



Marijuana Time, Place, and Manner Regulations

Public Review Draft

April 18, 2016

[\(Revision, page 9. April 21\)](#)

The City is requesting public comments on this draft by **May 3, 2016**. The comments will be used in finalizing a proposal for a public hearing with the Planning Commission on **May 23, 2016**. See inside cover for information on how to submit comments.

HOW TO SUBMIT COMMENTS

The Planning Department is accepting citizen input on the Public Review Draft of Marijuana Time, Place, and Manner Regulations through an on-line survey and written comments. This input will be used in finalizing the proposal for a public hearing with the Planning Commission on May 23, 2016.

An online survey is provided for public input on these questions. After reviewing this proposal, please complete the survey at: <https://www.surveymonkey.com/r/LOTPM>

Survey responses and/or written comments received by **12:00 Noon, Wednesday, May 3, 2016**, will be considered in preparing the public hearing proposal.

For more information or to provide written comments please contact:

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A copy of this report, online maps, and more information about this project can be found at:

https://www.ci.oswego.or.us/boc_pc/lu-16-0009-public-review-draft

Planning Commission work session and public hearing information, including links to meeting webpages where video recordings are provided, can be accessed here:

<http://www.ci.oswego.or.us/projects>
(Enter LU 16-0009 under "Search".)

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I. INTRODUCTION

Proposal Summary

This is a request from the City of Lake Oswego for text amendments to the Lake Oswego Community Development Code (CDC) for the purpose of regulating marijuana facilities, in the event that city voters reject the ban on marijuana facilities that was referred to the November 8, 2016, ballot. The restrictions would be in addition to those already imposed by state law (2015 House Bill 3400), which applies to producers, processors, wholesalers, and retailers (including medical dispensaries) of marijuana.

Key Dates

- City Council discussion and direction – **February 16, 2016**
- Planning Commission Work Session #1 – **March 28, 2016**
- Planning Commission Work Session #2 – **April 11, 2016**
- Public Review Draft of Code Amendments – **April 18, 2016**
- Public Comments on Review Draft Due – **May 3, 2016**
- Planning Commission Hearing – **May 23, 2016**
- City Council Hearing – **TBD** (estimated August/September)

II. BACKGROUND

Existing Ban on Marijuana Facilities

On December 3, 2015, the City Council enacted Ordinance 2698 banning medical marijuana processors and dispensaries, and recreational marijuana producers, processors, wholesalers and retailers, in the City of Lake Oswego. As required by state law ([2015 House Bill 3400](#)), the ordinance will be referred to city voters at the November 8, 2016 election. The Oregon Health Authority and the Oregon Liquor Control Commission will not register or license medical or recreational marijuana facilities in the city pending the election results.

House Bill 3400 (HB 3400) establishes restrictions on the location and operation of marijuana facilities. It also authorizes cities to impose certain types of “reasonable regulations” beyond those imposed by state law. Cities also arguably have home rule authority to impose restrictions beyond the types of local regulations authorized by HB 3400.

Alternatives & Approach

HB 3400 provides that local jurisdictions may restrict hours of operation for recreational retailers and medical grow sites, processors, and dispensaries. It also authorizes cities to add locational requirements for marijuana facilities, but prohibits imposing more than a 1,000 feet buffer between recreational retailers. Jurisdictions are also authorized to adopt regulations regarding the manner of operation for facilities other than medical growers, and regulations relating to the public's access to marijuana facilities. The city's home rule authority arguably allows it to enact regulations in areas beyond those specified in HB 3400.

The City Council in its meeting of February 16, 2016, discussed whether the existing state restrictions would be sufficient should voters overturn the ban on marijuana facilities. Based on this initial discussion the Council directed the Planning Commission to evaluate and recommend additional time, place and manner restrictions specific to Lake Oswego, as follows:

1. Restrict marijuana manufacturing and processing to the Industrial (I) Zone.
2. Require 1,500 ft. buffers around schools, where the state requires 1,000 feet minimum.
3. Evaluate and make recommendations regarding buffers similar to those for schools around recreation facilities, playgrounds, library, and other facilities where children congregate.
4. Evaluate and make recommendations regarding buffers around licensed childcare providers.

The Planning Commission held two work sessions on March 28 and April 11, 2016, to review background and alternatives, and to provide input to City staff in developing a public review draft of the Marijuana Time, Place, and Manner Regulations contained herein. The following summarizes the City's proposal pursuant to HB 3400, City Council direction, and Planning Commission input.

In addition to the "Buffer Maps" in Attachment A, the City has developed an online, interactive GIS mapping tool that can be used to see the different alternatives that have been considered for regulating the location of marijuana retail uses: <http://gis.ci.oswego.or.us/SiteAssessment/>.

III. SUMMARY OF DRAFT REGULATIONS

If adopted by the Council, Community Development Code restrictions would apply in the event that city voters reject the ban on marijuana facilities that was referred to the November 8, 2016, ballot. The restrictions would be in addition to those already imposed by state law. **An online survey is provided for public input on these questions. After reviewing this proposal, please complete the survey at:**

<https://www.surveymonkey.com/r/LOTPM>

Marijuana Production

Marijuana production includes manufacturing, planting, cultivating, growing and harvesting of marijuana. State law does not restrict the location for medical marijuana grow sites, which are not covered by the City's state-authorized local ban, or recreational marijuana producers. However, the State does limit medical grow sites to 12 mature plants in a residential zone, and 48 mature plants in other zones.¹ The City's proposal restricts the location of marijuana production (for medical and recreational uses) to the Industrial (I) Zone. Additional regulations are proposed to address odor control, lighting, and other potential land use and public facility concerns.

Marijuana Processing

State law prohibits medical marijuana processors (compounding or converting marijuana into medical products, concentrates or extracts) in residential zones, but does not restrict them elsewhere. The State law for recreational marijuana processors (processing, compounding or converting marijuana into recreational products, concentrates or extracts) is slightly different; these uses are prohibited in "exclusively" residential zones only if marijuana extracts are processed. The City's proposal restricts the location of both medical and recreational marijuana processing to the Industrial (I) Zone. Under existing code, the use of explosive materials such as



Top: 'I' zone, outlined in orange, is limited to the Foothills District. **Middle and Bottom:** Production, and extraction processing in NE Portland.

¹ The City's proposed regulations do not restrict personal use of marijuana as allowed by State law.

butane is prohibited. Additional regulations are proposed to address odor control, lighting, and other potential land use and public facility concerns.

Marijuana Wholesale

Similar to recreational marijuana processors, State law prohibits recreational marijuana wholesalers (purchasing marijuana items for resale to a person other than a consumer) in areas zoned “exclusively” for residential use (as opposed to mixed-use zones). The City’s existing code restricts wholesale (of all products) to the Industrial (I) Zone; these existing regulations would apply to both medical and recreational marijuana wholesale. Additional regulations are proposed to address odor control, lighting, and other potential land use and public facility concerns.

Marijuana Dispensaries and Retail Sales (Retail)

State law prohibits medical marijuana dispensaries in residential zones. Further, a medical dispensary may not be within 1,000 feet of most elementary and secondary schools (specifically public schools teaching children between ages five and 18 who have not completed 12th grade, or private schools teaching children in courses of study usually taught in grades 1 through 12 in public schools). Medical dispensaries also may not be within 1,000 feet of an existing dispensary, or at the same address as a grow site. The State law prohibits recreational marijuana retailers (selling to consumers) in areas zoned “exclusively” for residential use (as opposed to mixed-use zones). Like medical dispensaries, recreational retailers may not be within 1,000 feet of the described schools. However, there is no state prohibition against being within 1,000 feet of another retailer. The City’s proposal restricts all marijuana retail (dispensaries and retail for recreational use) to: more than 1,500 feet from a school, active-use park (e.g., sports facilities and playgrounds), or other civic uses where children frequently congregate (e.g., library, parks and recreation department); and 500 feet from a State-registered childcare use.



