



CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033
425.587-3225 - www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Eric Shields, Planning Director
Robin Jenkinson, City Attorney

Date: March 10, 2014

Subject: Marijuana Interim Zoning Regulations

RECOMMENDATION

After conducting a public hearing, the City Council should determine whether to approve the attached Ordinance which would revise interim regulations pertaining to the retail sale of recreational marijuana. The regulations would be in effect for a period of six months. The ordinance presumes previous adoption of Kirkland School Walk Routes by the Council.

BACKGROUND DISCUSSION

Council Direction

On February 4, 2014, the City Council adopted Ordinance O-4434 establishing interim regulations on the sale of recreational marijuana. The ordinance prohibited marijuana sales in the Market Street Corridor (MSC) 1 zone due to concerns about its proximity to school walk routes, the unknown traffic impacts of marijuana retail locations, and the fact that the MSC 1 zone was primarily a low density office zone with few retail businesses. At that time, the Council asked staff to research additional options for allowing and restricting marijuana sales.

On March 4, 2014, the City Council reviewed several options prepared by staff (attached maps 1-7) and directed staff to prepare for consideration at a public hearing a new interim ordinance based on one of those options (map 6). The proposed new ordinance would do the following:

- Continue to allow marijuana sales in zones that allow retail establishments, while also;
 - Prohibiting marijuana sales in the Market Street Corridor (MSC) 1 zone and the MSC 2 zone due to adjacency to Kirkland School Walk Routes;
 - Prohibiting marijuana sales on properties abutting other Kirkland School Walk Routes;
- Allow marijuana sales in three light industrial zones: Totem Lake (TL) 7 and TL 9, and Light Industrial Technology (LIT);
- Require the containment of marijuana odors;
- Require security measures for cash and marijuana kept on businesses premises; and
- Establish enforcement authority for the interim regulations.

State Regulations

As noted in previous memoranda to the City Council, Initiative 502, which legalized the sale of marijuana in Washington State, also prohibits marijuana sales, processing or production within

1,000 feet of public parks, elementary and secondary schools, state licensed child care centers, playgrounds, recreation centers, game arcades where admission is not restricted to persons 21 or over and public transit centers. The determination of whether proposed marijuana businesses comply with these restrictions will be made by the Washington State Liquor Control Board (WSLCB). The WSLCB has indicated that any parcel that has any portion of its area located within a 1,000 foot arc from one of the protected sites will be considered to be ineligible for a license. The WSLCB also has indicated that the prohibition near parks will apply only to active use areas and not undeveloped open space or areas with only trails. Staff has asked the WSLCB to further clarify how this will be applied.

Based on City population from the last census, Kirkland will be allotted a maximum of two retail licenses. The WSLCB indicated that it will issue licenses only on the basis of state regulations. Cities will have to enforce their own regulations.

Interim Regulations

Under RCW 35A.63.220 and RCW 36.70A.390, the City Council must adopt findings of fact that support the adoption of interim regulations. Section 1 of the proposed ordinance includes such findings of fact.

The interim regulations are limited to a period of six months. During that time, the expectation is that the City will be working to prepare amendments to the Zoning Code. Prior to the expiration of the interim regulations, the City Council may, after conducting another public hearing, extend the interim regulations for another six months if a work plan is developed for such a longer period.

Experiences of Colorado Cities

Staff has been attempting to obtain information from Colorado cities about their experiences with marijuana businesses to date, particularly concerning traffic and crime. Attachment 8 is a memorandum from Chief Olsen and Captain Bill Hamilton of the Police Department summarizing their findings. The conclusion is that the experience of Colorado is mixed and varies by city.

