

ORDINANCE NO. 684

AN ORDINANCE of the City Council of the City of Lakewood, Washington, Amending Title 18A, Land Use and Development Code, Establishing a New Chapter 18A.04 Authorizing the Limited Retail Sales of Recreational Marijuana in Certain City of Lakewood Zoning Districts

**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**, 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**, 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 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/or 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**, 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; and

**WHEREAS**, on February 7, the Planning Commission reviewed and deliberated Case No. LU-17-00254 (text amendment); and

**WHEREAS**, on February 21, 2018 the Planning Commission deliberated and recommended the prohibition of marijuana production, processing and retail sales in all Lakewood zoning districts to the City Council; and

**WHEREAS**, on February 21, 2018, per Lakewood City Council direction, the Planning Commission also deliberated about and amended a staff-proposed draft ordinance that would allow retail marijuana sales under certain regulations for City Council consideration; and

**WHEREAS**, on April 23, 2018, the Lakewood City Council conducted a study session regarding the Planning Commission's recommended prohibition of marijuana production, processing and retail sales as well as a draft ordinance regulating retail marijuana sales; and

**WHEREAS**, on May 7, 2018 the Lakewood City Council conducted an advertised public hearing; and

WHEREAS, on May 7, 2018, the Lakewood City Council closed the public hearing on oral testimony, but left the record open for written comments to be received until May 21, 2018 at 5:00 PM.

WHEREAS, the Lakewood City Council adopts the foregoing as its findings of fact justifying this Ordinance to protect the public health, safety, and welfare of the residents of the City of Lakewood.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON HEREBY ORDAINS, Lakewood Municipal Code is amended to include a new Chapter 18A.04 to read as follows:

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

**Chapter 18A.40.700 Marijuana Business Overlay**

**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 - Recreational marijuana retail business locations
- 18A.40.760 - Special regulations for marijuana retail businesses
- 18A.40.770 - Prohibited activities
- 18A.40.780 - Enforcement of violations
- 18A.40.790 - No Nonconforming uses

**Chapter 18A.40.700 Marijuana Business 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 - Recreational marijuana retail business locations.**

A. A state-licensed marijuana retail business shall not be located on parcels located within **one thousand (1,000) feet of parcels** containing any of the following uses, as officially defined in WAC 314-55-010. The distance shall be measured as the shortest straight line from property line to property line, as set forth in WAC 314-55-050(10).

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

**OR**

A. A state-licensed marijuana retail business shall not be located on parcels located within **five hundred (500) feet of parcels** containing any of the following uses, as officially defined in WAC 314-55-010 with the exception of elementary or secondary school, public or private, playgrounds, publicly managed, and public parks, having facilities for active or passive recreation, exclusive of trails, for which uses the distance

shall remain at one thousand (1,000) feet. 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. Recreation center or facility, providing a broad range of activities intended primarily for minors and managed by a public or charitable non-profit entity;
2. Child care facility, licensed by the Department of Early Learning providing child care regularly for less than 24 hours;
3. Public transit center where several transit routes converge;
4. Library; or
5. Game arcade where admission is not restricted to persons age 21 and older.

B. 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.

C. 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.

D. 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.

E. 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.

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

G. 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.

#### **Section 18A.40.760 - 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.

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.

**Section 18A.40.770 - 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.40.780 - 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.40.790 - 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.

**Section 2.** Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

**Section 3.** Effective Date. This Ordinance shall be in full force and effect thirty (30) days after publication as required by law.

PASSED by the City Council this 21<sup>st</sup> day of May, 2018.

