

ORDINANCE NO. 683

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 Prohibiting the Production, Processing and Retail Sales of Marijuana in All City of Lakewood Zoning Districts

WHEREAS, **City's Police Power** - the Washington State Constitution Article XI invests the City of Lakewood with police powers to provide for public health, safety and welfare and pursuant to its police powers, the City regulates land use planning, development and the operation of businesses within its jurisdictional boundaries; and

**WHEREAS**, 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 operate 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,** 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 which 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; and

**WHEREAS**, on February 7, the Planning Commission reviewed and deliberated Case Nos 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 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. 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.04.010 - 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.04.020 - 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.04.030 - 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.04. 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.

**Section 3. 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 4. 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.

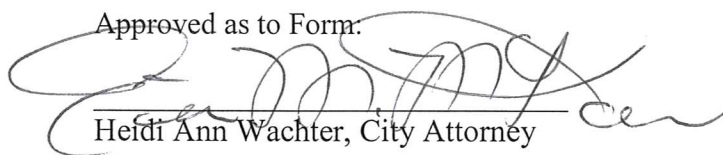
CITY OF LAKEWOOD

  
Don Anderson, Mayor

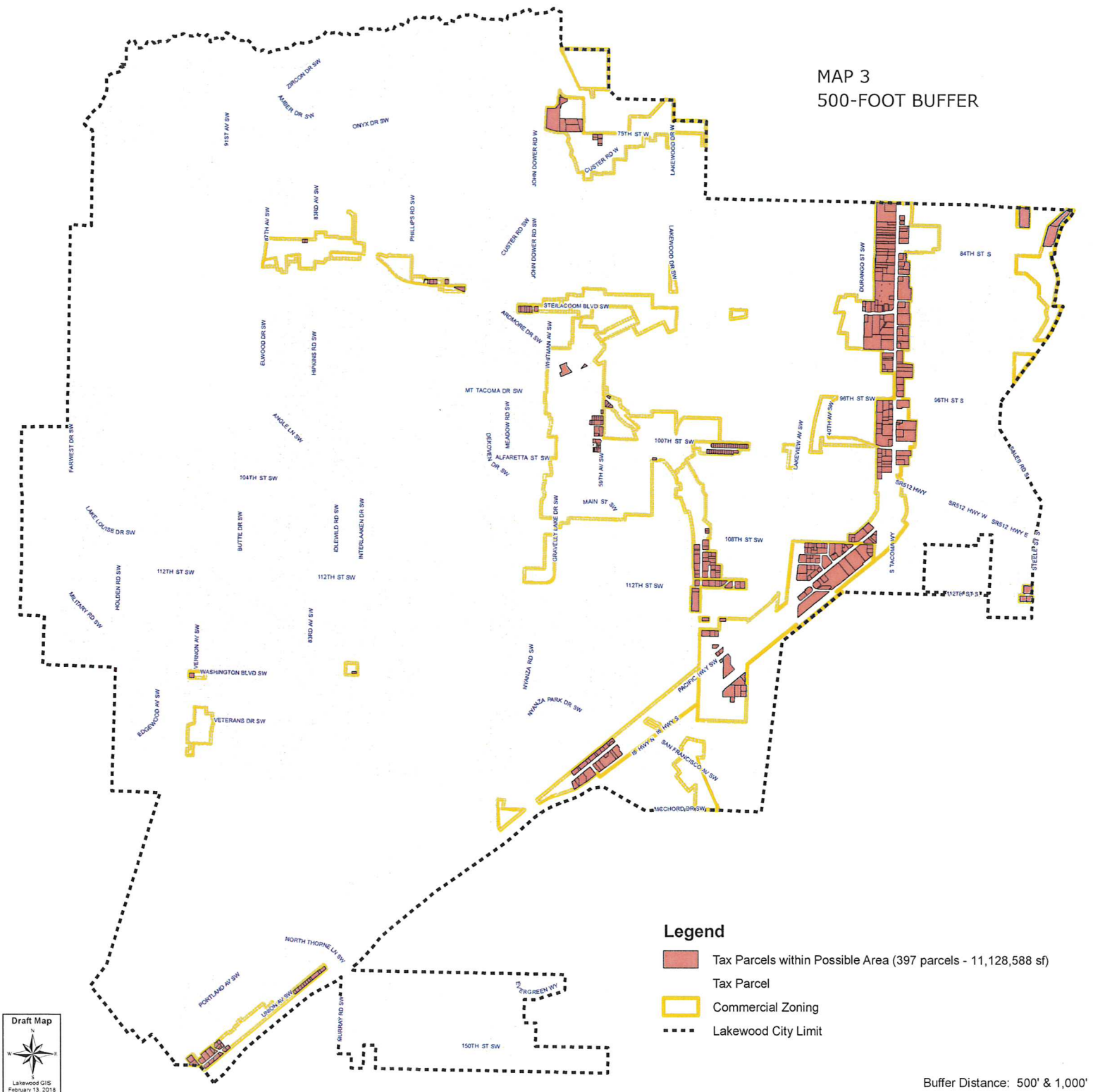
Attest:

  
Alice M. Bush, MMC, City Clerk

Approved as to Form.

