



# 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, February 21, 2018**

**City Hall Council Chambers**

6000 Main Street SW, Lakewood, Washington

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of Minutes from February 7, 2018**
- 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**
  - None
- 7. Unfinished Business**
  - Marijuana Regulations Reduced Buffer Zones Maps and Comparisons of Special Regulations in Draft Ordinances
- 8. New Business**
  - 2017 Annual Housing Report
- 9. Report from Council Liaison**
  - Mr. Mike Brandstetter
- 10. Reports from Commission Members & Staff**
  - Written Communications – "*Place Vettings*" Article
  - Future Agenda Topics
  - Area-Wide Planning / Land Use Updates
  - Other

**Enclosures**

1. Draft Meeting Minutes from February 7, 2018
2. Staff Report on Marijuana Regulations
3. Comparison of the special regulations contained in the draft ordinance allowing for marijuana retail operations in relation to the Washington Administrative Code
4. 5131 Advertising Notice
5. Buffer zone map 1, 1,000-foot separation
6. Buffer zone map 2, 750-foot separation
7. Buffer zone map 3, 500-foot separation
8. Buffer zone map 4, 300-foot separation
9. Buffer zone map 5, 100-foot separation
10. Draft ordinance establishing an overlay and local standards
11. Draft ordinance prohibiting marijuana
12. 2017 Annual Housing Report
13. H. Wachter. Jan/Feb 2018. "*Place Vettings*" Article from Cityvision

**Members Only**

Please email [kdevereaux@cityoflakewood.us](mailto:kdevereaux@cityoflakewood.us) or call Karen Devereaux at 253.983.7767 no later than Tuesday at noon, February 20, 2018 if you are unable to attend. Thank you.



**PLANNING COMMISSION  
REGULAR MEETING MINUTES  
February 7, 2018  
City Hall Council Chambers  
6000 Main Street SW  
Lakewood, WA 98499**

**Call to Order**

Mr. Don Daniels, Chair, called the meeting to order at 6:30 p.m.

**Roll Call**

Planning Commission Members Present: Don Daniels, Chair; Robert Estrada, Vice - Chair; Connie Coleman-Lacadie, James Guerrero, and Christopher Webber

Planning Commission Members Excused: Nancy Hudson-Echols and Paul Wagemann

Planning Commission Members Absent: None

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

Council Liaison: Councilmember Mr. Michael Brandstetter

**Approval of Minutes**

**The minutes of the meeting held on January 17, 2018 were approved by voice vote M/S/C Estrada/Coleman-Lacadie. The motion to approve the minutes passed unanimously, 5-0.**

**Agenda Update**

No changes to any topics were requested. An incorrect date of 2017 was noted on agenda Item #3.

**Public Comments**

Mr. Jordan Michelson, Lakewood, made comments in support of the Marijuana Business Overlay Zoning District and Resolution allowing retail sales within the City of Lakewood. Mr. Michelson provided his thoughts on the specific language used in additional local standards around keeping a 1,000 foot buffer from sensitive receptors, limiting hours of operation, and additional security measures proposed in the resolution.

Mr. Phil Sorenson, Lakewood, spoke in opposition of Western State Hospital utilizing Adult Family Homes in the high-density Oakbrook neighborhood and transforming them into Essential Services Facilities. Mr. Sorenson commented that it is being left to the communities to look out for themselves with DSHS/DOC placing dangerous folks into neighborhood homes.

**Public Hearings**

None

## **Unfinished Business**

### **Star Lite Land Use and Development Code Text Amendment**

Director Bugher informed the commissioners no new written testimony was received since the public hearing held January 17, 2018. Mr. Bugher reiterated this is a City initiated area-wide amendment which would allow a flea market to sell both new and used goods. The project has no environmental impact and staff recommends approval.

**Mr. Christopher Webber made the motion to approve Resolution 2018-01 as written. The motion was seconded by Mr. James Guerrero. A voice vote was taken and passed unanimously, 5-0.**

### **Proposed Marijuana Regulations**

Mr. Bugher summarized that the commission was discussing two separate draft resolutions for recommendation to Council: either allow; or prohibit marijuana retail sales. Mr. Bugher provided a set of copies of written statements received on the proposed marijuana regulations. He briefly reviewed the resolutions and proposed code amendments with the commissioners.

During deliberations, commissioners were concerned with the size of the buffer areas overall. Mr. Bugher stated that some of the buffers areas could be reduced. The commission wanted to review reduced buffer zone maps.

In addition, the commission desired to compare State marijuana regulations to the City's special regulations, and, lastly, to review revised language in the draft ordinance prohibiting marijuana.

Mr. Bugher stated he would return with the information requested at the next meeting scheduled for February 21, 2018.

### **Proposed Adult Family Homes and Essential Services Facilities Regulations**

Mr. Bugher noted that one letter was received before the 5:00 p.m. deadline today. A copy was provided to commissioners.

Mr. Bugher informed commissioners that he had met with the legal department. He told the commission that he would prefer to revise the draft resolution in an effort to better defend the city from legal challenges, and protect Lakewood's neighborhoods. The amended resolution would define adult family homes and enhanced service facilities, prohibit the conversion of adult family homes into enhanced service facilities, allow enhanced service facilities in the MF1, MF2, MF3, NC2, TOC, CBD, and C1 zones, subject to the approval of a conditional use permit and all applicable development permits, and prohibit enhanced service facilities in all other zones. He commented that this was a better approach to use since both adult family homes and enhanced service facilities are labeled as essential service facilities under GMA.

This additional step would require another public hearing which would take 21-days. If this was the direction of the commission, Mr. Bugher indicated the hearing would schedule for March 7, 2018. Commissioners agreed with this approach.

There was some discussion regarding expediting the recommendation process pertaining to this second hearing. The commission indicated that it would conduct the hearing on March 7, 2018, thereafter, close the hearing, and move to take action that same evening. .

## **New Business**

### *Vote for New Chair and Vice-Chair Positions*

The floor was opened for nominations for positions. Ms. Connie Coleman- Lacadie nominated Mr. Don Daniels for the position of Chair. Mr. Daniels accepted. There were no other nominations. **A voice vote was taken and the nomination for Mr. Don Daniels as Chair carried, 6-0.**

Mr. James Guerrero nominated Mr. Robert Estrada for the position of Vice-Chair. Mr. Estrada accepted. Mr. Don Daniels nominated Ms. Connie Coleman- Lacadie. Ms. Coleman-Lacadie accepted. **A voice vote was taken and the nomination for Mr. Estrada as Vice-Chair carried, 3-2.**

## **Report from Council Liaison**

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

- Council is working on new policies, procedures, and rules of franchising regarding small cell infrastructure. The infrastructure consists of an antenna and auxiliary equipment that allow for power and connection to fiber and Wi-Fi; the infrastructure is placed onto utility poles. There are some concerns over aesthetics.

## **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*

Downtown Subarea Plan and EIS (possible joint meeting with the city council is under consideration); sign code update; and revisions to the City's land use and development code, Title 18A.

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

Mr. David Bugher introduced Ms. Tiffany Speir, Planning Manager Special Projects.

Ms. Speir will be focusing on two primary assignments of the Downtown Subarea Plan and revising Title 18A.

**Next Meeting: Wednesday, February 21, 2018 at 6:30 p.m. in Council Chambers**

**Meeting Adjourned** at 8:11 p.m.

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Don Daniels, Chair  
Planning Commission 02/21/2018

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Karen Devereaux, Recording Secretary  
Planning Commission 02/21/2018



**CITY OF LAKEWOOD  
COMMUNITY AND ECONOMIC DEVELOPMENT DEPARTMENT**

February 21, 2018

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<b>Application No(s)</b>	LU-17-00254 (ZOA text amendment) LU-17-00260 (SEPA Checklist) (STAFF REPORT NO. 3)
<b>Applicant</b>	City of Lakewood
<b>Project Description</b>	<p>A PROPOSED ORDINANCE of the City Council of the City of Lakewood, Washington, establishing: 1) a <b>MARIJUANA BUSINESS OVERLAY ZONING DISTRICT</b> 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 <b>LOCAL STANDARDS</b> to address potential public health, safety and welfare considerations.</p> <p>OR</p> <p>A PROPOSED ORDINANCE of the City Council of the City of Lakewood, Washington, enacting a <b>PROHIBITION</b> 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>
<b>Location</b>	Area-wide amendment
<b>Planning Commission Meeting Dates</b>	January 3, 2018 (Study Session) January 17, 2018 (Public Hearing) February 7, 2018 (Review & deliberation of Draft Ordinances) February 21, 2018 (Review & deliberation of Draft Ordinances)

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**SUMMARY OF ACTIONS TO-DATE:** At the request of the city council, the planning commission was directed to review proposals for marijuana legislation. One of the proposals would establish: 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.

The other option would establish 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.

On February 7, 2018, the commission received written testimony that was submitted to the City between January 17, 2018 to 5:00 PM, February 7, 2018. The public hearing was closed although the City continues to receive correspondence. Any correspondence received after 5:00 PM, February 7, 2018, will be forwarded to the city council.

The commission began the process of deliberation. There were many inquiries on a variety of topics with requested follow-up by the department. Follow-up items included: 1) comparison of state marijuana regulations versus the special regulations contained in the City's draft ordinance allowing retail marijuana; 2) revisions to language prohibiting marijuana; 3) revised buffer zone maps, including reduced buffer areas; and 4) "first in" regulations.

**COMPARISON OF STATE MARIJUANA REGULATIONS VERSUS THE SPECIAL REGULATIONS:** Commission members requested a comparison of the special regulations contained in the draft ordinance allowing for marijuana retail operations in relation to the Washington Administrative Code. The areas which the commission wanted to compare and examine included security, hours of operation, and signage and advertising. Commission members are directed to Attachment 1 of this report.

**REVISIONS TO LANGUAGE PROHIBITING MARIJUANA:** Current language reads as follows:

18A.40.020 - 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).



Alternative language from Washington cities prohibiting marijuana has been provided below. There are currently 77 cities that prohibit marijuana in Washington State. Approaches vary significantly.