The map series in Attachment A shows the portions of city non-residential zones that are located outside the proposed buffers. Because mixed-use development is allowed in nearly all of the City’s non-residential zones (with some limitations on use or size) these areas include zones where both commercial and residential uses are allowed.

Under HB 3400, if the local ban is lifted and the City does not adopt time, place, and manner regulations for marijuana facilities, these uses would be allowed subject to existing Community Development Code provisions without limitations, as summarized below.

In addition to the “Buffer Maps” in Attachment A, the City has developed an online, interactive GIS mapping tool that can be used to see the different alternatives that have been considered for regulating the location of marijuana retail uses: <http://gis.ci.oswego.or.us/SiteAssessment/>.

Relationship to Existing Zoning Regulations

a. “Production”

Production of medical or recreational marijuana would be classified as “nursery stock production and sale” (not retail). Nurseries are allowed in the Industrial (I) zone only.² The Foothills District contains the only land in the city zoned Industrial (I). While the Industrial Park (IP) Zone also allows industrial uses, the City Council has determined that the IP zone is not appropriate for marijuana production due to water service constraints in the city’s Southwest Employment Area and land use policy focusing on light industrial redevelopment in that area. (See also, Community Development Code, Section LOC 50.03.002-2 Commercial, Mixed Use Industrial and Special Purpose Districts Use Table.)

b. “Processing”

Marijuana processing would be classified as “manufacturing” processing and/or compounding, under LOC 50.03.002-2. While manufacturing is an allowed use, subject to use specific standards, in several city zones (I, IP, CR&D, MC, GC, and HC), the proposed marijuana facility regulations would restrict marijuana processing to the Industrial (I) zone.

c. “Wholesale”

Recreational marijuana wholesale in the city’s non-residential zones would be classified as “wholesale” under LOC 50.03.002-2. Wholesale is allowed only in the Industrial (I) Zone; the Foothills District contains the only land in the city zoned Industrial.

² Garden centers, such as the Seven Dees on McVey Avenue, are different than nurseries. Garden centers are primarily retail uses, where nurseries focus on production or propagation of plants but may also have retail.

d. “Retail”

Medical marijuana dispensaries and recreational marijuana retailers would both be classified as “retail” under the Community Development Code (LOC 50.03.002-2 Commercial, Mixed Use Industrial and Special Purpose Districts Use Table). While retail is an allowed use in all of the City’s commercial zones (NC, GC, HC, EC, OC, CR&D, MC, WLG-OC, FMU), as well as the Industrial and Industrial Park Overlay (I and IPO) zones, subject to the size limitations and special use standards of each zone, the proposed marijuana facility regulations would restrict marijuana retail to: more than 1,500 feet from a school, active-use park (e.g., sports facilities and playgrounds), or other civic uses where children congregate (e.g., library, parks and recreation department); and 500 feet from a State-registered childcare use.

The map series in Attachment A shows in yellow the portions of city non-residential zones that are outside the proposed buffers. Because mixed-use development is allowed in the City’s non-residential zones, with the exception of the Industrial and Mixed Commerce (I, IP, and MC) zones, the yellow areas include zones where both commercial and residential uses are allowed.

IV. ANALYSIS

The Planning Commission provided initial input to staff on the development of CDC amendments regulating Marijuana Time, Place, and Manner when it met March 28 and April 11, 2016. The Commission identified several issues/questions that it wanted citizens to consider in their review of the proposal, which are summarized as follows.

(In addition to the “Buffer Maps” in Attachment A, the City has developed an online, interactive GIS mapping tool that can be used to see the different alternatives that have been considered for regulating the location of marijuana retail uses: <http://gis.ci.oswego.or.us/SiteAssessment/>.)

Child Care Uses

What are the public health and safety reasons for childcare uses from marijuana facilities?

The City is considering requiring buffers from marijuana facilities for childcare uses. The concern in locating marijuana retailers in close proximity to childcare uses is twofold: 1) street crime associated with these businesses, as marijuana remains a controlled substance under federal law and retailers rely upon cash transactions; and 2) exposure of children to marijuana (particularly edibles), if a retailer or customer loses possession of a product.

The State of Oregon regulates and requires registration or certification (licensing) for two types of child care: Family Child Care Homes, which typically occupy a residence and serve up to 16

children residing outside the Home; and Child Care Facilities, which may serve more than 16 children and are typically located in a commercial or institutional (e.g., church) space. Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the State of Oregon's minimum requirements for family child care providers, which must be registered with the Education Department, Office of Child Care. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own home. OAR 414-300-0000 through 414-300-0415 set forth Office of Child Care requirements for Child Care Facilities, including certification and inspection.

Some child care in Oregon does not require a license from the Office of Child Care; child care is exempt from regulation if: the provider cares for three or fewer children (in addition to the provider's own children); care is limited to the same family/parent/guardian; care is occasional and incidental to another use; the facility also provides a preschool program for less than four hours per day; the facility provides training on a specific subject (e.g., dance, drama, music, etc.); the facility is an organized club or hobby group providing short activities; or the facility is operated by a government agency.

The City is not aware of any empirical studies addressing proximity of marijuana businesses to child care uses or impacts of marijuana facilities on child care businesses specifically; the marijuana industry in the United States is relatively young, and eventually research may be forthcoming. As compared to schools, Child Care Homes and Facilities serve fewer children generally and typically serve younger (e.g., preschool age) children. They may also vary by size and age cohort(s) served, more so than schools and preschools. State rules require a higher caregiver-to-child ratio for child care homes/centers serving the youngest children. For these reasons the Planning Commission is evaluating buffers from child care that are smaller than those from schools (500 ft., versus 1,500 ft.).

Law enforcement officials in Colorado, where medical dispensaries and recreational marijuana retail are legal, and in California where medical dispensaries are legal, have found that marijuana businesses, due to their reliance on cash transactions, attract crime, including violent crime. While the data may be debatable, and the problem itself may be temporary as it could be resolved with changes in federal law, it is an issue nonetheless and the Planning Commission is considering standards to keep marijuana businesses some distance away from child care uses.³

The City is considering requiring a buffer of 500 ft. from State-registered childcare uses for marijuana facilities. By comparison, Clackamas County applies buffers of 500 ft. from child care uses, 2,000 feet from schools, and 1,000 feet from parks and playgrounds. This "scaled"

³ Lake Oswego Police Chief Don Johnson has testified to the City Council (February 16, 2016, and on other occasions) that in states where marijuana businesses are legal, communities have experienced an increase in crime, including violent crime.

approach is rational because fewer children congregate at child care homes and centers as compared to schools and community parks or large playgrounds.

If the City were to apply 1,500 ft. buffers around child care uses, similar to those applying around schools, the options for siting marijuana retail uses would be more limited. If similar buffers were then added to active-use parks, playgrounds and other civic uses, as is proposed, marijuana retail would be further limited and concentrated on the west side of Lake Oswego only. See, **Attachment A – Draft Marijuana Facility Buffers**. Buffer radius is measured from the parcel boundary.