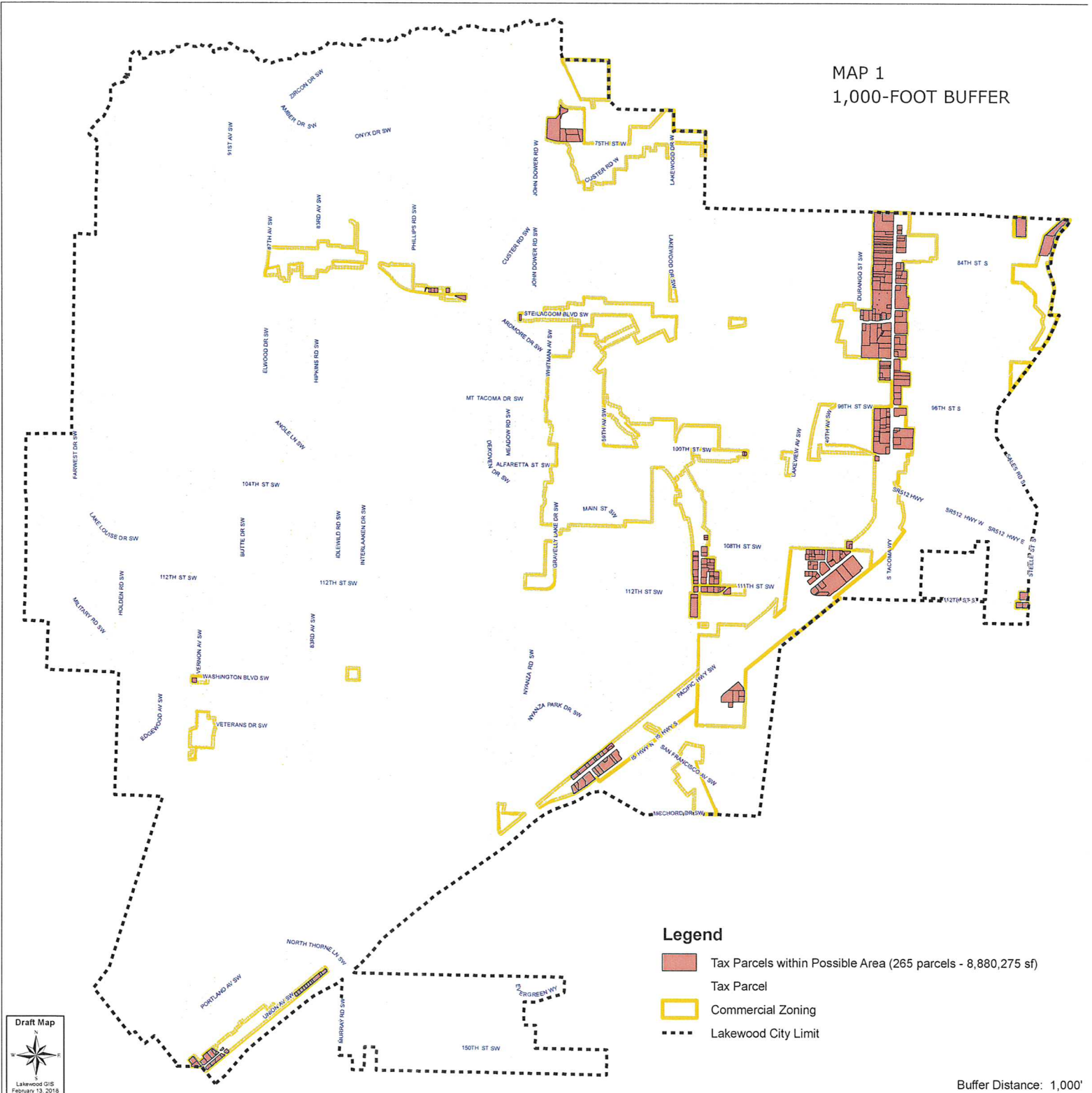
  
Heidi Ann Wachter, City Attorney

MAP 3  
500-FOOT BUFFER



Buffer Distance: 500' & 1,000'

MAP 1  
1,000-FOOT BUFFER



Buffer Distance: 1,000'