**Option 1 (Richland, WA):**

Marijuana-related land uses, including marijuana retail sale, production or processing facilities, collective gardens and/or dispensaries as may be allowed under state law are expressly prohibited from locating or operating in any zoning district within the City of Richland.

No land use shall be permitted or authorized which is determined by the community development director to be in violation of any local, state, or federal law, regulation, code or ordinance.

**Option 2 (Pasco, WA):**

Marijuana related land uses such as marijuana production, processing, retail sales and/or collective gardens or dispensaries as may be allowed by State law are expressly prohibited from locating or operating in any zoning district within the City of Pasco.

**Option 3 (Snoqualmie, WA):**

The City of Snoqualmie hereby adopts a prohibition against the production, processing, and retail sale of marijuana and marijuana-infused products, intended for medical and/or recreational use, in all zoning districts of the City. The establishment, location, operation, licensing, maintenance or continuation of any use of property in the City by a marijuana producer, processor, retailer, dispenser and/or collective garden, for medical and/or recreational use is prohibited. No business license shall be issued to any person or entity for marijuana production, processing, or retailing, and any licenses issued for any of these uses in error or based on a vague and/or misleading application description are null and void, and without legal force and effect.

**Option 4 (Poulsbo, WA):**

Adopted a special ordinance 2014-12, prohibiting marijuana production, processing, and retailing and collective gardens.

**Option 5 (Lynnwood, WA):**

Retail sales, production and processing of marijuana and/or marijuana-infused products, medical marijuana collective gardens, as either a primary use, accessory use, or home occupation, are prohibited in single-family residential zones, multiple-family residential zones, public zones, commercial zones, industrial zones, and mixed-use/business zones.

**Option 6 (Marysville, WA):**

No person or entity may produce, grow, manufacture, process, accept donations for, give away or sell marijuana or marijuana infused products within Residential zones in the City.

No person or entity may produce, grow, manufacture, process, accept donations for, give away, or sell marijuana or marijuana infused products within Commercial, Industrial, Recreation and Public Institutional zones in the City.

**Option 7 (Puyallup, WA):**

Marijuana processors, marijuana producers, and marijuana retailers are prohibited in all zoning districts within the City of Puyallup.

The City shall not issue a City Business license to a person who will operate as a marijuana processor, marijuana producer, or marijuana retailers, as such terms are defined in Puyallup Municipal Code.

Puyallup's Code permits the City to review its prohibition in the event the state legislature reconciles incongruities in state law pertaining to marijuana-related businesses and collective gardens; changes in revenue structure; or determinations made by the legislature or the courts that local governments can prohibit I-502 licensees from operating in local jurisdictions; or whether local jurisdictions are preempted by state law from prohibiting I-502 licensees; or the federal government removes marijuana from the schedule of controlled substances.

**REVISED BUFFER ZONE MAPS:** 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 foot 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. CED staff also refers to the term entities as "sensitive receptors."

Local governments may reduce the 1,000 foot 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).

The state has applied specific definitions for the types of uses listed above. These are found in WAC 314-55-010 and added to this report:

"Elementary school" means a school for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

"Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under twenty-one years of age are not restricted.

"Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

"Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

"Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

"Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

"Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government.

"Secondary school" means a high and/or middle school: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

**Examples of Reduced Buffer Zones:** The following ordinance examples are from jurisdictions that have reduced the 1,000 foot 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 1,000 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. 7046 (2016) – Reduces 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 foot buffer zone remains effective for those same facilities located outside the downtown district.

Commissioners should note that some cities have chosen to expand the list of "sensitive receptors." A good example of this approach is the City of Tacoma.

**Buffer areas for Lakewood:** CED staff provides five different scenarios for marijuana buffers. City maintains the 1,000 foot separation for elementary and secondary schools, public playgrounds and parks. In Lakewood, public parks and playgrounds are not easily

separated since they are found on the same piece of property, and, thus, remain one in the same.

The five scenarios use 1,000-, 750-, 500-, 300-, and 100-foot buffers, excepting again for public parks and playgrounds where the 1,000-foot buffer is used. Table 1 shows the available land and parcels that could be used for retail marijuana. Table 1 also references maps that show the geographic areas of each of the scenarios. The maps are part of the attachments to this report. The development of these maps is a three-part process which will be explained to the commission and public at the commission meeting.

<b>TABLE 1</b> <b>Retail Marijuana Land Capacity</b>			
<b>Scenario</b>	<b>Map No.</b>	<b>Land in Acres</b>	<b>Number of Parcels</b>
1 (1,000 ft. separation)	1	204	265
2 (750 ft. separation)	2	226	328
3 (500 ft. separation)	3	255	397
4 (300 ft. separation)	4	281	441
5 (100 ft. separation)	5	317	475

When viewing the maps, because of Lakewood's underlying land use and zoning patterns, the general location for allowing retail marijuana does not dramatically change from one scenario to another. Primary retail marijuana locations remain on South Tacoma Way and Pacific Highway SW.

As a reminder to the commission, the Korean-American community has submitted several petitions objecting to retail marijuana in the International District (South Tacoma Way). Based on comments that the department has previously received from the Korean-American community in the development of the Downtown Subarea Plan, they are already less than pleased with the existing adult entertainment and mini-casino establishments found in this area. Adding retail marijuana to the mix is not viewed by this group as acceptable.

**FIRST-IN-TIME REGULATIONS:** Commission members inquired about the possible occurrence of a sensitive receptor, such as a daycare, locating within an established buffer area after a retail marijuana business had been established. Would the retail marijuana business have to relocate?

The means to address this would be to adopt "First-in-Time" regulations. Content of such regulations could be as follows:

**Section title:** First-in-time-change in ownership, sensitive receptors, relocation, and abandonment.

**Ownership.** The status of a first-in-time determination is not affected by changes in ownership.

**Sensitive receptors locate within a buffer area AFTER a retail marijuana business is established.** In the event that a sensitive receptor establishes itself after a retail marijuana business has been approved by the State of Washington, and has obtained a City business license, there is no requirement under this regulation that the retail marijuana business shall be required to close or relocate.

**Relocation of a retail outlet to a new property voids any first-in-time determination previously made as to the vacated property.** The determination shall become void on the date the property is vacated. Applicants who may have been

previously denied a license due to a first-in-time determination at the vacated property may submit a new application after the prior first-in-time determination becomes void.

**Discontinuance.** If an existing marijuana retail use is discontinued or abandoned for a period of 12 months with the intention of abandoning that use, then the property shall forfeit first-in-time status. Discontinuance of a licensed retail use for a period of 12 months or greater constitutes a prima facie intent to abandon the retail use. Intent to abandon may be rebutted by submitting documentation adequate to rebut the presumption. Documentation rebutting the presumption of intent to abandon includes but is not limited to:

State licensing review or administrative appeal; or

Review of building, land use, other required development permits or approvals; or

Correspondence or other documentation from insurance provider demonstrating an intent to reestablish the use after either a partial or full loss or disruption of the use.

The Director shall determine whether a retail use has been discontinued, abandoned, or voided, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

**Accidental Destruction.** First-in-time status is not affected when a structure containing a state-licensed retail outlet is damaged by fire or other causes beyond the control of the owner or licensee; provided redevelopment occurs within 12 months or the licensee provides documentation demonstrating why redevelopment cannot commence within 12 months, otherwise the Director shall determine the retail use abandoned, unless the licensee can demonstrate an intent not to abandon the use. If the retail use cannot be reestablished within 12 months, the licensee shall provide a schedule with reasonable deadlines to establish the use.

**Appeal of Director Determination.** The Director's Determination of whether a retail use has been discontinued, abandoned, or voided may be appealed pursuant to LMC 18A.02.740, Appeal of Process II decisions.

The first-in-time regulations were excerpted from Bellevue's Code which has been adjudicated. The introduction of first-in-time process was also added to the code under LMC 18A.40.760 in the event that two marijuana retail applicants seek licensing from the state and propose to locate within 1,000 feet of each other.

Two clerical notes of importance: 1) both draft ordinances have been revised to update public comment under the WHEREAS clauses; and 2) if the commission recommends reductions in buffers, it will require additional changes to the draft regulations. Currently, the draft code provides for 1,000-foot buffers.

#### **ATTACHMENTS:**

1. Comparison of the special regulations contained in the draft ordinance allowing for marijuana retail operations in relation to the Washington Administrative Code.
2. 5131 Advertising Notice
3. Buffer zone map 1, 1,000-foot separation
4. Buffer zone map 2, 750-foot separation
5. Buffer zone map 3, 500-foot separation
6. Buffer zone map 4, 300-foot separation
7. Buffer zone map 5, 100-foot separation

8. Draft ordinance establishing an overlay and local standards
9. Draft ordinance prohibiting marijuana

## ATTACHMENT 1

### COMPARISON OF WASHINGTON STATE ADMINISTRATIVE REGULATIONS VERSUS PROPOSED CITY OF LAKEWOOD REGULATION FOR SECURITY, HOURS OF OPERATION, & SIGNAGE/ADVERTISING

*(See also attachment to this table regarding recent changes to marijuana advertising law.)*

#### Security

##### WAC 314-55-083

What are the security requirements for a marijuana licensee?

The security requirements for a marijuana licensee are as follows:

(1) Display of identification badge. All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of marijuana. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.

(a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.

(b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.