Kirkland Business Licenses

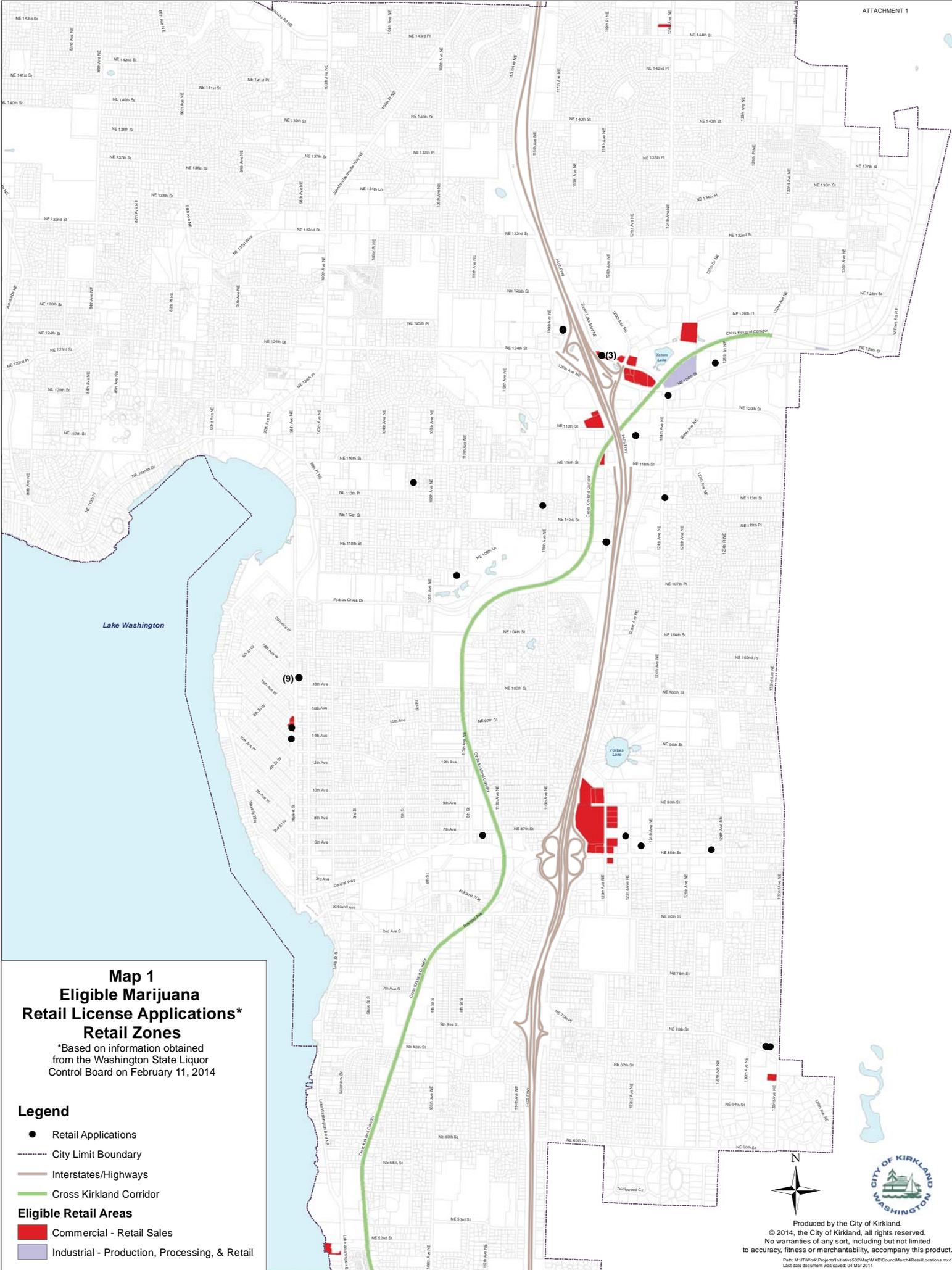
All marijuana businesses will require a business license from the City. Staff from all departments have met and will continue to do so to establish protocols for reviewing proposed licenses to assure that City regulations and guidelines are met.

SEPA Compliance

The adoption of interim regulations is subject to compliance with the State Environmental Policy Act (SEPA). A SEPA Determination of Nonsignificance was issued on March 12, 2014.

Attachments:

1. Map 1 – Existing eligible locations for retail licenses
2. Map 2 – Existing eligible locations excluding properties within 100 feet of residential use
3. Map 3 – Existing eligible locations plus industrial zones
4. Map 4 – Existing eligible locations plus industrial zones excluding LIT zones
5. Map 5 – Existing eligible locations plus industrial zones, excluding properties within 100 feet of residential use
6. Map 6 - Existing eligible locations plus industrial zones, excluding properties along school walk routes
7. Map 7 - Existing eligible locations plus industrial zones, excluding properties within 100 feet of residential use and/or along school walk routes
8. Memorandum from Police Department



