starting in July 1, 2016 **the retail sales tax will not be applied to:**

- Retail sales of medical marijuana to “qualifying patients or designated providers who have been issued recognition cards.”
- Retail sales tax of high CBD/low THC medical cannabis to any person.

## Distribution of Tax Revenue

During fiscal years 2016 and 2017, the state will distribute \$6 million to cities and counties that have licensed retail marijuana stores within their jurisdiction.

Beginning in fiscal year 2018, if marijuana excise tax collection exceeds 25 million dollars, 30% of all marijuana excise taxes deposited into the general fund the prior fiscal year will be distributed to local governments as follows:

- 30% will go to counties, cities, and towns where retailers are located, based on the retail sales from stores within each jurisdiction;
- 70% will be distributed to counties, cities, and towns on a per capita basis – but only to jurisdictions that do not prohibit the siting of state-licensed producers, processors, or retailers. However, the amount distributed to cities and counties is capped at \$15 million in fiscal years 2018 and 2019, and \$20 million per fiscal year thereafter.

The State Treasurer will make the transfers to local governments in four installments, by the last day of each fiscal quarter. See RCW 69.50.540.

## Law Enforcement

Marijuana law in Washington State legalizes the possession of specified amounts of marijuana and the private recreational and medical use of marijuana. Under state law licensed marijuana businesses can grow, process and sell marijuana. Police officers may arrest individuals for driving under the influence of marijuana (RCW 46.61.502) and they may issue citations for consuming marijuana in public (RCW 69.50.445).

Any sale of recreational marijuana or medical marijuana after **July 1, 2016**, other than by a state-licensed retailer is criminal, as is any production or processing of marijuana for sale outside the state-licensed regulated system.

For more information related to the enforcement of recreational marijuana, see our page [Enforcing Recreational Marijuana FAQ](#).

## Marijuana in the Workplace

Employers' rights to enact drug policies prohibiting marijuana use in and outside the workplace under Washington law did not change after the adoption of the marijuana initiative in 2012. Initiative 502 is silent on the topic of marijuana use and testing in the workplace, and marijuana remains illegal under federal law. Where in force, federal regulations may still prohibit use and mandate testing for marijuana.

For more information on employment-related issues regarding marijuana, see our page [Marijuana in the Workplace FAQ](#).

## Recommended Resources

- **[Washington State Office of Financial Management \(OFM\): Monitoring Impacts of Recreational Marijuana Legalization](#)** (2015 Update Report) – Includes data on health, enforcement, revenues and taxes, production and sales, as well as city and county ordinances.
- **[Washington State Institute for Public Policy: I-502 Evaluation Plan and Preliminary Report on Implementation](#)** (2015) – Prepared pursuant to initiative 502 and RCW 69.50.550, this report contains numerous exhibits with data on licensed marijuana businesses and locations, sales, per capita sales per county, tax revenue, youth attitudes toward marijuana since I-502 adoption, etc. The report to the legislature is scheduled to be updated with recommendations in 2017.
- **[Liquor and Cannabis Board](#)** – Provides a wealth of information on the [Medical Marijuana transition](#) and marijuana licensing issues. Their [Weekly Marijuana Report](#) offers details regarding the growing sales of marijuana, and the growing tax revenue.
- **[MRSC Insight: Recreational and Medical Marijuana](#)** – Browse articles on marijuana from our topic experts.

Last Modified: March 29, 2017

## Chapter 18.51 STATE-LICENSED MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS

### 18.51.000 Chapter Contents

#### Sections:

- [18.51.010](#) Findings.
- [18.51.020](#) Purpose.
- [18.51.030](#) Definitions.
- [18.51.040](#) State-Licensed Marijuana Producer, Processor and Retailer Requirements.

(Ord. 7046 §1, 2016; Ord. 6930 §1, 2014).

#### **18.51.010 Findings**

The City Council finds that nothing in this chapter [18.51](#) OMC shall be construed to supersede Washington State or federal law pertaining to the acquisition, possession, manufacture, sale or use of marijuana.





(Ord. 7046 §1, 2016; Ord. 6930 §1, 2014).

#### **18.51.020 Purpose**

The purpose of these regulations of state-licensed marijuana producers, processors, and retailers is to mitigate potential impacts on nearby properties of marijuana producers, processors, or retailers licensed or to be licensed by the State of Washington Liquor and Cannabis Board and to promote the public health, safety, and welfare.

(Ord. 7046 §1, 2016; Ord. 6930 §1, 2014).

#### **18.51.030 Definitions**

- A. "Marijuana" shall have the definition as provided in RCW [69.50.101](#)  (v) as it currently states or as may be amended.
- B. "Marijuana processor" shall have the definition as provided in RCW [69.50.101](#)  (x) as it currently states or as may be amended.
- C. "Marijuana producer" shall have the definition as provided in RCW [69.50.101](#)  (y) as it currently states or as may be amended.
- D. "Marijuana retailer" shall have the definition as provided in RCW [69.50.101](#)  (bb) as it currently states or as may be amended.

(Ord. 7046 §1, 2016; Ord. 6930 §1, 2014).

#### **18.51.040 State-Licensed Marijuana Producer, Processor and Retailer Requirements**

- A. General requirements.

A marijuana producer, processor, or retailer licensed by the State of Washington Liquor and Cannabis Board shall be required to comply with all applicable regulations established by the City including, but not limited to, all building and fire code regulations and zoning regulations and shall be required to provide a copy of the state-issued license to the City upon request. A marijuana producer, processor, or retailer licensed by the State of Washington Liquor Control Board shall also be required to comply with all

applicable state regulations and all requirements set forth in the state-issued license.

#### B. Premises Requirements.

A recreational producer, processor, or retailer must operate in compliance with the following conditions:

1. From a public right-of-way, there shall be no exterior display of marijuana or marijuana cultivation visible outside of the premises.
2. The marijuana of a retailer, producer, or processor shall be entirely within a permanent enclosed structure with a roof. The structure shall comply with all applicable code requirements.
3. Areas where marijuana is grown, stored, or dispensed must be provided with ventilation systems so that no odors are detectable off the premises.
4. All premises must comply with the noise control requirements of the Olympia Municipal Code.
5. No minors shall be permitted on marijuana producer, processor, or retailer premises unless accompanied by a parent or guardian.
6. Consumption of marijuana, products containing marijuana or alcohol on the premises is prohibited, as are any other associated uses such as a smoking room, dance or performance space, private club, open-to-the-public nightclub, cabaret, tavern, or similar establishment.
7. All premises must have an operating security and alarm system that is monitored twenty-four (24) hours a day and that includes a video recording system that monitors production, storage, and point of sale areas. All video recordings must be continuously recorded twenty-four (24) hours a day and must be kept for a minimum of forty-five (45) days on the licensee's recording device. All videos are subject to inspection by the Olympia Police Department upon request.
8. A recreational retailer may be open only between the hours of 8 a.m. and 9 p.m.

#### C. City Zoning

##### 1. State-Licensed Marijuana Retailers

- i. No person may conduct business within the City of Olympia as a state-licensed marijuana retailer unless they are located within a HCD3, HDC4, MS or GC Zone in accordance with OMC Title [18](#), Unified Development Code and licensed under this chapter.
- ii. No state-licensed marijuana retailer shall be permitted within five hundred (500) feet of the perimeter of the grounds of a recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one (21) years or older, with the exception of the elementary schools, secondary schools, and playgrounds, for which uses the distance shall remain at one thousand (1,000) feet.
- iii. Waste products must be disposed of in a secure manner that would prevent exposure to the public or create a nuisance.
- iv. A retailer is required to obtain a conditional use permit approved by the Hearing Examiner pursuant to chapter [18.48](#) OMC.

##### 2. State-Licensed Marijuana Producers and Processors

- v. No person may conduct business within the City of Olympia as a state-licensed marijuana producer or processor unless it is located within a light industrial zone in accordance with OMC Title [18](#), Unified Development Code, and licensed under this chapter.
- vi. Waste products must be disposed of in a secure manner that would prevent exposure to

the public or create a nuisance.

vii. A producer and/or processor is required to obtain a conditional use permit.

(Ord. 7046 §1, 2016; Ord. 6930 §1, 2014).

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**The Olympia Municipal Code is current through Ordinance 7071,  
passed April 11, 2017.**

Disclaimer: The City Clerk's Office has the official version of the Olympia Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Olympia's Codification Process (<http://olympiawa.gov/city-government/codes-plans-and-standards/municipal-code.aspx>)

**Municipal Code contact information:**

Email: [adminservices@ci.olympia.wa.us](mailto:adminservices@ci.olympia.wa.us)  
(<mailto:adminservices@ci.olympia.wa.us>)

Telephone: (360) 753-8325

City Website: <http://olympiawa.gov>  
(<http://olympiawa.gov>)  
Code Publishing Company  
(<http://www.codepublishing.com/>)

### **ORDINANCE NO. 6 6 1 3**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, CREATING A NEW SECTION, 5.20.250, OF THE AUBURN CITY CODE AND AMENDING SECTIONS 1.04.060, 1.25.010, 5.20.030, 5.20.050 AND 9.22.030 OF THE AUBURN CITY CODE RELATED TO MARIJUANA RELATED BUSINESSES AND ACTIVITIES, AND IMPOSING A MORATORIUM ON MARIJUANA RELATED ACTIVITIES AS IDENTIFIED HEREWITH

WHEREAS, the voters of the State of Washington approved Initiative Measure No. 502 (I-502), in 2012, now codified within Chapters 69.50, 46.04, 46.20, 46.21 and 46.61 of the Revised Code of Washington (RCW), which initiative decriminalized possession and use of certain amounts of marijuana and marijuana paraphernalia, and authorized promulgation of regulations and issuance of licenses by the Washington State Liquor and Cannabis Board (WSLCB) for the production, processing and retailing of marijuana; and

WHEREAS, pursuant to Section 13 of I-502, the City of Auburn was initially allocated a maximum of two (2) marijuana retailers licensed by the WSLCB; and

WHEREAS, Second Engrossed Substitute House Bill 2136 and Senate Bill 5052 (SB 5052), adopted on April 24, 2015, revised state requirements for state marijuana regulations, including marijuana processors, producers, retailers, and cooperatives; and

WHEREAS, the WSLCB notified the City of Auburn on September 23, 2015, that pursuant to SB 5052 it would not limit the number of marijuana retailers licensed within the City of Auburn to only those allocated per I-502; and

WHEREAS, the WSLCB notified the City of Auburn on March 8, 2016, that it would increase the number of marijuana retailers licensed within the City of Auburn to the two (2) authorized by I-502 and identified as the Stash Box and Evergreen Market, AND an additional two (2) Priority 1 applicants for licenses under SB 5052 ; and

WHEREAS, the WSLCB has since indicated that the number of SB 5052 retail licenses within the City of Auburn (presently two [2]) may be increased in the future; and

WHEREAS, the City of Auburn adopted a moratorium, through Resolution No. 5194, prohibiting any new marijuana retailers not already in operation on January 4, 2016; and

WHEREAS, in a public hearing on February 16, 2016, and in comment to City elected officials, including social media posts, Auburn residents voiced concern for any marijuana retailers in excess of the initial two (2) originally approved by I-502; and

WHEREAS, WSLCB then notified the City of Auburn on March 8, 2016, that marijuana retailers, including the Evergreen Market, that were licensed using the I-502 lottery are not allowed to move out of the jurisdictions where they are licensed; and

WHEREAS, based upon – and in reliance on – that information, the City of Auburn amended its moratorium, through Resolution No. 5215, to authorize the operation of the two (2) marijuana retailers initially provided for by I-502; and

WHEREAS, other cities, including Everett, Renton and Vancouver have adopted restrictions on the number of licensed retailers to conform to initial I-502 approved caps; and

WHEREAS, the WSLCB continued to process and issue licenses to marijuana retailers within the City of Auburn pursuant to SB 5052 despite transmittal of Resolution No. 5215 to the WSLCB; and

WHEREAS, because of the continued processing and issuing of WSLCB licenses of retail marijuana businesses, and because new retail marijuana businesses continued to engage in activities contrary to the City's moratoria, and in response to the inconsistent, conflicting, and uncooperative position of the WSLCB, the City of Auburn adopted Ordinance No. 6595 on April 4, 2016, which ordinance prohibited all marijuana related activities within the City of Auburn; and



WHEREAS, consistent with a report by the Northwest High Intensity Drug Trafficking Area, a division of the Office of National Drug Control Policy, Ordinance No. 6595 protects public health, safety and welfare by minimizing societal effects of marijuana, including a 122% increase in fatality motor vehicle accidents involving the use of marijuana between 2010 and 2014 and a 312% increase in contacts to the Washington Poison Center for intoxication calls pertaining to youth consumption of marijuana, and other increases on demands for public services such as fire and police presence; and

WHEREAS, despite the City's transmittal of Ordinance No. 6595 to the WSLCB, the WSLCB has continued to process and issue licenses to marijuana retailers within the City of Auburn pursuant to SB 5052; and

WHEREAS, the City of Auburn has been forced to expend significant resources to enforce Resolution No. 5194, Resolution No. 5215 and Ordinance No. 6595, due to WSLCB's continued issuance of marijuana retailer licenses pursuant to SB 5052; and

WHEREAS, the City desires to provide greater clarity as to permitted and prohibited marijuana retailers within the City of Auburn, avoid onerous enforcement proceedings, improve voluntary compliance with local laws pertaining to marijuana activities, facilitate improved cooperation with the WSLCB, and protect the public health, safety and welfare while remaining cognizant of the approval of I-502 by voters within the City of Auburn; and

WHEREAS, the incorporation of marijuana retailers into the City's business licensing requirements will provide greater clarity, consistency, predictability and uniformity that will benefit Auburn businesses and residents; and

WHEREAS, in a public hearing on February 16, 2016, and in comment to City elected officials, including social media posts, Auburn residents have not expressed objection to, or concern over, licensed marijuana processors or producers operating within the City of Auburn; and

WHEREAS, the revisions to state requirements for marijuana processors and producers included in SB 5052 were minimal and have not resulted in a noticeable increase in police and fire calls within the City of Auburn; and

WHEREAS, marijuana processors and producers are not accessed by the general public and, consequently, result in impacts to the surrounding community that are different than the impacts created by marijuana retailers and are properly addressed through development and consideration of zoning provisions, as is evidenced in other cities in Washington, including Vancouver and Spokane Valley; and

WHEREAS, the Planning Commission of the City of Auburn has held and conducted various public meetings and workshops to address marijuana production, processing, and retailing, and subsequent zoning requirements for licensed marijuana processors and producers is expected; and

WHEREAS, the WSLCB continues to license marijuana processors and producers within the City of Auburn; and

WHEREAS, the incorporation of marijuana processors and producers into the city's business licensing requirements will provide greater clarity, consistency, predictability and uniformity that will benefit Auburn businesses and residents; and

WHEREAS, the City desires to better align the regulation of licensed marijuana processors and producers with the expressed preference of its residents, improve voluntary compliance with local laws pertaining to marijuana activities, facilitate improved cooperation with the WSLCB and protect the public health, safety and welfare while remaining cognizant of the approval of I-502 by voters within the City of Auburn; and

WHEREAS, issues related to the schedule I classification of marijuana in the Controlled Substances Act of 1970 and clinical and trial research on marijuana's potential therapeutic effects warrant review of how or whether this should be addressed in the Auburn City Code; and

WHEREAS, existing marijuana retailers, approved and licensed under I-502, within the City as well as others within neighboring communities can provide adequate access to marijuana for medicinal purposes; and

WHEREAS, Article XI, Section 11 of the Washington State Constitution provides that any city may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws; and

WHEREAS, the City has all powers possible under the Constitution and not specifically denied to it; and

WHEREAS, the Washington Attorney General, through Opinion 2014-02, has advised that I-502 left in place the normal powers of local governments to regulate marijuana related businesses within their jurisdictions; and

WHEREAS, the Washington Supreme Court also upheld city authority to prohibit medical marijuana related land uses within their jurisdictions in *Cannabis Action Coalition v. City of Kent*; and

WHEREAS, the City's right to exact license fees through business licensing requirements has been upheld by the Washington Supreme Court in *Diamond Parking, Inc. v. City of Seattle*, *City of Port Angeles v. Hadsell*, and *World Wide Video, Inc. v. City of Tukwila*; and

WHEREAS, ACC 5.10.040(A) requires any person desiring to establish or undertake any activity, occupation, trade, pursuit, profession or other matter with a physical presence in the City, whether operated with the object of profit or operated not for profit, to first apply for, and obtain a business license; and

WHEREAS, the City code does not currently include business licensing requirements for marijuana related businesses; and

WHEREAS, amendment of the City code to provide business licensing requirements for marijuana related businesses will improve voluntary compliance with local laws pertaining to marijuana activities, facilitate improved cooperation with the WSLCB and protect the public health, safety and welfare while remaining cognizant of the approval of I-502 by voters within the City of Auburn;

and

WHEREAS, the Auburn City Code does not currently have specific provisions addressing the number of statutorily permitted marijuana provisions and/or uses; and

WHEREAS, the provisions for marijuana cooperatives, marijuana researchers and marijuana transporters contained within SB 5052 go into effect July, 2016; and

WHEREAS, marijuana cooperatives, marijuana researchers and marijuana transporters are not explicitly addressed by current code provisions; and

WHEREAS, the impacts and effects of marijuana cooperatives, marijuana researchers and marijuana transporters on Auburn and the Auburn community are unknown and deserving of study and review; and

WHEREAS, the inclusion of the prohibition of marijuana cooperatives, marijuana researchers and marijuana transporters in the City's business licensing requirements, pending review and potential amendment of the City Code, will provide greater safety, clarity, consistency, predictability and uniformity that will benefit Auburn businesses and residents; and

WHEREAS it would be advantageous for the City of Auburn to have a thorough review made of the impacts and effects of marijuana cooperatives, marijuana researchers and marijuana transporters; and

WHEREAS, Sections 35A.63.220 and 36.70A.390 of the Revised Code of Washington ( RCW) authorize the City Council to adopt an immediate moratorium for a period of up to twelve (12) months if a public hearing on the proposal is held within at least sixty (60) days of its adoption and a work plan is developed for related studies providing for the moratorium period; and

WHEREAS, the City Council desires to impose a moratorium for an initial term of twelve (12) months on the acceptance and/or processing of any permit or applications, for or related to any marijuana related activities,

including, but not limited to, licensing, permitting, siting, making structural or building improvements, or operating any new marijuana activities; and any other marijuana uses or activities that are not expressly provided by the City Code regulations addressed herein; and

WHEREAS, the City Council anticipates that it can develop and adopt appropriate controls for marijuana retail facilities prior to the expiration of the moratorium enacted hereby; and

WHEREAS it would be advantageous for the City of Auburn to have a thorough review made of the alternatives and options available to it for regulation of marijuana related uses and activities; and

WHEREAS, in the event permanent regulations are adopted prior to the expiration of the twelve (12) month moratorium established by this Ordinance this Ordinance may be repealed, terminating the moratorium.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

**Section 1. Recitals Adopted.** That the City Council hereby adopts the recitals contained in this Ordinance as Findings of Facts and Conclusions, as appropriate given the context of each recital and incorporates said recitals herein by this reference.

**Section 2. Replacement of Prior Ordinance.** That this Ordinance replaces and supersedes Ordinance No. 6595.

**Section 3. Creating a New Section of the City Code.** That a new Section, 5.20.250, of the Auburn City Code is hereby created to read as follows:

**5.20.250 Marijuana Related Activities.**

**A. Definitions,**

- 1. "Marijuana cooperative" means up to four qualifying patients, as**

defined by RCW 69.51A.010(19), who share responsibility for acquiring and supplying the resources needed to produce and process marijuana, including tetrahydrocannabinols or cannabimimetic agents, only for the medical use of members of the cooperative and not for profit. At least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana cooperatives shall not be permitted within the city of Auburn .

2. "Marijuana related business" means a person or entity engaged in for-profit activity that includes the possession, cultivation, production, processing, distribution, dispensation, or sale of tetrahydrocannabinols or cannabimimetic agents, as defined by the controlled substances act, codified at 21 U.S.C. § 812, including marijuana retailers, marijuana processors, and marijuana producers, as defined herein.

a. "Marijuana processor" means any person or entity licensed by the Washington state liquor and cannabis board to process, package, and label marijuana concentrates, including tetrahydrocannabinols or cannabimimetic agents, in accordance with the provisions of RCW chapters 65.50 and 69.51a and WAC chapter 314-55.

b. "Marijuana producer" means any person or entity licensed by the Washington state liquor and cannabis board to produce marijuana, including tetrahydrocannabinols or cannabimimetic agents, for wholesale to marijuana processors and other marijuana producers pursuant to RCW 69.50.325.

c. "Marijuana retailer" means any person or entity established for the purpose of making marijuana concentrates, usable marijuana and marijuana-infused products, including tetrahydrocannabinols or cannabimimetic agents, available for sale to adults aged twenty-one and over.

d. "Marijuana researcher" is a position licensed by the Washington state liquor and cannabis board that permits a licensee to produce, process, and possess marijuana for the limited research purposes set forth in RCW 69.50.372. at least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana researcher businesses shall not be permitted within the city of Auburn.

e. "Marijuana transporter" is a position licensed by the Washington state liquor and cannabis board pursuant to WAC 314-55-310 that allows a licensee to physically transport or deliver marijuana, marijuana concentrates, and marijuana-infused products between licensed marijuana businesses within Washington state. at least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana transporter businesses shall not be permitted within the city of Auburn.

B. License application – qualification – requirements to apply. in addition to the information required to be included with an application form pursuant to ACC 5.10.040(a), an application for a license for marijuana related

business shall also include:

1. License – each application for a marijuana related business shall be accompanied by a current, valid license to operate as a marijuana producer or marijuana processor issued by the Washington state liquor and cannabis board, or a current, valid license to operate as a marijuana retailer awarded by the Washington state liquor and cannabis board on the basis of I-502 lottery selection. Even if permitted or licensed by and/or registered with the Washington state liquor and cannabis board, marijuana cooperatives, marijuana researchers and marijuana transporters are not qualified or entitled to operate within the city of Auburn or to apply for a permit or business license within the city of Auburn.<sup>1</sup>

a. The maximum number of licensed marijuana retailers authorized and allowed to operate in the city of Auburn shall not exceed two (2)

b. Any marijuana producer or marijuana processors operating within the city (i) shall strictly comply with all industrial, health and safety codes, including but not limited to section 314.55.104 WAC and section 69.50.348 RCW, and (ii) shall have at least 4,000 square feet of building utilized for its individual business, and the total square feet of all marijuana producers and processor in the city shall not exceed 90,000 square feet of building space; provided that any such business that was licensed and existing prior to August 1, 2016, that did not have at least 4,000 square feet of building utilized for its individual business may continue operating at its current location even though it did not have at least 4,000 square feet of building utilized for its individual business.

2. Security requirements – each application for a marijuana related business shall be accompanied by documentation of compliance with the security requirements of WAC 314-55-083 (2) and (3).

3. Fingerprints – Each application for a marijuana related business or renewal shall be accompanied by a complete set of fingerprints of all managers and owners of the business, utilizing fingerprint forms as prescribed by the chief of police.

C. License regulations.

1. Access by city officials – all city officials shall have free access to marijuana related businesses licensed under the provisions of this chapter for the purposes of inspecting and enforcing compliance with the provisions of this chapter.

2. Entry prohibitions for certain person – It is unlawful for the owner, proprietor, manager, or person in charge of any marijuana related business licensed under the provisions of this chapter, or for any employee of said place, to allow entry or admission to any person under the age of 21 years of age, any lewd or dissolute person, any drunken or boisterous person, or any person under the influence of any intoxicant.

3. Law enforcement officers entry right – It is unlawful for the owner,

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<sup>1</sup> See Section 5.20.250 ACC.

proprietor, manager or person in charge of any marijuana related business licensed under the provisions of this chapter to refuse admission to any peace officer of the city or of the state, or any officer of the united states government charged with the duty of enforcing the police laws of the united states. said officers shall have free access at all times to any marijuana related businesses licensed under the provisions of this chapter.

4. Operation regulations – All marijuana, including tetrahydrocannabinols or cannabimimetic agents, equipment and all cultivation, processing, production, storage or sales shall be conducted entirely inside buildings. any perimeter fencing intended for security purposes shall meet the requirements of the city of Auburn and of the state of Washington applicable thereto.

5. State statute compliance – All marijuana related businesses licensed under the provisions of this chapter shall also comply with RCW chapters 69.50 and 69.51A, and WAC chapter 314-55, as applicable.

**Section 4. Amendment to City Code.** That section 1.04.060 of

the Auburn City Code is hereby amended as follows:

**1.04.060 Conflict of ordinances with state or federal law.**

A. All ordinances and city code provisions, and regulations therein, shall not be in conflict with all other regulations and/or requirements of state and federal law, insofar as not permitting or allowing any action, use or conduct which is in violation of or prohibited by any state or federal laws, regulations or codes. Any such provisions that cannot be implemented or enforced because of provisions of state or federal law, or that cannot be reconciled with any state or federal law, shall be deemed to be in conflict therewith. Any provisions of city ordinances or of the city code deemed by the city council to be in conflict with state or federal law shall be null and void. The provisions of this section do not allow any action, use or conduct which is in violation of any local, state or federal laws, regulations, codes and/or ordinances, and the city is not authorized to permit, or license such action, use or conduct.

B. Any action, use or conduct which is not permitted or allowed is prohibited. ~~It is provided, however, that the provisions of this subsection B do not apply to any person or persons who has/have a valid, lawful license issued by the state of Washington to produce, process or sell marijuana, marijuana concentrates, usable marijuana and/or marijuana infused products and is acting in full conformity with the requirements of the state of Washington related to such license pursuant to RCW 69.50.301 through 69.50.369, and WAC 314-55-005 through 314-55-540. In such instances, the state of Washington, not the city, is the permitting and licensing entity. It is provided, however, that this provision does not preclude the city from taking enforcement action in instances where conduct or activity that is licensed or permitted under RCW 69.50.301 through~~



~~69.50.369, and WAC 314-55-005 through 314-55-540, occurs within the city of Auburn but is not in compliance with or violates the requirements of such state licensing or permitting. For the purposes of this section only, the provisions of RCW 69.50.325 through 69.50.369 and WAC 314-55-515 through 314-55-535 are hereby adopted by reference and incorporated herein.~~

C. Except as provided by ACC 5.20.250 and 9.22.010, no action, activity, business or enterprise shall be allowed or permitted to be conducted within the city of Auburn that is in violation of state or federal law. (Ord. 6525 § 2, 2014; Ord. 6416 § 3, 2012.)

**Section 5. Amendment to City Code.**

That section 1.25.010 of

the Auburn City Code is hereby amended as follows:

**1.25.010 Purpose.**

It is the purpose of this chapter to generally provide civil penalties for non-fire code violations of ACC Titles 1, 5, 8, 10, 12, 13, 15, 16, 17 and 18, all standards, regulations and procedures adopted pursuant to those titles, and the terms and conditions of any permit or approval issued pursuant to those titles which do not involve imminent danger to the public health, safety and welfare of persons or property, and such other code provisions as are specified. Criminal penalties provided in this code for non-fire violation of ACC Titles 1, 5, 8, 10, 12, 13, 15, 16, 17 and 18, and all standards, regulations and procedures adopted pursuant to those titles, and the terms and conditions of any permit or approval issued pursuant to those titles whether contained in chapter 1.24 ACC or in the individual titles are superseded to the extent provided herein. It is the intent of this chapter to permit a timely and efficient means of enforcement, to establish definitions, monetary penalties for violations and a hearing process before the court of limited jurisdiction authorized to hear cases of the city as assigned in the ACC or as otherwise provided by law. (Ord. 6429 § 1, 2012; Ord. 5966 § 1, 2006; Ord. 5837 § 1, 2004; Ord. 5677 § 2, 2002; Ord. 5667 § 1, 2002; Ord. 5246 § 1 (Exh. B), 1999; Ord. 5212 § 1 (Exh. B), 1999; Ord. 4460 § 1, 1991.)

**Section 6. Amendment to City Code.**

That section 5.20.030 of

the Auburn City Code is hereby amended as follows:

**5.20.030 License required – Fee – Term – Notices – Exemptions.**

A. It is unlawful for any person, firm or corporation to engage in any business as provided in this chapter within the city limits without first obtaining a license pursuant to the provisions of this chapter.