(c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied

##### Section 18A.49.770 (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.

<p>and provided to the WSLCB or law enforcement officer upon request.</p> <p>(d) Employees, visitors, and other persons at a marijuana licensed premises, including persons engaged in the transportation of marijuana, must provide identification to a WSLCB enforcement officer upon request.</p> <p>(2) Alarm systems. At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.</p> <p>(3) Surveillance system. At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement shall allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility shall be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.</p> <p>(a) Controlled areas include:</p>	
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<p>(i) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Rooms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.</p> <p>(ii) All point-of-sale (POS) areas.</p> <p>(iii) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.</p> <p>(iv) Any room or area storing a surveillance system storage device.</p> <p>(b) All marijuana, marijuana concentrates, or marijuana-infused products that are intended to be removed or transported between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the WSLCB or designees.</p> <p>(4) Traceability: To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the WSLCB. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-</p>	
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infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the WSLCB:

- (a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);
- (b) When plants are to be partially or fully harvested or destroyed;
- (c) When a lot or batch of marijuana, marijuana extract, marijuana concentrates, marijuana-infused product, or marijuana waste is to be destroyed;
- (d) When usable marijuana, marijuana concentrates, or marijuana-infused products are transported;
- (e) Any theft of usable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;
- (f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;
- (g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before marijuana plants, seeds, plant tissue cultures, or lots of marijuana are transported from a producer to another producer or to a processor;
- (h) There is a twenty-four hour

<p>mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, marijuana concentrates, or marijuana-infused products are transported from a processor to another processor or to a retailer;</p> <p>(i) All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually;</p> <p>(j) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana concentrates, marijuana-infused products, and marijuana waste;</p> <p>(k) All marijuana, usable marijuana, marijuana-infused products, marijuana concentrates, seeds, plant tissue, clone lots, and marijuana waste must be physically tagged with the sixteen digit identification number generated by the traceability system and tracked;</p> <p>(l) All point of sale records;</p> <p>(m) Marijuana excise tax records;</p> <p>(n) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;</p> <p>(o) All free samples provided to another licensee for purposes of negotiating a sale;</p> <p>(p) All samples used for testing for quality by the producer or processor;</p> <p>(q) Samples containing usable marijuana provided to retailers;</p> <p>(r) Samples provided to the WSLCB or their designee for quality assurance compliance checks; and</p> <p>(s) Other information specified by the</p>	
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<p>board.</p> <p>(5) Start-up inventory for marijuana producers. Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants, clones, seeds, and plant tissue cultures physically on the licensed premises. The producer must, within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.</p>	
<p style="text-align: center;"><b>Hours of Operation</b></p>	
<p><b>WAC 314-55-147</b></p> <p>A marijuana retailer licensee may sell usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.</p>	<p><b>Section 18A.49.770 (C.)</b></p> <p>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.</p>
<p style="text-align: center;"><b>Signage &amp; Advertising</b></p>	
<p><b>WAC 314-55-155</b></p> <p><b>Advertising.</b></p> <p>(1) Advertising by retail licensees. The WSLCB limits each retail licensed premises to a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.</p> <p>(2) General. All marijuana advertising and labels of usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington must not contain any statement, or illustration that:</p>	<p><b>Section 18A.49.770 (D.)</b></p> <p>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.</p> <p><b>Section 18A.49.770 (I.)</b></p> <p>Marijuana plants, products, and paraphernalia shall not be visible from outside the building in which the marijuana business is located.</p>

<p>(a) Is false or misleading;</p> <p>(b) Promotes over consumption;</p> <p>(c) Represents the use of marijuana has curative or therapeutic effects;</p> <p>(d) Depicts a child or other person under legal age to consume marijuana, or includes:</p> <p style="padding-left: 40px;">(i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or</p> <p style="padding-left: 40px;">(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.</p> <p>(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, marijuana concentrates, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:</p> <p style="padding-left: 40px;">(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;</p> <p style="padding-left: 40px;">(b) On or in a public transit vehicle or public transit shelter; or</p> <p style="padding-left: 40px;">(c) On or in a publicly owned or operated property.</p> <p style="padding-left: 40px;">(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.</p> <p>(5) Marijuana retail licensees holding a medical marijuana endorsement may donate</p>	
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product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) All advertising must contain the following warnings:

(a) "This product has intoxicating effects and may be habit forming."

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

**AND WAC 314-55-086 (Mandatory Signs)**

"Persons under twenty-one years of age not permitted on these premises without a valid qualifying patient card. Juvenile qualifying patients must be accompanied by their designated provider at all times."

"Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health."

"There may be health risks associated with consumption of this product."

"Should not be used by women that are pregnant or breast feeding."

"Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."

"Persons under twenty-one years of age not permitted on these premises."

## **Changes to Marijuana Advertising Laws**

Effective July 23, 2017, marijuana licensees will see changes and additional advertising restrictions, mainly around signage and billboards. These changes come from the passage of ESSB 5131 during the legislative session. The LCB will follow with additional communication regarding potential clarifying rulemaking, however, we wanted to make licensees aware so that they can comply with the law changes.

The information below summarizes some key points. For the full text of the law, which contains additional restrictions, see [Laws of 2017, Chapter 317 \(ESSB 5131, Sec. 14\)](#).

### **Business Signs and Outdoor Advertising**

- Licensees are limited to two signs (maximum 1600 sq. inches) that are permanently affixed to a building or other structure on the licensed premises.
- Other forms of signage/outdoor advertising are prohibited, such as sign spinners, sandwich boards, inflatables, persons in costume, etc.
- Signs are limited to the following information:
  - Business or tradename,
  - Business location, and
  - Identifying the nature of the business.
- Signs must contain text stating that marijuana products may be purchased or possessed only by persons 21 years of age or older.
- Signs cannot contain depictions of plants or products (ex: leaf = plant, joint = product), or use movie or cartoon characters, or any other depiction that might be appealing to children.
- Signs may contain:
  - Images – Will be further clarified in rule, but images cannot be plants, products, appealing to children, etc.
  - Logos – Logos may not contain plants, products, or be appealing to children, etc.

### **Billboards**

Licensed retail outlets may use a billboard solely for the purpose of identifying the name of the business, the nature of the business, and providing the public with directional information to the licensed retail outlet.

- Billboards are limited to the same restrictions as outdoor signs (listed above):
  - Billboards must contain text stating that marijuana products may be purchased or possessed only by persons 21 years of age or older.
  - Billboards cannot contain depictions of plants or products (ex: leaf = plant, joint = product), or use movie or cartoon characters, or any other depiction that might be appealing to children.
  - Billboards may contain:

- Images – Will be further clarified in rule, but images cannot be plants, products, appealing to children, etc.
  - Logos – Logos may not contain plants, products, or be appealing to children, etc.
- Billboards must contain all of the warnings required for advertising under WAC 314-55-155.

### **Other Advertising Restrictions**

- Transit advertising is prohibited on or in public or private vehicles and at bus stops, taxi stands, transportation waiting areas, train stations, airports, etc. This includes vinyl wrapped vehicles, logoed delivery vehicles and company cars.
- All print advertising must contain text that marijuana products may be purchased or possessed only by persons 21 years of age or older.
- Licensees are prohibited from engaging in advertising that specifically targets persons outside the state of Washington.

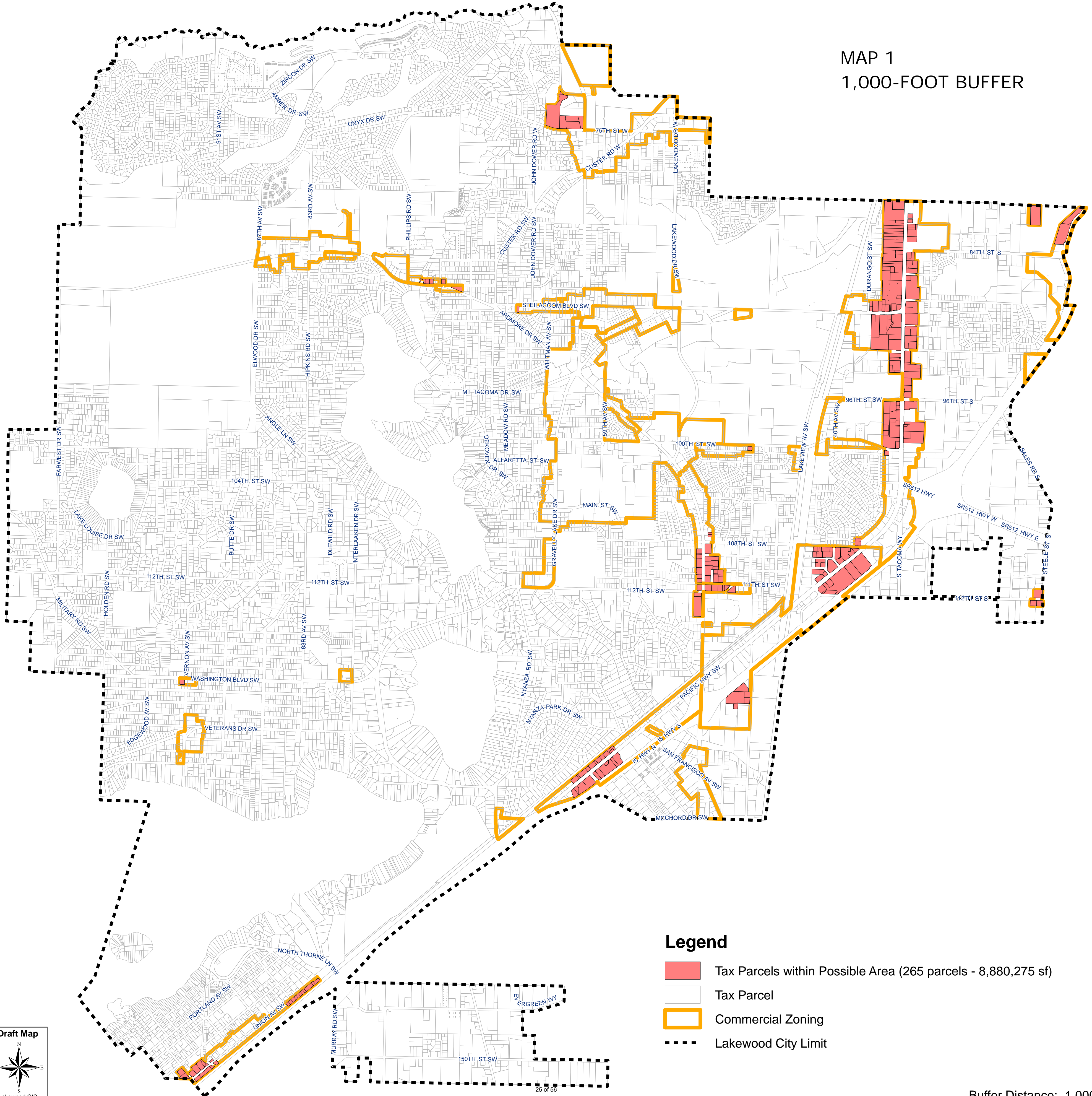
### **Local Authorities**

A city, town, or county may adopt rules of outdoor advertising by licensed marijuana retailers that are more restrictive than the advertising restrictions imposed under this chapter. Enforcement of restrictions to advertising is the responsibility of the city, town, or county.