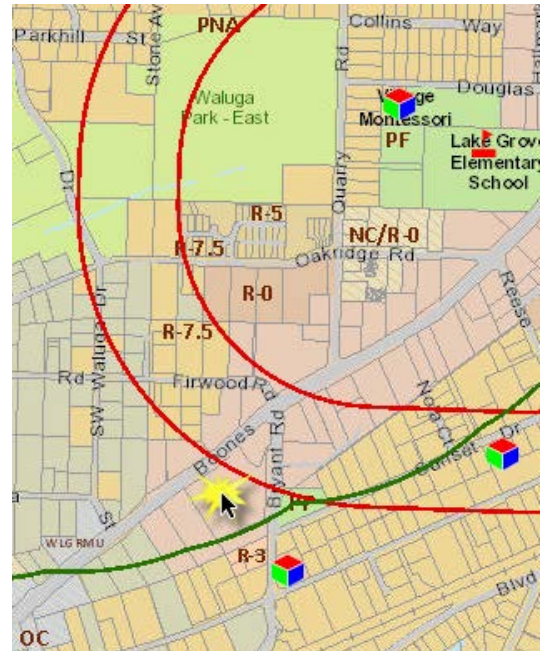
Liquor Stores and Pharmacies

Where are liquor stores and pharmacies presently located? How do the marijuana restrictions relate to these retail locations?

Lake Oswego has two liquor stores, one on State Street between C and D Avenues downtown (zoned EC), and one in Lake Grove at the Lake Grove Shopping Center adjacent to Zupan's Market (zoned GC-LGVCO). Under current City code, a liquor store is a retail use. As with marijuana businesses, a license approved by the Oregon Liquor Control Commission (OLCC) is required if a business sells, manufactures, imports, or distributes alcohol. (The Oregon Health Department issues licenses for medical marijuana dispensaries.) However, unlike marijuana businesses, which may locate anywhere they are allowed by local zoning and not otherwise preempted by State law (not within buffers around schools, residential zones, or too close to other dispensaries, etc.), OLCC determines the acceptable location for a liquor store based on population, demographics, transportation access, zoning, and distance to existing liquor stores, among other factors. According to the OLCC web site, "Although many people have a desire to open a new liquor store, or have an available site, locations are selected by the OLCC." The OLCC also considers public comment and input from the affected local government in reviewing applications for liquor licenses.

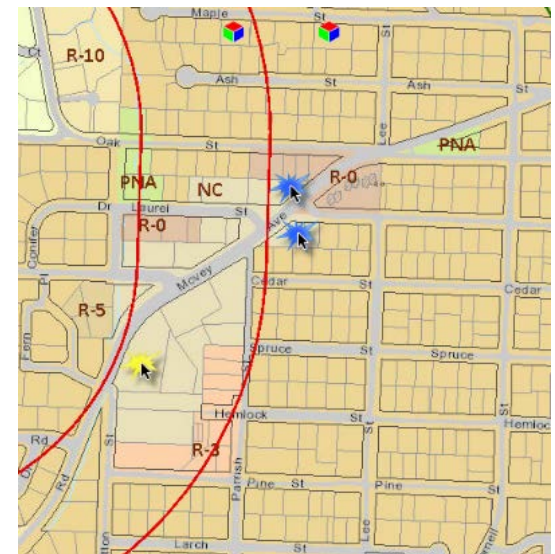
Lake Oswego has ~~three~~ four pharmacies, the Rite Aid on B Avenue downtown, Haggen's on Boones Ferry Road in Lake Grove, the A Avenue Safeway, and the Rite Aid in the Lake Grove Shopping Center next to Zupan's Market. Under current City code, a pharmacy is a retail use. Pharmacists must be licensed by the Oregon Board of Pharmacy, and pharmacies must meet state requirements, which do not include buffers from schools, parks, or childcare uses. Pharmacies have previously operated in Lake Oswego's Neighborhood Commercial (NC) zone, where retail is a permitted use, for example, at Palisades Market and Mountain Park.

With school buffers set at 1,500 ft., marijuana retail uses would not be allowed on the Haggen's site. With 1,000 ft. buffers (the minimum state requirement), this condition does not change. The image at right illustrates the 1,000 ft. and 1,500 ft. buffers (red rings) near the Lake Grove Shopping Center (yellow star outside buffer) and Haggen's at the northeast corner of Boones Ferry and Firwood Rd. (inside buffer).



Lake Grove Shopping Center example

The 1,500 ft. buffer also precludes marijuana retail uses at the Mountain Park and Palisades shopping centers (both zoned NC), where it would otherwise be allowed with 1,000 buffers. This is noteworthy because Palisades (shown at lower right) previously had a pharmacy (yellow star). It is also important to note however that even with school buffers set at 1,500 ft., portions of the Grimm's Corner/Palisades NC zone (blue stars) on McVey Ave. would allow marijuana retail, unless the code is amended to prohibit the use in the NC zone. The Planning Commission is seeking public input on whether marijuana retail should be prohibited in the NC zone.



Palisades Market and Grimm's Corner example

See, **Attachment A – Draft Marijuana Facility Buffers** for the effect of school buffers on other locations. Buffer radius is measured from the parcel boundary of the subject property.

Sale of Marijuana Plants in Conjunction with Other Retail Businesses

Is it legal to sell immature marijuana plants (e.g., starts or seedlings) in a grocery store or garden center?

The Planning Commission had asked if a grocery store or garden center would be allowed to sell marijuana seedlings or 'starts' under state law. HB 3400 defines Marijuana Retailer as "a person who sells marijuana items to a consumer in this state." HB 3400 defines Marijuana as "the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae." Only a licensed marijuana retailer may sell marijuana items to a consumer. Therefore, a garden center or a grocery store would not be allowed to sell marijuana seeds or seedlings/starts without an OLCC license, and then it would have to comply with OLCC requirements, including restrictions on access to minors, and prohibition of marijuana retail in marijuana production (grow) facilities. Section 6 of HB 3400 states, in part: "A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor or marijuana wholesaler for whom a premises has been licensed by the Oregon Liquor Control Commission. The sale of marijuana items by a marijuana retailer must be restricted to the premises described in the license, but deliveries may be made by the marijuana retailer to consumers pursuant to a bona fide order received at the licensed premises prior to delivery."

V. DRAFT COMMUNITY DEVELOPMENT CODE AMENDMENTS

The following text is from the Lake Oswego Community Development Code (LOC 50). Proposed additions are shown in bold double-underline text. Removed text is shown with ~~strikeouts~~. The boxes beneath each code provision contain explanatory text and questions that the Planning Commission has raised for public input and discussion.

An online survey is provided for public input on these questions. After reviewing this proposal, please complete the survey at: <https://www.surveymonkey.com/r/LOTPM>

50.03.002 USE TABLE

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3. COMMERCIAL, MIXED USE, INDUSTRIAL, AND SPECIAL PURPOSE DISTRICTS USE TABLE

Note: This section is not proposed to change. Marijuana production, processing, and laboratory/testing facilities will be classified Industrial (Manufacturing - Production and Processing); wholesale marijuana will be classified Wholesale; and, marijuana dispensaries and retail will be classified Retail. These uses are subject to the Specific Standards for Commercial, Mixed Use, and Industrial Zones of LOC 50.03.003, as amended, below. In the final ordinance this section will cross-reference the standards.