B. The fee licensing under the provisions of this chapter shall be as follows:

Type	Fee		Term
	Initial	Renewal	
Ambulance Services License			
Business	No Fee	No Fee	1/1 – 12/31
Attendant	No Fee	No Fee	1/1 – 12/31
Amusement Device License			
1 to 4	\$40.00	\$20.00	1/1 – 12/31
5 or more	\$70.00	\$20.00	1/1 – 12/31
Auto Races License	\$70.00	\$20.00	1/1 – 12/31
Cabaret License	\$50.00	\$20.00	1/1 – 12/31
Carnivals, Circuses, Shows, etc., Licenses			
Carnival/circus	\$70.00	\$20.00	1/1 – 12/31
Theater	\$70.00	\$20.00	1/1 – 12/31
Show/exhibition	\$70.00	\$20.00	1/1 – 12/31
Public amusement	\$70.00	\$20.00	1/1 – 12/31
Dance License	\$50.00	\$20.00	1/1 – 12/31
Fire Extinguisher			
Without testing	\$30.00	\$20.00	1/1 – 12/31
With testing	\$45.00	\$20.00	1/1 – 12/31
Fireworks Stands License	\$70.00	\$20.00	Noon 6/28 to Noon 7/6
(Regulation of fireworks stands under Chapter 8.24 ACC)			
Massage Business, Health Salon, Public Bathhouse License			
Business	\$85.00	\$20.00	1/1 – 12/31
Attendant	\$85.00	\$20.00	1/1 – 12/31
Merchant Patrol, Private Detective License			
Merchant patrol agency	\$55.00	\$20.00	1/1 – 12/31
Patrolman	\$55.00	\$20.00	1/1 – 12/31
Detective agency	\$55.00	\$20.00	1/1 – 12/31
Detective	\$55.00	\$20.00	1/1 – 12/31
Motor Vehicle Wreckers License	\$70.00	\$20.00	1/1 – 12/31
Outdoor Musical Entertainment License			
	\$85.00/Event		1/1 – 12/31
Pawnbrokers/Secondhand Dealers License			

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Ordinance No. 6613

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Type	Fee		Term
	Initial	Renewal	
	\$40.00	\$20.00	1/1 – 12/31
Solicitor License			
Master	\$40.00	\$20.00	1/1 – 12/31
Agent	\$40.00	\$20.00	1/1 – 12/31
Individual	\$40.00	\$20.00	1/1 – 12/31
Taxicab License – Requires King County license only to operate in Auburn			
Tow Truck Business License			
Business	\$60.00	\$20.00	1/1 – 12/31
Driver	\$40.00	\$20.00	1/1 – 12/31
<u>Marijuana Related Businesses</u>	<u>\$500.00</u>	<u>\$500.00</u>	<u>1/1 – 12/31</u>

~~Provided, that for the 2010 calendar year only, the renewal fee for business licenses for the period July 1, 2010, to December 31, 2010, shall be one-half of the specified renewal fees.~~

C. A duplicate license shall be issued by the business license clerk, as designated by the mayor, to replace any license previously issued which has been lost, stolen, defaced or destroyed, upon the filing of an affidavit attesting to such fact and the paying to the business license clerk of a fee of \$1.00.

D. Any notice required by this chapter to be mailed to any licensee shall be sent by ordinary mail, addressed to the address of the licensee shown by the records of the business license clerk or, if no such address is shown, to such address as the business license clerk is able to ascertain by reasonable effort. Failure of the licensee to receive such mailed notice shall not release the licensee from any fee or penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter.

E. This section grants an exemption from paying a fee for any licenses required under the provisions of this chapter to bona fide nonprofit, charitable, religious, or philanthropic persons or organizations.

1. Any person or organization claiming the exemptions of this section shall file with the business license clerk an affidavit setting forth facts sufficient to show the application of this section and the right to such exemption.

2. Persons or organizations required to be licensed by the state of Washington, wherein the state has preempted the field of endeavor of any such persons or organizations, shall not be required to obtain a license from the city under the provisions of this title; provided however, any such persons or organizations doing business within the city limits of the city shall carry the state license on his or her person at all times when doing business within the city, and shall exhibit such state license whenever he or she is requested to do so by any police officer or any person who asks to see the same.

~~F. For the 2010 calendar year only, individual license renewals shall be~~

~~valid for the period July 1, 2010, to December 31, 2010, subject to the payment of one half of the specified renewal fee. For the 2011 calendar year and subsequent calendar years, individual license renewals shall be for the period January 1st through December 31st. (Ord. 6309 § 4, 2010; Ord. 5897 § 7, 2005; Ord. 4012 § 2, 1984.)~~

**Section 7. Amendment to City Code.**

That section 5.20.050 of

the Auburn City Code is hereby amended as follows:

**5.20.050 License application – Approval or disapproval procedure.**

The business license staff person shall collect all license fees and shall issue licenses in the name of the city to all persons qualified under the provisions of this chapter and shall:

A. Adopt all forms and prescribe the information required to implement this chapter;

B. Submit all applications, to department heads as listed below for their endorsements as to compliance by applicant with all city regulations which they have the duty of enforcing:

1. Ambulance services license: Valley Regional Fire Authority and police department;

2. Amusement device license: police (four or under) and community development and public works and police (five or more);

3. Auto races license: Valley Regional Fire Authority, community development and public works, , and police departments;

4. Cabaret licenses: Valley Regional Fire Authority and police departments;

5. Carnivals, circuses, shows, etc., licenses: Valley Regional Fire Authority, community development and public works, and police departments;

6. Dance licenses: Valley Regional Fire Authority and police department;

7. Fire extinguisher service licenses: Valley Regional Fire Authority;

8. Massage business, health salon, etc., licenses: community development and public works, police departments and appropriate County health department;

9. Merchant patrol and private detective licenses: police department;

10. Motor vehicle wreckers licenses: community development and public works and police departments and Valley Regional Fire Authority;

11. Outdoor musical entertainment licenses: community development and public works and police departments and Valley Regional Fire Authority;

12. Pawnbrokers/secondhand dealers licenses: police department;

13. Solicitor license: police department;

14. Tow truck business license: Valley Regional Fire Authority, community development and public works and police departments;

15. Marijuana related business license: community development and

public works, police and utilities departments, and Valley Regional Fire Authority.

C. Notify any applicant of the acceptance or rejection of his/her application and shall, upon denial of any license state in writing the reasons therefor, the process for appeal and deliver them to the applicant.

D. Deny any application for license upon written findings that the granting would be detrimental to the public peace, health or welfare:

1. Whenever any such license is denied the applicant may within 15 calendar days from date of action, file written notice of appeal to the city's director of community development and public works. Action of the city's director of community development and public works may be appealed 15 calendar days from date of action to the hearing examiner, and action of the hearing examiner shall be conclusive and not subject to review.

2. When the issuance is denied and any action instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which the license was refused unless a license is issued pursuant to a judgment ordering the same. (Ord. 6532 § 7, 2014; Ord. 5897 § 9, 2005; Ord. 4012 § 2, 1984.)

#### **Section 8. Amendment to City Code.**

That section 9.22.030 of

the Auburn City Code is hereby amended as follows:

#### **9.22.030 Drug paraphernalia – Definitions.**

Except as authorized under United States Code (USC) Title 21: the Controlled Substances Act, and except as authorized by the Revised Code of Washington under RCW 69.50.301 through 69.50.369, as ~~As~~ used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, smoking, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

A. Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

B. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

C. Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

D. Testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

E. Scales and balances used, intended for use or designed for use in weighing or measuring controlled substances;

F. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

G. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

H. Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances;

I. Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances;

J. Containers and other objects used, intended for use or designed for use in storing or concealing controlled substances;

K. Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

L. A device "designed primarily for" such smoking or ingestion set forth in this section is a device which has been fabricated, constructed, altered, adjusted or marked especially for use in the smoking, ingestion or consumption of marijuana, hashish, hashish oil, cocaine or any other "controlled substance," and is peculiarly adapted to such purposes by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose. Paraphernalia includes, but is not limited to, the following items or devices:

1. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

2. Water pipes;

3. Carburetion tubes and devices;

4. Smoking and carburetion masks;

5. Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

6. Miniature cocaine spoons and cocaine vials;

7. Chamber pipes;

8. Carburetor pipes;

9. A smokable pipe which contains a heating unit, whether the device is known as an "electric pipe" or otherwise;

10. Air-driven pipes;

11. Chillums;

12. A device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke than would otherwise be

possible, whether the device is known as a “bong” or otherwise;

13. A device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a “buzz bomb” or otherwise;

14. A canister, container or other device with a tube, nozzle or other similar arrangement attached thereto so constructed as to permit the forcing of smoke accumulated therein into the user's lungs under pressure, whether the device is known as a “power hitter” or otherwise;

15. A device for holding a marijuana cigarette, whether the device is known as a “roach clip” or otherwise;

16. A spoon for ingestion of a controlled substance through the nose;

17. A straw or tube for ingestion of a controlled substance through the nose or mouth;

18. A smokable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested;

19. Ice pipes or chillers. (Ord. 6300 § 1, 2010.)

**Section 9. Moratorium.** Pursuant to the provisions of sections 35A.63.220 and 36.70A.390 RCW, the moratorium established by this Ordinance prohibits the acceptance or processing of any permits or applications, for or related to any marijuana related activities, including, but not limited to, licensing, permitting, siting, making structural or building improvements for such an activity, or operating any new marijuana activities; and any other marijuana uses or activities that are not expressly provided by the City Code regulations addressed herein.

**Section 10. Term of Moratorium.** The moratorium imposed by this Ordinance shall become effective on the effective date hereof, and shall continue in effect for an initial period of one year, unless repealed, extended or modified by the City Council after subsequent public hearing(s) and entry of appropriate findings of fact pursuant to RCW 35A.63.220, provided that the moratorium shall

automatically expire upon the effective date of zoning and land use regulations adopted by the City Council to address the implementation of the State's licensing of any marijuana/cannabis related business to be located in the City of Auburn.

**Section 11. Work Plan.** The following work plan is adopted to address the issues involving marijuana/cannabis related business regulations:

A. The City of Auburn Planning Commission shall be authorized and directed to hold public hearings and public meetings to fully receive and consider statements, testimony, positions and other documentation or evidence related to the issue of marijuana/cannabis related businesses, including, but not limited to, regulations related to the number of allowed retail businesses, and including but not limited to marijuana cooperatives, marijuana researchers and marijuana transporters.

B. The Planning Commission and City staff are authorized and directed to review the experiences of other jurisdictions, the status of legal cases, and statistical data, information, studies and other evidence compiled by other municipalities, of adverse impacts of such marijuana/cannabis related businesses, and to review State and Federal law and regulations and the regulations, ordinances and codes adopted and implemented by other municipalities to address marijuana/cannabis related business land uses, and any other information that is pertinent to consideration of marijuana/cannabis related businesses, including, but not limited to, regulations related to the number of allowed retail businesses.

C. The City of Auburn Planning Commission shall work with City staff and the citizenry of the City to develop proposals for regulation of marijuana/cannabis related business land uses and zoning considerations, to be forwarded in their recommendations to the City Council for inclusion in ordinances and ultimate adoption as a part of the City Code of the City of Auburn, including regulations related to the number of allowed retail businesses.

D. The Mayor, in consultation with the City Attorney, Community Development and Public Works Director, the Police Chief, the Human Resources and Risk Management Director and other staff, shall periodically advise and report to the City Council as to the status of hearings, meetings and information development regarding activities of the Planning Commission and City staff relative to the evaluation, consideration and development of regulations concerning marijuana/cannabis related land uses, including, but not limited to,



regulations related to the number of allowed retail businesses, with such reports to be scheduled approximately every six (6) months or as appropriate throughout the period of the moratorium and any extensions thereof, until adoption of a comprehensive ordinance as developed, relating to marijuana/cannabis related business land uses becoming effective in conjunction with the termination of the moratorium referred to in this Ordinance.

**Section 12. Public Hearing.** A public hearing shall be scheduled for 7:00 p.m. or as soon thereafter as the matter may be heard, on the 19<sup>th</sup> day of September, 2016, in City Council Chambers, 25 West Main Street, Auburn, Washington 98001, to hear and consider the comments and testimony of those wishing to speak at such public hearing regarding the moratorium.

**Section 13. Ordinance to be Transmitted to State.** Pursuant to RCW 36.70A.106, a copy of this Ordinance shall be transmitted to the Washington State Department of Commerce. A copy of this Ordinance shall also be transmitted to the Washington State Liquor and Cannabis Board.

**Section 14. Implementation.** That the Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

**Section 15. Severability.** That the provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

**Section 16. Effective date.** This Ordinance shall be in full force and effect five (5) days after publication, at which time the provisions of Ordinance No. 6595 shall be superseded and replaced insofar as inconsistent herewith.

INTRODUCED: AUG 15 2016

PASSED: AUG 15 2016

APPROVED: AUG 15 2016

CITY OF AUBURN

Nancy Backus  
NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam  
Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Held  
Daniel B. Held, City Attorney

Published: Seattle Times 8/18/2016

**ORDINANCE NO. 6 6 2 5**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF AUBURN, WASHINGTON, AMENDING SECTION,  
5.20.250, OF THE AUBURN CITY CODE AND AMENDING  
AUBURN ORDINANCE NUMBER 6613, RELATED TO  
MARIJUANA RELATED BUSINESSES AND ACTIVITIES

WHEREAS, on the 15th of August, 2016, the city Council of the city of Auburn, Washington, adopted its Ordinance No. 6613; and

WHEREAS, pursuant to Ordinance No. 6613, a limited number of marijuana related businesses, including retailers, producers and processors, are allowed to operate within the City of Auburn; and

WHEREAS, Ordinance No. 6613 also precludes, by moratorium, any marijuana related businesses or activities that do not meet the requirements set forth therein; and

WHEREAS, Ordinance No. 6613 directed the Planning Commission to evaluate the acceptable number and location of marijuana related businesses within the City of Auburn and develop a recommendation for permanent provisions to ultimately replace the moratorium provisions in Ordinance No. 6613; and

WHEREAS, the Washington Liquor and Cannabis Board continues to promulgate emergency rules to regulate marijuana businesses, including rules effective on August 27, 2016, September 7, 2016, October 8, 2016, and October 22, 2016; and

WHEREAS, the City Council desires to address the rapidly changing regulatory environment by modifying the limitations set forth in Ordinance No. 6613 prior to receipt of any recommendation from the Planning Commission in an effort to create greater stability for the business community within the City of Auburn; and

WHEREAS, Ordinance No. 6613 limits the number of marijuana retailers to those two that initially obtained a license from the Washington State Liquor and Cannabis Board pursuant to a lottery process developed to implement

Initiative 502; and

WHEREAS, the City Council has received public input, including a public hearing on February 16, 2016, that the residents of the City of Auburn oppose the proliferation of marijuana retailers within the City of Auburn; and

WHEREAS, a narrow expansion of the number of permitted marijuana retailers by the City Council prior to receipt of a recommendation from the Planning Commission will provide stability for businesses within the City of Auburn despite rapidly changing regulation by the Washington State Liquor and Cannabis Board while simultaneously respecting the public's comments; and

WHEREAS, all other provisions, amendments and the moratorium, including the moratorium work plan, as set forth in ordinance number 6613, shall remain in full force and effect unless specifically directed otherwise herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

**Section 1. Recitals Adopted.** That the City Council hereby adopts the recitals contained in this Ordinance as Findings of Facts and Conclusions, as appropriate given the context of each recital and incorporates said recitals herein by this reference.

**Section 2. Amendment to City Code.** That Section, 5.20.250, of the Auburn City Code is hereby amended to read as follows:

**5.20.250 Marijuana Related Activities.**

A. Definitions,

1. "Marijuana cooperative" means up to four qualifying patients, as defined by RCW 69.51A.010(19), who share responsibility for acquiring and supplying the resources needed to produce and process marijuana, including tetrahydrocannabinols or cannabimimetic agents, only for the medical use of members of the cooperative and not for profit. At least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana cooperatives shall not be permitted within the city of Auburn .

2. "Marijuana related business" means a person or entity engaged in

for-profit activity that includes the possession, cultivation, production, processing, distribution, dispensation, or sale of tetrahydrocannabinols or cannabimimetic agents, as defined by the controlled substances act, codified at 21 U.S.C. § 812, including marijuana retailers, marijuana processors, and marijuana producers, as defined herein.

a. "Marijuana processor" means any person or entity licensed by the Washington state liquor and cannabis board to process, package, and label marijuana concentrates, including tetrahydrocannabinols or cannabimimetic agents, in accordance with the provisions of RCW chapters 65.50 and 69.51a and WAC chapter 314-55.

b. "Marijuana producer" means any person or entity licensed by the Washington state liquor and cannabis board to produce marijuana, including tetrahydrocannabinols or cannabimimetic agents, for wholesale to marijuana processors and other marijuana producers pursuant to RCW 69.50.325.

c. "Marijuana retailer" means any person or entity established for the purpose of making marijuana concentrates, usable marijuana and marijuana-infused products, including tetrahydrocannabinols or cannabimimetic agents, available for sale to adults aged twenty-one and over.

d. "Marijuana researcher" is a position licensed by the Washington state liquor and cannabis board that permits a licensee to produce, process, and possess marijuana for the limited research purposes set forth in RCW 69.50.372. at least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana researcher businesses shall not be permitted within the city of Auburn.

e. "Marijuana transporter" is a position licensed by the Washington state liquor and cannabis board pursuant to WAC 314-55-310 that allows a licensee to physically transport or deliver marijuana, marijuana concentrates, and marijuana-infused products between licensed marijuana businesses within Washington state. at least until a thorough review of land use and code enforcement issues by the planning commission and the city council, and possible amendment to the city code, marijuana transporter businesses shall not be permitted within the city of Auburn.

B. License application – qualification – requirements to apply. in addition to the information required to be included with an application form pursuant to ACC 5.10.040(a), an application for a license for marijuana related business shall also include:

1. License – each application for a marijuana related business shall be accompanied by a current, valid license to operate as a marijuana producer or marijuana processor issued by the Washington state liquor and cannabis board, or, for marijuana retailers, either a current, valid license to operate as a marijuana retailer awarded by the Washington state liquor and cannabis board on the basis of I-502 lottery selection, or a current, valid license to operate as a marijuana retailer awarded by the Washington state liquor and cannabis board

on the basis of priority one selection together with a valid and complete building permit application submitted to the City of Auburn prior to January 4, 2016. Even if permitted or licensed by and/or registered with the Washington state liquor and cannabis board, marijuana cooperatives, marijuana researchers and marijuana transporters are not qualified or entitled to operate within the city of Auburn or to apply for a permit or business license within the city of Auburn.<sup>4</sup>

a. The maximum number of licensed marijuana retailers authorized and allowed to operate in the city of Auburn shall not exceed two (2); provided that a marijuana retailer licensed by the Washington state liquor and cannabis board on the basis of priority one selection may be allowed to operate within the city even if it constitutes more than two (2) such businesses, if the business applied to the city for permits or approvals patently related to an intended marijuana retail business at a time when the city did not have a moratorium or a ban prohibiting such activity.

b. If any marijuana retail business that is licensed on the basis of priority one selection by the Washington state liquor and cannabis board in combination with a valid and complete building permit application submitted to the City of Auburn prior to January 4, 2016, ceases to operate within the city, the number of authorized marijuana retail businesses would be reduced to a number not exceeding two (2).

bc. Any marijuana producer or marijuana processors operating within the city (i) shall strictly comply with all industrial, health and safety codes, including but not limited to section 314.55.104 WAC and section 69.50.348 RCW, and (ii) shall have at least 4,000 square feet of building utilized for its individual business, and the total square feet of all marijuana producers and processor in the city shall not exceed 90,000 square feet of building space; provided that any such business that was licensed and existing prior to August 1, 2016, that did not have at least 4,000 square feet of building utilized for its individual business may continue operating at its current location even though it did not have at least 4,000 square feet of building utilized for its individual business.

1. Security requirements – each application for a marijuana related business shall be accompanied by documentation of compliance with the security requirements of WAC 314-55-083 (2) and (3).

2. Fingerprints – Each application for a marijuana related business or renewal shall be accompanied by a complete set of fingerprints of all managers and owners of the business, utilizing fingerprint forms as prescribed by the chief of police.

bb. License regulations.

1. Access by city officials – all city officials shall have free access to marijuana related businesses licensed under the provisions of this chapter for the purposes of inspecting and enforcing compliance with the provisions of this chapter.

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<sup>4</sup> See ACC Section 5.20.250.

2. Entry prohibitions for certain person – It is unlawful for the owner, proprietor, manager, or person in charge of any marijuana related business licensed under the provisions of this chapter, or for any employee of said place, to allow entry or admission to any person under the age of 21 years of age, any lewd or dissolute person, any drunken or boisterous person, or any person under the influence of any intoxicant.

3. Law enforcement officers entry right – It is unlawful for the owner, proprietor, manager or person in charge of any marijuana related business licensed under the provisions of this chapter to refuse admission to any peace officer of the city or of the state, or any officer of the united states government charged with the duty of enforcing the police laws of the united states. said officers shall have free access at all times to any marijuana related businesses licensed under the provisions of this chapter.

4. Operation regulations – All marijuana, including tetrahydrocannabinols or cannabimimetic agents, equipment and all cultivation, processing, production, storage or sales shall be conducted entirely inside buildings. any perimeter fencing intended for security purposes shall meet the requirements of the city of Auburn and of the state of Washington applicable thereto.

5. State statute compliance – All marijuana related businesses licensed under the provisions of this chapter shall also comply with RCW chapters 69.50 and 69.51A, and WAC chapter 314-55, as applicable. (Ord. 6613 § 3, 2016.)

**Section 3. All Other Provisions of Ordinance No. 6613, including its Moratorium and Work Plan Remain in Effect.** All provisions of Ordinance No. 6613, including recitals, amendments, moratorium and work plan shall remain in full force and effect, consistent with the provisions thereof.

**Section 4. Ordinance to be Transmitted to State.** Pursuant to RCW 36.70A.106, a copy of this Ordinance shall be transmitted to the Washington State Department of Commerce. A copy of this Ordinance shall also be transmitted to the Washington State Liquor and Cannabis Board.

**Section 5. Implementation.** That the Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the

directives of this legislation.

**Section 6. Severability.** That the provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

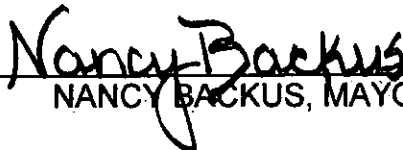
**Section 7. Effective date.** This Ordinance shall be in full force and effect five (5) days after publication.

INTRODUCED: NOV - 7 2016  
PASSED: NOV - 7 2016  
APPROVED: NOV - 7 2016


CITY OF AUBURN

ATTEST:

  
Danielle E. Daskam, City Clerk

  
NANCY BACKUS, MAYOR

APPROVED AS TO FORM:

  
Daniel B. Heid, City Attorney

Published: November 10, 2016 in The Seattle Times





To: Mayor and City Councilmembers

From: David Bugher, Assistant City Manager/Community Development Director  
Heidi Ann Wachter, City Attorney

Through: John J. Caulfield, City Manager *John J. Caulfield*

Date: November 12, 2013

Subject: Initiative 502 – Executive Summary

There are essentially four options for the City of Lakewood in addressing the potential for retail marijuana establishing in Lakewood:


1. Moratorium – a temporary ban to allow for further study. This measure is not necessary in Lakewood, as Lakewood's business code provides for denial of any business license to conduct illegal activity at the federal level. Marijuana is prohibited at the federal level.
2. Ban – an outright ban. This measure is not necessary in Lakewood, again because we have Code provisions authorizing the denial of any business license to conduct illegal activity at the federal level. Whether Cities have the authority to adopt a ban under the language of I-502 is the subject of some debate.
3. Zoning – restrict sales to specific locations. This measure may not be authorized due to state regulation of marijuana. Cities may zone based on traditional classifications such as commercial or residential but licensing of retail marijuana sales is done by the State.
4. Exercise our authority under the business license code – The City of Lakewood can deny a business license based on illegal conduct at the federal level. This does not prevent an aspiring marijuana entrepreneur from obtaining a retail marijuana license from the State. However, the State process mirrors that of liquor licensing, which includes the subject city in the licensing process. Within this process, the City can object based on our Code, which provides for denial of a business license to conduct illegal activity. If the State approves the license, the City can then appeal, first administratively and ultimately through the various Court levels. During the pendency of such an appeal issuance of the retail marijuana license is stayed.

Developing an effective strategy for the City of Lakewood requires understanding the plain language of I-502, how the State plans to implement this initiative and the Code provisions specific to the City of Lakewood. The strategy should take into consideration the litigation that may follow including whether the City is litigating this matter with the federal government, private counsel for the marijuana industry or the State of Washington.



To: Mayor and City Councilmembers

From: David Bugher, Assistant City Manager/Community Development Director  
Heidi Ann Wachter, City Attorney

Through: John J. Caulfield, City Manager 

Date: November 12, 2013

Subject: Initiative 502 – Options for the City of Lakewood

Initiative 502 allows the sales, distribution, and processing of marijuana in the State of Washington. The Federal Controlled Substances Act prohibits sales, distribution, and processing of marijuana within the United States. Legalization of recreational marijuana has roots in the earlier movement to legalize medicinal marijuana. When that movement began, the Public Safety Advisory Committee (PSAC) and then the City Council were briefed on options. At that time, recognizing that marijuana use is prohibited at the federal level and that federal law preempts state law in this area, the City made no change in existing Code. Businesses in the City of Lakewood require a business license and the City Code provides for denial of any business license application to conduct illegal activity whether the activity is illegal at the local, state or federal level. During this time very few inquiries came to the City regarding establishment of this type of business and most, if not all, were informal. No medicinal marijuana dispensaries have been established in the City of Lakewood.

I-502 legalized recreational marijuana at the State level. Marijuana is still illegal at the federal level and federal law preempts State law. Some, including staff at the Municipal Research Services Center (MRSC), have opined that the federal government is permitting marijuana in the wake of social acceptance. This is simply not true and our understanding, based on a discussion with MRSC representatives, is that a correction to this misstatement will be made. An article provided by the Association of Washington Cities (AWC) more accurately labels the federal approach as "wait and see". The federal prohibition stands and there is federal correspondence on either sides. See attachments, first correspondence from the Department of Justice to Clark County and then what is referred to as the "Cole memo" which some cite as federal permission to follow I-502. U.S. Attorneys will individually be responsible for interpreting the guidelines and how they apply to a case they intend to prosecute. Initiative 502 does not preempt federal law. Washington State residents involved in marijuana production/retailing are subject to prosecution at the discretion of the federal government.

The voters in Lakewood supported I-502 by a wide margin, 56% to 43%. Out of 30 precincts, only four voted against legalization and those were by narrow margins (the vote adds up to 49% for to 50% against in those four precincts).

Under I-502 the State of Washington regulates the sale, distribution and processing of marijuana.

I-502 basically has four parts:

- Allows the licensing and regulation of marijuana production, distribution, and possession for persons over 21;
- Removed state-law criminal and civil penalties for activities that it authorizes;
- Permits the state to tax marijuana sales and earmark marijuana-related revenues; and
- Created a regulated licensing system similar to that used for the control of alcohol. This regulatory system is to be in effect December 1, 2013.

This last part, creating a licensing system, permitted the Washington State Liquor Control Board (WSLCB), to establish a marijuana licensing process. Three new types of licenses are permitted under the initiative: producer; processor; and retailer. The fee for each license is a \$250 application fee, and \$1000 annual renewal fee.

A marijuana producer produces marijuana for sale at wholesale to marijuana processors and allows for production, possession, delivery, and distribution.

A marijuana processor processes, packages, and labels marijuana/marijuana infused product for sale at wholesale to marijuana retailers and allows for processing, packaging, possession, delivery, distribution.

A marijuana retailer allows for the sale of useable marijuana/marijuana infused products at retail outlets.

Production, processing and retail are all regulated by the WSLCB. I-502 allows the WSLCB to charge fees for anything done to implement/enforce the act. Fees can be charged for sampling, testing, and labeling.

Based on what Lakewood zoning allows, after removing anything within the state mandated buffers, marijuana retail establishments can only locate along or near some places along South Tacoma Way, Union Avenue and one or two other spots identified on the attached map. Pursuant to state regulations, the State will license no more than two retailers citywide. The State process anticipates licensing marijuana retailers, which bifurcates the process – the State licenses the marijuana and the City handles the business permitting as it would any other business. This has been likened to how liquor retail is currently handled.

Both the WSLCB and MRSC take the position that because I-502 does not address the option for local government to ban retail marijuana sales entirely such option does not exist and local government does not have the authority to do so. This is the subject of some debate and in the wake of numerous such bans being enacted by cities the WSLCB is seeking guidance from the Attorney General.