CITY OF LAKEWOOD

\_\_\_\_\_  
Don Anderson, Mayor

Attest:

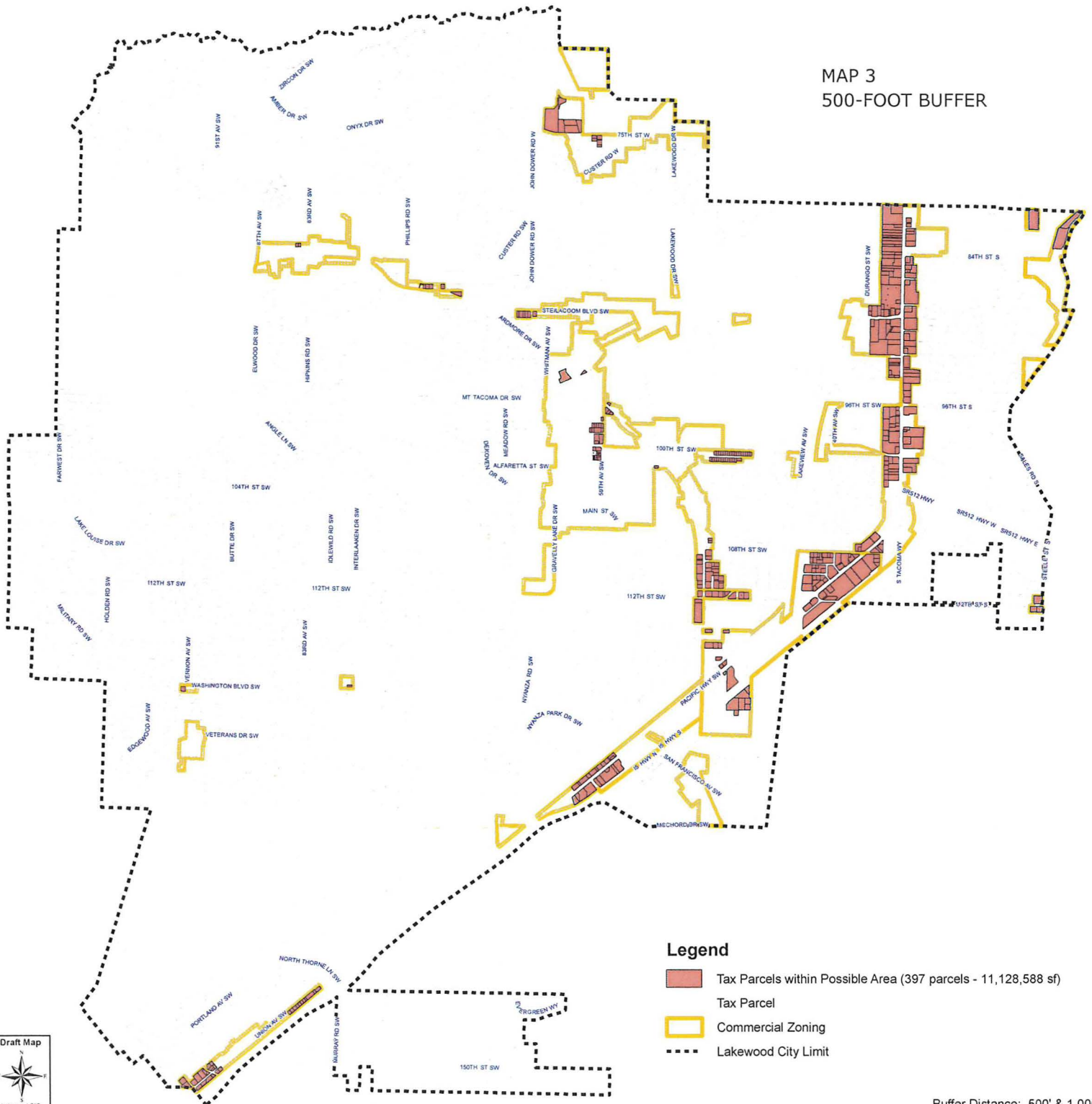
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Alice M. Bush, MMC, City Clerk

Approved as to Form:

\_\_\_\_\_  
Heidi Ann Wachter, City Attorney

**STRIKED FROM CONSIDERATION**  
**5/21/2018**

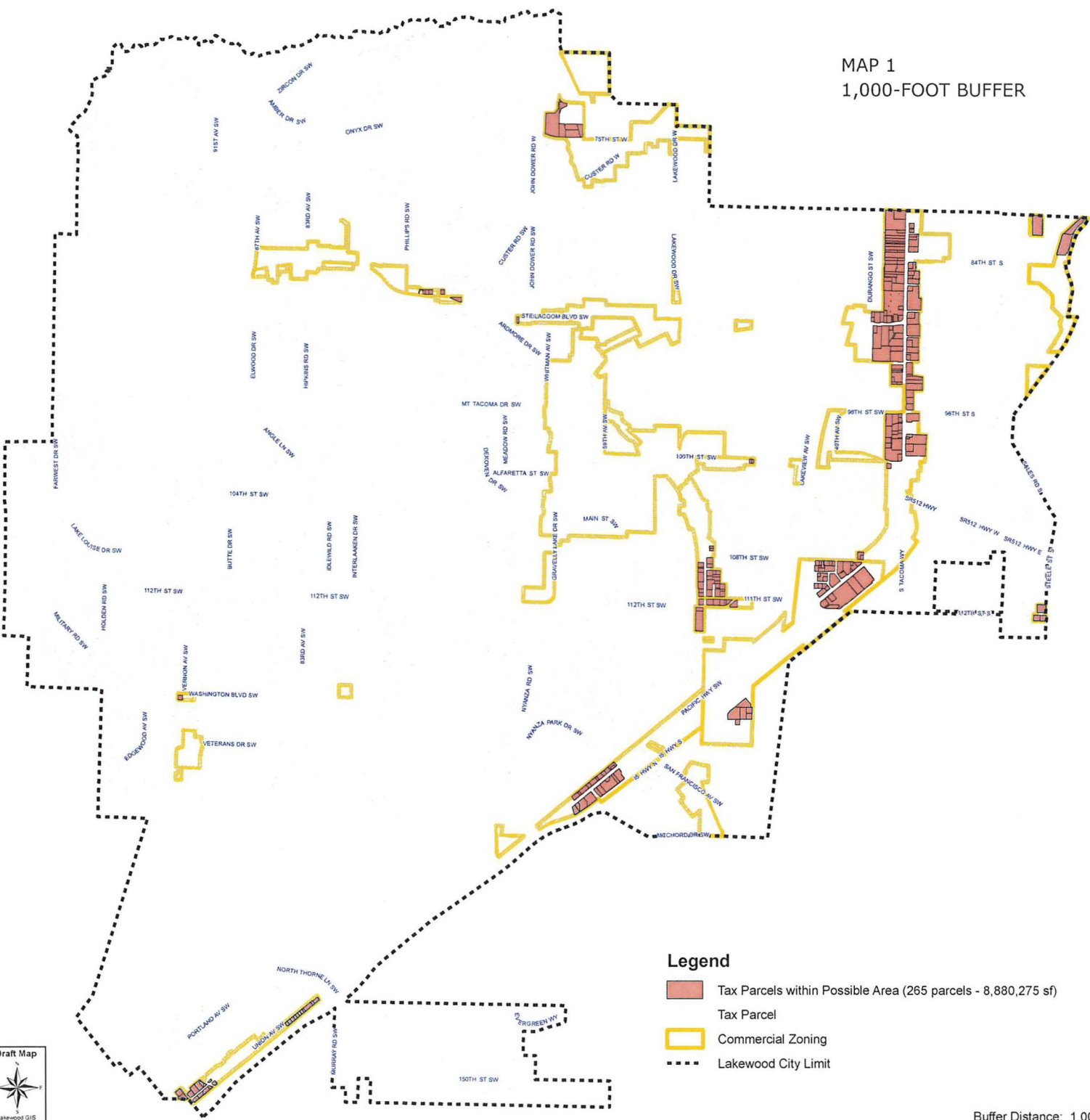
MAP 3  
500-FOOT BUFFER



- Legend**
- Tax Parcels within Possible Area (397 parcels - 11,128,588 sf)
  - Tax Parcel
  - Commercial Zoning
  - Lakewood City Limit

Buffer Distance: 500' & 1,000'

MAP 1  
1,000-FOOT BUFFER



- Legend**
- Tax Parcels within Possible Area (265 parcels - 8,880,275 sf)
  - Tax Parcel
  - Commercial Zoning
  - Lakewood City Limit



Buffer Distance: 1,000'