50.03.003 USE-SPECIFIC STANDARDS

2. SPECIFIC STANDARDS FOR COMMERCIAL, MIXED USE, AND INDUSTRIAL ZONES

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b. Standards Applicable in Specific Zones

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iii. Specific Standards in the Industrial and Industrial Park Zones

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- (2) Manufacturing, repairing, compounding, processing or storage uses permitted in the I zone shall operate in continuing compliance with the requirements of Oregon Administrative Rules Chapter 340 and City Codes and regulations.

Note: OAR 340 contains State Department of Environmental Quality rules, including but not limited to rules for noise control for industry and commerce, wastewater treatment, recycling and waste reduction, solid waste, hazardous waste, management of pesticide wastes, illegal drug lab cleanup, visible emissions and nuisances (including odor control), and air quality.

- (3) Research facilities, testing laboratories, manufacturing, processing or assembling of products, wholesale, and incidental retail uses, as permitted in the IP and I zones, shall not emit noise, smoke, glare, vibration, fumes or other environmental effects which adversely affect people, property or uses beyond the property lines of the subject IP or I site.

Note: This amendment applies specific development standards to the Industrial (I) zone, which is limited to the Foothills District. These are the same standards that currently apply to the IP zone (Southwest Employment Area). The amendment does not single out marijuana businesses, but requires that all production, processing, and wholesale uses not adversely affect neighbors. The amendment is warranted because the 'I' zone is adjacent to the residential area of Oswego Point and Foothills Park. Additionally, the Foothills District is planned for future mixed-use redevelopment, per the Foothills District Master Plan, so it is important that any industrial use locating there be compatible with adjacent uses. The "no adverse effect" requirement is an ongoing obligation of the use. Additionally, through the minor development review process (LOC 50.07.003.14), the City may require mitigation/conditions of approval specific to a proposed use.

(4) Marijuana production, processing, wholesale, laboratory/testing, and retail (includes medical dispensary) facilities shall comply with the following standards:

Note: The minimum buffer for separation of marijuana retail/dispensary uses from schools under state law is 1,000 ft., though local jurisdictions may adopt larger buffers. Most of the following standards are similar to those adopted by Clackamas County, except that Clackamas County requires a 2,000 ft. buffer from schools for marijuana retailers, and a 1,000 ft. buffer for dispensaries. The Planning Commission would also like to receive public input on the proposal to prohibit marijuana retail uses in the Neighborhood Commercial (NC) zone, below, under (c).

- (a) The facility shall be licensed by the Oregon Liquor Control Commission (OLCC) or Oregon Health Authority (OHA) as applicable;**
- (b) Production, processing, wholesale, and laboratory/testing facilities are limited to the Industrial (I) zone;**
- (c) Marijuana retail is prohibited ~~[in the NC zone, and]~~ shall not be located within:**
- (i) 1,500 ft. from a lot containing a public elementary or secondary school for which attendance is compulsory under ORS 339.020; or a lot containing a private elementary or secondary school teaching children as described in ORS 339.030(1)(a);**
 - (ii) 1,500 ft. from a lot containing a public recreation facility (athletic field, court, gym, swim pool, Oswego Lake swim park, etc.), public playground, public library or public community center; or**
 - (iii) 500 ft. from a lot containing a daycare facility or preschool licensed by the Oregon Department of Education, Early Learning Division, Office of Child Care.**

Note: The current proposal is limited to regulating marijuana facilities. The Planning Commission wants public input on whether additional regulations should be adopted restricting the location of new childcare uses, such that a new childcare center is not within 500 ft. of an existing marijuana facility. This would involve amending a different section of code, and possibly require a separate hearing, as it would affect both residential and nonresidential zones throughout the city where childcare is allowed.

(d) For purposes of compliance with the siting standards of LOC 50.03.003.2.b.iii(4)(c), distance shall be measured from the lot line of the affected property (e.g., a school) to the closest lot line of the lot occupied by the marijuana retail use.

(e) A marijuana retail use shall not be located within 1,000 ft. from another marijuana retail use. For purposes of compliance with this standard, distance shall be measured from the lot line of one marijuana retail use to the closest lot line of the lot occupied by the other marijuana retail use.

Note: State law requires a minimum 1,000 ft. separation between medical marijuana dispensaries; these uses would be classified as 'Retail' under Lake Oswego Code, even though State law distinguishes between recreational (retail) marijuana sales and dispensaries for purposes of licensing. The Planning Commission would like public input on the question of whether recreational retail marijuana stores should be subject to the same 1,000 ft. separation requirement as applies to medical dispensaries.

(f) Marijuana facilities shall be fully enclosed in a building and not have a walk-up window or drive-thru window service;

(g) The use of butane or other explosive materials in the processing of marijuana is prohibited pursuant to LOC 50.03.003.5.b;

(h) A development permit for a marijuana production facility shall not be granted where water, wastewater, or transportation facilities are not adequate, and cannot be made adequate through mitigation, to serve the facility;

(i) Light emitted by grow lights used in production facilities shall not be visible outside the facility;

(ii) Marijuana facilities shall be equipped with an air filtration system designed by a mechanical engineer licensed in the State of Oregon that meets the following standards:

(i) Air leaving the building through an exhaust vent shall first pass through an activated carbon filtration system, consisting of one or more fans and activated carbon filters;

(ii) At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM;

(iii) The filtration system shall be maintained in working order and shall be in use at all times. The filters shall be changed a minimum of once every 365 days;

(iv) Maintains negative air pressure inside the building;

(v) The engineer shall stamp the design and certify that it complies with LOC 50.03.003.2.b.iii(4)(j);

Exception: An alternative odor control system is permitted if the applicant submits a stamped design and report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.

(k) All doors and windows to the marijuana facility shall remain closed, except doors may be open for the minimum length of time needed for ingress to and egress from the facility;

(l) Security cameras shall be directed to record only the subject property, except as required to comply with licensing requirements of the OLCC or registration requirements of the OHA as applicable;

(m) Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant, as applicable, and disposed of in compliance with State requirements and City regulations;

(n) A marijuana retailer may only sell to consumers between the hours of 10:00 a.m. and 9 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 9 p.m.

3. COMMERCIAL – PERMITTED USES

a. Home Occupations

A home occupation may be conducted where allowed by other provisions of this Code if the following conditions are continuously complied with:

- i. The use does not alter the residential character of the neighborhood nor infringe upon the right of residents in the vicinity to the peaceful enjoyment of the neighborhood.

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vi. Marijuana facilities are prohibited.

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5. INDUSTRIAL/MANUFACTURING

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b. Prohibited Uses in Any Industrial Zone

Uses whose primary function is the storing, utilizing or manufacturing of explosive materials.

Note: This requirement provided for context. It is not proposed to change.

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50.07.003 REVIEW PROCEDURES

14. MINOR DEVELOPMENT DECISIONS

a. Minor Development Classification

i. A minor development is a development which requires a permit from the City that:

- (1) Requires a more discretionary level of review than a ministerial decision. "Minor development" is intended to include decisions defined as "limited land use decisions" pursuant to ORS [197.015](#)(12); or
- (2) Is reviewed based on Clear and Objective Housing Standards for Approval in LOC [50.06.001.7](#), Building Design; LOC [50.05.004.13](#), Downtown Redevelopment Design District; LOC [50.05.006.9](#), Old Town Neighborhood Design; or LOC [50.05.005.9](#), West Lake Grove Design District, together with other applicable zoning and development standards.

ii. "Minor development" under subsection 14.a.i.(1) of this section includes:

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(26) Establishment of a marijuana facility.