**Given the plain language of I-502, current plans for implementation, and the provision of the Lakewood Municipal Code, options to consider are as follows:**

Option No. 1: The moratorium

Analysis of this option begins with an understanding of what a moratorium is. Attorney Carol Morris has authored the “Moratoria Handbook for Municipalities” on behalf of the Association of Washington Cities Risk Management Services Agency. She defines moratorium as



...an emergency measure adopted without notice to the public or public hearings, designed to preserve the status quo. A moratorium suspends the right of property owners to submit development applications and obtain development approvals while the local legislative body considers, drafts and adopts land use comprehensive plans and/or development regulations (or amendments thereto), to respond to new or changing circumstances not addressed in current laws.

The City of Lakewood has a Code providing for the denial of a business permit based on violation of federal law. Codes differ between cities and some of the moratoria recently adopted may be necessary for those cities to consider options. Some cities adopted moratoria long before anyone could have obtained a legal license to sell marijuana which can factor into whether the City has a legitimate foundation for the moratoria.

#### Option No. 2: A ban

The City of Lakewood has Code language providing for the denial of a business license based on violation of federal law. Because Lakewood can deny the business license under existing Code, a ban does not appear to offer greater protection. As previously discussed, other cities may need a ban due to their specific existing Code language.

#### Option No 3: Zoning Marijuana activity

As previously discussed, the sale of marijuana is state regulated. City zoning regulates use types such as commercial or residential. Regardless of our zoning, the marijuana retailer gets the license to sell marijuana through the state.

#### *State Administrative Requirements*

Under WSLCB administrative regulations consider location in issuing licenses to marijuana producers, processors, and retailers. The variety of rules, either found in state law or in administrative code, as to location can be summarized into four basic rules. Taken as a whole, these “rules” place tight constraints on the siting, and operations of any type of marijuana business.

*First Rule:* Before the state liquor control board issues a new (or renewed) license to an applicant it shall give notice of the application to the chief executive officer of the incorporated city, in this case the City Manager. Lakewood then has the right to file with WSLCB within 20 days after the date of transmittal of the notice of application (or at least 30 days prior to the expiration date for renewals), written objections against the applicant or against the premises for which the new (or renewed license) is requested. WSLCB may extend the time period for submitting written objections.<sup>1</sup>

*Second Rule:* There are a limited number of locations. WSLCB will allow 334 retail stores statewide, up to 31 retail outlets in Pierce County, two of which can be located in Lakewood. These numbers are specific to retail outlets only.

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<sup>1</sup> This process is the exact same process used for liquor control licenses. When an application is filed with WSLCB, it is transmitted to the City Manager's Office. From there, it goes to the Assistant City Manager for Development Services/Community Development Director. Here, the request is either approved, conditionally approved, or denied. Depending on the location of the license, or the history of the applicant, CSRT may also be contacted.

At this time, the exact number of marijuana producers and processors are unknown. WSLCB will initially limit the opportunity to apply for marijuana producer and processor licenses to a 30-day calendar window beginning November 18, 2013. Initially, up to 2 million square feet of growing space would be allowed around the state, to harvest no more than 40 metric tons (about 44 tons) of marijuana.

*Third Rule:* A new marijuana license (whether producer, processor or retailer) is prohibited if the proposed licensed business is within 1,000 feet<sup>2</sup> of the perimeter of the grounds of any of the following uses:

- Elementary or secondary school;
- Playground;
- Recreation center or facility;
- Child care center;
- Public park;
- Public transit center;
- Library; or
- Any game arcade (where admission is not restricted to persons age twenty-one or older).

*Fourth Rule:* WSLCB will not approve a retail license for retail marijuana sales within another business.

The attached map referenced earlier shows what locations are available once the state rules are applied. Within that available area, the City has the authority to restrict based on zoning. The space available under state law, if residential, remains unavailable to a marijuana retailer because retail sales are a commercial use.

#### *Local Zoning for Marijuana Retail Activities*

Zoning regulates height, bulk and use. This can include building size, shape, and placement. It can also include regulation of density. Zoning also controls uses within districts. There are permitted uses, which are allowed as of right (subject to meeting other permit requirements) and conditional uses, which are allowable uses within a district subject to administrative approval (usually before a planning commission or through an administrative officer) to ensure their compatibility and appropriateness.

Lakewood's zoning distinctly regulates activities and intensities; it generally stays away from regulating specific items, objects or substances. For example, cigarette and alcohol sales are retail activities. Retail sales activities are permitted uses in numerous commercial zoning districts. Under Lakewood's current zoning regulations, a marijuana retailer meets the definition of "retail trade," meaning the sale or rental of goods and merchandise for final use or consumption. (LMC 18A.90.220) Retail trade is a commercial use category. The current zoning code does not specifically list marijuana retailing, but based on the how the state is regulating marijuana in the same manner as alcohol, it is best described as sales of general merchandise<sup>3</sup>. General merchandise sales are primary permitted uses in the ARC, NC1, NC2, TOC, CBD, C1, and C2 zoning districts. Sales of general merchandise in residential and industrial zoning districts are prohibited. Once you apply the WSLCB's requirements (only two marijuana retail outlets), and keeping a 1,000 buffer away from certain uses, the number of potential locations dwindles substantially.

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<sup>2</sup> The 1,000 feet is measured along the most direct route over or across established public walks, streets, or other public passageway between the proposed building/business location to the perimeter of the grounds of use types listed herein.

<sup>3</sup> When liquor sales were privatized, a land use determination was made to allow liquor sales as general merchandise.



## *Local Zoning for Marijuana Production, Processing, and Warehousing*

These activities are essentially manufacturing processes that would be typically located in industrial zoning districts. For Lakewood, this would be in the I1, I2, or IBP zoning districts. The production of marijuana is essentially a horticultural activity. Horticulture is not described or listed in I1, I2, or the IBP zoning districts. Further, the processing of marijuana does not fit into the three manufacturing processes listed in the code - primary manufacturing, secondary manufacturing or major assembly, or limited manufacturing/assembly. Nor is it a match with food and related products. Current regulations also specifically prohibit the warehousing, distribution, and freight movement of illegal substances. LMC 18A.20.700.

One area of zoning regulation to be mindful of is the production of marijuana in the CZ, AC1, and AC2. All three zones allow for agricultural production as a permitted use, meaning, the growing, producing, or harboring of plants. These same zones also allow for nurseries. Technically, there are large sections of the AC1 zone outside the mandated WSLCB buffer (generally east of South Tacoma Way and south of 92<sup>nd</sup> Street SW) that could be used to grow marijuana only (no processing and no distribution).

Under WSLCB administrative law, marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in non-rigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must also meet certain security requirements.

Marijuana production applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

Tier 1 – Less than 2,000 square feet;

Tier 2 – 2,000 square feet to 10,000 square feet; and

Tier 3 – 10,000 to 30,000 square feet. (WAC 314-55-075)

### Options 4A, 4B and 4C: Addressing the federal preemption issue within the licensing process

A marijuana entrepreneur may apply for a business license in the City of Lakewood, and it would be processed in the same way as any other non-marijuana license. If the proposal would be denied for non-marijuana reasons, such as zoning, it will be denied; and, if it would normally be granted, it will be granted. That entrepreneur will have to obtain a state license as well as a City business license before selling marijuana. The State process anticipates seeking input from the relevant city prior to issuing any license. Options at this stage are as follows:

- 4A. The City may choose to seek federal assent to issuance of a City business license for a federally prohibited activity given our Code language; or

After an applicant seeks the state license for marijuana, the state seeks the City's input as the receiving jurisdiction. Lakewood can provide notice to the federal government of our concerns and the violation of federal law. If there is no response from the federal government, the City may choose to seek a declaratory judgment to protect the City from any federal liability for licensing federally prohibited activity in the City. Specifically, the City can cite to the Clark County memo which has never been withdrawn

and seek clarification as to whether the federal government will pursue the City of Lakewood for violation. Issuance of a City business permit may be stayed pending the outcome of this process.

- 4B. The City may deny the business license application based on the federal prohibition of marijuana. This potentially may result in litigation from the marijuana entrepreneur. The City's defense will be based on our Code and this will put the City in the position of defending federal preemption.
- 4C. The City may choose to oppose, within the State licensing process, issuance of the license due to the federal prohibition.

Within the state process, Lakewood can oppose issuance of the state license based on the federal prohibition and then appeal issuance of the license thereafter. This would be an appeal under the state Administrative Appeals Act, starting within the administrative process and proceeding to the Superior Court, Court of Appeals and ultimately the state Supreme Court for a determination on the question of federal preemption. Issuance of a state license to sell retail marijuana is stayed pending the outcome of this process.

**In setting the course for the City of Lakewood, the City must first establish what the desired outcome is; make a statement, change law, keep this type of business out of the City?**

Current consensus appears to be that because the federal government is choosing to "wait and see" cities should simply proceed on the assumption that the federal prohibition is not part of the analysis. By accepting this position, the federal government is free to take whatever course is politically convenient based on anything or nothing at all. The better course is to at least document acknowledgement of the federal prohibition and an effort to follow it without incurring undue liability to the City.

The City has the Code necessary to deny a business license to marijuana retailers due to the federal prohibition. Such action may trigger litigation. Within the business licensing options evaluated here is the underlying question as to which is the preferred opponent- the federal government, private counsel for the would-be marijuana entrepreneur or the State of Washington.

Attachments:

- Buffer Analysis Map
- Clark County Memorandum
- Cole Memorandum



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;



- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

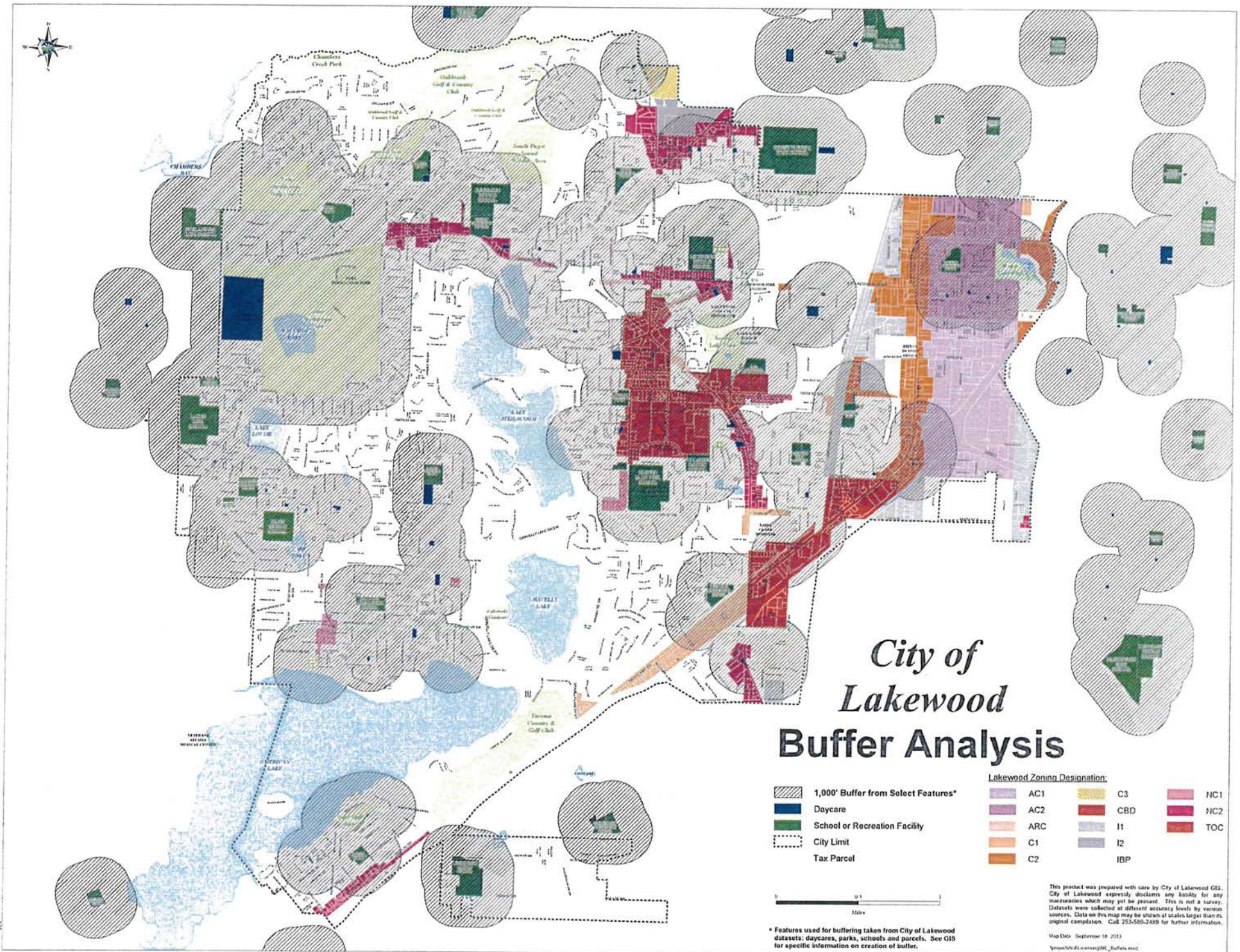
Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

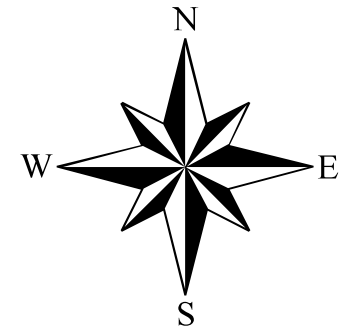
H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation









- 1,000' Buffer from Select Features\*
- Child Care Facility
- Library
- School or Recreation Facility
- Transit
- Tax Parcel
- Commercial Zoning Boundary
- Lakewood City Limit

\* Features used for buffering taken from City of Lakewood datasets: daycares, libraries, parks, schools, and transit. See GIS for specific information on creation of buffer.

# City of Lakewood Potential Marijuana Overlay

0 0.5 1 Mile

This product was prepared with care by City of Lakewood GIS. City of Lakewood expressly disclaims any liability for any inaccuracies which may yet be present. This is not a survey. Datasets were collected at different accuracy levels by various sources. Data on this map may be shown at scales larger than its original compilation. Call 253-589-2489 for further information.

Map Date: January 10, 2018 :Projects\CD\Licensing\Marijuana\PMO\_CZ.mxd



# **Preliminary Determination of Environmental Nonsignificance**

City of Lakewood proposed Marijuana Regulations  
Proposed Amendments to the Lakewood Municipal Code

**Case No. LU-17-00260**

**TO:** All Departments and Agencies with Jurisdiction

**SUBJECT:** Preliminary Determination of Environmental Nonsignificance

In accordance with WAC 197-11-340, a copy of the Preliminary Determination of Environmental Nonsignificance for the project described below is transmitted:

**APPLICANT:** City of Lakewood Community and Economic Development Department  
6000 Main Street SW  
Lakewood, WA 98499-5027

## **Proposal:**

The proposed action would amend Lakewood Municipal Code, Title 18A, Land Use and Development Code. There are two proposals under consideration:

The first proposal would enact a prohibition of all medical and recreational marijuana uses, including medical marijuana dispensaries, collective gardens, cooperatives, individual or group cultivation of marijuana, and all marijuana production, processing, research, and retailing, including those marijuana businesses licensed by the Washington State Liquor and Cannabis Board.

The second proposal would establish a marijuana overlay zoning district whose purpose is to establish zoning regulations that provide for state licensed recreational and medical marijuana land uses consistent with state law under Title 69 RCW, and subject to requirements of the Washington Administrative Code (WAC) Chapter 314-55, adding additional local standards to address potential public health, safety and welfare considerations. Under the second proposal the following regulations are contemplated:

- A conditional use permit requirement;
- Dispersion requirements of 1,000 feet for uses listed in WAC 314-55-010;
- Dispersion requirements for marijuana retail businesses (marijuana retail businesses shall not be located within 300 feet of other state-licensed marijuana retail business);
- Marijuana retail businesses are not permitted as a home occupation;
- Marijuana retail businesses may not be located within any other businesses, and may only be located in buildings with other uses only if the marijuana business is separated by full walls and with a separate entrance. No more than one marijuana retail business shall be located on a single parcel;
- Marijuana retail businesses shall not be located in a mobile home or mobile structure or manufactured home;

- Marijuana retail businesses must maintain documentation demonstrating that all required federal, state, and local taxes, fees, fines, and penalties have been paid and that there are no past due obligations;
- Special regulations outlining compliance with Title 69 RCW and WAC Chapter 314-55 and other state statutes; zoning district locations; hours of operation; a limitation on the number of retail outlets not to exceed two; compliance with Title 15A and Title 18A development standards; visibility of Marijuana plants, products, and paraphernalia, and security requirements subject to WAC Chapter 315-55.

Copies of the complete text of the proposed permanent regulations are available from the Community and Economic Development Department at the address below.

**Location:** City of Lakewood

**Lead Agency:** City of Lakewood

**City Contact:** David Bugher  
Community and Economic Development Department  
6000 Main Street SW  
Lakewood, WA 98499-5027  
(253) 512-2261

The lead agency for this proposal has made a preliminary determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file with the led agency. This information is available to the public upon request.

This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2). **Comments may be submitted by 5:00 PM on January 17, 2018.** The Responsible Official will reconsider the DNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the DNS. **Unless modified by the City, this determination will become final on February 7, 2018.** There is no administrative appeal for this determination. Appeals must be filed in conjunction with appeals of the adopted amendments to the Growth Management hearings Board; appeals shall be taken in accordance with procedures and limitations set forth in RCW 43.21C.075 and WAC 242-02. In addition to the Growth Management Hearings Board requirements, a copy of the appeal shall be filed with the City Clerk, 6000 Main Street SW, Lakewood, WA 98499-5027.

Responsible Official: David Bugher  
Position/Title: Assistant City Manager for Development Services

Signature:



Issue date: December 29, 2017  
Comment deadline: January 17, 2018, at 5:00 PM





Office of the Attorney General  
Washington, D. C. 20530

January 4, 2018

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, III  
Attorney General

SUBJECT: Marijuana Enforcement

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 *et seq.* It has established significant penalties for these crimes. 21 U.S.C. § 841 *et seq.* These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately.<sup>1</sup> This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

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<sup>1</sup> Previous guidance includes: David W. Ogden, Deputy Att'y Gen., Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); James M. Cole, Deputy Att'y Gen., Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (Aug. 29, 2013); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes (Feb. 14, 2014); and Monty Wilkinson, Director of the Executive Office for U.S. Att'ys, Policy Statement Regarding Marijuana Issues in Indian Country (Oct. 28, 2014).



October 26 2017 10:43 AM

KEVIN STOCK  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

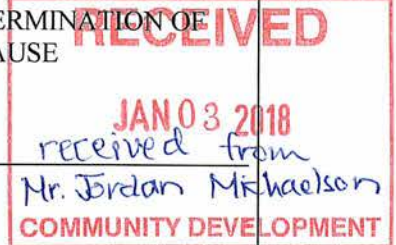
CAUSE NO. 17-1-04134-5

vs.

DEREK WAYNE SHENEFELT,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

Defendant.



WILLIAM J. HURNEY, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the LAKEWOOD POLICE DEPARTMENT, incident number 1729800288;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 25th day of October, 2017, the defendants, DUSTIN KENT SHENEFELT and DEREK WAYNE SHENEFELT, did unlawfully possess marijuana with the intent to deliver while armed with three firearms.

Pursuant to neighborhood complaints regarding the sale of marijuana, police began to investigate a residence in Lakewood. Investigation revealed that Derek and Dustin Shenefelt resided at the residence.

This residence is less than 500 feet from Clover Park High School.

After making a controlled buy of marijuana from the residence, police obtained a search warrant. Upon entry both Derek and Dustin were located in the living room. A loaded AR 15 rifle was leaning against the wall, and a loaded 9mm semi-automatic pistol was within reach of both.

Post Miranda, Derek admitted to selling marijuana for the last year to support himself and stated there is approximately 10 pounds of marijuana in the residence. Derek claimed all the firearms belonged to him and are for protection.

Post-Miranda, Dustin also admitted to selling marijuana from the house for the last year to support himself. He said they make about \$500 a week from selling marijuana. He related that the firearms in the house are for protection.

Both defendants stated that the homeowner is aware they are selling marijuana from the house.

In the southwest bedroom a SKS rifle was found.

In the closet nearest the living room a suitcase was discovered. Inside was approximately 10 pounds of a green leafy substance which the officer believed to be marijuana based upon his training and experience.

DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400

1 Two digital scales and baggies were found on a table in the kitchen

2 The State reserves the right to add a school bus enhancement at a later date.

3 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
4 WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

5 DATED: October 26, 2017

6 PLACE: TACOMA, WA

7 /s/ WILLIAM J. HURNEY  
WILLIAM J. HURNEY, WSB# 12902

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DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -2

Office of the Prosecuting Attorney  
930 Tacoma Avenue South, Room 946  
Tacoma, WA 98402-2171  
Main Office (253) 798-7400



**CITY OF LAKEWOOD  
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT  
STAFF REPORT TO THE PLANNING COMMISSION**

January 17, 2018

<b>Application No(s)</b>	LU-00261(text amendment) & LU-00262 (SEPA)
<b>Applicant</b>	City of Lakewood
<b>Project Description(s)</b>	The proposed action would amend Lakewood Municipal Code, 18A.20.300 (D.): 1) defining an Adult Family Home (AFH) as a Type 1 Group Home licensed pursuant to RCW 70.128.150; 2) requiring an AFH to obtain a city business license; 3) prohibiting clients with a history of violence, including sex offenses from occupying an AFH; 4) prohibiting the conversion of an AFH into an Enhanced Services Facility (ESF); and 5) prohibiting ESFs in the R1, R2, R3, and R4 single-family residential zoning districts.
<b>Location</b>	Area-wide amendment
<b>Reason for Requested Change</b>	City Council initiated
<b>Planning Commission Meeting Dates</b>	January 3, 2018 (Study Session) January 17, 2018 (Public Hearing) February 7, 2018 (Tentative date for taking action)

**Staff Recommendation**

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**I. Background**

On January 9, 2017, the city council received a comprehensive report on Adult Family Homes (AFHs). The report covered 23 subject areas including legal limitations, previous city council actions on AFHs, AFHs in Pierce County, Lakewood, and selected Pierce County cities, AFH and nursing home cost structures, sex offenders in AFHs, placement of the mentally ill in AFHs, neighborhood impacts, AFH saturation, and a minimum wage discussion. A list of recommendations was provided at the end of the report:

1. Contact DSHS and request that that the agency:

Not authorize any additional AFHs in the Lakewood Oakbrook Neighborhood; and



Prohibit the placement of no more than two sex offenders per AFH, and, further, that given the saturation of AFHs in Oakbrook, that each AFH housing a sex offender be located at a minimum of 880 feet separation from any other AFH housing a sex offender.

2. Revise Title 18A and update special needs housing definitions based on the State's categorization of facilities.
3. Perform traffic studies of AFHs located in the Oakbrook Neighborhood. Determine if certain concentrations of AFH's have impacted the aesthetic nature of the area, and if so, determine possible mitigation measures.
4. Change the City's land use and permitting regulations to require a permit for any change in impervious surface.
5. Review the 11 policy statements found in City Council Resolution 2007-01<sup>1</sup>. Some of these policies have been, or were implemented, and others were not. Some had budgetary implications and, further, some dealt with potential changes in council legislative policy (which was not aggressively pursued). Council may want to revisit the Resolution 2007-01 before making changes.
6. Consider an ordinance to increase minimum wage rates for direct-care workers who work in special needs housing settings. Direct-care workers are Nursing Assistants (usually known as Certified Nursing Assistants or CNAs), Home Health Aides, and Personal Care Aides.

Excerpt of minutes of the city council January 9, 2017 meeting:

*Review of adult family homes.*

*Assistant City Manager for Development Services Bugher provided background information about adult family homes and reviewed the number of adult family homes in Lakewood and in the Oakbrook neighborhood. He then reviewed*

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<sup>1</sup> The City shall continue its current practice of accepting fully completed adult family home pre-inspection checklist applications; and providing onsite inspections by the City's Building Official and Fire Marshal and/or their respective designees;

- That CED provide a follow-up report on daycare facilities;
- City support the current development standards listed in the Lakewood Municipal Code (LMC) Section 18A.30.160 for the R1, R2, R3 and R4 zoning districts;
- Continue the current practice of requiring general business licenses and zoning certification for bed-and-breakfast operators, daycares, home occupations, and all types of group residential accommodations, including adult family homes;
- Affirmation that an AFH licensing regulations do not prohibit a licensee from operating other businesses on the premises so long as the AFH remains compliant with the licensing requirements of an adult family home; Promulgation and distribution of 'good neighbor' brochure to AFH operators;
- City to expand its newsletter and website to better inform citizens about the regulatory environment for personal care facilities, daycares, group homes, home based businesses, and other related activities located in residential zoning districts;
- City to enforce building code regulations to prevent work being performed without construction permits, in addition to enforcing minimum health and safety and property maintenance regulations, public nuisances, and unsafe and dangerous building regulations;
- Reject administrative policies regarding parking and traffic safety mitigation measures for Type I Group Homes. However, such administrative policies may be appropriate for other group accommodations and higher intensity home based businesses on a case by case basis subject to administrative review;
- Petition the City to monitor shuttle bus operations in consultation with Pierce Transit; and
- Support legislation which amends the RCWs and WACs allowing community input into the siting process for group homes and adult family homes licensed by the Department of Social and Health Services (DSHS).

*recommendations to begin discussions with DSHS to not authorize additional adult family homes in Oakbrook, prohibit the placement of no more than two sex offenders per adult family home where it has been saturated; revise Title 18A and special needs housing, perform traffic studies of adult family homes in Oakbrook, change land use and permitting to require permitting on changes in impervious surface, consider reviewing and changing policy statements on personal care facilities in Resolution 2007-01, and consider increase in minimum wage rates for direct care works in special needs housing.*

*Discussion ensued if adult family home providers are obtaining remodeling permits, what happened to the Resolution 2007-01 policy statements; concerns that any wage increase is not to put care workers out of business, it is about employee safety, benefits and training and workers should receive what State workers receive; concerns that this is a public safety issue in addition to a land use and property value issue; what characteristics constitute saturated areas and are permits required; concerns about sex offenders residing with developmentally disabled individuals in adult family homes and cities may have zoning authority in enhanced used facilities; and with regard to recommendation #1, the City should strongly recommend if it is an adult family home, there should be no sex offenders in adult family homes and the City has the ability to revoke such business licenses.*

On November 27, 2017, the city council received a second report on AFHs. The topics in the report included:

1. A brief history of AFHs in Washington;
2. The concentration of AFHs in specific residential neighborhoods in the City;
3. AFHs may be used to house individuals who are either dangerous or in need of greater care than can be appropriately provided in AFHs;
4. AFHs may be transformed into Enhanced Services Facilities (ESFs), whose residents require greater care than AFH residents, with no notice to affected neighborhoods;
5. Underlying lack of transparency by the Washington Department Social Health Services (DSHS) as to placement in AFH residents exacerbates community concern.
6. The Federal Fair Housing Act cannot act as a shield for dangerous individuals to occupy AFHs;
7. State regulation of AFHs does not prevent the City from imposing public safety regulations such as the building or business license code; and
8. Submittal of a draft ordinance.

Excerpted minutes of the November 27, 2017 council meeting are as follows:

*Adult family homes/Enhanced Service Facilities update.*

*City Attorney Wachter and Assistant City Manager for Development Services provided an update on adult family homes.*

*Discussion ensued if the Department of Social and Health Services (DSHS) cannot be located in residential areas; create a zoning prohibition of DSHS in*



*residential settings; does the regulation provide for protection under the Federal Fair Housing Act regulations and types of behavior; does the City have the ability to have one-on-one eyes on staffing levels and defining what one-on-one would mean; providing for business licenses for operators of adult family homes and should the proposed ordinance be split into several legislative items; do DSHS employees coach patients into certain homes; having discussions with DSHS about employee credentials and wages; State legislators creating legislation and possibly the Supreme Court making changes; what is the timeline for having some type of legislation prepared for the Council such as prohibiting expansion of enhanced service facilities ; and providing for a business license effective January 1, 2018.*

On December 11, 2017, the city council received a third report on AFHs. This report provided additional information including action items:

Perform a compliance check on the status of all business licenses, including AFHs. A progress report on this effort is to be provided by the city manager at the January 16, 2018 city council regular meeting.