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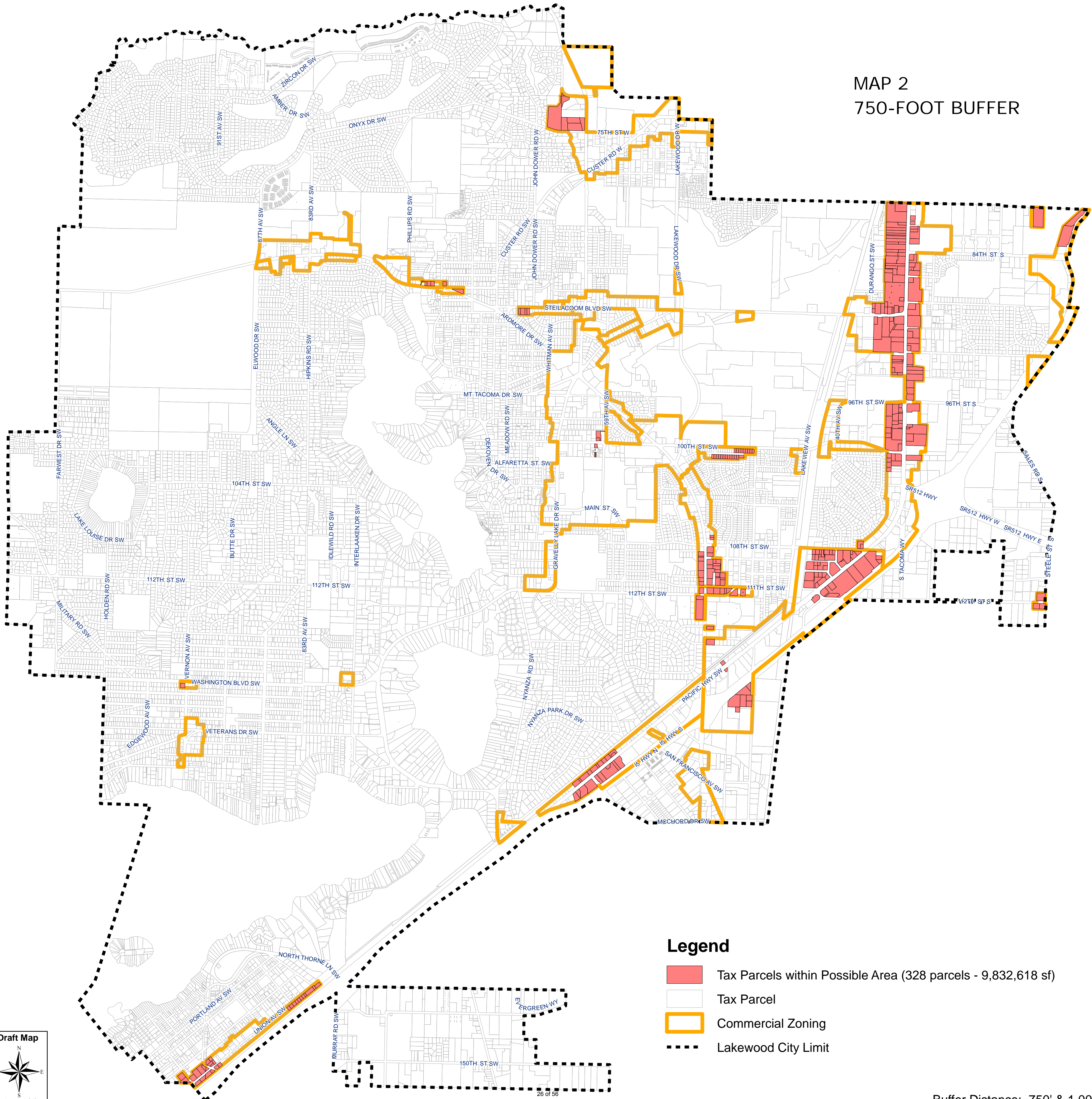