Map 1
Eligible Marijuana
Retail License Applications*
Retail Zones

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014

Legend

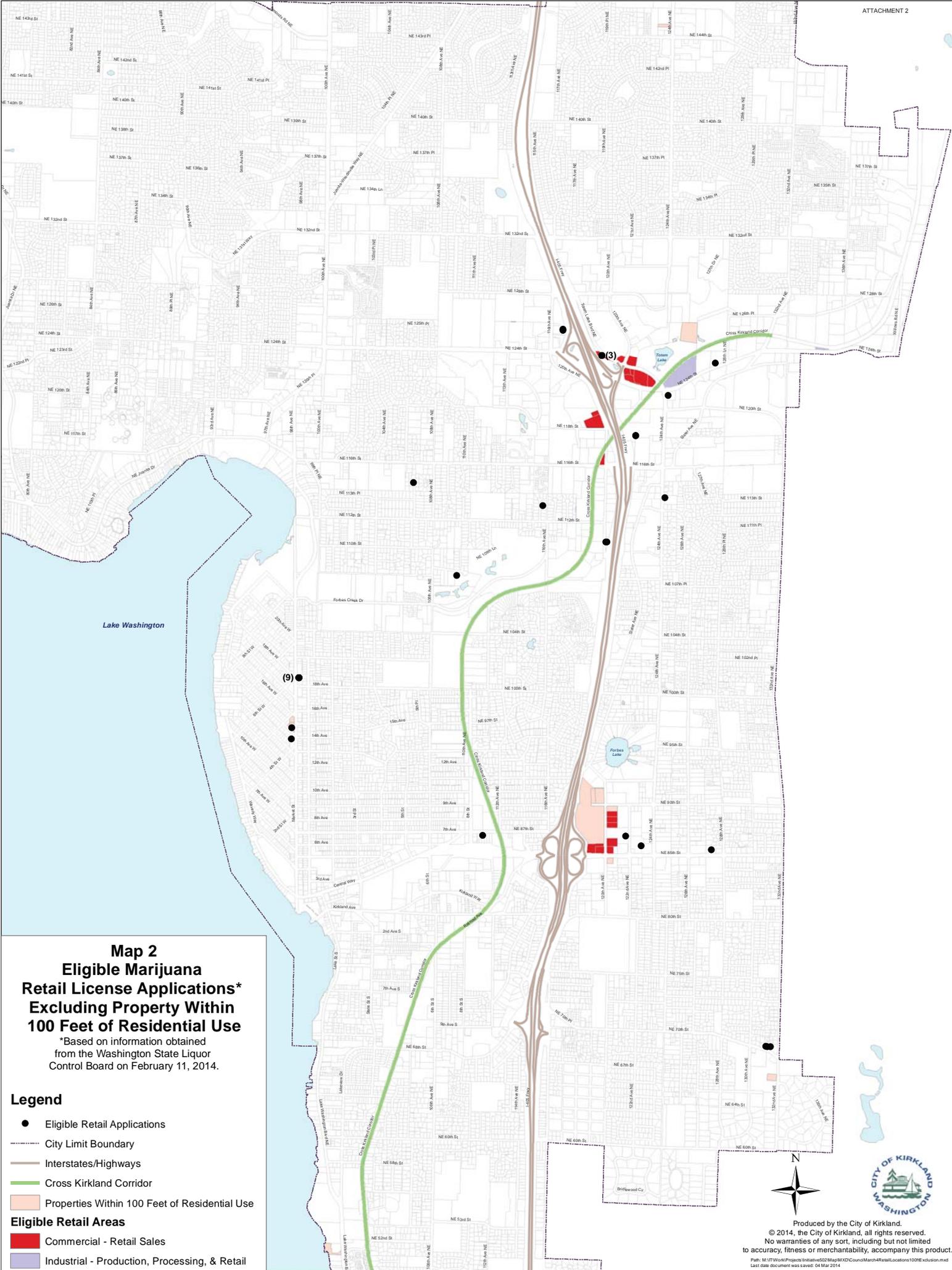
- Retail Applications
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail



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Map 2
Eligible Marijuana
Retail License Applications*
Excluding Property Within
100 Feet of Residential Use

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014.