A review process would begin on three proposed ordinances:

- Proposed Ordinance 1 - Adult Family Home Businesses shall not include Enhanced Service Facilities. The first proposed ordinance amends Title 18A, the City's Land use and Development Code, to do the following:
  - Add a definition of Adult Family Home Business in the code specifying that Adult Family Homes are intended to serve people with functional disabilities and are not intended to serve those with a history of violence, including sex offenses;
  - Prohibit Enhanced Service Facilities in residential zones; and
  - Prohibit the conversion of Adult Family Home Businesses into Enhanced Services Facilities.
- Proposed Ordinance 2 - Dispersal of Adult Family Homes Plus. The second proposed ordinance amends Title 18A to do the following:
  - Permit Adult Family Home Business applications only if they meet conditions that effectively disperse them in the city;
  - Require public participation prior to licensing an Adult Family Home Businesses within the City;
  - Require operators of Adult Family Home Businesses to properly maintain the homes;
  - Limit on-street, employee parking; and
  - Ensure that any signs associated with the home are consistent with the surrounding neighborhood.
- Proposed Ordinance 3 - Adult Family Home Business License. The third proposed ordinance amends Title 5, the City's Business Licenses and Regulations, to add a new Chapter 5.70 "Adult Family Home Business" the provisions of which shall be

supplemental to the general business license requirements of Title 5 to require the following:

- Establishing staff- to- patient ratios;
- Establishing minimum educational qualifications of staff; and
- Establishing minimum wage paid to staff.

Proposed Ordinances 1 and 2 would be referred to the planning commission for consideration; the first to be reviewed in January/ February and the second to be reviewed March/April.

The third may be considered directly by the city council after receiving more information about the population served by these businesses sometime in May/June.

## **II. Text of Proposed Amendment**

Lakewood Municipal Code 18A.20.300 D shall be amended as follows:

Section 1. Type 1 Group Home. Publicly or privately operated living accommodations for related or unrelated individuals having handicaps, subject to compliance with all applicable federal, state, and/or local licensing requirements. For the purposes hereof, "handicap" shall mean a physical or mental impairment which substantially limits one or more of the person's major life activities, a record of having such an impairment, or being regarded as having such an impairment; however, the term does not include current, illegal use of or an addiction to a controlled substance.

a. Adult Family Home Business - Defined. An Adult Family Home Business is a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements. Adult Family Homes are intended to serve those with functional disabilities and are not intended to serve those with a history of violence, including sex offenses.

b. Adult Family Home Business – May not be Converted. An Adult Family Home Business which is located in a single-family residential zoning district may not be converted or otherwise changed to an Enhanced Services Facility or any other type of use not permitted in single-family residential zoning district. Enhanced Services Facilities are not permitted in single-family residential zoning districts.

## **III. Process**

**Public/Agency Notice:** The proposed action is a Process V Permit. A Process V Permit is defined as an extensive text or area-wide map revisions of the comprehensive plan, the land use and development code; zoning of annexed land and/or adoption of new planning-related ordinances. This type of permit requires a public hearing before the planning commission (LMC 18A.02.565).

**Process V Permits has specific notice requirements:** The requirements include: 1) content; 2) publication at least once in the newspaper of record (and the City's website); and notice must be mailed, posted and first published not less than fifteen (15) nor more than thirty (30) days prior to the hearing requiring the notice (LMC 18A.02.700). After adoption, the text of the action either in summary form, or the entire ordinance, must be published in the newspaper of record (RCW 35A.12.16).



The public hearing notice was published on December 29, 2017 and placed on the City's website on the same date.

**Environmental Review:** The Responsible Official on behalf of the City of Lakewood has made a determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file. This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2) and will become final on February 7, 2018.

**Public/Agency Comments:** As of January 10, 2018, no comments have been received.

#### **IV. LMC Criteria for Amendment**

**Initiation Process:** This amendment was initiated by the Lakewood City Council (LMC 18A.02.410).

#### **Review of Pierce County Countywide Planning Policies:**

AH-3. The County, and each municipality in the County, shall encourage the availability of housing affordable to all economic segments of the population for each jurisdiction.

3.1 For the purpose of the Pierce County Countywide Planning Policies the following definitions shall apply:

3.1.4 "Special Needs Housing" shall mean supportive housing opportunities for populations with specialized requirements, such as the physically and mentally disabled, the elderly, people with medical conditions, the homeless, victims of domestic violence, foster youth, refugees, and others.

3.4 Each jurisdiction should provide a sufficient supply of special needs housing opportunities that is equitably and rationally distributed throughout the County.

**Affordable Housing in Lakewood:** Within the region, Lakewood may exceed its share of low-income housing. The majority of housing for extremely low- and very low-income households has historically been older housing stock. Most of the low-income housing is located in central Lakewood, the east side of the City, Tillicum, and Woodbrook.

Some of the community's housing needs that cannot be met by the market are met by the Pierce County Housing Authority (PCHA), and by private non-profit housing providers. These organizations are generally subject to the same land use regulations as for-profit developers; however, they can access an array of federal, local, and charitable funding to make their products affordable to households in the lower income segments.

Pierce County Housing Authority (PCHA) owns and operates five apartment complexes with a total of 285 units in Lakewood. PCHA manages these properties. Some tenants receive Section 8 vouchers. In total, as of early 2010, there were 551 PCHA Section 8 certificates or vouchers in use in Lakewood.

In addition to PCHA, there are four low-income housing tax credit apartment complexes totaling 388 units. There are two small HUD contract housing apartments, 28 units located



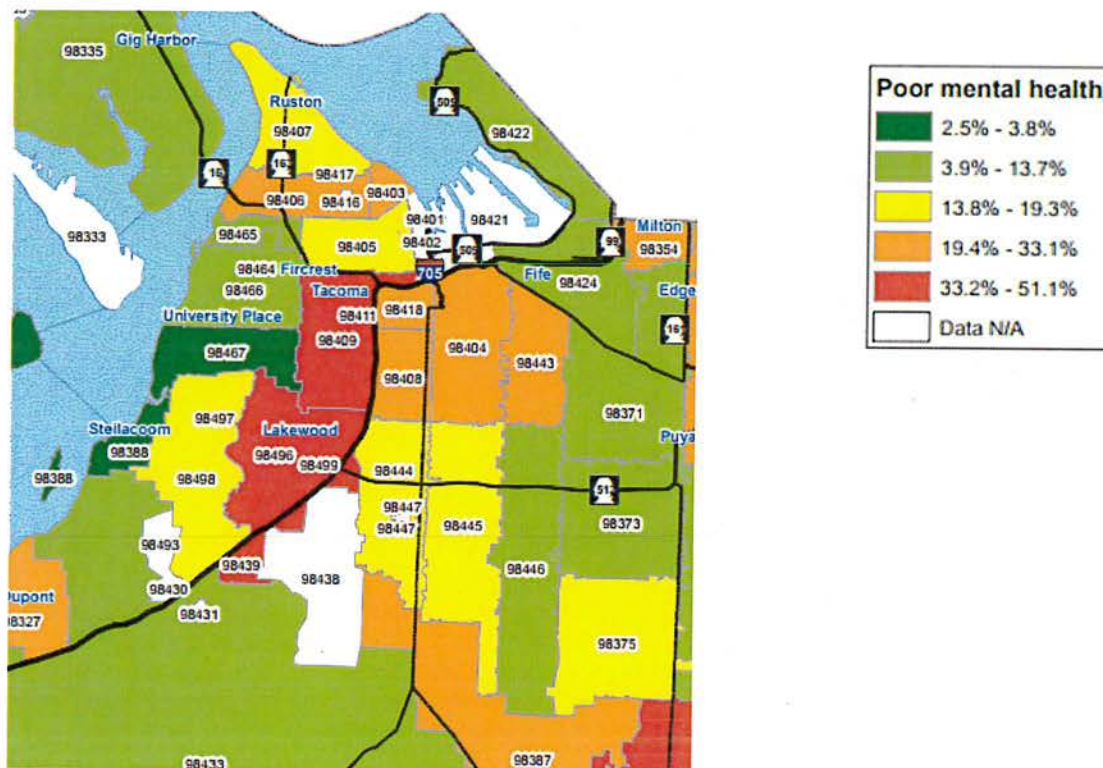
in Lakewood. Network Tacoma operates 15 units of affordable housing at the Venture II Apartments located at 5311 Chicago Avenue SW.

The Metropolitan Development Council (MDC) operates four affordable housing units in Tillicum. The Pierce County Affordable Housing Association (PCAHA) owns a 20 unit, permanent low- income housing apartment complex at 5532 Boston Avenue SW (Manresa Apartments). The property is managed by the Catholic Housing Services.

The Living Access Support Alliance (LASA) operates several programs in Lakewood providing a variety of housing types. LASA operates six units in Lakewood in a partnership with Sound Families, PCHA and social service agencies. Families are provided an apartment along with case management services. A limited number of Section 8 certificates are available to graduates of this program. Ainsworth House is a group house serving 3 to 4 young mothers and their young children. Each mother and child can stay up to 24 months based on program participation. Case management services are provided including parenting, financial education, landlord-tenant rights/laws and other life skills.

Total assisted housing in Lakewood comes to 1,298 residential units. This number represents about 10% of the City's rental housing stock. The number of low-income units in Lakewood is higher than many of the surrounding Pierce County suburban cities.

There also appears to be a correlation between low-income housing in the City and mental health: 33.2 percent to 51.1 percent of the individuals, who reported poor mental health in the past 30 days by ZIP code, using 2011-2013 data, were found in nearly the exact same locations as to where low-income housing is sited in Lakewood. Graphically, this is depicted on the Tacoma Pierce County Health Department Health Equity Map:



### Special Needs Housing:

Nursing homes: A nursing home is a place for people who do not need to be in a hospital but cannot be cared for at home. Most nursing homes have nursing aides and skilled nurses

on hand 24 hours a day. Some nursing homes are set up like a hospital. The staff provides medical care, as well as physical, speech and occupational therapy. There is one nursing home located in Lakewood, the Kindred Transitional Care and Rehabilitation Center located at 11411 Bridgeport Way. They have 80-beds. Within the greater Tacoma-Lakewood region there are a total of 12 nursing homes.

There was a second nursing home located in Lakewood at 8407 Steilacoom Boulevard SW. It closed and remained vacant for several years. The nursing home was eventually converted into Pierce College student housing.

Assisted living facilities: Assisted living is a system of housing and limited care that is designed for senior citizens who need some assistance with daily activities but do not require care in a nursing home. There are about 26 assisted living facilities in the greater trauma/Lakewood area. None are located in Lakewood.

AFHs: Coupled with subsidized housing, nursing homes, assisted living facilities, is the large number and concentration of AFHs in Lakewood. AFHs are so concentrated in the Oakbrook neighborhood that it may be diminishing the existing residential neighborhood. This creates a concentration of AFHs in an area rather than an integration of the homes into existing neighborhoods, which threatens the legislative intent.

The majority of AFHs in Pierce County are in the following cities:

Tacoma: 71 AFHs/393 beds  
Lakewood: 73 AFHs/426 beds  
Puyallup: 31 AFHs/ 173 beds  
Gig Harbor: 17 AFHs/ 99 beds<sup>2</sup>

The City of Tacoma, with a population more than triple Lakewood's has two fewer AFHs than Lakewood. The following table presents a city-wide per square mile for a Lakewood-Tacoma comparison:

	<b>Lakewood</b>	<b>Tacoma</b>
Total AFH	73	71
Land area	18.95 sq. mi.	62.34 sq. mi.
Land area, no water	17.17 sq. mi.	49.72 sq. mi.
Land area/AFH concentration	3.84 AFH sq. mi.	1.14 AFH per sq. mi.
Land area, no water/AFH concentration	4.16 AFH per sq. mi.	1.42 AFH per sq. mi.

**Summary:** Lakewood has a significant amount of low-income housing, a large population with mental health needs, and has the highest count of AFHs in Pierce County, in addition to one of the largest psychiatric hospitals on the West Coast, Western State Hospital, being located in Lakewood.

### **Standards and Criteria to be Used by the Planning Commission and City Council to evaluate a request for an amendment (LMC 18A.02.415)**

#### A. The proposed amendment is consistent with the comprehensive plan.

The proposed amendment has three basic parts.

The first part defines an Adult Family Home (AFH) as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements. Adult Family

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<sup>2</sup> This information is from the DSHS Adult Family Home Locator as of November 16, 2017.



Homes (AFH) are intended to serve those with functional disabilities and are not intended to serve those with a history of violence, including sex offenses. This proposed text provides clarifying language consistent with state law. The proposal also adds a business licensing component.

This part of the proposal has no impact on the comprehensive plan.

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The second part, prohibiting residents who may have functional disabilities and having a history of violence, including sex offenses, is a topic that is not that is not addressed with any specific Comprehensive Plan policy.

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The third part of the proposal would prohibit Enhanced Services Facility (ESF) in single-family residential zoning districts (zones R1, R2, R3, and R4) and/or the conversion of an AFH into an ESF.

Such actions would preserve and protect existing residential neighborhoods which align with the following Comprehensive Plan policies:

*GOAL LU-4: Maintain, protect, and enhance the quality of life of Lakewood's residents.*

*Objective: Preserve and protect the existing housing stock. Policies:*

*LU-4.1: Preserve existing housing stock where residential uses conform to zoning requirements.*

DSHS characterizes an ESF as a licensed residential facility, which provides a community placement option for individuals whose personal care and behavioral challenges do not rise to a level that requires an institutional setting. Such individuals are referred to an ESF if they are coming out of state and community psychiatric hospitals or have no other placement option due to their complex behavior, medical, chemical dependency and/or mental health needs. An ESF can house up to 16 persons, whereas an AFH can house no more than six.

There is an argument that the proposal could potentially decrease the supply of special needs housing, and inconsistent with GOAL LU-3, Policies LU-3.5, LU-3.6, and LU-3.7. An ESF is a form of institutional care. This determination is made based on the licensing requirement, construction standards, and the size of the facility. And while there is a nationwide trend towards deinstitutionalization with more and more adults with disabilities being absorbed into community living arrangements, ESFs have a setting more in line with psychiatric hospitals. The City of Lakewood argues that ESFs are not a residential use, but either institutional or commercial in character.

Attached to this report is a memorandum prepared by the City's Building Official, Nancy Craig. Ms. Craig compared the building code requirements of an AFH with a ESF. The construction standards are not the same, and the conversion of an AFH to an ESF may be economically impractical. An AFH could not be reclassified as an ESF as it would require significant building modifications which would also trigger a change of use from an R-3 to an I-1. Current zoning would not allow an institutional

type facility, based on construction code standards, in a single family residential zone.

Further, a review of the Department of Health's (DOH) website (Construction Review Search), December 20, 2017, indicates that there are eight ESF projects throughout the state. The table below lists the construction status of ESFs statewide.

Facility name	Project title	Project Status	Project close date	Facility city
Unified Residential Care	Proposed 16 Bed ESF	Approved; construction completed	Oct 26, 2017	Spokane Valley
Orchards Highlands	Private meeting room & breakroom addition	Pending; authorized to begin construction	N/A	Vancouver
Upriver Place	Room 6 safety modification	Pending; project in review stages	N/A	Spokane
Sunrise ESF	New ESF	Pending; authorized to begin construction	N/A	Everett
Creekstone Care	New ESF	Closed; project cancelled	N/A	Kennewick
Heart To Heart Adult Family Home	New ESF	Closed; project cancelled	N/A	Federal Way
Trent Avenue ESF	New ESF	Closed; incomplete application	N/A	Spokane
Upriver Place (8 beds)	ESF conversion	Approved; construction completed	Jan 17, 2015	Spokane
Orchards Highlands (12 beds)	New ESF	Approved; construction completed	May 7, 2015	Vancouver

Three ESFs have been completed. Two ESFs are pending. Three ESFs have been cancelled.

Given the unique nature of ESFs, their construction requirements and the difficulty of DSHS in authorizing ESFs, the City's proposal should not have an adverse impact on special needs housing.

B. The proposed amendment and subsequent development of the site would be compatible with development in the vicinity.

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements is not applicable to this criterion.

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Prohibiting residents who may have functional disabilities, and having a history of violence from being housed in an AFH, would be incompatible with development given the saturation of AFHs at least in the Oakbrook Neighborhood.

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Prohibiting ESFs and the conversion of AFHs to ESFs - an ESF could house up to 16 persons. This level of density is not consistent with single-family residential zoning districts.

CED has attempted to identify the locations of existing, operational ESFs. There are three ESFs in operation: Unified Residential Care located in Spokane Valley; Upriver Place also in Spokane Valley; and Orchards Highlands in Vancouver.

The actual address locations of these ESFs have been difficult to determine. The information is not readily available. Locational data beyond the location of the city is not provided by either DSHS or DOH. However, using the name of the facility, Secretary of State data, and city location, some address locations have been identified.

**Unified Residential Care** is located at 15413 E Valleyway Avenue, Spokane Valley, WA. Subject property is located in a commercial zoning district about 2,400 feet from I-90 and the intersection of Sullivan Road.

**Orchard Highlands # 1 and #2** addresses are unknown, but Orchard Highlands # 1 may be located at 9505 NE 116th Avenue, Vancouver, WA as part of an assisted living facility known as the Orchards Highlands Senior Community. Property is located adjacent to State Highway 503 in a transitional area. To the north and east of the site, are commercial, office, and semi-warehouse buildings. To the south and west, older, single family residential development.

Orchard Highlands #2 may be located down the block at 9101 NE 116<sup>th</sup> Avenue, Vancouver, WA. This is a stand-alone building. Property is located adjacent to State Highway 503 also in a transitional area. Single family residential uses are found to the north and west. To the south, is located a mini-warehouse. To the east and across the state highway, is a Goodwill Outlet Store, a single family rental and an express market.

**Upriver Place's** address location is unknown, but it may part of an existing assisted living facility known as Bethany Place located at 9111 East Upriver Drive, Spokane Valley, WA. The facility is located in a developing single family residential area adjacent to a major collector street.

**The Sunrise Services ESF** is currently under construction. This is a 16-bed ESF located at 6502 Evergreen Way, Everett, AW. The ESF is adjacent to an arterial commercial road; residential uses of varying densities are located behind the proposed facility.

In sum, existing ESFs are not found in established single family neighborhoods. Placing such uses in these areas would be incompatible.

C. The proposed amendment will not unduly burden the transportation system in the vicinity of the property with significant adverse impacts which cannot be mitigated.

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements - not applicable to this criterion.

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Prohibiting residents who may have functional disabilities and having a history of violence from being housed in an AFH - not applicable to this criterion.

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Prohibiting ESFs and the conversion of AFHs to ESFs - the proposed amendment would not burden the existing transportation system. If anything, the proposed amendment would likely reduce potential traffic impacts in the event that such a use were proposed.

D. The proposed amendment will not unduly burden the public services and facilities serving the property with significant adverse impacts which cannot be mitigated.

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements - not applicable to this criterion.

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Prohibiting residents who may have functional disabilities and having a history of violence from being housed in an AFH – would reduce the burden on public services and facilities. This proposal would prohibit such uses thereby maintaining current service levels, and not exacerbating same.

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Prohibiting ESFs and the conversion of AFHs to ESFs - would reduce the burden on public service and facilities. This proposal would prohibit such uses thereby maintaining current service levels, and not exacerbating same.

E. The proposed amendment will not adversely affect the public health, safety and general welfare of the citizens of the city.

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements - not applicable to this criterion.

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Prohibiting residents who may have functional disabilities and having a history of violence from being housed in an AFH – would protect the public health, safety, and general welfare of the citizens of the City by not allowing dangerous individuals to be placed in AFHs.

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Prohibiting ESFs and the conversion of AFHs to ESFs – Lakewood contends that an ESF is an institutional use and is not appropriate in single-family residential zoning districts.

The underlying issue is that the state of Washington has sorely underfunded mental health treatment. The use of ESFs is a means to find quick solutions to increasing



bed capacity which may, in fact, be endangering the general public, in addition to not fundamentally serving those in its charge.

- F. The entire range of permitted uses in the requested zoning classification is more appropriate than the entire range of permitted uses in the existing zoning classification, regardless of any representations made by the petitioner as to the intended use of subject property.

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements - not applicable to this criterion.

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Prohibiting residents who may have functional disabilities and having a history of violence from being housed in an AFH – not applicable to this criterion.

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Prohibiting ESFs and the conversion of AFHs to ESFs – the proposal would prohibit ESFs within all single-family residential districts. ESFs, however, would still be permitted in commercial zoning and public-/institutional zoning districts throughout the City.

- G. Circumstances have changed substantially since the establishment of the current zoning map or zoning district to warrant the proposed amendment.

***DSHS operates Western State Hospital (WSH) which is located within the City of Lakewood.*** WSH is an inpatient psychiatric hospital that is certified by the federal Centers for Medicare and Medicaid Services - CMS. It has over 800 beds and over 1,800 employees. WSH is one of the largest psychiatric hospitals west of the Mississippi. It is also one of two state psychiatric hospitals located in the state.

***Given Lakewood's proximity to WSH there appears to be a desire to place additional mental health facilities in the general Lakewood area.*** There is a strong concern that Lakewood is being impacted disproportionately with an ever increasing number of AFHs and related types of special needs housing. Evidence is based on three factors:

- DSHS' intended release of an acknowledged psychotic killer from WSH to reside at the Alpha Palace Home, an adult group home at 7402 Coral Lane SW in the Oakbrook neighborhood within the City of Lakewood, 330 yards from an existing elementary school.
- DSHS' statement that for ESFs, their current focus is, "...on finding placements for clients who are ready to discharge from Western State Hospital; development of an ESF along the I-5 corridor is a priority."<sup>3</sup>

Again, WSH is located within the City's incorporated limits. Lakewood is also adjacent to the I-5 Corridor with over six miles of freeway frontage.

- A high incidence of AFHs/group homes located in the City of Lakewood. As of December 15, 2015, there are 256 AFHs in Pierce County of which 73, or 29 percent, are located in Lakewood. Lakewood has a population of 59,280. By

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<sup>3</sup> FAQs for ESF (2).docx <https://www.dshs.wa.gov/altsa/residential-care-services/enhanced-services-facilities>, December 15, 2017.

way of comparison, Tacoma, an adjacent city has 72 AFHs having a population of 208,100. Combined, Lakewood and Tacoma account for 57 percent of all AFHs in Pierce County.

***DSHS has expanded the role of AFHs to treat the mentally ill.*** A variety of different types of mentally ill residents can be placed in AFHs.

WAC 388-76-1000 uses the following definitions (paraphrased):

**Developmental Disability-** A severe chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition other than mental illness, found to be related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these person (i.s., autism)

**Mental Illness-** is defined as an Axis 1 or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (available through the aging and disability services administration)

The following is taken from the Diagnostic and Statistical Manual of Mental Disorders:

- Axis I: All psychological diagnostic categories except mental retardation and personality disorder
- Axis II: Personality disorders and mental retardation

Mental/Psychiatric/Behavioral/Learning conditions include, but are not limited to: depression, anxiety disorders, bipolar disorder, ADHD, autism spectrum disorders, anorexia nervosa, bulimia nervosa, and schizophrenia.

Personality Disorders include, but are not limited to: paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, borderline personality disorder, antisocial personality disorder, narcissistic personality disorder, histrionic personality disorder, avoidant personality disorder, dependent personality disorder, obsessive-compulsive personality disorder; and organic intellectual disabilities.

**Dementia-** Is defined as a condition documented through the assessment process required by WAC 388-76-10335 (Resident Assessment)

WAC 388-76-10500, which was authorized in 2007, allows an AFH to accept patients with known mental illnesses when:

- The provider, entity representative and resident manager have successfully completed training in one or more of the specialty designated area;
- The home provides the department with written documentation of successful completion and that specialty care training be provided for all caregivers in the AFH by a person knowledgeable in specialty care.
- The home ensures the specialty care need of each resident is met.



WAC 388-112A-0010 29) "Specialty training" refers to curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

H. Disregarding any benefit to the specific property owner or developer, how would the proposed amendment(s) benefit the community as a whole? How would the proposed amendment(s) outweigh any negative impacts?

Defining an AFH as a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements - not applicable to this criterion.

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Prohibiting residents who may have functional disabilities and *having a history of violence* from being housed in an AFH – not applicable to this criterion – improves public safety, and potentially reduces public service demands.

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Prohibiting ESFs and the conversion of AFHs to ESFs – prohibits dissimilar uses in single-family residential zoning districts; improves public safety; and potentially reduces public service demands.

## IX. Staff Analysis

### Draft Findings of Fact:

1. The City of Lakewood Planning Commission is responsible for long range planning matters and providing implementation recommendations to assure compliance with the Growth Management Act for the City of Lakewood Urban Growth Area in coordination with Pierce County and within the incorporated boundaries of the City of Lakewood. These measures include updates and amendments to the comprehensive plan; development regulations, environmental regulations, and any other rules, actions or regulations deemed necessary to implement the Growth Management Act.
2. RCW Chapters 36.70 and 36.70A authorize the adoption of development regulations.
3. The City of Lakewood Planning Commission conducted a public meeting on proposed regulations on **January 3, 2017**.
4. Copies of the SEPA checklist and determination of non-significance (DNS) were submitted to the Department of Ecology SEPA Register on **December 28, 2017**.
5. The proposed amendment is an area-wide text amendment subject to the noticing requirements found in LMC 18A.02.700.
6. Notice of the Planning Commission Public Hearing, DNS, and request for comments was published in *The News Tribune* and on the City's website on **December 29, 2017**.

7. The City of Lakewood submitted its 60-Day Notice of Intent to Adopt Amendment to the Washington State Department of Commerce on **December 22, 2017**.
8. The Washington State Department of Commerce acknowledged receipt of the proposal with **Material ID No. 24485**.
9. On **January 17, 2018**, the City of Lakewood Planning Commission conducted an advertised public hearing. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
10. The City of Lakewood Planning Commission incorporates previous 2017 city council reports as part of the record related to this draft ordinance.
11. The City of Lakewood Planning Commission further finds the following:
  - a. Lakewood has a significant amount of low-income housing proportionately and FHS more than many other Pierce County cities and it is NOT been equitably and rationally distributed. Other Pierce County cities may not be in compliance with Pierce County Countywide Planning Polices.
  - b. Based on the International Building Code, ESFs are institutional uses (and not residential in character).
  - c. It is economically impractical to convert an AFH into and ESF, and that such a modification would be representative of a change of use under the International Building Code.
  - d. DSHS desires to construct ESFs in western Washington adjacent to I-5 to expand capacity needs at Western State Hospital; however, three ESFs that have been permitted in eastern Washington, one in the Vancouver area, and a third under construction in Everett, Washington.
  - e. Those ESFs that have been permitted, which has been limited, are found in commercial zoning districts, along busy highways, or as a part of an existing assisted care facility. ESFs are not appropriate in single family zoning districts.
  - f. Prohibiting ESFs in Lakewood single family residential zones should have no impact on reducing the number of ESFs, or the ability locate ESFs in commercial zoning districts.
  - g. DSHS has expanded the role of AFHs to treat the mentally ill, and in the process, has on at least one occasion, attempted to place a psychotic killer from WSH to reside at the Alpha Palace Home, an adult group home at 7402 Coral Lane SW in the Oakbrook Neighborhood.
  - h. AFHs should not be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
  - i. To the best of the City's knowledge, DSHS has not properly performed individual assessments to determine direct threats in AFH settings.



- j. Prohibiting residents who may have functional disabilities and having a history of violence from being housed in an AFH, improves public safety, and potentially reduces public service demands.
  - k. Prohibiting ESFs and the conversion of AFHs to ESFs, prohibits dissimilar uses in single-family residential zoning districts, improves public safety, and potentially reduces public service demands.
  - l. ESFs may impose undue administrative or financial burden on the City of Lakewood.
12. The City of Lakewood Planning Commission has reviewed the entire record and public testimony as it relates to the proposed amendments to the Lakewood Municipal Code.

### **Draft Conclusions of Law**

- 1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
- 2. The procedural requirements of RCW 36.70A have been complied with.
- 3. The proposed amendments are consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.
- 4. The proposed amendments have been reviewed and processed in accordance with the requirements of Title 14 Environmental Protection, Title 14A Critical Areas, and Title 18A Land Use and Development of the City of Lakewood Municipal Code.

## **XI. Exhibits**

AFH Ordinance 1 – ESF

Memorandum plus attachment dated November 27, 2017 from the City Attorney and Assistant City Manager for Development Services

Map: City of Lakewood, Oakbrook Adult Family Homes - 500 foot buffer

Map: City of Lakewood, Oakbrook Adult Family Home – 1,000 foot buffer

July 20, 2017 Forensic Mental Health Report

Adult Family Home Disclosure of Services

Draft Ordinance w/Exhibits

City of Lakewood Public Disclosure Request, November 7, 2017

Map showing location of Adult Family Homes

Adult Family Home Permit Application

Memorandum from City Attorney, Heidi Wachter, to City Council, December 11, 2017

Memorandum from Building Official, Nancy Craig, December 19, 2017

TNT News Story, "Psychiatric hospital's proposed release of accused murderer sidestepped law intended to prevent it." December 29, 2017 & updated January 2, 2018

Preliminary Determination of Nonsignificance

Public hearing comments

Judy Swartz, January 2, 2018

DNS Comments

Mike Brandstetter, January 4, 2018

## ORDINANCE NO. XXX

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Title 18A, the Land Use and Development Code, to define “Adult family Home Business” in the code; prohibit Enhanced Service Facilities in residential zones; and to prohibit the conversion of Adult Family Home Businesses into Enhanced Services Facilities.