MAP 1  
1,000-FOOT BUFFER





MAP 2  
750-FOOT BUFFER

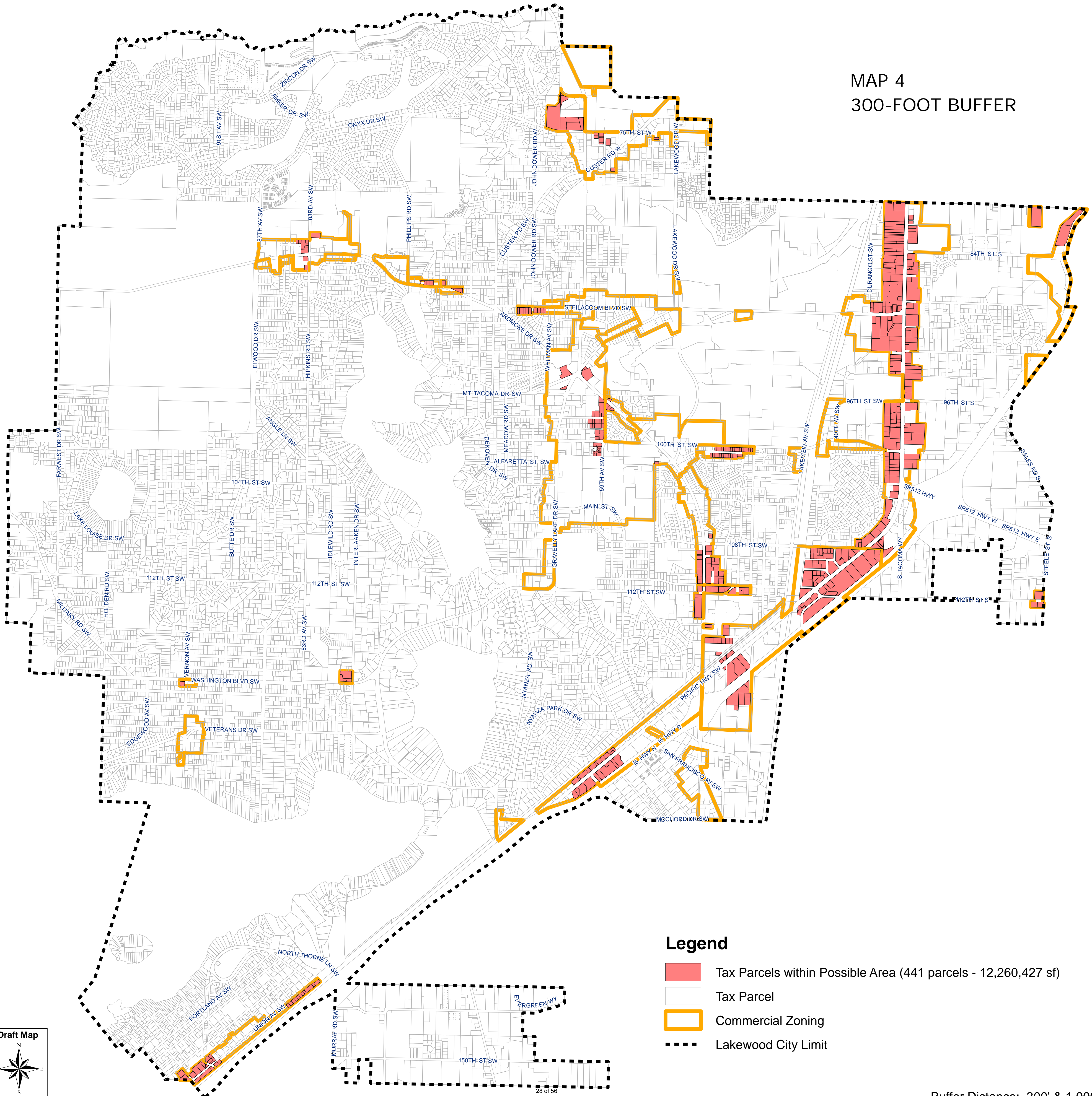






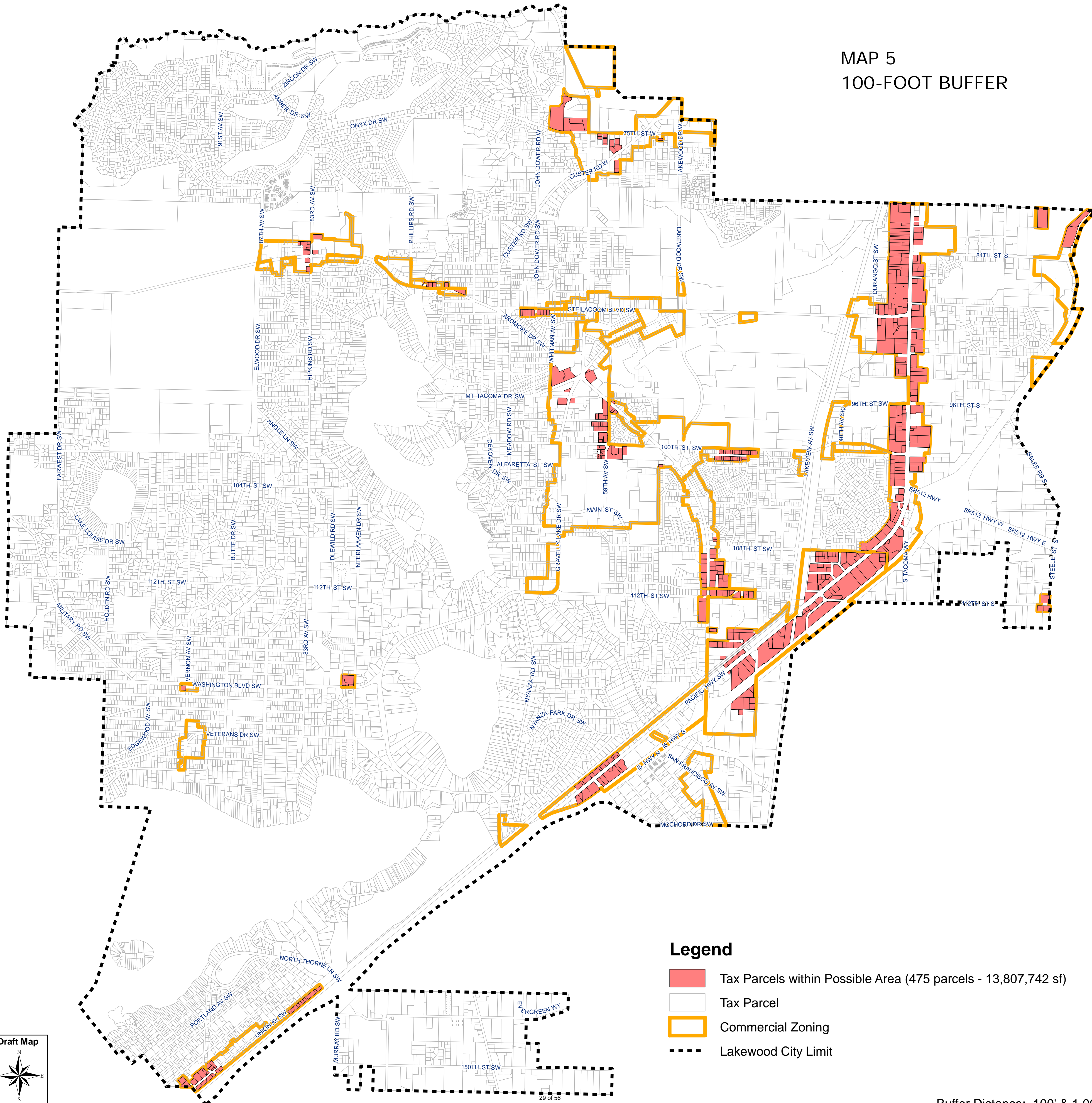


MAP 4  
300-FOOT BUFFER





MAP 5  
100-FOOT BUFFER





## **PLANNING COMMISSION RESOLUTION NO. 2018 - XX**

### **A RESOLUTION OF THE CITY OF LAKEWOOD PLANNING COMMISSION AMENDING TITLE 18A, LAND USE AND DEVELOPMENT CODE, ESTABLISHING A NEW CHAPTER 18A.04 REGULATING THE RETAIL SALES OF RECREATIONAL MARIJUANA WITHIN AN OVERLAY ZONE**

#### **I. RECITALS**

**WHEREAS**, in 1998, the voters of the State of Washington approved Initiative Measure No. 692, now codified as Chapter 69.51A RCW, entitled the Medical Use of Marijuana Act, which created an affirmative defense to state criminal liability for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

**WHEREAS**, the legislature adopted ESSB 5073, with certain provisions vetoed by the Governor, which became effective July 22, 2011, and which enacted provisions intended to authorize the establishment and operation of "collective gardens" for medical marijuana purposes subject to land use powers of municipalities within the State of Washington; and

**WHEREAS**, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 (Initiative "502") which decriminalized the possession and use of marijuana for "recreational purposes" and established a licensing protocol for marijuana production, processing, and retailing and tasking the Washington State Liquor Control Board (WSLCB) the responsibility to establish regulation and licensing of marijuana products; and

**WHEREAS**, the legislature adopted Senate Bill 5052, the Cannabis Patient Protection Act, which changed the name of the former Liquor Control Board to the Liquor and Cannabis Board (WSLCB) on July 24, 2015; and.

**WHEREAS**, on May 20, 2015, the King County Superior Court issued its decision in Greensun Group LLC v. City of Bellevue, No. 14- 2- 29863-3 SEA, which decision is incorporated herein as if set forth in full. The court determined, inter alia, that "the City of Bellevue has the authority to regulate the location and density of marijuana retail outlets within its boundaries, including through the adoption and enforcement`' of a requirement that a retail marijuana outlet cannot be located within 1, 000 feet of another retail marijuana outlet; and that "the City has the authority to develop and apply processes for enforcing" a 1, 000 foot separation requirement, including through use of a first-in-time determination based on the date and time of issuance of the state liquor control board license or conditional license, whichever is issued first; and

**WHEREAS**, RCW 69.50.331(8) (a) provides that the Washington State Liquor and Cannabis Board may not issue a license for any marijuana retail premises within one thousand (1000) feet of the perimeter of the grounds of any elementary or secondary school, playground, 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; and

**WHEREAS**, pursuant to Article 11, § 11 of the State Constitution, the general police powers of the City of Lakewood empower and authorize the City of Lakewood to adopt land use controls to provide for the regulation of land uses within the City and to provide that such uses shall be consistent with applicable law; and

**WHEREAS,** the Lakewood City Council has received reports on the topic of marijuana on November 12, 2013, April 17, 2017, and November 13, 2017; and

**WHEREAS,** on November 3, 2017, the Lakewood City Council directed the Lakewood Planning Commission to review proposed marijuana regulation; and

**WHEREAS,** the City initiated a text amendment application to Title 18A Lakewood Municipal Code, Case Nos LU-17-00254 (text amendment), and LU-17-00260 (SEPA); and

**WHEREAS,** the application contained a proposal to: 1) establish 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) add additional local standards to address potential public health, safety and welfare considerations; and

**WHEREAS,** on December 21, 2017, Case Nos LU-17-00254 (text amendment), and LU-17-00260 (SEPA) were deemed completed applications; and

**WHEREAS,** on December 22, 2017, pursuant to RCW 36.70A.106, the City submitted to the Washington State Department of Commerce a copy of the proposed text amendment; and

**WHEREAS,** on December 31, 2017, the Washington State Department of Commerce acknowledged receipt of the proposed ordinance text, Material ID # 24486; and

**WHEREAS,** pursuant to Lakewood Municipal Code (LMC) 18A.02.565, Case Nos LU-17-00256 (text amendment), is a Process V Permit; and

**WHEREAS,** under LMC 18A.02.565, a Public Hearing is required; and

**WHEREAS,** the notice of the Public Hearing was published in *The News Tribune* on December 29, 2017; and

**WHEREAS,** copies of the proposed regulations were transmitted to state and local agencies; and

**WHEREAS,** the notice of the Public Hearing was also placed on the City's website on December 29, 2017; and

**WHEREAS,** a State Environmental Policy Act (SEPA) Checklist was prepared; and

**WHEREAS,** 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; and

**WHEREAS,** a Preliminary Determination of Nonsignificance (DNS) was issued under WAC 197-11-340(2); and

**WHEREAS,** on December 29, 2017, the DNS was published on the Washington State SEPA Register (SEPA # 201706702); and

**WHEREAS**, on December 29, 2017, the DNS was published in *The News Tribune* on December 29, 2017; and

**WHEREAS**, on December 13, 2017 and January 3, 2018, the City of Lakewood Planning Commission conducted a study session on January 3, 2018 regarding Case Nos LU-17-00254 (text amendment), and LU-17-002607 (SEPA); and

**WHEREAS**, on January 17, 2018, the City of Lakewood Planning Commission conducted an advertised public hearing; and

**WHEREAS**, on January 17, 2018, the City of Lakewood Planning Commission closed the public hearing on oral testimony, but left the record open for written comments to be received until February 7, 2018 at 5:00 PM.

**NOW THEREFORE,**

**II. THE PLANNING COMMISSION OF THE CITY OF LAKEWOOD DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

**SECTION 1:** The procedural and substantive requirements of the State Environmental Policy Act have been complied with.

**SECTION 2:** The procedural requirements of RCW 36.70A have been complied with.

**SECTION 3:** The proposed amendment is consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.

**SECTION 4:** The proposed amendment is consistent with the City of Lakewood Comprehensive Plan.

**SECTION 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.

**SECTION 7:** All of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

**SECTION 8:** All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the City's municipal code.

**SECTION 9:** The Lakewood Planning Commission finds and determines that the regulation and prohibition of marijuana production, processing, and retail uses is within the City's regulatory authority.

**SECTION 10:** The Lakewood Planning Commission finds and determines that approval of such amendments prohibiting the production and processing of marijuana in the City of Lakewood is supported by case law and the Opinion of the Washington State Attorney general, is in the best interests of the residents of Lakewood, and will promote the general health, safety and welfare.

**SECTION 11:** The Lakewood Planning Commission finds and determines that regulation of marijuana for retail sales and for recreational or medical purposes is subject to the authority and general police power of the City to develop specific and appropriate land use controls



regarding such uses, and the City reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law;

**SECTION 12:** The documents and other materials that constitute the record of the proceedings upon which the Planning Commission's recommendations are based, which include, but are not limited to, the staff reports for the Project and all of the materials that support the staff reports for the Project, are located in the City of Lakewood, Community and Economic Development Department at 6000 Main Street SW, Lakewood, Washington, 98499-5027. The custodian of these documents is the Assistant City Manager for Development Services of the City of Lakewood; **NOW, THEREFORE,**

**III. THE PLANNING COMMISSION OF THE CITY OF LAKEWOOD, WASHINGTON DOES RECOMMEND AS FOLLOWS:**

**New Sections are hereby added to LMC Title 18A.40, Overlay Districts:**

Chapter 18A.40

Sections:

18A.40.700 - Marijuana business overlay  
18A.40.710 - Purpose and intent  
18A.40.720 - Definitions  
18A.40.730 - Marijuana retail business overlay created  
18A.40.740 - Applicability - recreational marijuana retail business  
18A.40.750 - Conditional use permit  
18A.40.760 - Recreational marijuana retail business locations  
18A.40.770 - Special regulations for marijuana retail businesses  
18A.40.780 - Prohibited activities  
18A.40.790 - Enforcement of violations  
18A.40.800 - No Nonconforming uses

**18A.40.700 Marijuana businesses overlay**

**Section 18A.40.710 - 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.40.720 - 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.40.730 - Marijuana retail business overlay created.**

There is hereby established a **Marijuana Retail Business Overlay Zone (MRBOZ)** as depicted in Exhibit A attached hereto and incorporated by this reference.