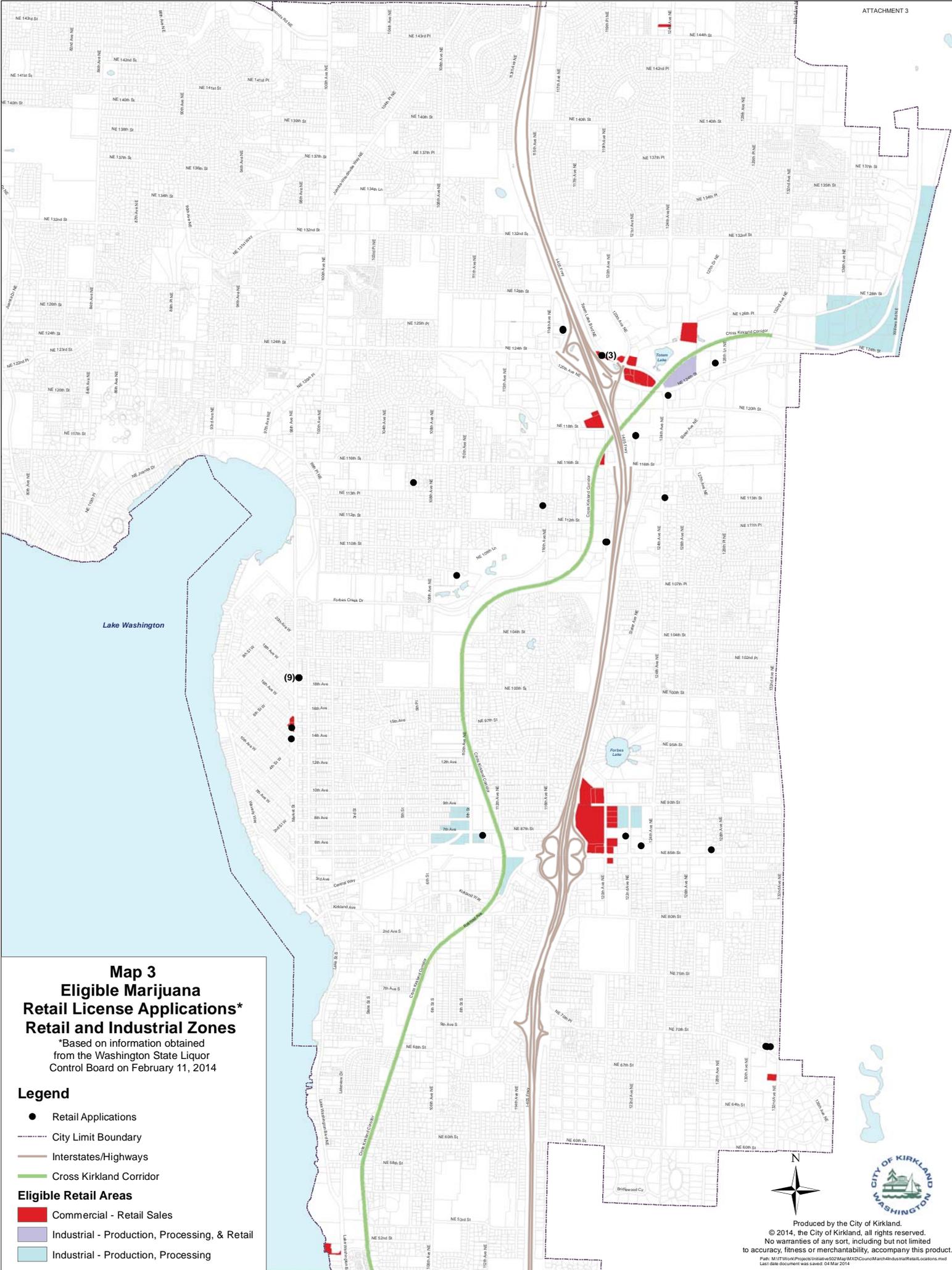
Legend

- Eligible Retail Applications
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor
- Properties Within 100 Feet of Residential Use

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail





Map 3
Eligible Marijuana
Retail License Applications*
Retail and Industrial Zones

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014

Legend

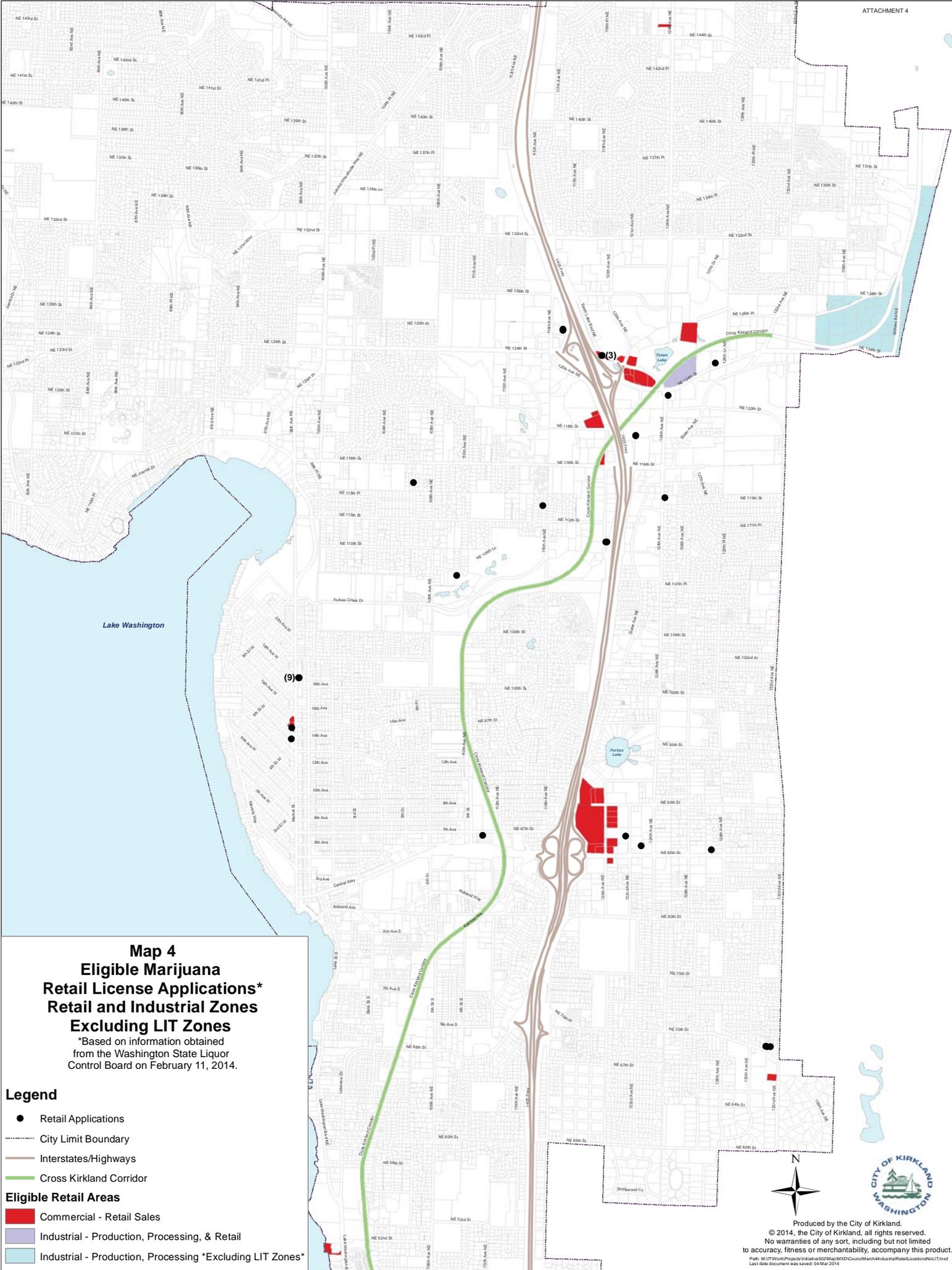
- Retail Applications
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail
- Industrial - Production, Processing



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Map 4
Eligible Marijuana
Retail License Applications*
Retail and Industrial Zones
Excluding LIT Zones

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014.