WHEREAS, **City’s Police Power** - the Washington State Constitution Article XI invests the City of Lakewood with police powers to provide for public health, safety and welfare and pursuant to its police powers, the City regulates land use planning, development and the operation of businesses within its jurisdictional boundaries; and

WHEREAS, the **Growth Management Act**, chapter 36.70A RCW, requires the City to adopt a Comprehensive Plan, including a process for identifying and siting essential public facilities; and

WHEREAS, the GMA defines essential public facilities as those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, regional transit authority facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities; and

WHEREAS, the GMA requires each county, in cooperation with cities and towns, county-wide planning policies and the City participated in the development of the Pierce County County-Wide Planning Policies; and

WHEREAS the County-Wide Planning Policies recognize the importance of distributing essential public facilities identified in the GMA among jurisdictions and communities (Pierce County County-Wide Planning Policies, at Page 64-65 EFP-3); and

WHEREAS, the City of Lakewood (City) has adopted a Comprehensive Plan pursuant to the GMA and that plan includes a process for identifying and siting essential public facilities (City of Lakewood Comprehensive Plan, Chapter 9, page7 Goal 9.7); and

WHEREAS, **Adult Family Homes** are a type of group home and are considered an essential public facility pursuant to the GMA; and

WHEREAS, qualified Adult Family Homes are meant to be an essential component of the state's long-term care system and are meant to reduce institutionalization pursuant to RCW 70.128.005; and

WHEREAS, Adult Family Homes require specialized staffing in the facilities pursuant to RCW 70.128.130; and

WHEREAS, Adult Family Homes must be considered a residential use of property as well as a "permitted use in all areas zoned for residential or commercial purposes" pursuant to RCW 70.128.140; and

WHEREAS, **Enhanced Services Facilities** are also considered to be an essential public facility pursuant to the GMA; and

WHEREAS, Enhanced Services Facilities are designed to assist people with serious issues of substance abuse, mental illness, dangerous behavior or a combination thereof pursuant to chapter 70.97 RCW; and

WHEREAS, Enhanced Services Facilities require specialized staffing and facilities above and beyond those required for Adult Family Homes, pursuant to RCW 70.97.080; and

WHEREAS, while residents of Enhanced Services Facilities and Adult Family Homes require substantially different levels of care and facilities, Adult Family Homes may be transformed into Enhanced Services Facilities pursuant to RCW 70.97.060 with little or no notice to affected communities; and

WHEREAS, given that the people served in Enhanced Services Facilities require significantly more care and treatment, as well as far more secure facilities, than those served in Adult Family Homes, the City finds that Enhanced Services Facilities are incompatible with residential zones and should not be allowed as a permitted use in residential zones; and

WHEREAS, state law provides an exemption from liability for facilities providing care and treatment for residents placed in Enhanced Services Facilities as well as to the agencies licensing or placing



people in these facilities pursuant to RCW 70.97.220; and

WHEREAS, **Washington State Department of Social and Health Services** (DSHS) licenses and regulates Adult Family Homes pursuant to chapter 70.128 RCW and particularly RCW 70.128.060; and

WHEREAS, DSHS also licenses and regulates Enhanced Services Facilities pursuant to chapter 70.97 RCW; and

WHEREAS, Adult Family Homes and Enhanced Services Facilities operate as businesses in that they are licensed and inspected as a business and they charge fees for services; and

WHEREAS, DSHS places many residents in adult family homes, but it is unknown how much information about prospective residents DSHS shares with Adult Family Home operators, the City and the community; and

WHEREAS, DSHS and other similar agencies are under pressure by both legal requirements and the volume of people needing care to offer placements in facilities that offer the least restrictive alternatives to institutional care (e.g., RCW 71.34.740); and

WHEREAS, DSHS recently attempted to place at least one resident in an Adult Family Home who has spent most of his adult life at Western State Hospital, has a history of violence including murder and assault, and is considered at risk of future danger to himself and others, even when compliant with medications; and

WHEREAS, the City finds that the above intended placement by DSHS is inappropriate for an Adult Family Home because Adult Family Homes are not required to have, and often do not have, the staff, resources or secure facilities needed to accommodate such residents and may therefore risk the safety and security of other Adult Family Home residents, themselves and the general public; and

WHEREAS, the City did not learn of the above intended placement directly from DSHS and the City suspects that other, similarly inappropriate placements may have been made and/or may continue to be made by DSHS; and

WHEREAS, the City has attempted to learn if DSHS has made or intends to make other such placements like the above intended placement through a public record's request pursuant to chapter 42.56 RCW, which is attached and incorporated herein as **Exhibit A (Request for records)**, but DSHS has not been forthcoming with this information; and

WHEREAS, each Adult Family Home is required to “meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence” pursuant to RCW 70.128.140; and

WHEREAS, the City code requires all businesses operating within the City to obtain a business license, stating that it is “unlawful for any person to conduct, operate, engage in, or practice any business in the city that is conducted operated, engaged in, or practiced in whole or in part from real property located within the city, without first obtaining the appropriate general or temporary business license along with any applicable additional license required by this Title or other applicable local, state or federal law” at LMC 5.02.020 Business License Required; and

WHEREAS, the City code states that “no structure ... shall be ... constructed ... altered nor any use be established or changed until a zoning certification or discretionary land use permit ... have been issued” by the City (LMC 18A.02.140); and

WHEREAS, the City code defines a zoning certification as “a certificate, issued prior to a project permit, stating that the proposed use is in accordance with the requirements and standards of” title 18A LMC (LMC 18A.90.); and

WHEREAS, the City code states that a complete application is the “most current version of the permit application form approved” by the City; and Community Development Director (LMC 18A.02.152); and

WHEREAS, the City code gives effect to state mandates outlined in the Washington Administrative Code (WAC) 51.51.0325 (Adult Family Homes) in order to ensure public health, safety and welfare by

requiring an Adult Family Home permit application, a copy of which is attached and incorporated herein as **Exhibit B (Adult Family Home Application)**; and

WHEREAS, the City finds that DSHS's placement of dangerous people in Adult Family Homes impedes the intent of chapter 70.128 RCW because it places potentially violent and therefore dangerous people in homes ill-equipped to treat and/or manage them; and

WHEREAS, state agencies are required to comply with county and city comprehensive plans and regulations pursuant to RCW 36.70A.103; and

WHEREAS, the City finds that DSHS's placement of dangerous residents in Adult Family Homes violate the comprehensive plans and regulations adopted by Pierce County and the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY ORDAINS, Lakewood Municipal Code 18A.20.300 D shall be amended as follows:

Section 1. Type 1 Group Home. Publicly or privately operated living accommodations for related or unrelated individuals having handicaps, subject to compliance with all applicable federal, state, and/or local licensing requirements. For the purposes hereof, "handicap" shall mean a physical or mental impairment which substantially limits one or more of the person's major life activities, a record of having such an impairment, or being regarded as having such an impairment; however, the term does not include current, illegal use of or an addiction to a controlled substance.

a. Adult Family Home Business - Defined. An Adult Family Home Business is a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements.

b. Adult Family Home Business – May not be Converted. An Adult Family Home Business which is located in a residential zone may not be converted or otherwise changed to an Enhanced Services Facility or any other type of use not permitted in a residential zone. Enhanced Services Facilities are not permitted in residential zones.

Section 2. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance

Section 3. Effective Date. This Ordinance shall be in full force and effect upon passage and signatures hereon.

PASSED by the City Council this \_\_ day of November, 2017.

CITY OF LAKEWOOD

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Don Anderson, Mayor

Attest:

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Alice M. Bush, MMC, City Clerk

Approved as to Form:

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Heidi Ann Wachter, City Attorney

DRAFT

## **EXHIBIT A**

Exhibit A – City’s Public Records Request.

## **EXHIBIT B**

Exhibit C - Adult Family Home permit application.


DRAFT





To: Mayor and City Councilmembers

From: Heidi Ann Wachter, City Attorney and Dave Bugher, Assistant City Manager

Through: John J. Caulfield, City Manager 

Date: November 27, 2017

Subject: Adult Family Homes

The City's goal is to protect the safety, aesthetics and residential quality of neighborhoods through regulation designed to control the impact caused by the proliferation of the Adult Family Home (AFH) business. Proposed local legislation, attached, limits the amount of this business type in any one area to protect the residential setting desired by both Adult Family Home residents and existing neighborhoods.

To facilitate consideration of the proposal, this memo reviews the history of Adult Family Home business model generally as well as in the City. This memo also addresses some of the comments, questions and concerns raised by citizens and councilmembers.

### **Adult Family Homes**

AFHs arose in the 1970s as a small, community alternative to nursing homes. Currently, the state of Washington has the capacity to care for more individuals in AFHs than any other state in the nation.<sup>1</sup> There were 2,070 licensed AFHs statewide in October 2002, and as of 2016, there are about 2,813. This number has been relatively stable over the past several years.

In the 1990's Washington state lawmakers passed legislation that created a program to promote residential care settings as an alternative to nursing home care.<sup>2</sup> The program's goal was to create opportunities for individuals to live in settings less restrictive than traditional nursing facilities and to decrease public expenditures on long-term care for older and disabled adults. At the time, this policy was controversial. In less than two years, the

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<sup>1</sup> Adult Family Home Quality Assurance Report; Recommendations to the Governor and Legislature per ESHB 1277 December 1, 2012

<sup>2</sup> Id

number of publicly-funded nursing home residents decreased nearly 13%, while the use of residential care options such as AFHs increased dramatically. The majority of the licensed AFHs in Washington are located in King, Pierce, Snohomish, and Clark counties.

An “Adult Family Home” is, by definition of state law, a residential home where care givers provide “personal care, special care, room and board” to one to six adults who are not related to the care givers.<sup>3</sup> Specifically exempted from the definition are nursing homes, assisted living facilities, residential treatment facilities for individuals with mental illness, hospitals and homes for individuals with developmental disabilities.<sup>4</sup> Despite this, state licensing procedures specifically contemplate serving a population with needs similar to those served in the exempt facilities.<sup>5</sup>

AFHs are private businesses, licensed by the state. The business model naturally rewards carrying the maximum number of residents. The impression created by the legislative scheme is one of flexibility designed to provide an alternative to institutional care, a “least restrictive” setting for a population with highly varied needs.<sup>6</sup> The result is that the flexibility designed to encompass a variety of individuals is being stretched to include residents who pose a danger to neighborhoods, as well as to residents and staff of the AFHs.

**Adult Family Homes are concentrated in specific residential neighborhoods rather than dispersed throughout residential settings.**

One of the concerns with AFHs in the City of Lakewood is that they are so concentrated in particular neighborhoods as to diminish the existing residential nature of the neighborhood. This creates a concentration of Adult Family Homes in an area rather than an integration of the homes into existing neighborhoods, which threatens the legislative intent. The majority of AFHs in Pierce County are in the following cities:

Tacoma: 71 AFHs/393 beds  
Lakewood: 73 AFHs/426 beds  
Puyallup: 31 AFHs/ 173 beds  
Gig Harbor: 17 AFHs/ 99 beds<sup>7</sup>

The City of Tacoma, with a population more than triple Lakewood’s has two fewer AFHs than Lakewood. It is fair to say that within the County, Adult Family Homes have a concentration in the City of Lakewood.

<sup>3</sup> [RCW 70.128.010\(1\)](#)

<sup>4</sup> [RCW 70.128.030](#)

<sup>5</sup> See [RCW 70.128.060](#), which discusses particularities of licensing for populations presenting both developmental and mental conditions. It should be noted that for many of these facilities, the intent of purpose section describes a fairly specific population served while the section addressing licensing allows a lot of overlap between populations served.

<sup>6</sup> See [RCW 70.128.050](#), which details the intent of Adult Family Home regulation.

<sup>7</sup> This information is from the DSHS Adult Family Home Locator as of November 16, 2017.

Within the City of Lakewood, dispersion appears to be a challenge. The attached maps show a high concentration of Adult Family Homes in the Oakbrook neighborhood as follows:

1. Adult Family Homes – Citywide
2. Adult Family Homes – Oakbrook

Here is a general City-wide concentration per square mile for a Lakewood-Tacoma comparison:

	Lakewood	Tacoma
Total AFH	73	71
Land Area	18.95 Sq. Mi.	62.34 Sq. Mi.
Land Area, No water	17.17 Sq. Mi.	49.72 Sq. Mi.
Land Area/AFH Concentration	3.84 AFH per Sq. Mi.	1.14 AFH per Sq. Mi.
Land Area, No water/AFH Concentration	4.16 AFH per Sq. Mi.	1.42 AFH per Sq. Mi.

Restrictions on density are reflected in the following maps which show the potential buffers:

1. Oakbrook Adult Family Homes – 500 Ft Buffer
2. Oakbrook Adult Family Homes – 1000 Ft Buffer

A potential for addressing this concern is to establish density limitations within any given area, as indicated in the proposed ordinance. When AFHs become sufficiently concentrated in one place the result is an inability for any of the AFHs to benefit from a residential neighborhood setting; rather that setting has been replaced by the concentration of AFHs.

The common factors in concentration seem to be price of house. In each tract reviewed for this memo, which include Lakewood, University Place and Vancouver, selected due to concentration of AFHs, the median mortgage ranges from \$1250 to \$1926 per month for houses of a median value that tops out at \$262,000.00 for each tract reviewed.<sup>8</sup>

AFHs are a business, therefore price of house is always going to be a factor. Business owners must recoup capital investment with earnings. Earnings for AFHs are in the form of “heads in beds”. The natural business model for AFHs given the current legislative scheme is to minimize costs, such as a mortgage, and maximize clients. Attached is a hypothetical budget that is well within reasonable expectations. This hypothetical demonstrates that profit comes only at the fifth or sixth client.

<sup>8</sup> [American Community Survey 2011-2015](#)

Because of the business benefit of a certain price of house, regulatory intervention must be employed to protect the legislative intent of placing this particular type of residence in a neighborhood setting. Without regulation the market encourages concentration in specific communities based on cost.

**Adult Family Homes may be used to house individuals who are either dangerous or in need of greater care than can be appropriately provided in Adult Family Homes.**

One reason AFHs have failed to blend into the residential setting is the perception that the homes accommodate not only the intended population, but also dangerous individuals. This perception was confirmed as reality when the City learned indirectly that Western State Hospital intended to place one of their long-term residents into Oakbrook despite his pending Aggravated Murder 1 charge, diagnosis of psychosis and a prognosis for re-offense. The Murder 1 incident took place the last time he was released into the community.<sup>9</sup>

Revisit the business model: minimize cost and maximize clients. The natural inclination is to push the boundaries of legislation that is built for flexibility. The flexibility was intended to allow for different types of care; it is being abused to enable placement of individuals who require a different degree of care.<sup>10</sup> Attached is the application on file with the State for the Adult Family Home the Murder 1 defendant was to be placed. A review of the activities provided at this Adult Family Home seems absurd for such an individual – games and trips to the mall.<sup>11</sup>

Assuming DSHS is allowing individuals with more complicated needs into Adult Family Homes, the qualifications of care givers merits attention but has yet to be addressed legislatively. One avenue for ensuring quality of care is to adopt a minimum wage that will ensure that care givers in this setting earn at the same rate as they would in other, similarly challenging settings. Without this, Adult Family Homes, for financial and other reasons, may have an incentive to admit people with complex issues while employing those who lack the required training to work with them.

Minimum wage legislation has been adopted at the local level in other cities.<sup>12</sup> There are not examples of minimum wage legislation with a specific focus such as health care providers. Legislation of this nature would need to be sufficiently focused to achieve the goal of quality providers without unintended consequences to other health care providers in the community.

<sup>9</sup> July 20, 2017 Forensic Mental Health Report

<sup>10</sup> Residents of AFHs may present with developmental disabilities or need care due to the effects of aging. The common theme is supposed to be the need for personal care with assistance. Legislation designed to address this minor assistance across a variety of conditions is being stretched to include persons with criminal and violent history.

<sup>11</sup> Adult Family Home Disclosure of Services

<sup>12</sup> SeaTac, Seattle.

**Adult Family Homes may be transformed into Enhanced Services Facilities, whose residents require greater care than Adult Family Home residents, with no notice to affected neighborhoods.**

Additional concerns result from state legislation that allows the transformation of AFHs into Enhanced Services Facilities.<sup>13</sup> Enhanced Services Facilities are specifically designed for a population with serious issues of substance abuse, mental illness, dangerous behavior, or a combination thereof.<sup>14</sup> The intent is to provide a safe, secure treatment environment for a limited population which is not appropriately served in other facilities or programs. This connection suggested by the legislation underscores concern for the varied population AFHs may attempt to serve.

Failure to remove the legislative connection between AFHs and Enhanced Services Facilities exacerbates the perception that AFHs are designed to house criminal and violent individuals. Removing the references between the two will prevent the continuing view that they are different points on the same spectrum. Such a fix should be simple given the representation by DSHS that transition from Adult Family Home to Enhanced Services Facility is not automatic and would not occur in a residential zone. The conversion reportedly is not possible; the legislation should reflect that.

A potential solution is to amend state law to clarify what population is intended for Adult Family Homes. With clarification, the homes can serve people suited to residential neighborhoods while ensuring that those not suited to residential neighborhoods will be placed and treated in settings more appropriate for them.

<sup>13</sup> Capacity-Security-Licensing-Application of state and local rules. RCW 70.97.060 4) Nursing homes under chapter [18.51](#) RCW, assisted living facilities under chapter [18.20](#) RCW, or adult family homes under chapter [70.128](#) RCW, that become licensed as facilities under this chapter shall be deemed to meet the applicable state and local rules, regulations, permits, and code requirements.

<sup>14</sup> [RCW 70.97.030 Admission Criteria](#). A person, eighteen years old or older, may be admitted to an enhanced services facility if he or she meets the criteria in subsections (1) through (3) of this section:

- (1) The person requires: (a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or (b) assistance with three or more activities of daily living; and
- (2) The person has: (a) A mental disorder, chemical dependency disorder, or both; (b) an organic or traumatic brain injury; or (c) a cognitive impairment that results in symptoms or behaviors requiring supervision and facility services; [and]
- (3) The person has two or more of the following:
  - (a) Self-endangering behaviors that are frequent or difficult to manage;
  - (b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;
  - (c) Intrusive behaviors that put residents or staff at risk;
  - (d) Complex medication needs and those needs include psychotropic medications;
  - (e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the person's behaviors, history, or security needs;
  - (f) A history of frequent or protracted mental health hospitalizations;
  - (g) A history of offenses against a person or felony offenses that created substantial damage to property.



**Lack of transparency as to placement in Adult Family Homes exacerbates community concern.**

The Department of Social and Health Services typically asserts that they cannot inform communities about placements because they are required to protect patient information. The result is that the system lacks transparency. There is no public outreach or notification regarding either establishment of one of these businesses or the placement of a potentially dangerous individual in such a business.

The City has made a request of DSHS pursuant to the Public Records Act to obtain information regarding the number and type of individuals placed in AFHs from other state institutional care. The response will help clarify the degree to which individuals placed in these businesses appear consistent with the legislative intent.

Community notification must be provided by DSHS to the surrounding residents when placing an AFH. The notification should provide ample opportunity for citizen input as is done for placement of ESFs. This could mirror the public participation called for in local planning processes.<sup>15</sup> DSHS, as the placing agency, maintains responsibility for public input and response to it.

One potential solution might be harmonizing DSHS's process with the City's business license requirements. This might address legitimate public concern about the impact on residential neighborhoods while not violating privacy. The City will want to be exceedingly clear that liability for negligent placement remains with the State.

**The Federal Fair Housing Act cannot act as a shield for dangerous individuals to occupy Adult Family Homes.**

The Federal Fair Housing Act (the Act) has been mentioned as a bar to any sort of standard as to who may be admitted to an AFH. The Act ensures fair housing practices in relation to race, color, religion, national origin, sex, disability, and familial status in single family residential zones. Denial of housing based on criminal history or past violence with potential for future danger are not specifically protected under the Act, although arguments about disparate impact are starting to surface (correlation between race and criminal history results in racial discrimination). That being said, the Federal Fair Housing Act does not protect someone likely to do harm, such as our diagnosed psychotic murderer.

The combination of the Act and the lack of transparency from the State as to placement in Adult Family Homes results in an inability to determine which occupants are protected by the Act and which are not. More importantly, the lack of transparency undermines any confidence that the individuals placed in Adult Family Homes fall within the legislative intent.

<sup>15</sup> [WAC 365-196-600](#)

**State regulation of Adult Family Homes does not prevent the City from imposing public safety regulations such as the building or business license code.**

Regardless of state regulation of AFHs as a business, the City retains regulatory authority over building safety. The caution in exercising this authority is to exercise it equitably regardless of the building being an AFH.

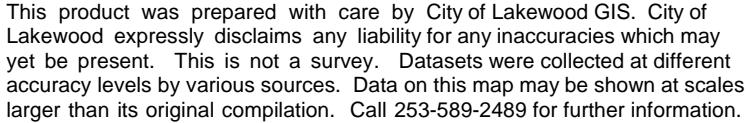
### **Next Steps**

Attached is a draft ordinance designed to ensure fulfillment of the legislative intent of RCW Chapter 70.128 Adult Family Homes. The proposed ordinance should be referred to the Planning Commission for review and consideration and ultimately provide a recommendation for adoption by the City Council.

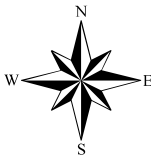
The City is also reaching out to meet with the Secretary of the Department of Social and Health Services, the Executive Director of the Adult Family Home Council and the Senior Policy Advisor for Human Services Governor's Policy Office.

### **Attachments:**

- 1) Map: City of Lakewood, Oakbrook Adult Family Homes - 500 ft Buffer
- 2) Map: City of Lakewood, Oakbrook Adult Family Home – 1000 ft Buffer
- 3) July 20, 2017 Forensic Mental Health Report
- 4) Adult Family Home Disclosure of Services
- 5) Draft Ordinance w/Exhibits



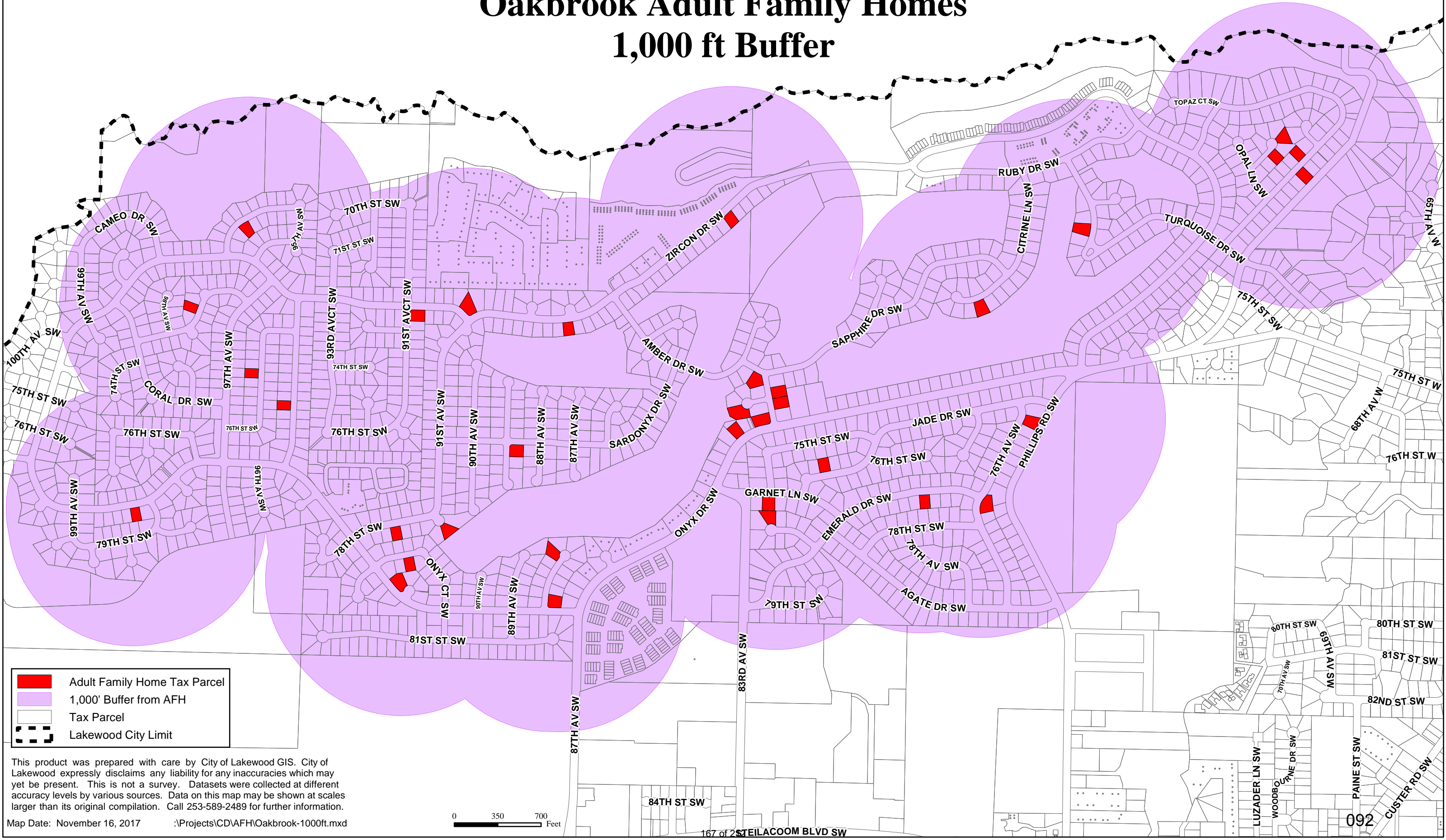




# City of Lakewood

## Oakbrook Adult Family Homes

### 1,000 ft Buffer





10-1-04934-9 49840510 FPE 07-27-17



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
Office of Forensic Mental Health Services  
Behavioral Health Administration  
Central Regional Office - Western State Hospital Campus  
9601 Steilacoom Blvd SW, Lakewood, WA 98498

July 20, 2017

FILED  
IN COUNTY CLERK'S OFFICE

JUL 26 2017

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY N DEPUTY

**Forensic Mental Health Report**

Re: State of Washington  
vs  
Lawrence David Butterfield

Cause No: 10-1-04934-9  
WSH No: 361682  
DOB: August 17, 1955

The forensic evaluation reflected in this report was conducted pursuant to court order under the authority of RCW 10.77.060. This report was released only to the court, its officers and to others designated in statute and is intended for their use only. Any other use or distribution of this document is not authorized by the undersigned.

**Reason for Referral**

On July 10, 2017, the Pierce County Superior Court ordered Mr. Butterfield re-admitted to Western State Hospital (WSH) for up to 15 days for an evaluation regarding his competency to proceed to trial on his re-filed charges. Additionally, as is mandated by RCW 10.77.060 and 10.77.084, we will address his future dangerousness, and any further need for evaluation under RCW 71.05.

According to discovery information, Mr. Butterfield is charged with Murder First Degree, allegedly committed November 18, 2010.

**Sources of Information**

Mr. Butterfield had been admitted to WSH on December 7, 2010,<sup>1</sup> and he has most recently been housed on Ward F-1, a ward that allows for 24-hour per day observation and treatment, under the

<sup>1</sup> Mr. Butterfield had been initially admitted to WSH for evaluation regarding his competency to proceed to trial. He was found not competent, and after competency restoration efforts, his case was dismissed without prejudice on May 6, 2011, and he was eventually civilly committed pursuant to RCW 71.05. On May 1, 2013, he was referred to WSH for evaluation regarding his competency on re-filed charges of Murder First Degree. He was eventually found not competent and not restorable on May 30, 2013, again civilly committed, where he remained at WSH until the



treatment and care of Dr. Nitin Karnik, Staff Psychiatrist. We completed this report taking into consideration all of the assessments, consultations, and findings

Pursuant to RCW 10:77.060, Dr. Ray Hendrickson, WSH staff psychologist, was designated as the qualified expert or professional person to examine and report upon the mental condition of Mr. Butterfield. Ms. Maiga Berzins, M.A., WSH Psychology Predoctoral Practicum Student, participated in the July 20 interview, and drafted portions of this report.