#### **Section 18A.40.740 – 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.40.750 - 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.40.760 - 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, and herein referred to as sensitive receptors. 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 1,000 feet of other state-licensed marijuana retail business, as measured from the shortest straight line from property line to property line as specified in WAC 314-55-050(10).

1. Areas where no retail marijuana uses are located. If two or more marijuana retail applicants seek licensing from the state and propose to locate within 1,000 feet of each other, the City shall consider the entity who is licensed first by the state liquor and cannabis board to be the "first-in-time" applicant who is entitled to site the retail use. First-in-time determinations will be based on the date and time of the state-issued license or conditional license, whichever is issued first. The Director shall make the first-in-time determination, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

2. First-in-time determinations are location-specific and do not transfer or apply to a new property or site, unless the new site is within the same tax parcel. See paragraph E. for regulations applying to established retail uses and status of first-in-time determinations.

3. Appeal of Director Determination. The Director's first-in-time determination may be appealed pursuant to LMC 18A.02.740, Appeal of Process II decisions.

E. First-in-time-change in ownership, sensitive receptors, relocation, and abandonment

1. Ownership. The status of a first-in-time determination is not affected by changes in ownership. b. Relocation.

2. Sensitive receptors locate within a buffer area AFTER a retail marijuana business is established. In the event that a sensitive receptor establishes itself after a retail marijuana business has been approved by the State of Washington, and has obtained a City business license, there is no requirement under this regulation that the retail marijuana business shall be required to close or relocate.

3. Relocation of a retail outlet to a new property voids any first-in-time determination previously made as to the vacated property. The determination shall become void on the date the property is vacated. Applicants who may have been previously denied a license due to a first-in-time determination at the vacated property may submit a new application after the prior first-in-time determination becomes void.

4. Discontinuance. If an existing marijuana retail use is discontinued or abandoned for a period of 12 months with the intention of abandoning that use, then the property shall forfeit first-in-time status. Discontinuance of a licensed retail use for a period of 12 months or greater constitutes a prima facie intent to abandon the retail use. Intent to abandon may be rebutted by submitting documentation adequate to rebut the presumption. Documentation rebutting the presumption of intent to abandon includes but is not limited to:

i. State licensing review or administrative appeal; or

ii. Review of building, land use, other required development permits or approvals; or

iii. Correspondence or other documentation from insurance provider demonstrating an intent to reestablish the use after either a partial or full loss or disruption of the use.

iv. The Director shall determine whether a retail use has been discontinued, abandoned, or voided, whether in connection with an application for an administrative conditional use permit or as otherwise appropriate.

5. Accidental Destruction. First-in-time status is not affected when a structure containing a state-licensed retail outlet is damaged by fire or other causes beyond the control of the owner or licensee; provided redevelopment occurs within 12 months or the licensee provides documentation demonstrating why redevelopment cannot commence within 12 months, otherwise the Director shall determine the retail use abandoned, unless the licensee can demonstrate an intent not to abandon the use. If the retail use cannot be reestablished within 12 months, the licensee shall provide a schedule with reasonable deadlines to establish the use.

6. Appeal of Director Determination. The Director's Determination of whether a retail use has been discontinued, abandoned, or voided may be appealed pursuant to LMC 18A.02.740, Appeal of Process II decisions.

F. 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.

G. 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.

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

I. 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.

J. 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.40.770 - 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 shall only locate within the **MRBOZ**.

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.40.780 - 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 outside of the **MRBOZ**, regardless of whether it has a license from the Washington State Liquor and Cannabis Board.

**Section 18A.40.790 - 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.40.800 - No Nonconforming 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 nonconforming status.

**PASSED, APPROVED, and ADOPTED** this 21st day of February, 2018 upon a motion of Commissioner BLANK, seconded by Commissioner BLANK, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
KAREN DEVEREAUX, Secretary

# **EXHIBIT A**

## **Exhibit A – MRBOZ Overlay**

DRAFT PC MJ APPROVAL



## PLANNING COMMISSION RESOLUTION NO. 2018 - XX

### A RESOLUTION OF THE CITY OF LAKEWOOD PLANNING COMMISSION AMENDING TITLE 18A, LAND USE AND DEVELOPMENT CODE, ESTABLISHING A NEW CHAPTER 18A.04 PROHIBITING THE PRODUCTION, PROCESSING AND RETAIL SALES OF RECREATIONAL MARIJUANA IN ALL CITY OF LAKEWOOD ZONING DISTRICTS

#### I. RECITALS

**WHEREAS**, in 1998, the voters of the State of Washington approved Initiative Measure No. 692, now codified as Chapter 69.51A RCW, entitled the Medical Use of Marijuana Act, which created an affirmative defense to state criminal liability for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

**WHEREAS**, the legislature adopted ESSB 5073, with certain provisions vetoed by the Governor, which became effective July 22, 2011, which enacted provisions intended to authorize the establishment and operation of "collective gardens" for medical marijuana purposes subject to land use powers of municipalities within the State of Washington; and

**WHEREAS**, on November 6, 2012, the voters of the State of Washington approved Initiative Measure No. 502 (Initiative "502") which decriminalized the possession and use of marijuana for "recreational purposes" and established a licensing protocol for marijuana production, processing, and retailing and tasking the Washington State Liquor and Control Board (WSLCB) the responsibility to establish regulation and licensing of marijuana products; and

**WHEREAS**, the legislature adopted Senate Bill 5052, the Cannabis Patient Protection Act, which changed the name of the former Liquor Control Board to the Liquor and Cannabis Board on July 24, 2015; and

**WHEREAS**, Congress passed the *Comprehensive Drug Abuse Prevention and Control Act of 1970*, Pub. L. No. 91-513, 84 Stat. 1236, to create a comprehensive drug enforcement regime it called the *Controlled Substances Act*, 21 U.S.C. § 801-971. Under the Controlled Substances Act (also "CSA"), Congress established five "schedules" of controlled substances. Controlled substances are placed in specific schedules based upon their potential for abuse, their accepted medical use in treatment, and the physical and psychological consequences of the abuse of the substance. See U.S.C. § 811(a); and

**WHEREAS**, under the Controlled Substances Act, it is unlawful to knowingly or intentionally "manufacture, distribute, or dispense, possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute. 21 U.S.C. § 841 (a)(1). Possession of a controlled substance, except as authorized under the Controlled Substances Act, is also unlawful; and

**WHEREAS**, the United States Supreme Court has held in *Gonzales v. Reich*, 545 U.S. 125 S. Ct. 2195, 162 L. Ed. 2d (2005), that Congress was within its rights and powers under the Commerce Clause to regulate marijuana as a Schedule I controlled substance pursuant to the Controlled Substances Act. And that, under the Supremacy Clause of the U.S. Constitution, the Federal Controlled Substances Act will prevail over any conflicting State law; and

**WHEREAS,** Court decisions in other jurisdictions have held that local legislation authorizing conduct and uses in violation of the Federal Controlled Substances Act are in conflict with such federal legislation and thus preempted by the federal law [*cf.*, *Pack v. Superior Court*, 199 Cal. App. 4<sup>th</sup> 1070, (October 2, 2011); *Emerald Steel Fabricators v. Bureau of Labor and Industries*, 348 Or. 159, 230 P. 3d 518 (2010)]; and

**WHEREAS,** on January 16, 2014, the Washington State Attorney General issued an opinion (AGO 2014-2) concluding that Initiative 502 does not preempt counties, cities and towns from banning marijuana production, processing, and retail businesses within their jurisdictions, and concluding that the issuance of a license from the Liquor Control Board does not entitle licensee to locate or operating a marijuana processing, producing, or retail business in violation of local rules or without necessary approval from local jurisdictions concluding that local jurisdictions are permitted under the law to prohibit such activities; and

**WHEREAS,** WAC 314-55-0200(11) promulgated by the WSLCB under the authority of I-502 describes the license permit process and includes the following limitation:

- (11) 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; and

**WHEREAS,** the Washington State Court of Appeals Division I issued a decision in *Cannabis Action Committee, et al. v City of Kent* (March 31, 2014) that ESSB 5073 did not legalize medical marijuana nor collective gardens, upholding the City of Kent's authority to ban medical marijuana, collective gardens and dispensaries; and

**WHEREAS,** pursuant to Article 11, § 11 of the State Constitution, the general police powers of the City of Lakewood empower and authorize the City of Lakewood to adopt land use controls to provide for the regulation of land uses within the City and to provide that such uses shall be consistent with applicable law; and

**WHEREAS,** since adoption of Initiative "502" the City of Lakewood has used its business license regulations to prohibit marijuana production, processing, and retailing; and

**WHEREAS,** Lakewood Municipal Code (LMC) Section 5.02.080 (A) states no business license shall be issued where any application to conduct, in whole or in part, activity that is illegal under local, state or federal law; and

**WHEREAS,** three retail marijuana business license applications were received by the City of Lakewood; and

**WHEREAS,** three retail marijuana business license applications were denied by the City; and

**WHEREAS,** three retail marijuana business license applicants appealed the decision to deny the business license applications; and

**WHEREAS,** the Hearing Examiner for the City of Lakewood upheld the business license denials; and

**WHEREAS,** two of the applicants attempted to open retail marijuana businesses without City of Lakewood licenses; and

**WHEREAS,** both retail marijuana business operators were subsequently fined; and

**WHEREAS,** both retail marijuana business operators closed their respective business operations; and

**WHEREAS,** the Lakewood City Council has received reports on the topic of marijuana on November 12, 2013, April 17, 2017, and November 13, 2017; and

**WHEREAS,** on November 3, 2017, the Lakewood City Council directed the Lakewood Planning Commission to review proposed marijuana regulation including a prohibition; and

**WHEREAS,** the City initiated a text amendment application to Title 18A Lakewood Municipal Code, Case Nos LU-17-00254 (text amendment), and LU-17-00260 (SEPA); and

**WHEREAS,** the application contained two 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 WSLCB; and

**WHEREAS,** on December 21, 2017, Case Nos LU-17-00254 (text amendment), and LU-17-00260 (SEPA) were deemed completed applications; and