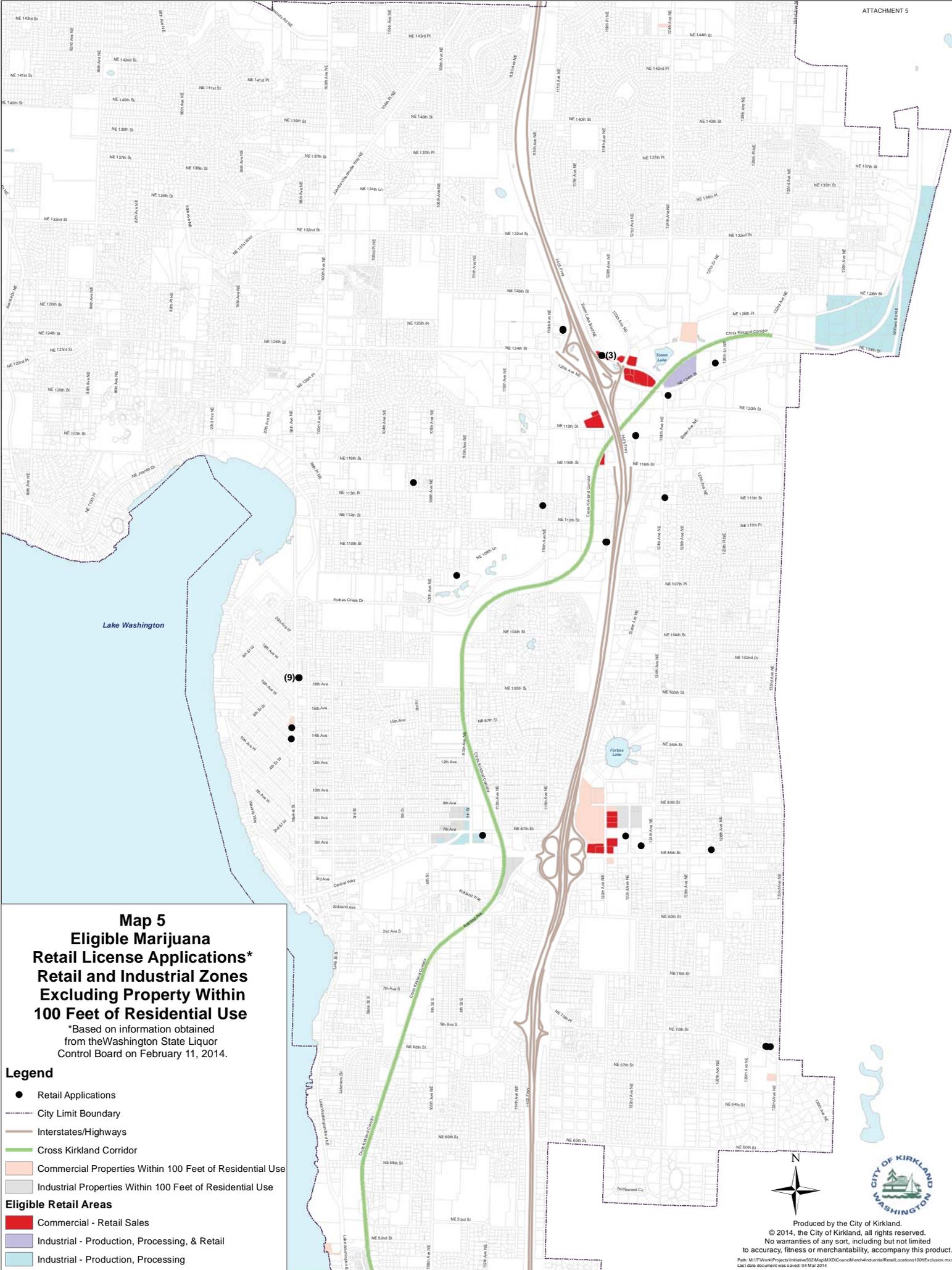
Legend

- Retail Applications
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail
- Industrial - Production, Processing *Excluding LIT Zones*