In addition to reviewing records pertaining to Mr. Butterfield, we reviewed and considered the following information in the preparation of this report:

- Evaluation interview of Mr. Butterfield on July 20, 2017
- Forensic Mental Health Reports by the following WSH Staff Psychologists (unless otherwise indicated), with reports dates indicated and with references contained therein
  - Dr. Margaret Dean, WSH Staff Psychiatrist, dated January 19 and May 4, 2011
  - Dr. Ray Hendrickson, dated May 14, 2013
- WSH medical and mental health evaluation and treatment records pertaining to Mr. Butterfield
- Consultation with the treatment team and staff on Ward F-1
- Discovery materials

#### **Notification and Agreement to Participate**

Prior to each interview, we informed Mr. Butterfield of the non-confidential nature of the evaluation, the purpose of the evaluation, and parties who would receive a copy of the forensic report. We also informed him that if he so chose, he could have his attorney present, and that he could decline to answer questions, or terminate the interview at any time. We told him of the possibility that the report could include a recommendation for mental health treatment, and the fact that our role is that of neutral evaluators and not as treatment providers for him.

Mr. Butterfield indicated an understanding of the above information, and agreed to the forensic interview. His attorney, Ms. Mary Kay High was present for the July 20 evaluation interview.

#### **Summary of Hospitalization and Evaluation History**

According to available records, Mr. Butterfield had been first admitted to WSH in 1975, for competency evaluation. He was again admitted to WSH in 1976 regarding competency to proceed to trial on then pending charges of Firearm Violation and Assault First Degree. On

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current charges of Murder First Degree were re-filed on July 5, 2017. He was discharged to the Pierce County Jail on July 10, 2017, and returned to WSH on July 11. He was transferred to Ward F-1 on July 12.

February 15, 1979, he was reportedly found not guilty due to insanity regarding those charges. He remained at WSH until he was discharged on conditional release on July 9, 2002.

In 2010, Mr. Butterfield was arrested and charged with Murder First Degree, the currently re-filed charges. We respectfully refer the Court to prior evaluation reports for additional information regarding Mr. Butterfield's subsequent WSH hospitalizations since 2010.

### **Relevant Clinical History and Collateral Information**

We respectfully refer the Court to prior evaluation reports for discussion of Mr. Butterfield's relevant clinical history and collateral information.

### **Current Mental Status**

We assessed Mr. Butterfield on July 20, 2017 regarding his current mental status. Ms. Berzins participated in the assessment. Ms. High was present during the interview.

Mr. Butterfield was open and cooperative, and exhibited normal eye contact throughout the interview. He appeared to be offering his best efforts in responding to questions, although he appeared mentally fatigued during the latter portion of the interview and his eye contact became inconsistent. His speech was slowed at times, but his speech characteristics otherwise appeared within normal limits. He demonstrated some psychomotor agitation, crossing and uncrossing his legs and fidgeting with his hands.

He stated his mood was "better than yesterday, I was depressed in jail." His affect appeared somewhat constricted and blunted. He reported his sleep, appetite and energy were within normal limits. However, he reported that he "can't sleep well in a place like that," referring to jail. Based upon his education, history, and use of language and syntax, we estimate his level of intelligence to be significantly below average.

He denied current thoughts of suicide or harm to self or others. When asked if he was experiencing paranoid ideation, he responded, "A little bit, but not much...about some of the peers. It is just things going on in my head though, not really there." When he was asked about other delusional ideations, he reported that he frequently thought that a microphone had been put in his brain, which is why he heard voices. When asked whether he still believed this he stated, "could be."

He denied ideas of reference and magical thinking, and denied that he is able to control thoughts of others or that people could control his thoughts. He reported no visual hallucinations but stated that he hears voices but "can't tell you about them, can't make them out, just talking in my head." His associations were for the most part coherent, logical, and goal-directed, although occasionally illogical.

He was oriented as to person and place. Despite one error on the date, he knew the month, year and day of the week. When asked why he was being evaluated, he appeared confused and unable to understand why he was being interviewed. He occasionally would not respond to questions, and he had to be specifically addressed to gain his attention.

His attention span and ability to concentrate was limited. He had difficulty with serial subtractions, and stated he could not give change for a purchase of a 75-cent item with a five-dollar bill. He also had difficulty spelling a common five-letter word backward. His short and long-term memory was impaired. When asked to recall names of past presidents he could remember the current and immediately prior president, and no others.

He recalled none of three words given, after about a five-minute delay. He was able to recall all three following prompts for each word. His working memory also appeared somewhat impaired. His ability to form and interpret concepts and abstractions was limited and concrete. His formal judgment and insight appeared limited but reasonably intact.

When asked if he has any mental health problems, he reported that he has been "slow at learning all my lifetime." However, when asked about medications, he stated he is taking them and that they help with "paranoia, voices, delusions and voices." He was unable to provide any further information regarding his symptoms. He stated he did not know what would happen if he stopped taking the medications, adding, "I haven't quit in a long time...been taking them since I was 18."

### **Course of Hospitalization**

During this hospitalization period, Mr. Butterfield has been prescribed and taking olanzapine and risperidone for auditory and visual hallucinations, and clonazepam for agitation.

Since his admission to Ward F-1 on July 12, 2017, he has been compliant with his medication regime, and has demonstrated no behavioral concerns. He participated in groups on the ward, and was noted to have satisfactory interactions with staff and other patients (Progress Note, 7/17/17). He expressed interest in participating in TRC, but accepted staff's explanation when they informed him he was not eligible to go to TRC at this point (Progress Note, 7/18/17).

### **Diagnostic Impressions**

As indicated in prior reports, Mr. Butterfield has a lengthy history of treatment for his diagnosed mental illness, having been hospitalized at WSH for over 20 years subsequent to being found not guilty by reason of insanity on 1977 charges of Assault First Degree. He had been diagnosed over the years with chronic paranoid schizophrenia and intellectual impairment. More recently,

his diagnosis has been listed as schizophrenia, undifferentiated type, as his continuing symptoms were not specific to paranoid or other type.

He currently presents with cognitive impairment, including significant memory difficulties, of an undetermined origin. It is possible that this impairment is related to negative symptoms of his diagnosed schizophrenia, the positive symptoms of which appear to have abated considerably. We have included Axis I diagnoses of Schizophrenia, Undifferentiated Type, and a *provisional diagnosis*<sup>2</sup> of Neurocognitive Disorder of unknown etiology. We have also included a diagnosis of Intellectual Disability, with mild impairment, by history, in view of past intelligence test results.

Based upon the information referred to above, a review of medical records and other available material, and the clinical interview, we offer the following *diagnostic impressions* (which are presented in a format that is consistent with the *DSM-5*<sup>3</sup>):

- Schizophrenia Spectrum Disorder, by history and clinical observation, with active auditory and possible visual hallucinations, and disorganized thinking
- Neurocognitive Disorder, of unknown etiology, *provisional*, with indications of mild impairment
- Intellectual Disability, with mild impairment, per historical test results

### **Competency to Proceed to Trial**

We interviewed Mr. Butterfield on July 20, 2017 regarding his competency to proceed to trial on his pending criminal charges. Ms. Berzins participated in the evaluation. Ms. High was present during the evaluation interview.

Mr. Butterfield was open and cooperative during the interview, and appeared to be offering his best efforts. As the evaluation continued, he exhibited considerable mental fatigue. After about 30 minutes, the interview was terminated, as it appeared Mr. Butterfield's ability to recall questions and information given to him was significantly impaired.

**Factual Understanding/Rational Understanding:** Mr. Butterfield's condition had not changed significantly since that indicated in the May 15, 2013 evaluation report. During the current interview, he had stated he did not know why he was being interviewed. At one point, he stated that he had been told by hospital staff that he was going to be "at the hospital for life." He appeared confused as the reason for his past and current hospitalizations at WSH.

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<sup>2</sup> A *provisional diagnosis* refers to a condition, which causes a diagnosis to be presumed, but for which there is insufficient evidence to support the diagnosis, and for which further evidence, investigation, or inquiry is required.

<sup>3</sup> The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* was released in mid-2013, and replaced the *DSM-IV*. There had been a transition during 2013 to 2015 to the use of *DSM-5* in connection with diagnostic procedures.

When asked about his current charges, he responded, "Assault." He indicated he could ask his attorney about his charges, but added that he did not want to do it at that time. He stated he did not recall the date of the alleged offense with which he is charged. He stated he did not know what the *prosecutor* had alleged, and when asked whom he could ask to find out, he stated, "No one." He stated he did "not really" want to know." His attorney asked if him if he did not want to talk about the charges because it might make him anxious. He responded that it was not anxiety.

He stated he did not know whether he is charged with a *felony* or a *misdemeanor*, and did not know the difference between the two. After an explanation was given, he stated that *felony* is more serious, and a conviction could result in "going to the hospital." He stated he did not know the meaning of the *classes* of felonies, but after an explanation was given, he recalled the respective seriousness of the *classes* and the maximum sentence associated with each of the *classes*, and acknowledged his charges is a *Class A* felony.

When asked about the duties of court personnel, including the *judge* and *jury*, he responded that he did not know. After an explanation had been given to him, when asked again about the duties of the *judge* and *jury*, he responded that he did not want to continue to talk about court matters.

We took a short break, and Ms. High talked to her client about continuing with some inquiries. He stated he could for a while. We asked him about the concept of *confidentiality*. He stated he did not know the meaning of the concept. He acknowledged that his attorney could not tell others what they talked about in private, but was unable to answer any further questions about *confidentiality*.

We asked him if he was able to discuss his case with his attorney. He responded, "Sometimes." When asked if it would be important to tell his attorney all he recalled about the incident that led to his charges, he stated, "No." When asked the reason he would not want to tell her, he gave no response, and he appeared to be significantly mentally fatigued at that point. We elected to discontinue the interview.

### **Discussion of Competency**

While Mr. Butterfield's previously noted symptoms of auditory and visual hallucinations, as well as paranoid delusions, appear to have abated considerably, he continues to exhibit disorganized thoughts and confusion, and cognitive slowing. After several explanations of legal concepts by the evaluators and his attorneys, Mr. Butterfield continued to exhibit confusion and a lack of any rational understanding of the concepts being discussed and explained.

He appeared unable to process information, and while he recalled to some extent information explained to him, we had no assurance that he would be able to recall this information with



regard to context, that is, have a rational understanding of information he had been given and was able to recall.

As indicated above, there was no notable difference in his current presentation from that exhibited during the evaluation referred to in the 2013 report.

**In conclusion, while Mr. Butterfield may have some limited ability to have a *factual understanding* of the charges and court proceedings he faces (and this perhaps only regarding those concepts to which he had been exposed in the past), due to his continuing symptoms, he lacks the ability to have a *rational understanding* of court proceedings. He also lacks the capacity to *consult with his attorney with a reasonable degree of rational understanding*, and thus he would be unable to assist his attorneys in his defense.**

### **Competency Restoration**

Mr. Butterfield has been in compliance with his prescribed medication, which over the years had been the maximum recommended dosage of olanzapine. An additional antipsychotic medication, risperidone, has been added to his list of prescribed medication. This psychotropic medication regime has caused considerable improvement in the hallucinations and delusions that he had experienced in the past. Nonetheless, he continues to present with confusion and cognitive impairment.

Mr. Butterfield had been tested in the past for his level of intellectual functioning, that had indicated a reported level of intelligence in the mild mental retardation range. This intellectual impairment would not be amenable to further treatment.

Based upon his current presentation, his diagnosed schizophrenia, and his tested level of intellectual functioning, we cannot state with any reasonable psychological certainty that Mr. Butterfield will improve with additional competency restoration treatment, and we thus do not recommend competency restoration. He appears to have reached his maximum level of improvement, and he would not likely improve with additional treatment.

### **Assessment for Future Dangerousness**

*This opinion concerning dangerousness was court-ordered and conducted within the scope of RCW 10.77.060 regarding pre-trial mental health evaluations. An opinion is to be made as to whether the defendant presents a substantial danger to others or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control of the court or other persons or institutions. An additional opinion is required as to whether the defendant should receive a RCW 71.05 civil commitment evaluation by a DMHP. This opinion is based solely upon the above evaluation under RCW 10.77.060. Other reasons*

*may exist to require a civil commitment evaluation, which fall within the scope of other standards outside the purview of this evaluation.*

Mr. Butterfield's criminal history has been stated above. Current practice in violence risk assessment involves the consideration of factors frequently associated with future violence. The HCR-20 is an instrument that organizes such known risk factors, dividing them into three categories: Historical, Clinical, and Risk Management.

Historical risk factors (also known as static factors) are relatively stable elements of the individual's life and are unlikely to change. In Mr. Butterfield's case, the following historical risk factors were present: history of alleged violent behavior, major mental illness, and employment problems.

Clinical risk factors describe the individual's current mental state and are considered more changeable or amenable to treatment. Mr. Butterfield demonstrated evidence of the following clinical risk factors: lack of insight regarding his behaviors and symptoms of mental illness, negative attitudes, indications of impulsivity, and unresponsiveness to treatment.

Finally, risk management factors are those that are likely to influence the individual in the future, and are also considered to be changeable. Mr. Butterfield possessed the following risk management factors: plans lack feasibility, active symptoms of a major mental illness, periodic noncompliance with remediation attempts, exposure to destabilizers, and stress.

Based upon Mr. Butterfield's criminal history record, information obtained through clinical and collateral interviews, and a review of risk factors, it is our professional opinion that he is a moderate to high risk for future serious dangerous behavior or other forms of dangerous behavior, and for re-offending.

The above opinion is offered at a time when Mr. Butterfield has been compliant with his prescribed medication. Should he discontinue his currently prescribed or any subsequently prescribed psychotropic medication, his condition will likely deteriorate, and his risk for future dangerousness and re-offending would likely increase significantly.

#### **Designated Mental Health Professional (DMHP) Referral**

Based upon the information referred to in this report, there is historical evidence to indicate that Mr. Butterfield is a danger to self or others. While he has denied any current thoughts of suicide, or harm to self or others, he presents with continuing symptoms of his diagnosed mental illness, and would likely be unable to provide independently for his basic needs of health and safety. A DMHP referral would therefore appear required and recommended should his custodial situation change.

**Forensic Mental Health Report**  
**Re: Lawrence David Butterfield**

**July 20, 2017**  
**Page 9 of 9 pages**

This evaluation is complete with the submission of this report. However, if we may be of further service to the Court in this matter, please do not hesitate to contact us.

*Electronically Signed and Authenticated via Clinical Document Manager (CDM)*

*Ray Hendrickson, J.D., Ph.D.*  
Licensed Psychologist/Supervisor  
Center for Forensic Services  
Western State Hospital

*Maiga Benjins, M.A.*  
Psychology Predoctoral Practicum Student  
Center for Forensic Services  
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Clinical Associate Professor  
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Email: [ray.hendrickson@dshs.wa.gov](mailto:ray.hendrickson@dshs.wa.gov)

cc: Presiding Judge, Pierce County Superior Court  
John Sheeran & Kathleen Proctor, Prosecuting Attorneys  
Mary Kay High, Defense Attorney  
Pierce County Designated Mental Health Professional



# Adult Family Home Disclosure of Services Required by RCW 70.128.280

HOME / PROVIDER <b>ALPHA PALACE HOME LLC</b>	LICENSE NUMBER <b>753004</b>
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**NOTE:** The term "the home" refers to the adult family home / provider listed above.

The scope of care, services, and activities listed on this form may not reflect all required care and services the home must provide. The home may not be able to provide services beyond those disclosed on this form, unless the needs can be met through "reasonable accommodations." The home may also need to reduce the level of care they are able to provide based on the needs of the residents already in the home. For more information on reasonable accommodations and the regulations for adult family homes, see Chapter 388-76 of Washington Administrative Code.

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DEC 16 2015

RCS/Public Disclosure

About the Home	
1. PROVIDERS STATEMENT (OPTIONAL) The optional provider's statement is free text description of the mission, values, and/or other distinct attributes of the home. <b>We offer residents a safe and a comfortable place where they can feel home.</b>	
2. INITIAL LICENSING DATE <b>03/19/2015</b>	3. OTHER ADDRESS OR ADDRESSES WHERE PROVIDER HAS BEEN LICENSED: <b>N/A</b>
4. SAME ADDRESS PREVIOUSLY LICENSED AS:	
5. OWNERSHIP <input type="checkbox"/> Sole proprietor <input checked="" type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Co-owned by: <input type="checkbox"/> Other:	
Personal Care	
"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs, and does not include assistance with tasks performed by a licensed health professional. (WAC 388-76-10000)	
1. EATING	

If needed, the home may provide assistance with eating as follows:

Supervision including Cuing and Monitoring, 1:1 feeding.

2. TOILETING

If needed, the home may provide assistance with toileting as follows:

Supervision, including Cuing and Monitoring, total assistance.

3. WALKING

If needed, the home may provide assistance with walking as follows:

Supervision including Cuing and Monitoring, 1:1 total assistance

4. TRANSFERRING

If needed, the home may provide assistance with transferring as follows:

Transfer assistance from Cuing and Monitoring to two person assist and Hoyer lift. from one person assist

5. POSITIONING

If needed, the home may provide assistance with positioning as follows:

Assistance with position from one person assist to two people assist and reposition every two hours while in bed.

6. PERSONAL HYGIENE

If needed, the home may provide assistance with personal hygiene as follows:

The caregiver will bath/clean the client as needed with full assistance

7. DRESSING

If needed, the home may provide assistance with dressing as follows:

From Cuing, Set-up and Monitoring to total assistance.

8. BATHING

If needed, the home may provide assistance with bathing as follows: from Cuing, Set-up and Monitoring hands-on assistance to guide through task completion and total assistance.

9. ADDITIONAL COMMENTS REGARDING PERSONAL CARE

We, the provider & caregiver will provide extra care as needed.

Medication Services

If the home admits residents who need medication assistance or medication administration services by a legally authorized person, the home must have systems in place to ensure the services provided meet the medication needs of each resident and meet all laws and rules relating to medications. (WAC 388-76-10430)

The type and amount of medication assistance provided by the home is: provider will give medication per physician order and through nurse delegation.

ADDITIONAL COMMENTS REGARDING MEDICATION SERVICES

The home contract with an RN to provide delegation.

Skilled Nursing Services and Nurse Delegation

If the home identifies that a resident has a need for nursing care and the home is not able to provide the care per chapter 18.79 RCW, the home must contract with a nurse currently licensed in the state of Washington to provide the nursing care and service, or hire or contract with a nurse to provide nurse delegation. (WAC 388-76-10405)

The home provides the following skilled nursing services:

check blood glucose, give medication, Range of motion and Skin Care.

The home has the ability to provide the following skilled nursing services by delegation:

The home staffs are delegated to give medication and check blood glucose



ADDITIONAL COMMENTS REGARDING SKILLED NURSING SERVICE AND NURSING DELEGATION

Specialty Care Designations

We have completed DSHS approved training for the following specialty care designations:

- ☒ Developmental disabilities
- ☒ Mental illness
- ☒ Dementia

ADDITIONAL COMMENTS REGARDING SPECIALTY CARE DESIGNATIONS

Staffing

The home's provider or entity representative must live in the home, or employ or have a contract with a resident manager who lives in the home and is responsible for the care and services of each resident at all times. The provider, entity representative, or resident manager is exempt from the requirement to live in the home if the home has 24-hour staffing coverage and a staff person who can make needed decisions is always present in the home. (WAC 388-76-10040)

- ☒ The provider lives in the home.
- ☐ A resident manager lives in the home and is responsible for the care and services of each resident at all times.
- ☐ The provider, entity representative, or resident manager does not live in the home but the home has 24-hour staffing coverage, and a staff person who can make needed decisions is always present in the home.

The normal staffing levels for the home are:

- ☒ Registered nurse, days and times: Only as needed
- ☐ Licensed practical nurse, days and times: \_\_\_\_\_
- ☒ Certified nursing assistant or long term care workers, days and times: 24hrs, 7 days a week.
- ☒ Awake staff at night
- ☐ Other: \_\_\_\_\_

ADDITIONAL COMMENTS REGARDING STAFFING

Cultural or Language Access

The home must serve meals that accommodate cultural and ethnic backgrounds (388-76-10415) and provide informational materials in a language understood by residents and prospective residents (Chapter 388-76 various sections)

We are happy to provide meals that accommodate cultural backgrounds.

The home is particularly focused on residents with the following background and/or languages:

We are happy to provide meals to accommodate cultural backgrounds.

ADDITIONAL COMMENTS REGARDING CULTURAL OR LANGUAGE ACCESS

We take all clients but English is preferred. We respect the culture of each client and we work together to meet their needs.

Medicaid

The home must fully disclose the home's policy on accepting Medicaid payments. The policy must clearly state the circumstances under which the home provides care for Medicaid eligible residents and for residents who become eligible for Medicaid after admission. (WAC 388-76-10522)

- ☐ The home is a private pay facility and does not accept Medicaid payments.
- ☒ The home will accept Medicaid payments under the following conditions:  
We accept Medicaid as a form of payment if the source of payment changes, please notify us within sixty days for alternative arrangements.

ADDITIONAL COMMENTS REGARDING MEDICAID

The home will provide care for medicaid eligible residents and for residents who become eligible for Medicaid after admission.

Activities

The home must provide each resident with a list of activities customarily available in the home or arranged for by the home (WAC 388-76-10530).

The home provides the following: The home provides activities such as puzzle games, playing bingo, trip to the mall, outing to church and shopping.

ADDITIONAL COMMENTS REGARDING ACTIVITIES

Resident families may arrange for special activities such as Christmas caroling, Thanksgiving Dinner or special meals

Please Return the completed form electronically to [AFHDisclosures@DSHS.WA.GOV](mailto:AFHDisclosures@DSHS.WA.GOV)

The form may also be returned by mail at:

RCS – Attn: Disclosure of Services

PO Box 45600

Olympia, WA 98504-5600

## ORDINANCE NO. XXX

AN ORDINANCE of the City Council of the City of Lakewood, Washington, adopting interim development regulations related to adult family homes.

WHEREAS, **City's Police Power** - the Washington State Constitution Article XI invests the City of Lakewood with police powers to provide for public health, safety and welfare and pursuant to its police powers, the City regulates land use planning, development and the operation of businesses within its jurisdictional boundaries; and

WHEREAS, the **Growth Management Act**, chapter 36.70A RCW, requires the City to adopt a Comprehensive Plan, including a process for identifying and siting essential public facilities; and

WHEREAS, the GMA defines essential public facilities as those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, regional transit authority facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities; and

WHEREAS, the GMA requires each county, in cooperation with cities and towns, county-wide planning policies and the City participated in the development of the Pierce County County-Wide Planning Policies; and

WHEREAS the County-Wide Planning Policies recognize the importance of distributing essential public facilities identified in the GMA among jurisdictions and communities (Pierce County County-Wide Planning Policies, at Page 64-65 EFP-3); and

WHEREAS, the City of Lakewood (City) has adopted a Comprehensive Plan pursuant to the GMA and that plan includes a process for identifying and siting essential public facilities (City of Lakewood Comprehensive Plan, Chapter 9, page7 Goal 9.7); and

WHEREAS, **Adult Family Homes** are a type of group home and are considered an essential public

facility pursuant to the GMA; and

WHEREAS, qualified Adult Family Homes are meant to be an essential component of the state's long-term care system and are meant to reduce institutionalization pursuant to RCW 70.28.005; and

WHEREAS, Adult Family Homes require specialized staffing a facilities pursuant to chapter 70.128; and

WHEREAS, Adult Family Homes must be considered a residential use of property as well as a "permitted use in all areas zoned for residential or commercial purposes" pursuant to RCW 70.128.140; and

WHEREAS, **Enhanced Services Facilities** are also considered to be an essential public facility pursuant to the GMA; and

WHEREAS, Enhanced Services Facilities are designed to assist people with serious issues of substance abuse, mental illness, dangerous behavior or a combination thereof pursuant to chapter 70.97 RCW; and

WHEREAS, Enhanced Services Facilities require specialized staffing and facilities, above and beyond those required for Adult Family Homes, pursuant to chapter 70.97 RCW; and

WHEREAS, while residents of Enhanced Services Facilities and Adult Family Homes require substantially different levels of care and facilities, Adult Family Homes may be transformed into Enhanced Services Facilities pursuant to RCW 70.97.060 with little or no notice to affected communities; and

WHEREAS, state law provides an exemption from liability for facilities providing care and treatment for residents placed in Enhanced Services Facilities as well as to the agencies licensing or placing people in these facilities pursuant to RCW 70.97.220; and

WHEREAS, **Washington State Department of Social and Health Services** (DSHS) licenses and regulates Adult Family Homes pursuant to chapter 70.128 RCW and particularly RCW 70.128.060; and

WHEREAS, DSHS also licenses and regulates Enhanced Services Facilities pursuant to chapter 70.97 RCW; and

WHEREAS, while intended to be a residential use, Adult Family Homes operate as businesses in that they are licensed and inspected as a business and they charge fees for services; and

WHEREAS, DSHS places many residents in adult family homes, but it is unknown how much information about prospective residents DSHS shares with Adult Family Home operators, the City and the community; and

WHEREAS, DSHS and other similar agencies are under pressure by both legal requirements and the volume of people needing care to offer placements in facilities that offer the least restrictive alternatives to institutional care (e.g., RCW 71.34.740); and

WHEREAS, DSHS recently attempted to place at least one resident in an Adult Family Home who has spent most of his adult life at Western State Hospital, has a history of violence including murder and assault, and is considered at risk of future danger to himself and others, even when compliant with medications; and

WHEREAS, the City finds that the above intended placement by DSHS is inappropriate for an Adult Family Home because Adult Family Homes are not required to have, and often do not have, the staff and resources needed to accommodate such residents and may therefore risk the safety and security of other Adult Family Home residents as well as the general public; and

WHEREAS, the City did not learn of the above intended placement directly from DSHS and the City suspects that other, similarly inappropriate placements may have been made and/or may continue to be made by DSHS; and

WHEREAS, the City has attempted to learn if DSHS has made or intends to make other such placements like the above intended placement through a public record's request pursuant to chapter 42.56 RCW, which is attached and incorporated herein as **Exhibit A (Request for records)**, but DSHS has not been forthcoming with this information; and

WHEREAS, each Adult Family Home is required to “meet applicable local licensing, zoning,



building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence” pursuant to RCW 70.128.140; and

WHEREAS, the City has identified and charted essential public facilities and specifically, group homes like Adult Family Homes in a map which is attached and incorporated herein as **Exhibit B (GIS Map)**; and

WHEREAS, the City has compared the number of Adult Family Homes located throughout Pierce County to those located within the City; and

WHEREAS, as of November 2017, there are 255 Adult Family Homes located within Pierce County; and

WHEREAS, as of November 2017, there are 73 Adult Family Homes located within the City with a total of 426 beds;

WHEREAS, of the 73 Adult Family Homes located within the City, 36 of the homes are located in the Oakbrook neighborhood;

WHEREAS, while the City of Lakewood is one of 23 cities within Pierce County, 31 percent of Adult Family Homes are located within the City of Lakewood;

WHEREAS, the City code states that “no structure ... shall be ... constructed ... altered nor any use be established or changed until a zoning certification or discretionary land use permit ... have been issued” by the City (LMC 18A.02.140); and

WHEREAS, the City code defines a zoning certification as “a certificate, issued prior to a project permit, stating that the proposed use is in accordance with the requirements and standards of” title 18A LMC (LMC 18A.90.); and

WHEREAS, the City code states that a complete application is the “most current version of the permit application form approved” by the City; and Community Development Director (LMC 18A.02.152); and

WHEREAS, the City code gives effect to state mandates outlined in the Washington Administrative Code (WAC) 51.51. 0325 (Adult Family Homes) in order to ensure public health, safety and welfare by requiring an Adult Family Home permit application, a copy of which is attached and incorporated herein as **Exhibit C (Adult Family Home Application)**; and

WHEREAS, after years of identifying and charting adult family homes, the City finds that Adult Family Homes are often established near one another and in some instances, congregating in one or two small communities (Exhibit B – GIS Map); and

WHEREAS, the City finds that by congregating in one or two small communities, Adult Family Homes segregate the people who need those homes instead of integrating them into the larger community which may adversely affect them; and

WHEREAS, the City finds that segregation of Adult Family Homes impedes the goals to disperse essential public facilities as set forth in the Pierce County County-Wide Planning Policies, the Pierce County Comprehensive Plan and the City's Comprehensive Plan; and

WHEREAS, the City finds that DSHS's placement of dangerous people in Adult Family Homes impedes the intent of chapter 70.128 because it places potentially violent and therefore dangerous people in homes ill-equipped to treat and/or manage them; and

WHEREAS, state agencies are required to comply with county and city comprehensive plans and regulations pursuant to RCW 36.70A.103; and

WHEREAS, the City finds that DSHS's concentration of multiple Adult Family Homes in particular areas violates the comprehensive plans and regulations adopted by Pierce County and the City; and

WHEREAS, the City finds that DSHS's placement of dangerous residents in Adult Family Homes violate the comprehensive plans and regulations adopted by Pierce County and the City; and

WHEREAS, the City finds that DSHS's concentration of multiple Adult Family Homes in particular areas and its placement of dangerous residents in Adult Family Homes undermines the purposes of chapter

70.128 RCW to integrate residents of Adult Family Homes into traditional single family neighborhoods as well as the City code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY ORDAINS, Lakewood Municipal Code 18A.20.300 D shall be amended as follows:

Section 1. Type 1 Group Home. Publicly or privately operated living accommodations for related or unrelated individuals having handicaps, subject to compliance with all applicable federal, state, and/or local licensing requirements. For the purposes hereof, “handicap” shall mean a physical or mental impairment which substantially limits one or more of the person’s major life activities, a record of having such an impairment, or being regarded as having such an impairment; however, the term does not include current, illegal use of or an addiction to a controlled substance.

a. Adult Family Home - Defined. An Adult Family Home is a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City’s Adult Family Home business licensing.

b. Adult Family Home – No Change in Residential Areas. An Adult Family Home located in a residential zone may not be changed or converted to an Enhanced Services Facility or any other type of use not permitted in a residential zone. Enhanced Services Facilities are not permitted in residential zones.

c. Adult Family Home – Public Participation. No Adult Family Home shall be licensed in the City of Lakewood prior to a public participation process conducted by DSHS as the licensing agency. Such process shall mirror that used by the City of Lakewood in its comprehensive planning processes LMC 18A.02. DSHS, as the licensing agency, shall be responsible for all aspects of this process, including documentation as to how the public participation is incorporated into the licensing decision and any liability for foreseeable consequences of the placement based on public input.

d. Adult Family Home - Dispersed. An Adult Family Home shall be permitted in any residential zone which allows single family residences unless another licensed, operating Adult Family Home is located within 1000 feet of the proposed home. The distance between the homes shall be measured as the shortest straight line between the property line of the proposed home and the property line of the existing home. This provision will ensure that the goal of integrating Adult Family Homes into residential neighborhoods may be realized pursuant to chapter 70.128 RCW. This provision will also ensure that the county and city goal to disperse essential public facilities is given effect.

i. Adult Family Homes licensed on or before (MM/DD/YY) in violation of the dispersion requirement shall be allowed to continue as a nonconforming use until the license expires without renewal. No transfer of license shall be permitted.

e. Adult Family Home – Staffing. Operators of Adult Family Homes shall employ staff who are adequately trained to care for the residents accepted into the home and shall pay staff a minimum wage of XXX. The City may revoke its license of the Adult Family Home if the operator of the home fails to properly pay and employ adequately trained staff.

i. Adult family homes are intended to serve persons with functional

limitations. Adult Family Homes shall not be capable of housing individuals with documented violent history.

ii. For purposes of this section, individuals with documented violent history includes past violence against caregivers, convictions for sex offenses, conviction for all levels of assault, but is not limited to conviction data.

f. Adult Family Home – Property Maintenance. Operators of Adult Family Homes shall keep and maintain the homes in a reasonably neat and clean condition, as any other property subject to the city’s jurisdiction and in compliance with [Chapter 8.40](#).