Note: The minor development review process provides public notice, an opportunity to comment, and right to appeal the staff decision.

- End of code amendments -

VI. PUBLIC INVOLVEMENT

The Planning Department is accepting citizen input on the Public Review Draft of Marijuana Time, Place, and Manner Regulations through an on-line survey and written comments. This input will be used in finalizing the proposal for a public hearing with the Planning Commission on May 23, 2016.

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A copy of this report, online maps, and more information about this project can be found at:

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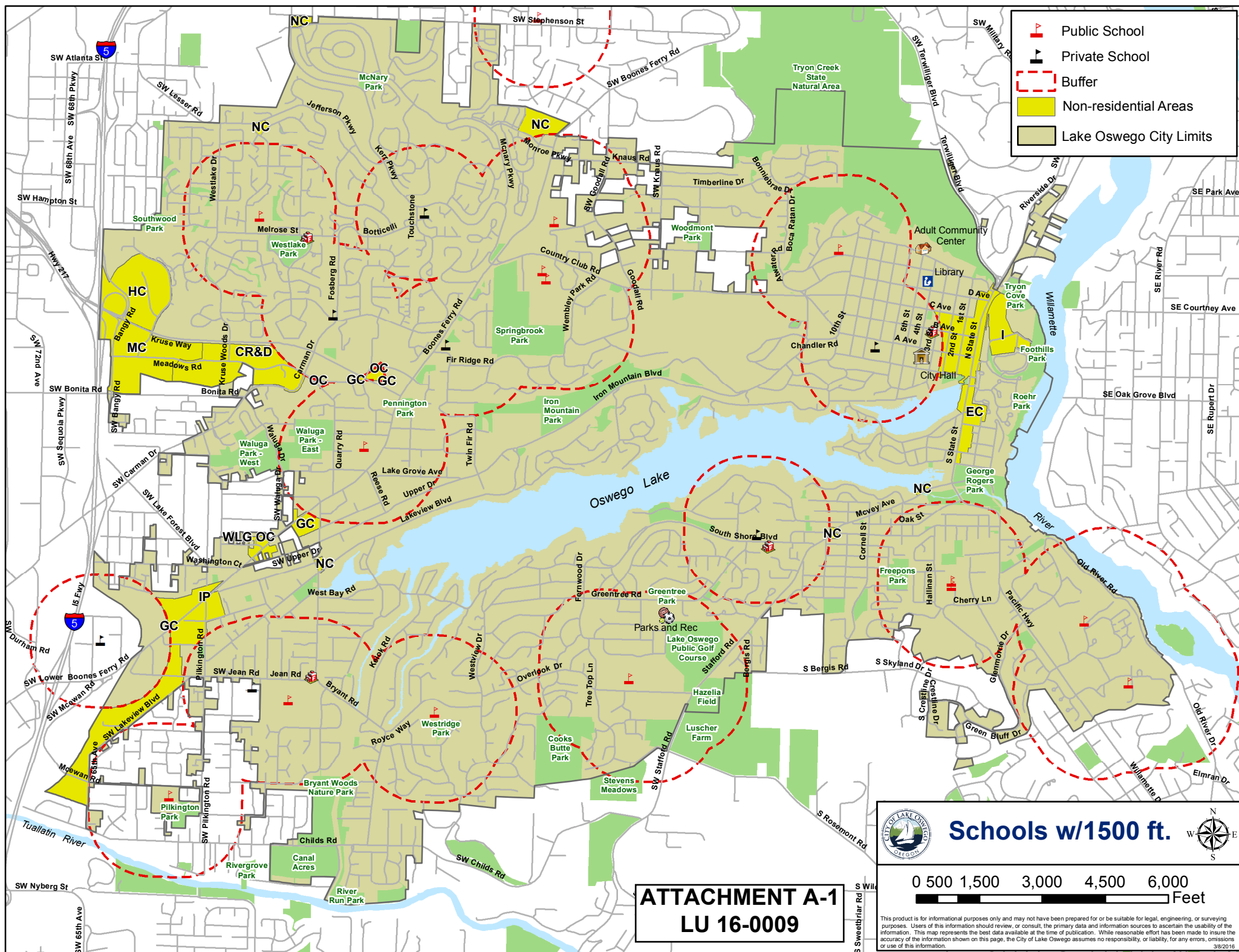
<http://www.ci.oswego.or.us/projects>
(Enter LU 16-0009 under “Search”.)