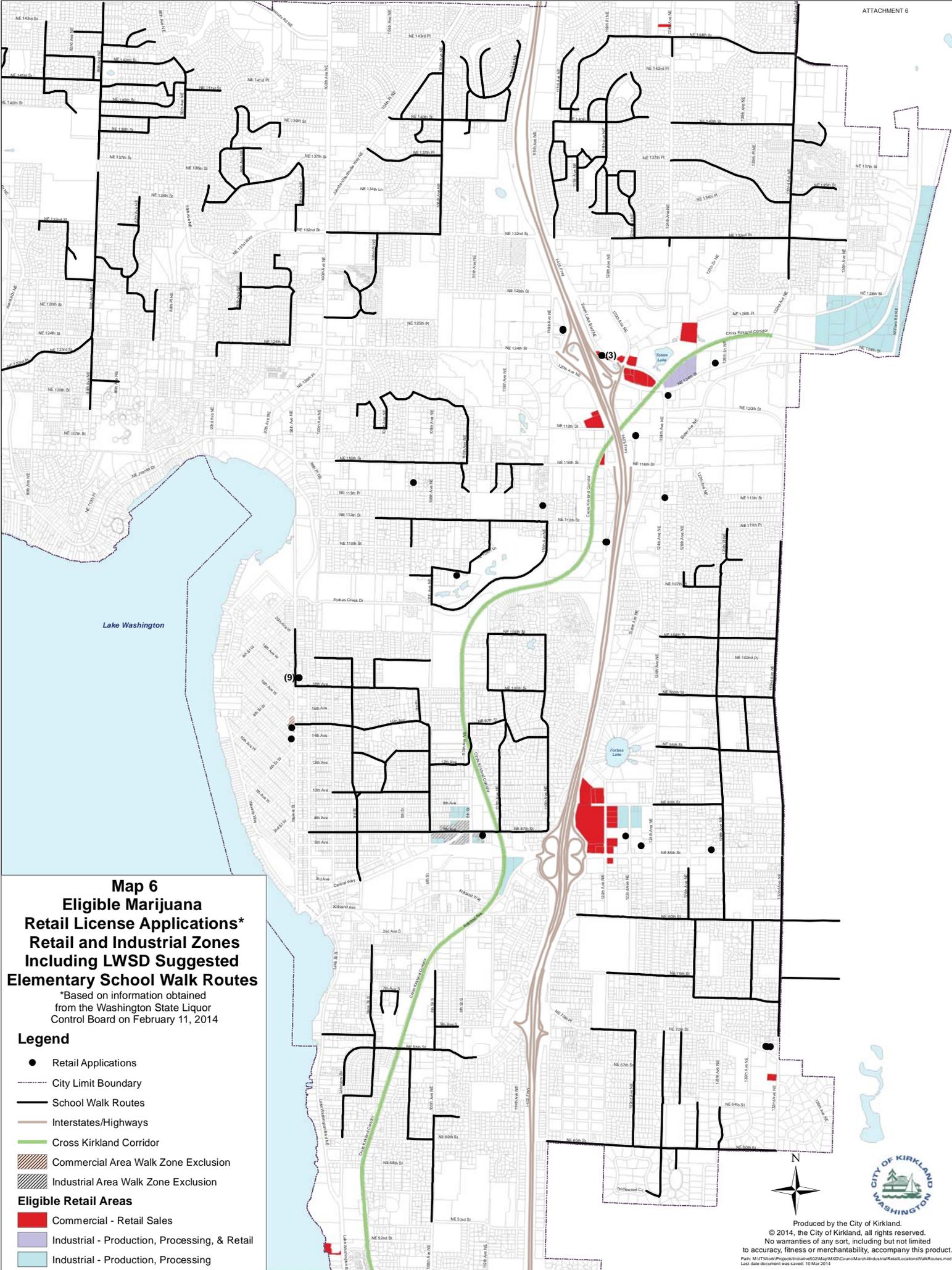
Map 5
Eligible Marijuana
Retail License Applications*
Retail and Industrial Zones
Excluding Property Within
100 Feet of Residential Use

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014.

Legend

- Retail Applications
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor
- Commercial Properties Within 100 Feet of Residential Use
- Industrial Properties Within 100 Feet of Residential Use
- Eligible Retail Areas
 - Commercial - Retail Sales
 - Industrial - Production, Processing, & Retail
 - Industrial - Production, Processing





Map 6
Eligible Marijuana
Retail License Applications*
Retail and Industrial Zones
Including LWSD Suggested
Elementary School Walk Routes