Section 2. This Ordinance shall be in full force and effect upon passage and signatures hereon.

PASSED by the City Council this \_\_\_ day of November, 2017.

CITY OF LAKEWOOD

\_\_\_\_\_  
Don Anderson, Mayor

Attest:

\_\_\_\_\_  
Alice M. Bush, MMC, City Clerk

Approved as to Form:

\_\_\_\_\_  
Heidi Ann Wachter, City Attorney

## **EXHIBIT A**

Exhibit A – City’s Public Records Request.

## **EXHIBIT B**

Exhibit B - GIS Map.

## **EXHIBIT C**

Exhibit C - Adult Family Home permit application.

DRAFT





## EXHIBIT A

Don Anderson  
Mayor

November 7, 2017

Jason Whalen  
Deputy Mayor

DSHS Public Records Officer  
DSHS Office of Policy and External Relations  
PO Box 45135  
Olympia WA 98504-5135

Mary Moss  
Councilmember

Dear Public Records Officer:

Michael D. Brandstetter  
Councilmember

The City of Lakewood requests the following public records from November 1, 2012 through November 1, 2017:

John Simpson  
Councilmember

- 1) Any and all documents from any and all Department employee related to the release of any and all patients or residents of Western State Hospital to any adult family home located in Washington State; and
- 2) Any and all documents from any and all Department employee relating to the priorities, policies and guidelines of the Department in investigating and/or evaluating placements of residents of Western State Hospital.

Marie Barth  
Councilmember

### Terms

Paul Bocchi  
Councilmember

**"Department"** refers to the Washington State Department of Social and Health Services including, but not limited to Western State Hospital.

John J. Caulfield  
City Manager

**"Document"** includes the original or any copy of any material that is handwritten, typed, printed, graphic, electronic or digital, including transcripts, contracts, agreements, spread sheets, work papers of any kind, email or voice mail messages or any other type of media or format used for communication or expression. This request should be interpreted to include all drafts of documents as well as any document bearing commentary or notations on it.

**"Employee"** refers to any full or part time employee of DSHS or Western State Hospital as well as any interns, volunteers, or contractors of DSHS and Western State Hospital.

**"Exemptions"** - Please provide a log of all documents identified but withheld for any reason, under the Act or any other law. Describe the document and the nature of the claimed exemption or exemptions relied upon. Identify the person ultimately responsible for authorizing or approving the claimed exemption.


The City of Lakewood is requesting these public records pursuant to the Washington State Public Records Act (Act), chapter 42.56 RCW. As you may know, the Act is to be liberally construed and all exemptions narrowly drawn to effect the Act's important public policy goals.<sup>1</sup>

In August 2017, the City of Lakewood was notified by the Pierce County Prosecuting Attorney that Western State Hospital/Department of Social and Health Services intended to place a resident of the hospital in an adult family home located in the City. The resident has spent most of his adult life at the hospital and while he has limited criminal conviction history, there is evidence that he has murdered one person, assaulted others, and is considered at risk of future danger to himself and others, even when compliant with medications. The City is concerned that such placements threaten not only the community but the safety of residents of adult family homes.

We have been asked to review and research adult family homes in the City of Lakewood, as well as state authority, regulations, current use, comparison with other cities and counties, legislative options and recommended policy changes. Our goal is to present the most complete report possible, which necessarily includes information about the role DSHS plays in placing residents in adult family homes.

Thank you for your prompt attention to this request. We will be available to work with you to better refine these requests in a way that meets our requirements, while also not unnecessarily burdening the Department. The City is willing to waive patient identifiers for patients who have resided or continue to reside at the hospital. Please provide, in an electronic format, all requested documents, redacted as necessary to protect patient identity. Compliance with the Act favors redaction over withholding. Please include a full explanation of any redaction and/or withholding done in this request. In the event the cost of duplicating the requested documents exceeds \$500.00, please contact us before exceeding this amount.

Sincerely,

  
Heidi Ann Wachter  
City Attorney

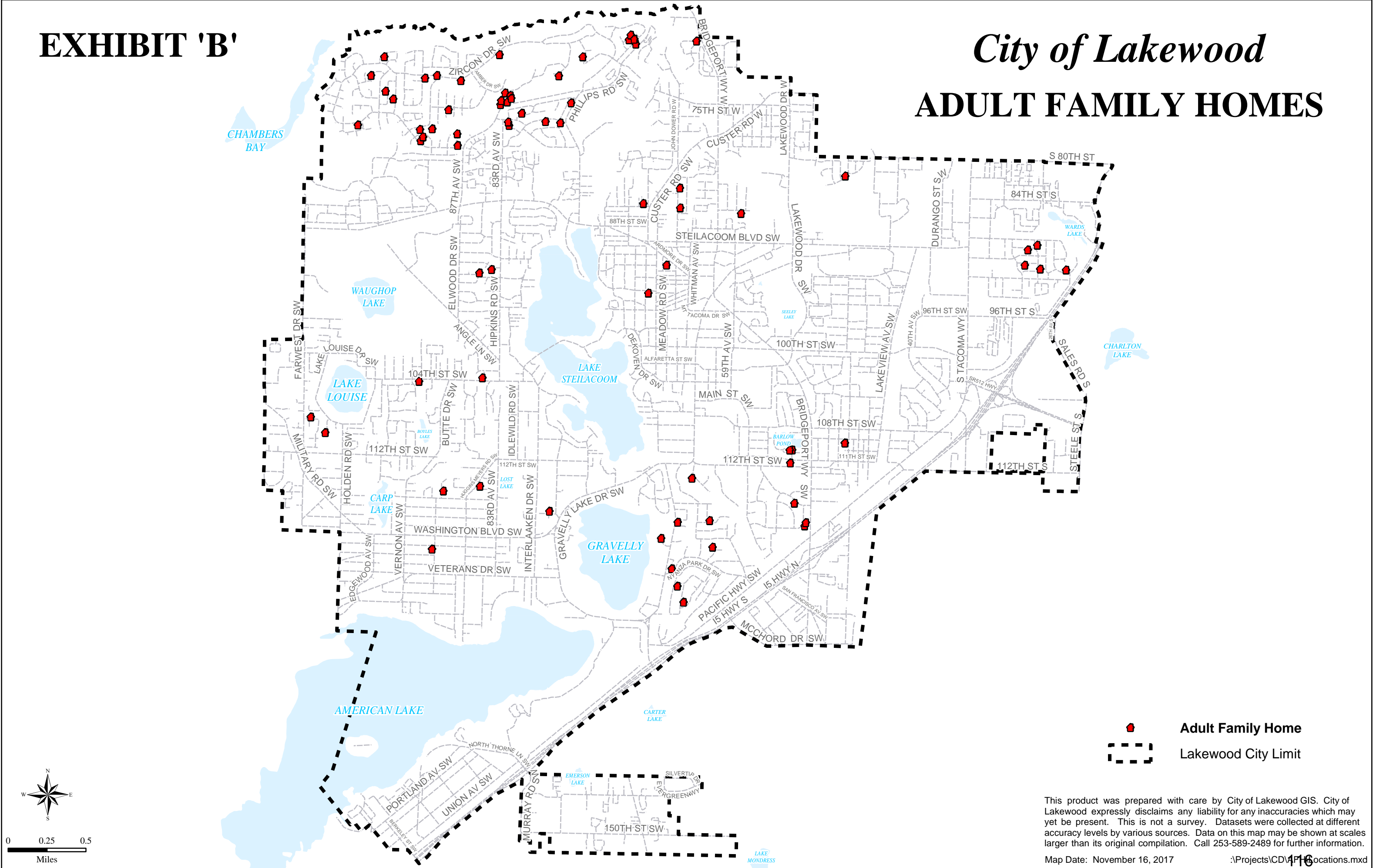
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<sup>1</sup> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. This chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern. RCW 42.56.030.



EXHIBIT 'B'

City of Lakewood  
ADULT FAMILY HOMES



## EXHIBIT C



# Adult Family Home Permit Application

## Community Development

6000 Main St. SW ☐ Lakewood, WA 98499  
Phone (253) 512-2261 ☐ permits@cityoflakewood.us

Office use

Permit #: \_\_\_\_\_

Date rec'd: \_\_\_\_\_

**Fee: \$132.50**

*This application must include a completed AFH checklist (attached) with required floor plans and site plan.*

<b>SITE ADDRESS:</b>	Parcel #:
<b>APPLICANT:</b>	Phone:
Address (City, State, Zip):	E-Mail Address:
<b>OWNER:</b>	Phone:
Address (City, State, Zip):	E-Mail Address:
<b>AFH LICENSEE:</b>	Phone:
Address (City, State, Zip):	E-Mail Address:

**Description:**

\_\_\_\_\_  
\_\_\_\_\_

Proposed number of residents \_\_\_\_\_ Proposed number of employees \_\_\_\_\_ Number of employees living on-site \_\_\_\_\_

*I hereby certify that the information provided is correct and that the construction on the above described property, the occupancy, and use will be in accordance with the laws, rules, and regulations of the State of Washington and the Lakewood Municipal Code. I agree to hold harmless the City of Lakewood as to any claim incurred as a result of this work.*

Print Name: \_\_\_\_\_

☐ Owner ☐ Agent ☐ Specify \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# Adult Family Home (AFH) LOCAL BUILDING INSPECTION CHECKLIST

Code References: 2015 IRC Section R325 (WAC 51-51)

APPLICATION NUMBER: \_\_\_\_\_

**SECTIONS 1, 2, 3, AND 4 MUST BE COMPLETED BY APPLICANT BEFORE INSPECTION WILL BE PROCESSED**

## SECTION 1 – PROPERTY INFORMATION

SITE ADDRESS: \_\_\_\_\_ ASSESSOR'S TAX/PARCEL#: \_\_\_\_\_

## SECTION 2 – APPLICANT INFORMATION

PROPERTY OWNER NAME: \_\_\_\_\_ DAYTIME PHONE: \_\_\_\_\_

AFH LICENSEE NAME (IF DIFFERENT): \_\_\_\_\_ DAYTIME PHONE: \_\_\_\_\_

## SECTION 3 – FLOOR PLAN

**On a separate sheet of paper (8 ½ x 11) draw a floor plan (including all floors) of your prospective AFH. Include all sleeping rooms (bedrooms) indicating which bedroom is: A, B, C D, E and F.**

**Label all components for exiting i.e., stairs, ramps, platforms, lifts and elevators.**

## SECTION 4 – DISCLAIMER/SIGNATURE BLOCK

I certify under penalty of perjury that the information furnished by me is true and correct to the best of my knowledge, and that I am requesting or I am authorized by the owner of the above premises to request inspection for the operation of an Adult Family Home at this location. I agree to hold harmless the jurisdiction conducting such inspections, at my request, as to any claim (including costs, expenses, and attorneys' fees incurred in the investigation of such claim), which may be made by any person, including the undersigned, and filed against the jurisdiction, but only where such claim arises out of the reliance of the jurisdiction, including its officers and employees, upon the accuracy of the information supplied to the jurisdiction as a part of this application.

NAME/TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

☐ PROPERTY OWNER

☐ APPLICANT

☐ LICENSEE

Effective: 2013 July 01

Updated: 11/16/17



## SECTION R325 ADULT FAMILY HOMES

**R325.1 General.** This section shall apply to all newly constructed adult family homes and all existing single family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

**R325.2 Reserved.**

**R325.3 Sleeping room classification.** Each sleeping room in an adult family home shall be classified as:

1. Type S - Where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - Where one means of egress is at grade level or a ramp constructed in accordance with R325.9 is provided.
3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with R325.9 are provided.

**R325.4 Types of locking devices and door activation.** All bedroom and bathroom doors shall be openable from the outside when locked.

Every closet shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist. Pocket doors shall have graspable hardware available when in the closed or open position.

The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Required exit doors shall have no additional locking devices.

Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing reentry into the adult family home without the use of a key, tool or special knowledge.

**R325.5 Smoke and carbon monoxide alarm requirements.** All adult family homes shall be equipped with smoke and carbon monoxide alarms installed as required in Sections R314 and R315.1. Alarms shall be installed in such a manner so that the detection device warning is audible from all areas of the dwelling upon activation of a single alarm.

**R325.6 Escape windows and doors.** Every sleeping room shall be provided with emergency escape and rescue windows as required by Section R310. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

**R325.7 Fire apparatus access roads and water supply for fire protection.** Adult family homes shall be served by fire apparatus access roads and water supplies meeting the requirements of the local jurisdiction.

**R325.8 Grab bar general requirements.** Where facilities are designated for use by adult family home clients, grab bars for water closets, bathtubs and shower stalls shall be installed according to this section.

**R325.8.1 Grab bar cross-section.** Grab bars with a circular cross section shall have an outside diameter of 1 1/4 inches minimum and 2 inches maximum. Grab bars with noncircular cross section shall have a cross section dimension of 2 inches maximum and a perimeter dimension of 4 inches minimum and 4 5/8 inches maximum.

**R325.8.2 Grab bar installation.** Grab bars shall have a spacing of 1 1/2 inches between the wall and the bar. Projecting objects, control valves and bathtub or shower stall enclosure features above, below and at the ends of the grab bar shall have a clear space of 1 1/2 inches to the grab bar.

**EXCEPTION: Swing-up grab bars shall not be required to meet the 1 1/2 inch spacing requirement**

Grab bars shall have a structural strength of 250 pounds applied at any point on the grab bar, fastener, mounting device or supporting structural member. Grab bars shall not be supported directly by any residential grade fiberglass bathing or showering unit. Acrylic bars found in bathing units shall be removed.

Fixed position grab bars, when mounted, shall not rotate, spin or move and have a graspable surface finish.

**R325.8.3 Grab bars at water closets.** Water closets shall have grab bars mounted on both sides. Grab bars can be a combination of fixed position and swing-up bars. Grab bars shall meet the requirements of R325.8. Grab bars shall mount between 33 inches and 36 inches above floor grade. Centerline distance between grab bars, regardless of type used, shall be between 25 inches minimum and 30 inches maximum.

**R325.8.3.1 Fixed position grab bars.** Fixed position grab bars shall be a minimum of 36 inches in length and start 12 inches from the rear wall.

**R325.8.3.2 Swing-up grab bars.** Swing-up grab bars shall be a minimum of 28 inches in length from the rear wall.

**R325.8.4 Grab bars at bathtubs.** Horizontal and vertical grab bars shall meet the requirements of R325.8.

**R325.8.4.1 Vertical grab bars.** Vertical grab bars shall be a minimum of 18 inches long and installed at the control end wall and head end wall. Grab bars shall mount within 4 inches of the exterior of the bath tub edge or within 4 inches within the bath tub. The bottom end of the bar shall start between 36 inches and 42 inches above floor grade.

**EXCEPTION:** The required vertical grab bar can be substituted with a floor to ceiling grab bar meeting the requirements of R325.8 at the control end and head end entry points.

**R325.8.4.2 Horizontal grab bars.** Horizontal grab bars shall be provided at the control end, head end, and the back wall within the bathtub area. Grab bars shall be mounted between 33 inches and 36 inches above floor grade. Control end and head end grab bars shall be 24 inches minimum in length. Back wall grab bar shall be 36 inches minimum in length.

**R325.8.5 Grab bars at shower stalls.** Where shower stalls are provided to meet the requirements for bathing facilities, grab bars shall meet the requirements of R325.8.

**EXCEPTION:** Shower stalls with permanent built-in seats are not required to have vertical or horizontal grab bars at the seat end wall. A vertical floor to ceiling grab bar shall be installed within 4 inches of the exterior of the shower aligned with the nose of the built-in seat.

**R325.8.5.1 Vertical grab bars.** Vertical grab bars shall be 18 inches minimum in length and installed at the control end wall and head end wall. Vertical bars shall be mounted within 4 inches of the exterior of the shower stall or within 4 inches inside the shower stall. The bottom end of vertical bars mount between 36 inches and 42 inches above floor grade.

**R325.8.5.2 Horizontal grab bars.** Horizontal grab bars shall be installed on all sides of the shower stall mounted between 33 inches and 36 inches above the floor grade. Horizontal grab bars shall be a maximum of 6 inches from adjacent walls. Horizontal grab bars shall not interfere with shower control valves.

**R325.9 Ramps.** All interior and exterior ramps, when provided, shall be constructed in accordance with Section R311.8 with a maximum slope of 1 vertical to 12 horizontal. The exception to R311.8.1 is not allowed for adult family homes. Handrails shall be installed in accordance with R325.9.1.

**R325.9.1 Handrails for ramps.** Handrails shall be installed on both sides of ramps between the slope of 1 vertical to 12 horizontal and 1 vertical and 20 horizontal in accordance with R311.8.3.1 through R311.8.3.3.

**R325.10 Stair treads and risers.** Stair treads and risers shall be constructed in accordance with R311.7.5. Handrails shall be installed in accordance with R325.10.1.

**R325.10.1 Handrails for treads and risers.** Handrails shall be installed on both sides of treads and risers numbering from one riser to multiple risers. Handrails shall be installed in accordance with R311.7.8.1 through R311.7.8.4.

**R325.11 Shower stalls.** Where provided to meet the requirements for bathing facilities, the minimum size of shower stalls for an adult family home shall be 30 inches deep by 48 inches long.

[Statutory Authority: RCW [19.27.031](#) and chapters [19.27](#) and [34.05](#) RCW. 13-04-068, § 51-51-0325, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter [19.27](#) RCW. 10-18-036, § 51-51-0325, filed 8/25/10, effective 9/25/10. Statutory Authority: RCW [19.27.190](#), [19.27.020](#), and chapters [19.27](#) and [34.05](#) RCW. 09-04-023, § 51-51-0325, filed 1/27/09, effective 7/1/10. Statutory Authority: RCW [19.27.074](#), [19.27.020](#), and chapters [19.27](#) and [34.05](#) RCW. 07-01-090, § 51-51-0325, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW [19.27.031](#) and [19.27.074](#). 04-01-109, § 51-51-0325, filed 12/17/03, effective 7/1/04.]



NAME OF AFH: \_\_\_\_\_

SECTION 5 **MUST BE COMPLETED BY THE BUILDING DEPARTMENT IN THE JURISDICTION THE HOME WILL BE LOCATED. PLEASE CHECK ALL APPLICABLE BOXES; MATCH THE LIST BELOW TO THE APPLICANT'S FLOOR PLAN – USING THEIR PROSPECTIVE RESIDENT BEDROOM DESIGNATIONS OF A B C D E AND F AND CLASSIFICATION CODE S, NS1 OR NS2.**

### SECTION 5 – BUILDING INSPECTOR'S INSPECTION CHECKLIST

R325.3 Sleeping Room Classification: Each sleeping room in an Adult family Home shall be classified as:

Type S – where the means of egress contains stairs, elevators or platform lifts to evacuate residents to public area.

Type NS1 – where 1 means of egress at grade level (has no stairs) or ramp constructed compliant with R325.9 is provided to evacuate residents to public area.

Type NS2 – where 2 means of egress at grade level (both have no stairs) or ramps constructed compliant with R325.9 are provided to evacuate residents to public area.

SLEEPING ROOM A		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>
SLEEPING ROOM B		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>
SLEEPING ROOM C		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>
SLEEPING ROOM D		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>
SLEEPING ROOM E		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>
SLEEPING ROOM F		<input type="checkbox"/> Type S	<input type="checkbox"/> Type NS1	<input type="checkbox"/> Type NS2	YES	NO
Closet door/s are readily openable from the inside	Yes No	Smoke alarm is installed in the bedroom			<input type="checkbox"/>	<input type="checkbox"/>
Bedroom door opens easily and quickly from the outside when locked					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a net opening of 5.7 SF (minimum dimensions at least 24" high; at least 20" wide) <b>EXCEPT</b> per R310.2.1: at-grade escape windows – may have net clearance opening 5 SF					<input type="checkbox"/>	<input type="checkbox"/>
Sleeping room window has a maximum sill height of 44" above floor to clear opening; no steps under window allowed					<input type="checkbox"/>	<input type="checkbox"/>

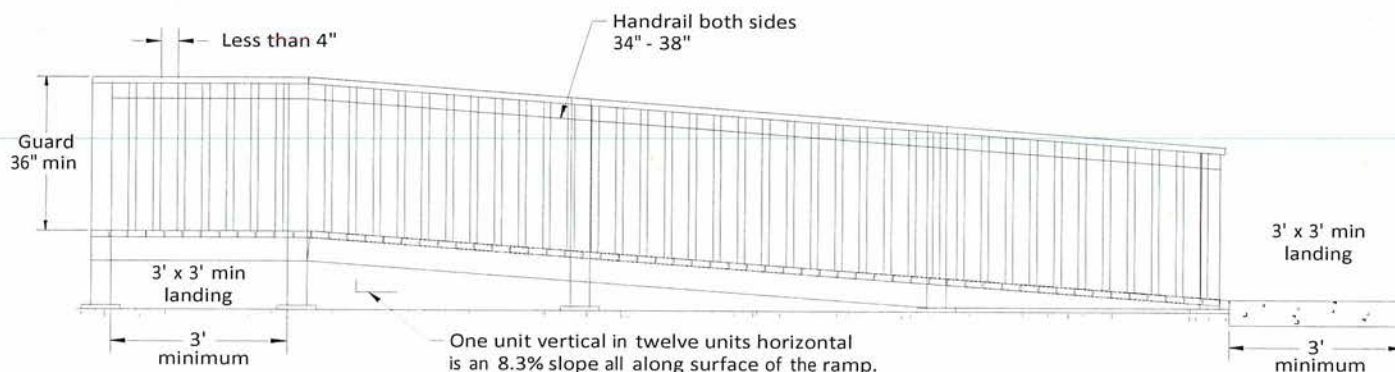
Effective: 2013 July 01

Updated: 11/14/17



GENERAL		YES	NO
Bathroom doors are easily and quickly openable from the outside when locked		<input type="checkbox"/>	<input type="checkbox"/>
Carbon Monoxide alarms are installed as required in R315 on each level of the home.		<input type="checkbox"/>	<input type="checkbox"/>
Smoke alarms are installed on all levels of the dwelling, in each resident sleeping room, outside each separate sleeping area in the immediate vicinity of sleeping rooms (R314).		<input type="checkbox"/>	<input type="checkbox"/>
Smoke and Carbon Monoxide alarms are installed in such a manner so that the audible warning may be heard in all parts of the dwelling upon activation of a single device.		<input type="checkbox"/>	<input type="checkbox"/>
Access road and water supply meet local fire jurisdictional requirements.		<input type="checkbox"/>	<input type="checkbox"/>
R325.4 Operable parts of door handles, pulls, latches, locks and other devices installed in AFH shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist (lever-type).		<input type="checkbox"/>	<input type="checkbox"/>
Pocket doors shall have graspable hardware available when in the closed or open position.		<input type="checkbox"/>	<input type="checkbox"/>

R311.8 Ramps		YES	NO
Inside Ramp	N/A		
R311.8.1 Maximum Slope one unit vertical in twelve units horizontal (8.3% slope). (Exception R311.8.1 Not allowed in AFH)		<input type="checkbox"/>	<input type="checkbox"/>
R311.8.2 Landing Requirements: min. 3X3 foot landing at top/bottom, where doors open onto ramps, and where ramp changes directions.		<input type="checkbox"/>	<input type="checkbox"/>
R325.9.1 Handrails required on both sides of ramp in accordance with R311.8.3.1–R311.8.3.3.		<input type="checkbox"/>	<input type="checkbox"/>
Outside Ramp	N/A <input type="checkbox"/>	YES	NO
R311.8.1 Maximum Slope one unit vertical in twelve units horizontal (8.3% slope). (Exception R311.8.1 Not allowed in AFH )		<input type="checkbox"/>	<input type="checkbox"/>
R311.8.2 Landing Requirements: min. 3X3 foot landing at top/bottom, where doors open onto ramps, and where ramp changes directions.		<input type="checkbox"/>	<input type="checkbox"/>
R325.9.1 Handrails required on both sides of ramp in accordance with R311.8.3.1 – R311.8.3.3.		<input type="checkbox"/>	<input type="checkbox"/>
Guards below are depicted vertically as an example only. <b>All Ramps must have Guards</b>		<input type="checkbox"/>	<input type="checkbox"/>



R311.2 Means of Egress		YES	NO
R311.2 Door must be side-hinged with min. width of 32 inches between face of door and stop. Height not less than 78 inches.		<input type="checkbox"/>	<input type="checkbox"/>
R325.4 Operable parts of door handles, pulls, latches, locks and other devices installed in AFH shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist (lever-type).		<input type="checkbox"/>	<input type="checkbox"/>
R325.4 Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing re-entry without use of key, tool or special knowledge.		<input type="checkbox"/>	<input type="checkbox"/>
R311.7 Stairways	N/A	YES	NO
R311.7.5.1 Riser Height: Max riser height shall be 7 1/4 inches (8 inches in structures built prior to July 1, 2004)		<input type="checkbox"/>	<input type="checkbox"/>
R311.7.5.2 Tread Depth: Min. tread depth shall be in 10 inches (9 inches in structures built prior to July 1, 2004)		<input type="checkbox"/>	<input type="checkbox"/>
R325.10.1 Handrails for Treads and Risers shall be installed on both sides of treads and risers numbering from one riser to multiple Risers. Handrails shall be installed in accordance with R311.7. 8.1 – R311.7.8.4		<input type="checkbox"/>	<input type="checkbox"/>

<b>R325.8 Grab Bars in Bathrooms</b>	<b>N/A</b>		<b>YES</b>	<b>NO</b>						
Grab bars shall be installed for all water closets (toilets), bathtubs and showers according to R325.8.			<input type="checkbox"/>	<input type="checkbox"/>						
Water Closets (toilet) shall have grab bars installed on both sides according to R325.8 – R325.8.3.1 or R325.8.3.2.			<input type="checkbox"/>	<input type="checkbox"/>						
Bathtubs shall have two vertical and three horizontal grab bars installed according to R325.8 - R325.8.4 – R325.8.4.2			<input type="checkbox"/>	<input type="checkbox"/>						
Shower stalls have two vertical and horizontal grab bars mounted on all sides of shower according to R325.8 – R325.8.5 – R325.8.5.2.			<input type="checkbox"/>	<input type="checkbox"/>						
Shower stalls must be minimum size of 30 inches deep by 48 inches long (R325.11)			<input type="checkbox"/>	<input type="checkbox"/>						
<b>AG103 – AG105 Swimming Pool, Spa, Hot Tub</b>			<b>YES</b>	<b>NO</b>						
AF105.2 Must be surrounded by a barrier that is 48 inches high, may have doors and or gates that must have audible alarms when opened.			<input type="checkbox"/>	<input type="checkbox"/>						
AG105.5 EXCEPTION: Pools, Spas or Hot Tubs with a safety cover which complies with ASTM F 1346			<input type="checkbox"/>	<input type="checkbox"/>						
<table border="0" style="width: 100%;"> <tr> <td style="width: 33%; text-align: center;"><b>PASSED</b></td> <td style="width: 33%; text-align: center;"><b>CORRECTIONS REQUIRED</b></td> <td style="width: 33%; text-align: center;"><b>PERMIT REQUIRED</b></td> </tr> <tr> <td colspan="3" style="height: 150px; vertical-align: top;"> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><b>INSPECTOR'S NAME (PRINT)</b></p>    <p><b>INSPECTOR'S SIGNATURE</b></p>    <p><b>INSPECTOR'S OFFICE ADDRESS</b></p> </div> <div style="width: 35%;"> <p><b>DATE:</b></p>    <p><b>PHONE NUMBER:</b></p> </div> </div> </td> </tr> </table>					<b>PASSED</b>	<b>CORRECTIONS REQUIRED</b>	<b>PERMIT REQUIRED</b>	<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><b>INSPECTOR'S NAME (PRINT)</b></p>    <p><b>INSPECTOR'S SIGNATURE</b></p>    <p><b>INSPECTOR'S OFFICE ADDRESS</b></p> </div> <div style="width: 35%;"> <p><b>DATE:</b></p>    <p><b>PHONE NUMBER:</b></p> </div> </div>		
<b>PASSED</b>	<b>CORRECTIONS REQUIRED</b>	<b>PERMIT REQUIRED</b>								
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><b>INSPECTOR'S NAME (PRINT)</b></p>    <p><b>INSPECTOR'S SIGNATURE</b></p>    <p><b>INSPECTOR'S OFFICE ADDRESS</b></p> </div> <div style="width: 35%;"> <p><b>DATE:</b></p>    <p><b>PHONE NUMBER:</b></p> </div> </div>										
<p>Application and inspection checklist developed by Washington Association of Building Officials (WABO), in cooperation with Department of Social and Health Services (DSHS) for use by both departments and licensors. 07/01/2013</p>										





To: Mayor and City Councilmembers

From: Heidi Ann Wachter, City Attorney

Through: John J. Caulfield, City Manager

A handwritten signature in black ink, reading "John J. Caulfield".