**WHEREAS,** on December 22, 2017, pursuant to RCW 36.70A.106, the City submitted to the Washington State Department of Commerce a copy of the proposed text amendment; and

**WHEREAS,** on December 31, 2017, the Washington State Department of Commerce acknowledged receipt of the proposed ordinance text, Material ID # 24486; and

**WHEREAS,** pursuant to Lakewood Municipal Code (LMC) 18A.02.565, Case Nos LU-17-00256 (text amendment), is a Process V Permit; and

**WHEREAS,** under LMC 18A.02.565, a Public Hearing is required; and

**WHEREAS,** the notice of the Public Hearing was published in *The News Tribune* on December 29, 2017; and

**WHEREAS,** copies of the proposed regulations were transmitted to state and local agencies; and

**WHEREAS,** the notice of the Public Hearing was also placed on the City's website on December 29, 2017; and

**WHEREAS,** a State Environmental Policy Act (SEPA) Checklist was prepared; and

**WHEREAS,** 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; and

**WHEREAS,** a Preliminary Determination of Nonsignificance (DNS) was issued under WAC 197-11-340(2); and

**WHEREAS,** on December 29, 2017, the DNS was published on the Washington State SEPA Register (SEPA # 201706702); and

**WHEREAS,** on December 29, 2017, the DNS was published in *The News Tribune* on December 29, 2017; and

**WHEREAS,** on January 3, 2018, the City of Lakewood Planning Commission conducted a study session on January 3, 2018 regarding Case Nos LU-17-00254 (text amendment), and LU-17-00260 (SEPA); and

**WHEREAS,** on January 17, 2018, the City of Lakewood Planning Commission conducted an advertised public hearing; and

**WHEREAS,** on January 17, 2018, the City of Lakewood Planning Commission closed the public hearing on oral testimony, but left the record open for written comments to be received until February 7, 2018 at 5:00 PM.

**NOW THEREFORE,**

**II. THE PLANNING COMMISSION OF THE CITY OF LAKEWOOD DOES HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

**SECTION 1:** The procedural and substantive requirements of the State Environmental Policy Act have been complied with.

**SECTION 2:** The procedural requirements of RCW 36.70A have been complied with.

**SECTION 3:** The proposed amendment is consistent with the requirements of Revised Code of Washington, and the Washington Administrative Code.

**SECTION 4:** The proposed amendment is consistent with the City of Lakewood Comprehensive Plan.

**SECTION 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.

**SECTION 7:** All of the facts set forth in the Recitals are true and correct, and are incorporated herein by reference.

**SECTION 8:** All necessary public meetings and opportunities for public testimony and comment have been conducted in compliance with State law and the City's municipal code.

**SECTION 9:** The Lakewood Planning Commission finds and determines that the prohibition of marijuana production, processing, and retail uses within the City's regulatory authority.

**SECTION 10:** The Lakewood Planning Commission finds and determines that approval of such amendments prohibiting the production, processing and retail sales of marijuana in the City of Lakewood is supported by case law and the Opinion of the Washington State

Attorney general, and is in the best interests of the residents of Lakewood and will promote the general health, safety and welfare.

**SECTION 11:** The Lakewood Planning Commission finds and determines that regulation of marijuana for recreational or medical purposes is subject to the authority and general police power of the City to develop specific and appropriate land use controls regarding such uses, and the City reserves its powers and authority to appropriately amend, modify and revise such prohibition to implement such land use controls in accordance with applicable law;

**SECTION 12:** The documents and other materials that constitute the record of the proceedings upon which the Planning Commission's recommendations are based, which include, but are not limited to, the staff reports for the Project and all of the materials that support the staff reports for the Project, are located in the City of Lakewood, Community and Economic Development Department at 6000 Main Street SW, Lakewood, Washington, 98499-5027. The custodian of these documents is the Assistant City Manager for Development Services of the City of Lakewood; NOW, THEREFORE,

### **III. THE PLANNING COMMISSION OF THE CITY OF LAKEWOOD, WASHINGTON DOES RECOMMEND AS FOLLOWS:**

#### **Section 1. New Chapter is hereby added to LMC Title 18A:**

##### Chapter 18A.04 Marijuana Prohibited.

##### 18A.04.010 Findings

##### 18A.04.020 Purpose

##### 18A.04.030 Definitions

##### 18A.04.040 Prohibited activities

##### 18A.04.050 Use not permitted in any zone

##### 18A.04.060 No vested or nonconforming rights

##### 18A.04.070 Violations

##### 18A.40.010 - Findings.

The City Council finds that nothing in this chapter 18A.04 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.40.020 - 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.40.030 - 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.04.040 - 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.04.050 - 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.04.060 - 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.04.070 - 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.

**Section 2: Chapter 18A.02, Section 18A.02.215 is hereby amended:**

18A.02.215 Interpretation of Uses.

A. Land uses that are listed as primary uses in each zoning district shall be permitted subject to the review processes, standards, and regulations specified in Title 18A. If a described use is not listed as a use in a particular zoning district, it shall be considered to be a prohibited use within that district, excepting land uses listed as prohibited uses in Chapter 18A.40. However, it is inevitable that certain valid, justifiable uses of land will be missing from the listings of uses permitted in various zoning districts, therefore the Community Development Director is authorized to make an administrative interpretation in accordance with the procedures of this section.

B. If a proposed use is not specifically listed, an applicant may request an interpretation from the Community Development Director as to whether or not such use is a permitted use. In determining whether a proposed use closely resembles a use expressly authorized in the applicable zoning district(s), the Community Development Director shall examine the characteristics of the development and use and shall make a determination as to what zone(s) the development and use may be allowed as a primary permitted use or permitted with an administrative use permit or with a conditional use permit based on the following criteria:

1. The use is compatible with the applicable goals and policies of the comprehensive plan.
2. The use is consistent with the stated purpose of the applicable district or districts.
3. The requested use is most substantially similar to the listed uses permitted in the district in which the request is being sought, as opposed to its similarity to the listed uses permitted in other districts based on the following criteria:
  - a. The activities involved in or equipment or materials employed in the use;
  - b. The effects of the use on the surrounding area, such as traffic impacts, noise, dust, odors, vibrations, lighting and glare, impacts on public services and facilities, and aesthetic appearance.
  - c. The use has a high degree of potential to be consistent, compatible, and homogenous with listed uses.
  - d. The size of the facility.

C. Unlisted developments and uses for which the Community Development Director has made an administrative interpretation as to appropriate zone and type similarity shall be considered to constitute an official interpretation and shall subsequently be applied and used for future administration in reviewing like proposals. The Community Development Director shall report such decisions to the Planning Commission when it appears desirable and necessary to amend this code.



D. The Community Development Director's determination shall be processed and subject to the applicable requirements of LMC 18A.02.540 and may be appealed as provided in LMC 18A.02.740.

**PASSED, APPROVED, and ADOPTED** this 21st day of February, 2018 upon a motion of Commissioner BLANK, seconded by Commissioner BLANK, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
KAREN DEVEREAUX, Secretary



**TO:** Lakewood Planning Commission

**FROM:** David Bugher, Assistant City Manager for Development Services

**DATE:** February 21, 2018

**SUBJECT:** Department Annual Housing Report

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**Background:** Each year, the department prepares an annual housing report. The report provides data on new housing units built, remodels and additions, demolitions, pending residential projects and approved final plats. This information is provided in a series of eight tables found below. The data taken as a whole shows the community what has been constructed and the amount and type of residential development that can be anticipated to occur over the next 24 months.

Related comprehensive plan housing objectives have been excerpted as it relates to this topic.

LU-2.14: Maintain an updated inventory of land available for housing development.

LU-2.20: Maintain a sufficient land supply and adequate zoning within the City to accommodate 25 percent of the City's projected net household growth for those making less than or equal to 80 percent of county median income.

LU-5.1: On an annual basis, provide a report to policy makers on the loss of affordable housing due to demolition or conversion.

**Trends:**

- It is difficult to build new single family housing given the built-out nature of Lakewood.
- Preliminary and short plat approvals are difficult. These projects are usually opposed by surrounding property owners.
- The number of demolitions is significant. In 2017, about 42 percent of the single family demolitions are as a result of the City's dangerous building abatement program. City is likely to experience an ongoing loss of multifamily housing as industrial development begins to occur in the Woodbrook area. Some limited loss of housing will also occur with the construction of the I-5 JBLM Congestion Relief Project.
- CSRT is spending more time cleaning up manufactured housing parks; this will result in the removal of units. Some parks possess burned-out units that have not been removed. Other manufactured units are in a severely dilapidated condition.

- Sometimes homeowners initiate short plat applications. They misunderstand the subdivision process assuming that preliminary approval means final approval. Site grading and tree removal is initiated often in violation of the City's development regulations. Also, because they lack the capital to complete the process, it seems to take a long time before the short plat is completed.
- The amount of upgrades/improvements to multifamily units is generally low.
- City may experience an increase in multifamily remodels and repairs resulting from the RHSP.
- City has a problem with illegal conversion of single family units into apartments.
- There is the beginning of a surge in multifamily construction.