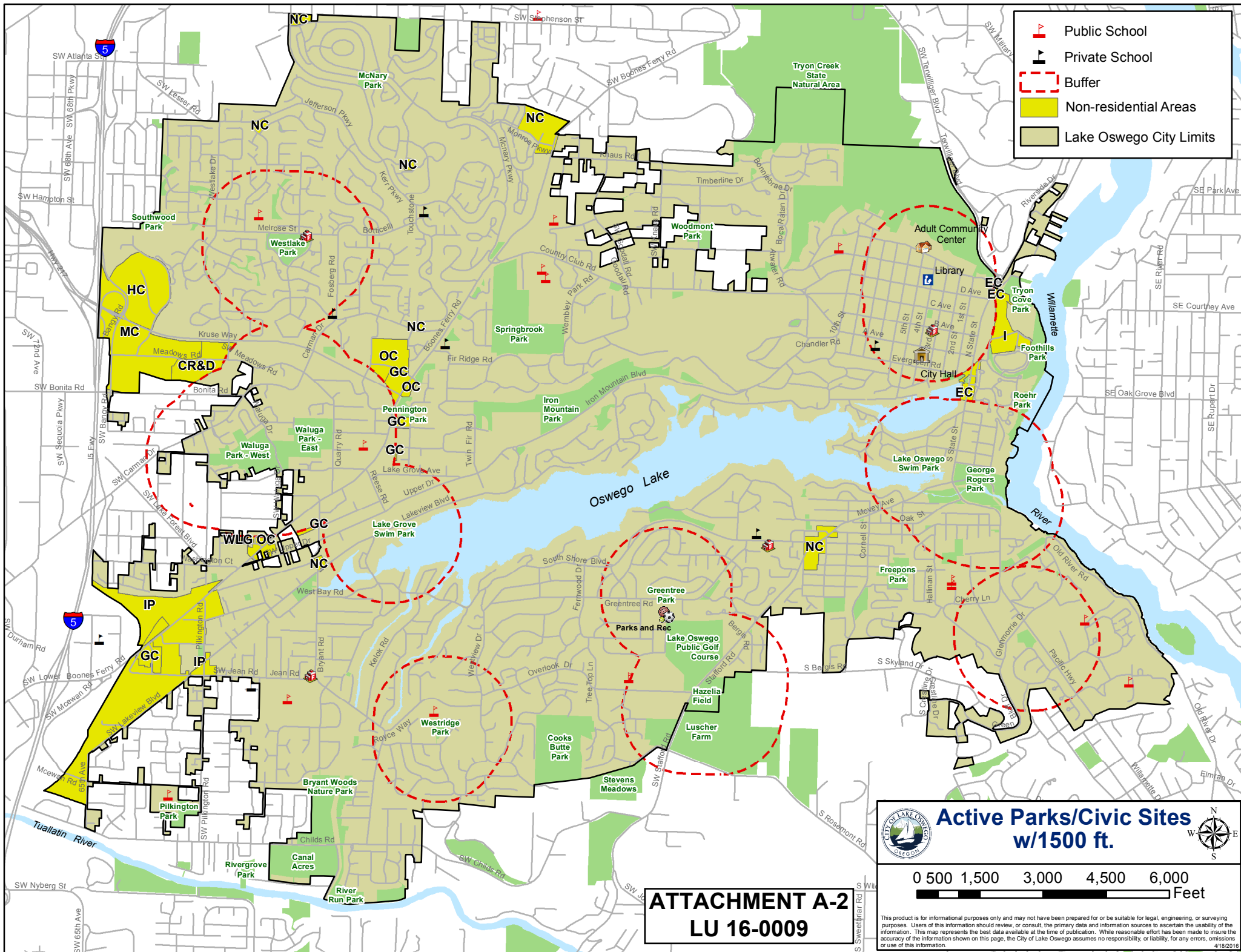
VII. ATTACHMENTS

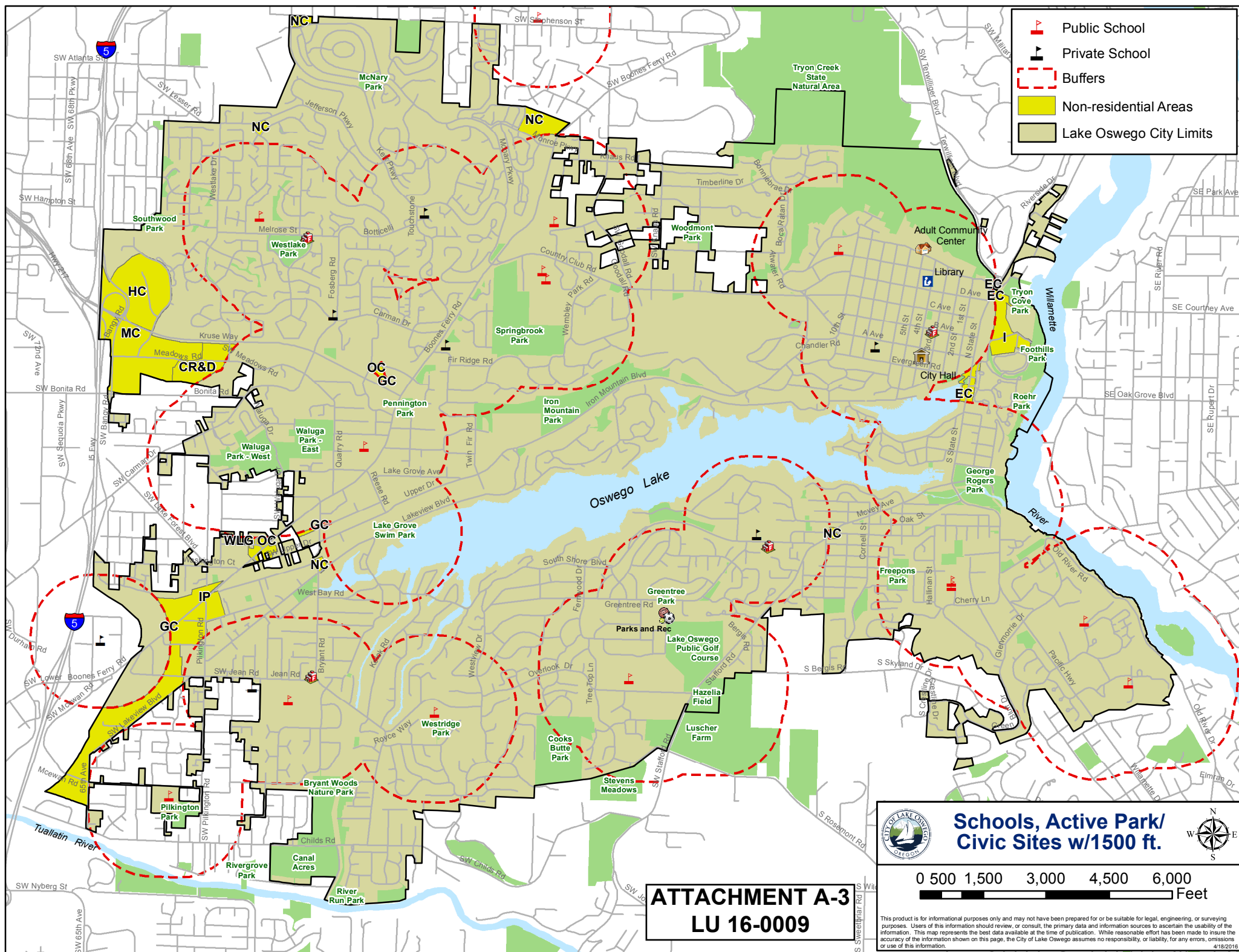
The following attached documents comprise the proposed Natural Resources Program revisions:

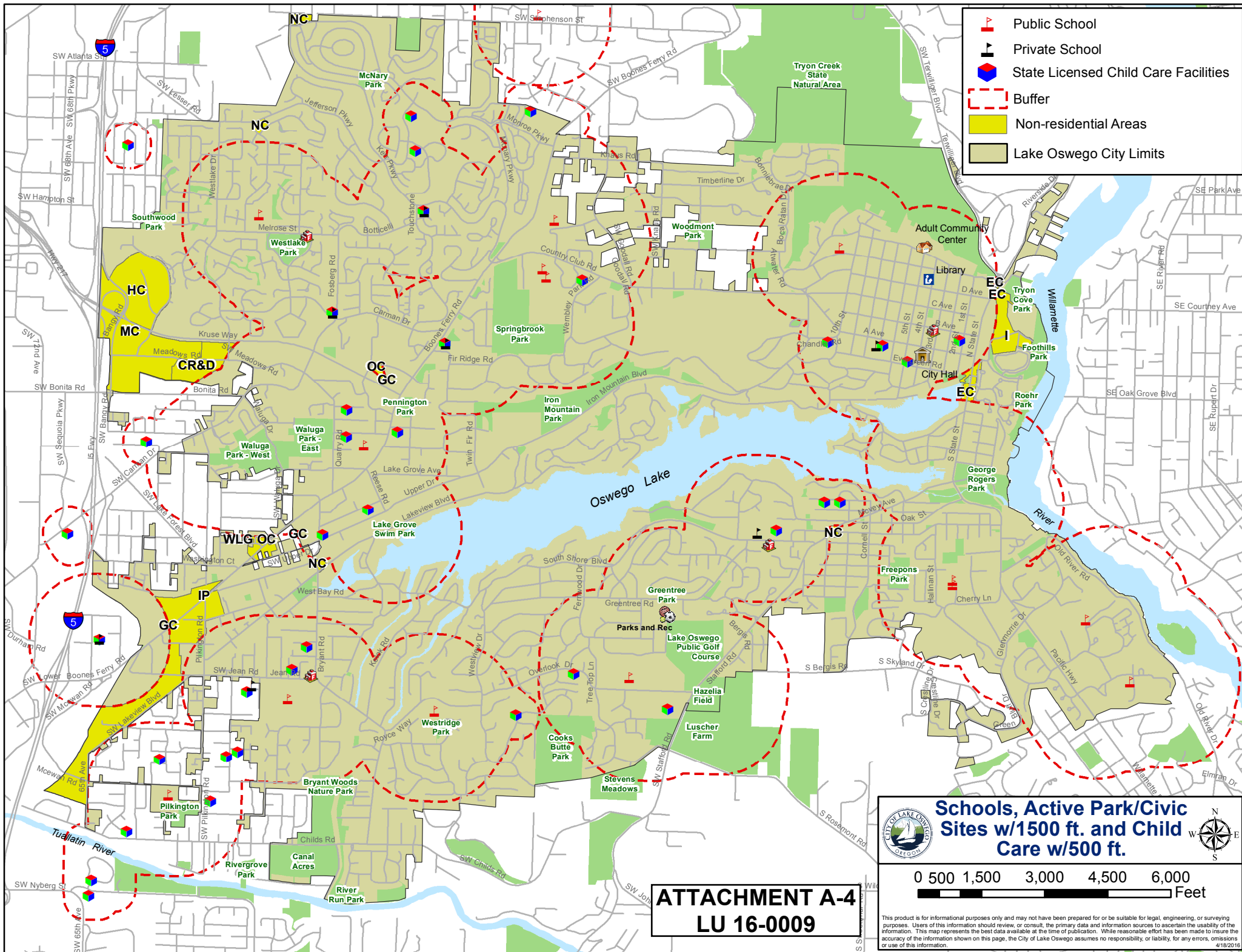
Attachment A – Draft Marijuana Facility Buffers