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014

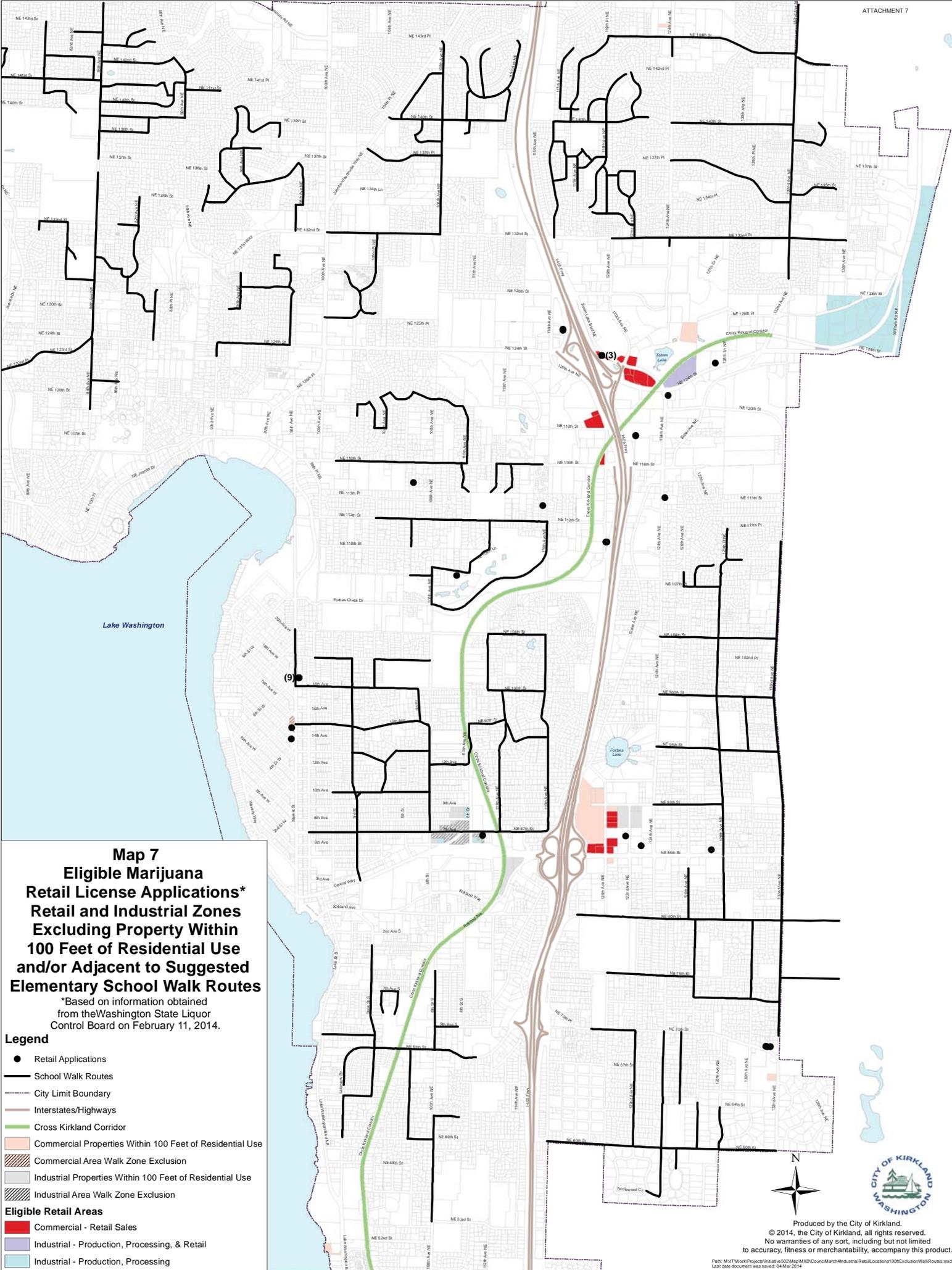
Legend

- Retail Applications
- City Limit Boundary
- School Walk Routes
- Interstates/Highways
- Cross Kirkland Corridor
- ▨ Commercial Area Walk Zone Exclusion
- ▨ Industrial Area Walk Zone Exclusion

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail
- Industrial - Production, Processing





Map 7
Eligible Marijuana
Retail License Applications*
Retail and Industrial Zones
Excluding Property Within
100 Feet of Residential Use
and/or Adjacent to Suggested
Elementary School Walk Routes

*Based on information obtained from the Washington State Liquor Control Board on February 11, 2014.

Legend

- Retail Applications
- School Walk Routes
- City Limit Boundary
- Interstates/Highways
- Cross Kirkland Corridor
- Commercial Properties Within 100 Feet of Residential Use
- Commercial Area Walk Zone Exclusion
- Industrial Properties Within 100 Feet of Residential Use
- Industrial Area Walk Zone Exclusion

Eligible Retail Areas

- Commercial - Retail Sales
- Industrial - Production, Processing, & Retail
- Industrial - Production, Processing



**CITY OF KIRKLAND****Police Department**

123 Fifth Avenue, Kirkland, WA 98033 425.587.3400

www.kirklandwa.gov

MEMORANDUM

To: Kirkland City Council

From: Bill Hamilton, Captain
Eric Olsen, Police Chief

Date: March 10, 2014

Subject: Colorado Marijuana Impacts on Traffic and Crime

Colorado Police agencies have had varying experiences regarding the legalization of marijuana, and its impact on traffic and crime. For comparative purposes, Captain Hamilton contacted the City of Boulder, population 101,000, and the City of Denver, population 632,000, as the demographic comparisons are somewhat similar to Kirkland and Seattle. Both Denver and Boulder report occasional long lines of pedestrian traffic at retail locations, but report no serious community impacts from pedestrians or associated vehicles. The related traffic is expected to ebb and flow, dependent on day of week or proximately to a holiday, similar to that of liquor sale locations. Both agencies are predominately focused on the mitigation of marijuana related crime and the fear of such crime. The Boulder Police Department has experienced significantly less serious criminal impacts than that of the Denver Police Department.

Boulder, while certainly not crime free, has reported few serious crimes at marijuana production or retail locations. Denver however, has reported a significant amount of crime, to include burglaries, robberies and physical assaults, some of which included weapons. A recent study by NBC news indicated that 50 percent of Denver marijuana businesses have been the victim of burglaries and/or robberies in the last two years (this includes medical marijuana locations) which is more than double that of 2009. While it is not unexpected for a large metropolitan city to experience more serious crime than that of a suburban city, the City of Boulder has not yet experienced such significant issues.