Date: December 11, 2017

Subject: Adult Family Homes

The Council has considered and discussed the impact of Adult Family Homes on the City of Lakewood given the inadequate regulation of these businesses by the State of Washington. This briefing is intended to refine the information provided and action proposed to specifically address shortcomings in State regulation.

**1. License Check. The City requires all businesses, including Adult Family Homes, to be properly licensed.**

Adult Family Homes are licensed as a business at the State level.<sup>1</sup> Adult Family Homes meet the City's definition of business.<sup>2</sup> All businesses within the City of Lakewood are required to maintain a City business license.<sup>3</sup> To operate an Adult family Home in the City, operators must obtain a general business license from the City.

On occasion, the City shifts resources for an emphasis in an area when doing so serves the citizens of the City. Examples include cross-jurisdictional DUI emphasis patrols, "amnesty" periods for municipal court fines, and sweeps for illegal camps. The City has previously done business license checks to ensure compliance with the requirements of the City Code. There is a correlation between these checks and compliance rates.

*Action Item: The City will check that all businesses, including Adult Family Homes, are in compliance with the City's business license requirement. A progress report on this effort will be included in the City Manager's report to Council during the January 16, 2018 regular meeting of the City Council.*

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<sup>1</sup> RCW 70.128.050

<sup>2</sup> LMC 5.02.010

<sup>3</sup> LMC 5.02.020

**2. Proposed Ordinances. The City will review proposed ordinances regulating Adult Family Homes to provide additional public protection.**

There are three proposed ordinances:

- a. **Adult Family Home Businesses shall not include Enhanced Service Facilities.** The first proposed ordinance amends Title 18A, the City's Land use and Development Code, to do the following:
  - 1) add a definition of Adult Family Home Business in the code specifying that Adult Family Homes are intended to serve people with functional disabilities and are not intended to serve those with a history of violence, including sex offenses;
  - 2) prohibit Enhanced Service Facilities in residential zones; and
  - 3) prohibit the conversion of Adult Family Home Businesses into Enhanced Services Facilities.
- b. **Dispersal of Adult Family Homes Plus.** The second proposed ordinance amends Title 18A to do the following:
  - 1) permit Adult Family Home Business applications only if they meet conditions that effectively disperse them in the city;
  - 2) require public participation prior to licensing an Adult Family Home Businesses within the City;
  - 3) require operators of Adult Family Home Businesses to properly maintain the homes;
  - 4) limit on-street, employee parking; and
  - 5) ensure that any signs associated with the home are consistent with the surrounding neighborhood.
- c. **Adult Family Home Business License.** The third proposed ordinance amends Title 5, the City's Business Licenses and Regulations, to add a new Chapter 5.70 "Adult Family Home Business" the provisions of which shall be supplemental to the general business license requirements of Title 5 to require the following:
  - 1) certain staff- to- patient ratios;
  - 2) certain minimum educational qualifications of staff; and
  - 3) certain minimum wage paid to staff.

**Recommendation and Timing.**

The first two proposed ordinances should be referred to the Planning Commission for consideration; the first to be reviewed in January/ February and the second to be reviewed March/April.

The third may be considered directly by the City Council after receiving more information about the population served by these businesses sometime in May/June. (There is a pending public records request from the City to the Department of Social and Health Services. The first installment response is expected, based on DSHS representations, by the end of January.)

City of Lakewood  
6000 Main Street SW  
Lakewood, WA 98499-1502  
Phone: (253) 512-2261  
Fax: (253) 512-2268



## Interoffice Memo

**Date:** December 19, 2017  
**To:** Dave Bugher  
**From:** Nancy Craig  
**Re:** Adult Family Home/Enhanced Service Facilities

I went through the various WAC codes to get a better understanding of the differences. I also reviewed sections of WAC 388-76 to understand "Specialty care designation" for AFH (WAC 388-76-10495, 10500, 10505) to determine if that appeared to open the AFH up for an ESF resident. I don't believe it does as an ESF states that it is specifically used for "transitioning" from state or local hospitals and they have different approval processes, staffing and building requirements. The building and staffing requirements for an EFS would make it difficult for an AFH, limited to 6 individuals, to make a profit.

The following table shows some of the differences.

	Adult Family Home	Enhanced Service Facility
Governing WAC	WAC 388-76	WAC 388-107
Approving agencies	DSHS Local Jurisdiction	DSHS DOH Local Jurisdiction
Customers	Individuals needing personal care, special care, room and board	Designed to serve individuals transitioning coming from state or local psychiatric hospitals
Building requirements		
Doors/hardware	Meet WAC 51-51 for residential construction	36" wide Swing out for staff emergency access Door hinges designed to minimize points for hanging Lever handles-anti ligature
Windows	Bedroom egress windows	Windows – tempered Bedrooms - egress
Kitchens/Food Prep	Must comply with WAC 388-112 and meet WAC 51-51 for residential construction	Must comply with WAC 246-215 and WAC 246-217
Bathrooms	1 toilet per 5 persons	1 toilet per 4 persons

# of residents	Maximum 6	Maximum 16
# of residents per room	Max 2	Max 1
Staff	1 qualified caregiver present unless the resident meets the criteria to be left alone per WAC 388-76-10200 #2	2 staff awake and on duty at all times 1 staff per 4 residents Registered nurse at least 20 hrs per week. On-call registered nurse within 30 minutes other times Licensed nurse on duty whenever a registered nurse not on-site Mental health professional on-duty at least 8 hrs per day Available on-call within 30 minutes other times
Training/Special Training	Orientation Basic Training Caregiver has minimum first aid card or certificate and CPR card	De-escalation Training Mental Health Specialty Training Dementia Specialty Training Home and Community Based Services Training

I did find that Adult Family Homes are able to accept mental health patients. WAC 388-76-1050 states "The adult family home must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness, or dementia as defined in WAC 388-76-1000, if the provider entity representative, resident manager and staff have not completed the specialty care training required by WAC chapter 388-112.

**WAC 388-76-10500** allows an AFH to accept patients with known mental illnesses when:

- The provider, entity representative and resident manager have successfully completed training in one or more of the specialty designated area;
- The home provides the department with written documentation of successful completion and that specialty care training be provided for all caregivers in the AFH by a person knowledgeable in specialty care.
- The home ensures the specialty care need of each resident is met.

**WAC 388-112A-0010** 29) "**Specialty training**" refers to curricula that meets the requirements of RCW [18.20.270](#) and [70.128.230](#) to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC [388-112A-0430](#), [388-112A-0440](#), or [388-112A-0450](#).

**WAC 388-76-1000** uses the following definitions (paraphrased)

**Developmental Disability-** A severe chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition other than mental illness, found to be related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a

person with mental retardation, and requires treatment or services similar to those required for these person (i.s., autism)

**Mental Illness-** is defined as an Axis 1 or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (available through the aging and disability services administration)

The following is taken from the Diagnostic and Statistical Manual of Mental Disorders:

- **Axis I:** All psychological diagnostic categories except mental retardation and personality disorder
- **Axis II:** [Personality disorders](#) and mental retardation

Mental/Psychiatric/Behavioral/Learning conditions include, but are not limited to: [depression](#), [anxiety disorders](#), [bipolar disorder](#), [ADHD](#), [autism spectrum disorders](#), [anorexia nervosa](#), [bulimia nervosa](#), and [schizophrenia](#).

**Personality Disorders include, but are not limited to:** [paranoid personality disorder](#), [schizoid personality disorder](#), [schizotypal personality disorder](#), [borderline personality disorder](#), [antisocial personality disorder](#), [narcissistic personality disorder](#), [histrionic personality disorder](#), [avoidant personality disorder](#), [dependent personality disorder](#), [obsessive-compulsive personality disorder](#); and organic intellectual disabilities.

**Dementia-** Is defined as a condition documented through the assessment process required by WAC 388-76-10335 (Resident Assessment)

I did a sampling of 20 AFS already licensed in Lakewood and found that 19 of their "Disclosure of Service" forms listed "Mental Illness" as a specialty care they provided. I was unable to find anything defining how DSHS labels AFH levels, only the information of how they are certified to offer the specialty care. Nor was I able to find information on who, how or if mentally ill patients are rated for possible danger to staff, other patients or the surrounding community. Patient confidentiality would prohibit the city from getting clear information on the number and nature of current patients.

In conclusion, an Adult Family Home could not be reclassified as an Enhanced Service Facility as they would have to make building modifications which would trigger a change of use from an R-3 to an I-1 by the building department. Current zoning would not allow an institutional type facility in a residential zone. The current rules for Adult Family Homes would allow a patient to transition from an ESF to an AFH as long as the staff has had the required specialty care training.



# Psychiatric hospital's proposed release of accused murderer sidestepped law intended to prevent it

*The News Tribune*

Sean Robinson

December 29, 2017, 1:23 PM

January 2, 2018, 11:11 AM

Four months ago, leaders of Western State Hospital tried to release a mentally ill man charged with murder to an adult family home in Lakewood, situated a few blocks from an elementary school.

The outcry was swift and loud: Lakewood Mayor Don Anderson, state Sen. Steve O'Ban and Pierce County Prosecutor Mark Lindquist led the chorus, pleading their case to Gov. Jay Inslee. As a result, the release of Lawrence David Butterfield, 62, was postponed, and he returned to the confines of the state hospital.

The debate over the aborted release continued, marked by a simple question: Why? Why would the hospital release Butterfield when four separate psychological evaluations labeled him as dangerous and noted his risk to re-offend in the future?

One answer: State attorneys and hospital leaders either sidestepped or believed they could not invoke a 2013 law designed to address such circumstances, according to information obtained by The News Tribune. A series of decisions by clinicians at Western State and lawyers for the state Attorney General's office allowed Butterfield's proposed release to go forward without any of the additional scrutiny and oversight the law was intended to provide.

O'Ban, R-Lakewood, was not happy to learn that.

"If there's a mechanism that exists and applies, and it wasn't applied, that's a concern," he said in a recent interview.

State Rep. Christine Kilduff, D-Lakewood, has filed a bill in advance of next year's legislative session that would add more teeth to the 2013 law, creating new powers of intervention for prosecutors and local law enforcement leaders.

"We have a sort of intersection of two systems: the mental health system and the criminal justice system, ping-pong back and forth. There's layers to each of those systems," she said. "We need to get mentally ill people the treatment that they need, but we also need to keep communities safe. It's a delicate balance and a persistent problem."

Asked to comment on the issue, Lindquist cited the need to "fix the system so there is an emphasis on public safety while balancing patient's needs and constitutional concerns. Part of the fix is in the rules, another part of the fix is how we apply the rules."

Kilduff hopes her bill will provide a legal fix — but an examination of the process surrounding Butterfield's case suggests that the existing law might have applied if state and hospital leaders had used the tools it provided.

Citing laws governing patient privacy, representatives of the state Department of Social and Health Services and the state Attorney General's office say they can't discuss Butterfield's case or even acknowledge its existence. Court records related to the criminal charges against him are open to the public, but legal records related to Butterfield's commitment and proposed release are shielded by privacy restrictions.

"While offices such as the Pierce County prosecutor can speak more freely on cases related to civil commitments, because of our agency's role in the process, we are subject to very strict confidentiality rules," said Brionna Aho, spokeswoman for the Attorney General's Office. "That includes anything that would identify a person as the recipient of mental health treatment (such as acknowledging a case exists)."

Butterfield is a longstanding Western State patient. He was charged with several assaults on his father in the 1970s. Those cases led to findings of him being incompetent to stand trial. The last charge, in 1979, led to a finding of not guilty by reason of insanity and a long-term commitment at the state hospital.

Diagnosed with paranoid schizophrenia and intellectual disabilities, Butterfield was released in 2002. Eight years later, prosecutors charged him with murder; the victim was his roommate, who was stabbed to death.

That charge has trailed Butterfield ever since and kept him in long-term commitment at the hospital where he's spent much of his adult life.

Three times in the past seven years, he's been found incompetent to stand trial, followed by refiled murder charges, most recently in July of this year. Four separate psychological evaluations conducted at the state hospital between 2011 and 2017 labeled him dangerous.

The last evaluation, filed on July 20, said Butterfield's persistent mental illness made him a "moderate to high risk for future serious dangerous behavior," and a greater risk if he stopped taking required medications. Four days after that evaluation, the murder charges against Butterfield were dismissed again due to his incompetence to stand trial. Within a month, the state hospital was preparing to release him.

In theory, Butterfield's case fell into the category of a law passed in 2013 and backed by Lindquist. The law governs mentally ill defendants charged with violent crimes who turn out to be incompetent. As of Sept. 30, Western State had 22 such patients at the hospital, according to state records.

The law passed in 2013 addresses such patients and what Lindquist calls "gap cases." The law established a process known as a "special finding." In such cases, a judge overseeing civil commitment proceedings can rule that the patient has been charged with a violent offense. The petition for such a finding must be sought by the state's attorney, with support from state hospital clinicians.

The finding triggers a layer of review and notification by the governor's seven-member Public Safety Review Panel, which assesses the potential releases of patients with violent histories who have been found incompetent to stand trial. The panel can recommend additional conditions of supervision, up to and including oversight by the state Department of Corrections.

The panel's authority was expanded by the 2013 law. According to Lindquist, the legal intent aims squarely at cases such as Butterfield's.

"The idea was for the safety of the community to be fully considered as well as the interests of the patient," he said.

A 2014 report from the panel found that release plans from both Western State and Eastern State Hospital were often vague and lacking specifics.

"The hospitals, despite repeated requests from the Panel, generally failed to submit release plans specifying enforceable standard conditions, naming actual treatment providers, treatment plans, and specified housing addresses," the report stated. "It is difficult to support a release plan when the Panel is unaware if the patient will be treated by an inexperienced therapist, or living in the same environment that led to the commitment. Such uncertainty in release planning and resources place both community safety and the patient at risk."

Butterfield fell into the category the panel is authorized to review: a classic gap case with an underlying charge of a violent offense, dismissal due to incompetence and a proposed release.

However, the panel had no opportunity to review Butterfield's release plan earlier this year because the special finding provision was never invoked. The News Tribune has learned that state clinicians overseeing Butterfield's treatment didn't suggest it, and the assistant attorney general assigned to the case didn't seek it.

Without that affirmative step — a presentation of evidence — the court couldn't make the special finding. Absent the finding, the review panel couldn't assess Butterfield's release plan.

Lindquist suggested that state attorneys have the power to push the idea of the special finding.

"As a practical matter, if the court neglects to make this determination, the AAG (assistant attorney general) would seem the natural party to remind the court to do so," he said. "The AAG is acting as the attorney for the Western State doctors in this context."

O'Ban, the state senator, held a legislative hearing in November that sought more information about the matter and the release process in general. During the hearing, O'Ban quizzed Carla Reyes, assistant DSHS secretary, and Marylouise Jones, interim CEO of Western State Hospital.

"They (Western State) determined that (Butterfield) wasn't competent and weeks later they determined that he was safe to be in the community," O'Ban said during the hearing. "Those seem to be mutually exclusive concepts."

Reyes and Jones said they couldn't comment directly on Butterfield's case for privacy reasons. Reyes also said the 2013 law wasn't "retroactive." That was a veiled reference to the idea that the original murder charge against Butterfield dated to 2010, meaning the 2013 law might not apply.

However, The News Tribune has learned that state attorneys briefly sought the so-called "special finding" for Butterfield in 2014, after the law was passed and after he was re-charged with murder. Butterfield's defense attorney objected to the finding. A judge agreed

with the defense argument. The state's attorney didn't pursue it further, for unclear reasons.

When Butterfield was re-charged a third time in 2017, there was no attempt to seek the special finding, despite the fresh psychological evaluation from the hospital's forensic division that deemed him dangerous. Lindquist believes the evaluation ought to count for something.

"The forensic side's findings should have great weight, especially when the doctors find a 'moderate to high risk for future serious dangerous behavior,' as they did with Butterfield," Lindquist said.

He added that state attorneys appear to be leaning on the retroactivity idea.

The News Tribune sought comment from the Attorney General's office about the retroactivity issue, and asked explicitly whether the 2013 law could apply to patients such as Butterfield, whose original commitment related to murder charges dating to 2010. Would new murder charges filed in 2014 and 2017 eliminate the retroactivity issue?

Aho, the attorney general spokeswoman, offered this response:

"Legal decisions are based on more than just statutory language. Other factors, such as case law, or constitutional issues (due process, equal protection, etc.) may also be involved. Also, the facts of the specific case are critical in making a legal determination — two cases that appear to be of a similar type may be decided differently because of their individual facts."

For Lindquist's office, Butterfield's case is a bitter echo of the incident that led to passage of the 2013 law. In 2012, Western State released Jonathan Meline, a mentally ill patient found incompetent to stand trial after criminal charges were filed against him.

In October of that year, Meline killed his sleeping father with hatchet. He was charged with first-degree murder, and later found not guilty by reason of insanity, which led to long-term commitment at the state hospital, where he still resides.

Meline's mother, Kim, later sued the state for negligence related to her son's release. A jury decided the case in her favor earlier this year, and awarded her family \$2.9 million.

The lawsuit covered ground similar to the case involving Butterfield: a patient repeatedly found to be dangerous and delusional by hospital psychologists. Meline was released to the community based on recommendations from a separate treatment team within the hospital's civil side. The Meline trial revealed that the civil treatment team ignored or didn't consider evaluations from the forensic side related to Meline's dangerousness.

Kilduff continues to work with Lindquist's office on her proposed bill, which would allow local prosecutors to intervene in gap cases, and seek additional commitment for hospital patients who fit the category. Lindquist said the bill is a potential vehicle for a long-term solution.

"Success is a system that prevents another Jonathan Meline tragedy," he said. "A legislative fix appears to be necessary. This bill removes the retroactivity argument, and also gives prosecutors a tool to intervene if we believe a patient's release jeopardizes public safety."

# **Preliminary Determination of Environmental Nonsignificance**

City of Lakewood Proposed Regulations to Adult Family Homes & Essential Services Facility

**Case No. LU-17-00262**

**TO:** All Departments and Agencies with Jurisdiction

**SUBJECT:** Preliminary Determination of Environmental Nonsignificance

In accordance with WAC 197-11-340, a copy of the Preliminary Determination of Environmental Nonsignificance for the project described below is transmitted:

**APPLICANT:** City of Lakewood Community and Economic Development Department  
6000 Main Street SW  
Lakewood, WA 98499-5027

## **Proposal:**

The proposed action would amend Lakewood Municipal Code, 18A.20.300 D as follows:

Section 1. Type 1 Group Home. Publicly or privately operated living accommodations for related or unrelated individuals having handicaps, subject to compliance with all applicable federal, state, and/or local licensing requirements. For the purposes hereof, "handicap" shall mean a physical or mental impairment which substantially limits one or more of the person's major life activities, a record of having such an impairment, or being regarded as having such an impairment; however, the term does not include current, illegal use of or an addiction to a controlled substance.

a. Adult Family Home Business - Defined. An Adult Family Home Business is a Type 1 Group Home licensed pursuant to RCW 70.128.150 and the City's licensing requirements. Adult Family Homes are intended to serve those with functional disabilities and are intended to serve those with a history of violence, including sex offenses.

b. Adult Family Home Business – May not be Converted. An Adult Family Home Business which is located in a single-family residential zone may not be converted or otherwise changed to an Enhanced Services Facility or any other type of use not permitted in a single family residential zone. Enhanced Services Facilities are not permitted in single-family residential zones.

Copies of the complete text of the proposed permanent regulations are available from the Community and Economic Development Department at the address below.

**Location:** City of Lakewood

**Lead Agency:** City of Lakewood

**City Contact:** David Bugher  
Community and Economic Development Department  
6000 Main Street SW



Lakewood, WA 98499-5027  
(253) 512-2261

The lead agency for this proposal has made a preliminary determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2). **Comments may be submitted by 5:00 PM on January 17, 2018.** The Responsible Official will reconsider the DNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the DNS. **Unless modified by the City, this determination will become final on February 7, 2018.** There is no administrative appeal for this determination. Appeals must be filed in conjunction with appeals of the adopted amendments to the Growth Management hearings Board; appeals shall be taken in accordance with procedures and limitations set forth in RCW 43.21C.075 and WAC 242-02. In addition to the Growth Management Hearings Board requirements, a copy of the appeal shall be filed with the City Clerk, 6000 Main Street SW, Lakewood, WA 98499-5027.

Responsible Official: David Bugher  
Position/Title: Assistant City Manager for Development Services

Signature:



Issue date: December 29, 2017  
Comment deadline: January 17, 2018, at 5:00 PM

## David Bugher

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**From:** Judy Swortz <judyswartz@comcast.net>  
**Sent:** Tuesday, January 02, 2018 11:06 PM  
**To:** David Bugher  
**Cc:** Guy & Laura McFadden  
**Subject:** Adult Family Home issue again

Hi Dave, enclosed you will find my comments regarding adult family homes with a hearing on January 17, 2018. It seems this issue continues to grow in the Oakbrook neighborhood and still the city or neighbors still have no teeth.

It is paramount to the City of Lakewood that our neighborhoods are safe and clean and are not subject to risks of interlopers who do harm. It is pathetic when interlopers are the renters and residents of these Adult Family Homes and yet, that is what is happening in many cases.

Your purpose to change the City Code in the following ways is long overdue.

1) define an Adult Family Home (AFH) as a Type 1 Group Home licensed pursuant to RCW 70.128.150; Even with the help of the now departed Mike Carrell, at the time this was considered a redundant act and concern. Thank you for catching up after ten years of worry.

2) require an AFH to obtain a city business license; I know in my original testimony in 2006, 07 when I stated that I was business license #129, and proud to to legally do business in this city while I was working. Yet at the time, not one of these homes operating as an adult family homes had been required to get a business license. I hope that happens this decade.

As you well know, in the beginning of this saga even public safety officers had no idea they were in the neighborhoods and the police and fire were constantly surprised at the frequent calls to the neighborhoods. I remember in my past testimony regarding this issue, I pointed out these were for profit businesses, with employees, in residential neighborhoods.

3) prohibit clients with a history of violence, including sex offenses from occupying an AFH. This section is an understatement in gravity and I do know that the city employees considered this issue redundant in the beginning. It is your job to be concerned for safety of residents of the AFH home and their neighbors. This should not have to be stated it should be the law, but with the lack of oversight by both the state and city it now needs to be spelled out.

4) prohibiting the conversion of an AFH into an Enhanced Services Facility (ESF); and 5) prohibiting ESFs in the R1, R2, R3, and R4 single-family residential zoning districts. According to the state, as quoted from their website, the person handling these facilities must have demonstrated an ability to provide support in a community based setting to adults with complex behavioral and persona care needs. It does not state where these facilities can or need to be so right away, one wonders where they plan on placing these folks.

**The issue of clustering homes in neighborhoods, which was a specific issue from the inception of this issue has yet to be addressed.** It is addressed in federal law, but both the state and city government have yet to consider this an issue. One of our blocks has 5 adult family homes. They are dispersed onto nearly every block in our development and yet there seems nothing can be done or this issue is not pursued.

Making money is the overall goal of most people and this seems like an easy way to make in one month, what most folks yearly income in one month if an AFH is full. I realize we are a market driven economy and have an aging population so it will be a few generations down the road before this issue is fully addressed. By then the houses will be completely worn out since no yard work is done, little landscaping since the overall goal of

maximizing your asset does not include anything aesthetic like plants or beauty. This is not the goal of most neighborhoods except those of non-owner occupied neighborhoods, which could be happening around here soon.

thank you for your persistence in this issue. Thank you for doing what you can.

Judy Swortz 7802 Ruby Dr SW Lakewood WA 98498 253 582-0373

## David Bugher

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**From:** Mike Brandstetter  
**Sent:** Thursday, January 04, 2018 10:13 AM  
**To:** John Caulfield; David Bugher  
**Subject:** Preliminary Determination of Environmental Nonsignificance LU-17-00262

Mr. David Bugher

I am concerned as to a determination of environmental non-significance for proposal LU-17-00262 as suggested by publication of the preliminary determination. I would suggest that the proposal is of significant impact to the environs in Lakewood's single family residential areas.

It is an established concern amongst residents that a proliferation of adult family homes housing violent individuals and sexual offenders would have a significant impact on safety, both for neighbors but also for AFH residents, in a real and perceived manner. An extension of this concern is the subsequent impact on property values and long term nature of neighborhoods.

The recent public (and city) concern about the potential housing of such an individual in an AFH clearly emphasized that the presence of such AFH resident poses a significant degradation of the neighborhood environs in single family neighborhoods. As such the proposal to specifically define in the LMC adult family home businesses as "... are intended to serve those with a history of violence, including sex offenses" clearly opens doors to significant environmental change by clarifying a gray area in the wrong direction.

It is directly contrary to citizen concerns that this non-protected class of individuals be defined as appropriate in Lakewood's AFH. The community clearly sees them as inappropriate. As such a closer review of the environmental impact of including such language in the LMC is warranted. Also warranted is consideration of amending the proposal and specifying that, as a condition of licensure, in Lakewood adult family home businesses "are not" intended or approved to serve those with a history of violence or sex offenses.

The proposed definition of adult family home business contradicts positions the city expressed in regard to the proposed residency of Mr. Butterfield in an AFH in 2017. The proposed language would also preclude or hinder the city in resisting similar situations in the future.

Sincerely

Michael D. Brandstetter  
11322 Interlaaken Drive SW

Sent from my iPad