Attachment B – Online Survey









This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review, or consult, the primary data and information sources to ascertain the usability of the information. This map represents the best data available at the time of publication. While reasonable effort has been made to insure the accuracy of the information shown on this page, the City of Lake Oswego assumes no responsibility or liability for any errors, omissions or use of this information.

4/18/2018



Public Review Draft of Marijuana Time, Place, Manner Land Use Regulations

Introduction

The City of Lake Oswego Planning Department is accepting public comments on draft code amendments regulating marijuana businesses in the city. This brief survey (10 minutes or less) is intended to help inform the drafting process. Citizen comments will be used in preparing a draft ordinance for a public hearing with the Planning Commission on May 23, 2016. The current Public Review Draft is available on the project web page for case file LU 16-0009 [HERE](#).

On December 3, 2015, the City Council enacted Ordinance 2698 banning medical marijuana processors and dispensaries, and recreational marijuana producers, processors, wholesalers and retailers, in the City of Lake Oswego. As required by state law (2015 House Bill 3400), the ordinance will be referred to city voters at the November 8, 2016 election. The Oregon Health Authority and the Oregon Liquor Control Commission will not register or license medical or recreational marijuana facilities in the city pending the election results.

House Bill 3400 (HB 3400) establishes restrictions on the location and operation of marijuana facilities. It also authorizes cities to impose certain types of “reasonable regulations” beyond those imposed by state law. Cities also arguably have home rule authority to impose restrictions beyond the types of local regulations authorized by HB 3400. The City Council in its meeting of February 16, 2016 directed the Planning Commission to evaluate and recommend additional time, place and manner restrictions specific to Lake Oswego.

This survey is intended to help the City in preparing a public hearing draft of the proposed regulations. The Planning Department is accepting survey responses and written comments until 12:00 Noon, Wednesday, May 3, 2016. This proposal is expected to change prior to the Planning Commission public hearing which is scheduled for May 23, 2016.

For more additional information, or to provide comments please contact: Scot Siegel, Director, Planning and Building Services, 503-699-7474, or ssiegel@ci.oswego.or.us. Your participation in this brief survey is appreciated.

1. The attached map shows areas where current zoning allows retail commercial uses, after excluding areas within 1,500 feet from any school. The proposed additional requirement (if voters overturn the present ban on marijuana uses) that marijuana retail (including recreational and medical marijuana) be more than 1,500 ft. from schools is:

- ☐ Excessive
- ☐ About right
- ☐ Not restrictive enough

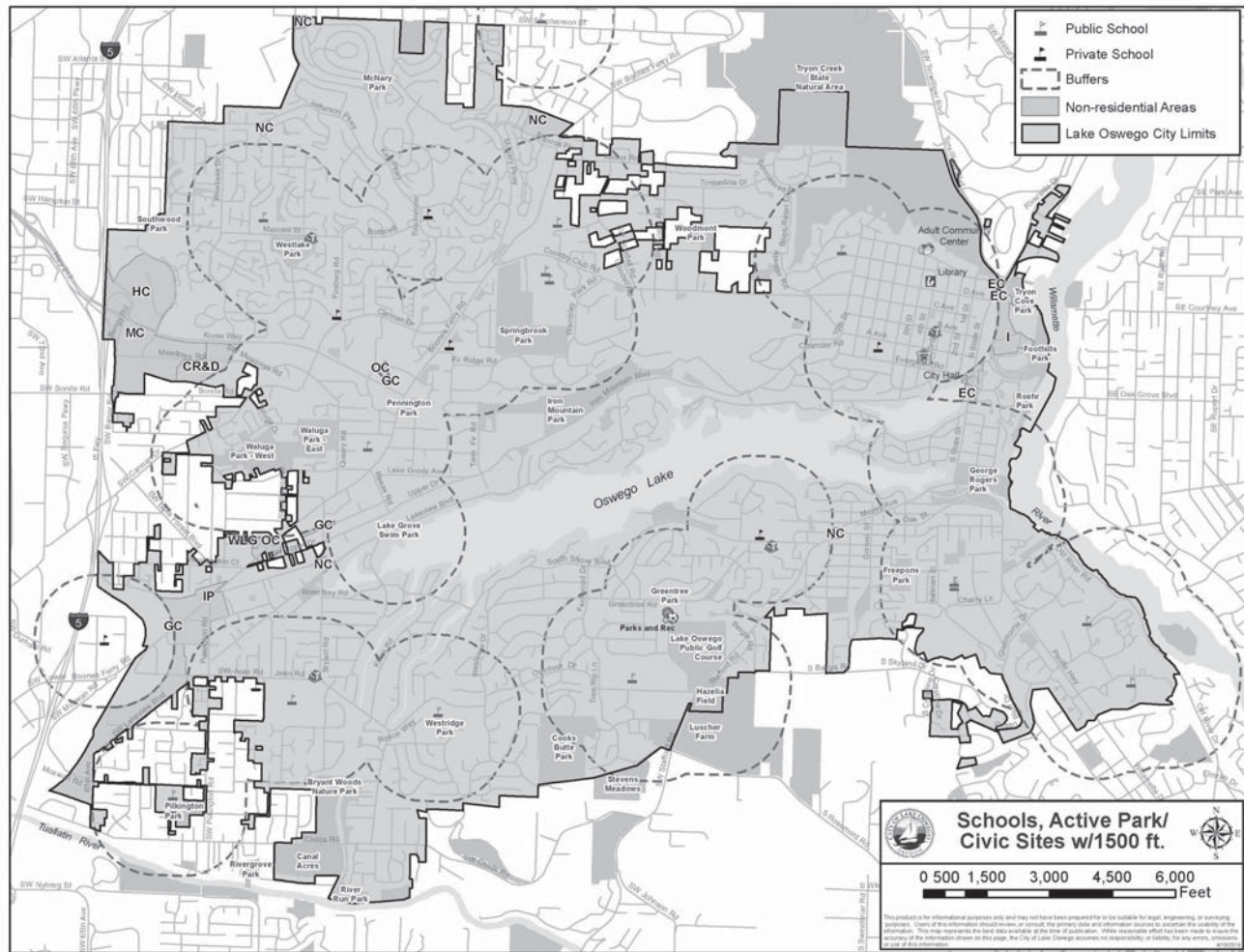
Map of public and private schools with 1,500 ft. buffers



2. The attached map shows areas where current zoning allows retail, after excluding areas within 1,500 feet from any school, active-use park (e.g., playground or sports facility), or civic use (e.g., library) where children congregate. The proposed additional requirement that marijuana retail uses be more than 1,500 ft. from these facilities is:

- ☐ Excessive
- ☐ About right
- ☐ Not restrictive enough
- ☐ No opinion

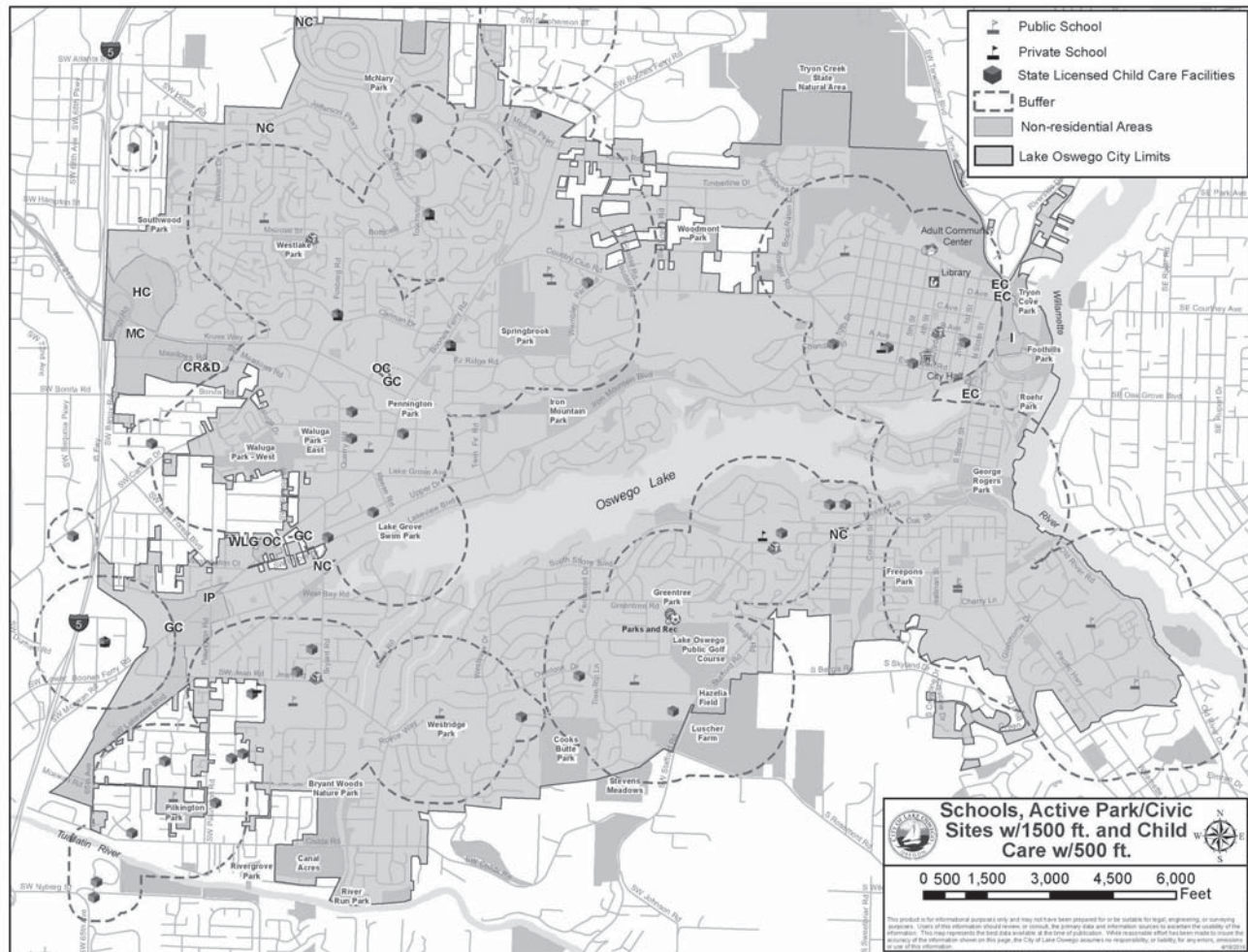
Schools, active-use parks, and civic uses with 1,500 ft. buffers



3. The attached map shows areas where current zoning allows retail, after excluding areas within 1,500 feet from any school, active-use park (e.g., playground or sports facility), or civic use (e.g., library) where children congregate; AND, 500 ft. from any state-registered childcare use. The proposed additional requirement that marijuana retail uses be more than 1,500 ft. from childcare is:

- ☐ Excessive
- ☐ About right
- ☐ Not restrictive enough

Schools, active-use parks, civic uses with 1,500 ft. buffers; and childcare with 500 ft. buffers



4. The current proposal, as illustrated with the preceding question, restricts marijuana retail from opening within 500 ft. of a state-licensed childcare use. Should the City also restrict the location of new childcare uses, such that a childcare use cannot open within 500 ft. of an existing marijuana retail facility?

- ☐ Agree
- ☐ Disagree
- ☐ No opinion

Other (please specify)

--

5. In addition to the restrictions suggested in questions 1-3 (in the event voters overturn the present ban on marijuana facilities) the City is considering prohibiting marijuana retail uses in Neighborhood Commercial (NC) zones. The commercial properties at the intersection of McVey Ave and Southshore Blvd (pictured) and the one at Lakeview Blvd and Bryant Rd are examples of NC. Do you agree with this approach?

- ☐ Agree
- ☐ Disagree
- ☐ No opinion

Other (Please comment)

This graphic shows the Palisades Shopping Center (single star) falling within the proposed 1,500 ft. school buffer, and other NC-zoned parcels (two stars) lying outside the buffer. The inner ring is set at 1,000 ft. to show where the state minimum requirement would fall. The dual stars are located beyond the outer (1,500 ft.) ring and more than 500 ft. from the existing registered childcare uses located directly north.



6. State law requires a minimum 1,000 ft. separation between medical marijuana dispensaries. Dispensaries would be classified as 'retail' under City code. Do you agree that recreational retail marijuana facilities should be subject to the same 1,000 ft. separation requirement as applies to dispensaries?

- ☐ Agree
- ☐ Disagree
- ☐ No opinion

Other (please specify)

7. Thank you for participating in the survey. Please feel free to provide any other comments below, or you may provide a written response to the Planning Department. Responses are requested by 12:00 noon, May 3, 2016. Contact: Scot Siegel, Planning and Building Services Director, 503-699-7474, ssiegel@ci.oswego.or.us

8. Do you agree with the following regulations, as proposed?

	Agree	Neutral	Disagree
Restriction on production, processing, and wholesale (Industrial zone only)	<input type="text"/>	<input type="text"/>	<input type="text"/>
Hours of operations	<input type="text"/>	<input type="text"/>	<input type="text"/>
Buffering from schools	<input type="text"/>	<input type="text"/>	<input type="text"/>
Buffering from active-use parks and civic uses	<input type="text"/>	<input type="text"/>	<input type="text"/>
Buffering from childcare	<input type="text"/>	<input type="text"/>	<input type="text"/>
Odor control	<input type="text"/>	<input type="text"/>	<input type="text"/>
Security cameras	<input type="text"/>	<input type="text"/>	<input type="text"/>
Waste management	<input type="text"/>	<input type="text"/>	<input type="text"/>
Public facilities impacts	<input type="text"/>	<input type="text"/>	<input type="text"/>
Minor development review required (public notice)	<input type="text"/>	<input type="text"/>	<input type="text"/>

Other (please specify)