## CITY OF LAKEWOOD 2017 HOUSING REPORT

<b>TABLE 1 MARKET RATE NEW HOUSING, PERMITS ISSUED</b>			
<b>Type</b>	<b>Number</b>	<b>Valuation</b>	<b>Average Valuation</b>
New single family dwelling units	48	\$13,617,723.18	\$289,738.79
Accessory dwelling units	1	\$59,202.00	\$59,202.00
Duplex/triplex dwelling units issued	0	\$0.00	\$0.00
New Multifamily dwelling units issued	11	\$1,353,942.04	\$123,085.64
New Condominiums	0	\$0.00	\$0.00
New manufactured housing	4	\$19,000.00	\$4,750.00
<b>Total</b>		<b>\$15,049,867.22</b>	<b>\$238,886.78</b>

<b>TABLE 2 MARKET RATE REMODELS/ADDITIONS/ALTERATIONS, PERMITS ISSUED</b>			
<b>Type</b>	<b>Number of Permits</b>	<b>Valuation</b>	<b>Average Valuation</b>
Single family dwelling	302	\$6,532,821.56	\$21,631.86
Accessory dwelling	0	\$0.00	\$0.00
Duplex/triplex dwelling	0	\$0.00	\$0.00
Multifamily dwellings	16 (297 units)	\$1,344,802.00	\$4,527.95 (per unit)
Condominiums	0	\$0.00	\$0.00
Manufactured housing	0	\$0.00	\$0.00
<b>Total</b>	<b>318</b>	<b>\$7,877,623.56</b>	<b>\$24,772.40</b>

**TABLE 3**  
**AFFORDABLE NEW HOUSING, PERMITS ISSUED**  
**(Entitlement projects)**

<b>Type</b>	<b>Number</b>	<b>Valuation</b>	<b>Average Valuation</b>
Single family dwelling units	0	\$0.00	\$0.00
Accessory dwelling units	0	\$0.00	\$0.00
Duplex/triplex dwelling units issued	0	\$0.00	\$0.00
Multifamily dwelling units issued	0	\$0.00	\$0.00
Condominiums	0	\$0.00	\$0.00
Manufactured housing	0	\$0.00	\$0.00
<b>Total</b>	<b>0</b>	<b>\$0.00</b>	<b>\$0.00</b>

**TABLE 4**  
**AFFORDABLE REMODELS/ADDITIONS/ALTERATIONS**  
**(CDBG/HOME)**

<b>Type</b>	<b>Number</b>	<b>Valuation</b>	<b>Average Valuation</b>
Single family dwelling units	13	\$44,987.24	\$3,460.55
Accessory dwelling units	0	\$0.00	\$0.00
Duplex/triplex dwelling units issued	0	\$0.00	\$0.00
Multifamily dwelling units issued	0	\$0.00	\$0.00
Condominiums	0	\$0.00	\$0.00
Manufactured housing	0	\$0.00	\$0.00
<b>Total</b>	<b>13</b>	<b>\$44,987.24</b>	<b>\$3,460.55</b>

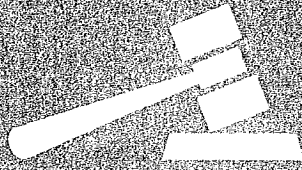
**TABLE 5**  
**DEMOLITIONS**

<b>Type</b>	<b>Units/structures demolished</b>
Single family dwellings	26
Accessory dwellings	0
Duplex/triplex dwellings	6
Multifamily dwelling units	0
Condominium units	0
Manufactured housing units	0
Other miscellaneous residential accessory structures	9
Commercial/industrial structures	12
<b>Total</b>	<b>53</b>

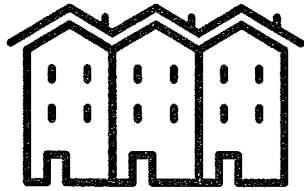
<b>TABLE 6</b> <b>PENDING PROJECTS ALL TYPES</b>		
<b>Name</b>	<b>Approximate Addresses</b>	<b>Number of Units/Lots</b>
<i>Single Family Residential (includes Preliminary Plats)</i>		
Windom Oaks	6183 88 <sup>th</sup> Street SW	15 SFR
Military Road Preliminary Plat	11210 & 11320 Military Road SW	17 SFR
<b>Subtotal</b>		<b>32 SFR</b>
<i>PDD</i>		
Hardwood Glen PDD	12404 Gravelly Lake Drive SW	18 SFR
Ruby Drive PDD	7701 Rudy Drive SW	16 SFR
<b>Subtotal</b>		<b>34 SFR</b>
<i>Short Plats</i>		
Goodman Short Plat	12009 Clover Creek Drive SW	4 SFR
Doremus Short Plat	12414 Glenwood Avenue SW	2 SFR
Jenson Short Plat	12624 Lakeland Avenue SW	4 SFR
Legacy Short Plat	10408 Idlewild Drive SW	4 SFR
Meacham Short Plat	381 Lake Louise Drive SW	2 SFR
Sass Short Plat	6713 – 6899 79 <sup>th</sup> Street SW	3 SFR
Riordan Short Plat	9347 DeKoven Drive SW	2 SFR
<b>Subtotal</b>		<b>21 SFR</b>
<i>Multifamily</i>		
Springbrook Apartments	12623 Bridgeport Way	208 MF
Cloverwood Apartments	4901 123rd Street SW	264 MF
Lake Grove Apartments	5915 Lake Grove Street SW	30 MF
Choi Apartments	7907 Washington Boulevard SW	42 MF
Rainier Apartments	4606 108 <sup>th</sup> Street SW	26 MF
<b>Subtotal</b>		<b>570 MF</b>
<b>"In the Pipeline"</b>		<b>657 +/- new units</b>

<b>TABLE 7</b> <b>APPROVED SHORT PLATS</b>					
<b>Name</b>	<b>Pending</b>	<b>App'd (Date)</b>	<b>Address</b>	<b>No. of lots</b>	<b>Expired/extended?</b>
96 <sup>TH</sup> Street S SP	No	6/19/17	2911 96 <sup>TH</sup> ST S	2	N/A
Puget Sound Surveying SP	No	9/18/2017	10110 Farwest Drive SW	2	N/A
<b>Total</b>				<b>4</b>	

TABLE 8 FINAL PLATS					
NAME	Pending	App'd (Date)	Address	No. of Lots	Expired/Extended?
Gravelly Lake Estates (SHB)	No	11/30/17	11604 Interlaaken Drive SW	32	N/A
Megan Court	No	9/18/17	10720 Farwest Drive SW	7	N/A
<b>Total</b>				<b>39</b>	



## LEGAL AFFAIRS



## Living Side by Side

A SNAPSHOT OF WESTERN WASHINGTON CITIES WITH A CONCENTRATION OF ADULT FAMILY HOMES

### LYNNWOOD 133 homes

3.5 homes  
per 1,000 people

### SHORELINE 85 homes

1.5 homes  
per 1,000 people

### VANCOUVER 271 homes

1.5 homes  
per 1,000 people

### LAKEWOOD 73 homes

1.2 homes  
per 1,000 people

# PLACE VETTINGS

CITIES COPE WITH CHALLENGES FROM MENTAL HEALTH RELEASES.

**SHOULD A MAN** accused of killing his roommate and charged with assaulting his father with the intent to kill live alongside a 95-year-old grandmother or an adult with “functional limitations,” as defined by the state? The City of Lakewood doesn’t think so, and we’re trying to find a way to stop it.

Over the summer, the city learned that an accused killer who was found incompetent to stand trial three times for the 2010 murder of his roommate was set to be released from Western State Hospital into an adult family home in one of our residential neighborhoods—despite mental health evaluations stating that the 61-year-old is a high risk to commit dangerous behavior again. By the time Lakewood discovered that the placement was going forward without input from city officials, remaining options to prevent it from happening were limited.

Our legal department quickly pulled together an emergency legal action against the state Department of Social and Health Services (DSHS) to stop the release. Meanwhile, city officials involved elected officials at the state level, which ultimately led to political intervention by the governor’s office, which oversees DSHS, to stop the man’s discharge into Lakewood.

This problem is not isolated to our city. By law, cities and counties must permit adult family homes as residential uses, which means local jurisdictions must generally allow the homes in the same manner and in the same areas they allow single-family homes. As a result, thousands of adult family homes exist throughout the state. The problem for many communities is that DSHS appears to be stretching the definition of the adult family home resident beyond what the Legislature originally intended, placing people with a history of violence or predation with those who are, by statute, considered vulnerable to abuse.

As established, these homes are meant to offer residential housing to aging adults and those with intellectual and physical disabilities who aren’t able to live on their own, but who still desire and have the capacity to live as independent a life as possible. But because the state regulates adult family homes, there’s little to no way for cities to know exactly how these homes are being used.

The state’s interpretation of the law no longer seems on par with the original vision; some of the people placed by the state into these homes have severe mental illness, predatory behaviors, or violent histories. As a result, these homes are morphing from safe residential settings for adults to receive occasional assistance into a version of institutional housing meant for those requiring, but not receiving, far more intensive care and supervision.

A single-family home where six adults live in a group setting is not the place for a man who previously spent 20 years committed to Western State Hospital after being found not guilty by reason of insanity on first-degree assault charges. The last time this man was released by DSHS into a residential setting, his roommate was killed, and he was charged with the murder. Seven years later, DSHS was prepared



DSHS appears to be stretching the definition of the adult family home resident beyond what the Legislature originally intended, placing people with a history of violence or predation with those who are, by statute, considered vulnerable to abuse.



to release the accused killer into Lakewood.

And we have since learned of at least three registered sex offenders placed by the state locally in adult family homes. Like the man who is alleged to have killed his roommate, these registered sex offenders no doubt have functional limitations that may qualify them for an adult family home, but these limitations should not overshadow other defining characteristics.

While the problem may seem easy to identify, a solution is harder to find. Part of what makes it difficult is the fact that cities have little regulatory authority when it comes to adult family homes. Still, better notifications around the release of potentially violent offenders would help, as would making sure they go into settings equipped to handle their level of threat to public safety. Typically, enhanced service facilities, which are designed to address the care needs of violent offenders, are better suited for these placements.

What can you do to prevent this from happening in your city? The short answer is not much, but here are some starting points:

- **Understand the dynamic.** Cities largely have no authority over adult family homes. They are regulated by the state, which establishes criteria, performs oversight, and issues licenses for the facilities. Attempts by cities to

regulate adult family homes are generally unsuccessful because of federal fair housing rules.

- **Educate yourself.** Know what notification the state is required to give about the release of patients and how that information will come in. For example, prior to the release of someone civilly committed following dismissal of a sex, violent, or felony harassment offense, DSHS must notify the police chief of the city in which the person will reside.

- **Advocate for change.** Work with your state legislative delegation and advocate for a change in the law. As it relates to the case in Lakewood, a state Public Safety Review Panel should have reviewed DSHS's plan to release the accused killer into our community pursuant to RCW 10.77.270 and RCW 71.05.280(3)(b), but that didn't happen. The statutory authority does not clearly articulate who is responsible for ensuring that such review takes place, an oversight that should be fixed. ©

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