Interviews with City of Boulder employees and a review of documents made available, indicate a very purposeful mitigation strategy. For example, the City of Boulder Recreational Marijuana ordinance (*Revised Code, chapter 6-16*) requires the business license applicant to submit plans for the mitigation of sales to juveniles, marijuana related smells, traffic, waste, lighting, and security issues, as part of the licensing decision process.

They also require that at close of business, all marijuana infused edibles and loose leaf products be locked in a refrigerator or safe, both of which must be bolted to the main structure or be subject to sanctions that include loss of business license. Boulder's noted ordinance places tighter restrictions and most importantly, actionable accountability mechanisms in place. Boulder reportedly set out to create a climate that allows a business to be highly successful, while setting clear expectations through the licensing process and a demonstrated willingness for a swift response to a community concern or safety issue.

In furtherance of this goal, Boulder has also funded a FTE. This position serves as a liaison with various city departments, conducting site inspections, business owner education/support/guidance, administrative policy development, as well as the enforcement authority to quickly hold businesses accountable (both administratively and/or criminally) when applicable. (Boulder reportedly recoups some degree of associated costs through the licensing fee structure as well as a special marijuana taxing structure for marijuana production and retail sales). While the City of Boulder recognizes that the State of Colorado has a responsibility to inspect locations and hold businesses accountable, the city ordinance permits the city to also do this. In their view, such local authority is critical in maintaining public trust, particularly in the beginning of this somewhat controversial and complex endeavor. This FTE is well versed in all aspects of marijuana production, packaging, retail sales, juvenile considerations, community impacts/concerns, enforcement considerations, environmental impacts, waste considerations, as well as addressing community concerns and developing communication strategies.

The Boulder Police Department credits the noted approach for their smooth and safe transition to recreational marijuana sales. The ordinance structure and licensing requirements has allowed businesses to prosper safely while maintaining community trust.

ORDINANCE O-4439

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, REPEALING AND REPLACING ORDINANCE O-4434, ADOPTING INTERIM ZONING REGULATIONS REGARDING THE RETAIL SALE OF RECREATIONAL MARIJUANA, INCLUDING LOCATIONAL RESTRICTIONS, PROVIDING FOR SEVERABILITY, AND APPROVING A PUBLICATION SUMMARY.

WHEREAS, Initiative 502 (I-502) approved by Washington voters in November 2012, provides a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana; and

WHEREAS, the Washington State Liquor Control Board has adopted rules pertaining to the licensing of marijuana producers, processors, and retailers and has accepted applications, and is beginning to issue licenses for these marijuana businesses; and

WHEREAS, the State Liquor Control Board has determined that two state licenses for the retail sale of recreational marijuana may be issued for the City of Kirkland; and

WHEREAS, on January 16, 2014, the Washington State Attorney General issued a formal opinion which concluded that I-502 does not prevent local governments from regulating or banning marijuana businesses; and

WHEREAS, following a public hearing on February 4, 2014, the City Council passed Ordinance O-4434 adopting interim zoning regulations regarding the retail sale of recreational marijuana; and

WHEREAS, the City Council has continued to review how to reconcile the needs of the residents and businesses of Kirkland with respect to the retail sale of recreational marijuana, with I-502, and the rules promulgated by the Washington State Liquor Control Board; and

WHEREAS, Kirkland School Walk Routes are intended to promote the safety, health and well-being of children as they walk and bike to school; and

WHEREAS, the City Council believes that health, safety, and welfare of the community is best served by imposing interim regulations with reasonable limitations to avoid locating recreational marijuana retail outlets next to incompatible uses, while permanent Zoning Code amendments are considered; and

WHEREAS, on March 18, 2014, the City Council conducted a public hearing to take public testimony on the adoption of interim zoning regulations; and

WHEREAS, on March 12, 2014, a determination of nonsignificance was issued on this proposed ordinance; and

WHEREAS, the Council now desires to supplement the interim zoning regulations for the retail sale of recreational marijuana by repealing Ordinance O-4434 and replacing it with this Ordinance; and

WHEREAS, the City has the authority to enact interim zoning regulations under RCW 35A.63.220 and RCW 36.70A.390;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Findings. The recitals set forth above are incorporated as findings of fact in support of the interim regulations imposed by this ordinance. The City Council further finds as follows:

a. The City Council wishes to exercise its police power authority granted under article XI, section 11 of the Washington Constitution to promote public safety, health, and welfare, but expressly disclaims any intent to exercise authority over marijuana uses in way that would conflict with the federal Controlled Substances Act; and

b. It is the intent of these interim zoning regulations to ensure that marijuana retail outlets are not located where the use could cause inappropriate off-site impacts; and

c. The Kirkland School Walk Routes have been identified based on considerations of existing traffic patterns and providing the greatest separation between walking children and traffic; and

d. The Market Street Corridor (MSC) MSC 1 and MSC 2 zones each abut or contain segments of Kirkland School Walk Routes developed with crosswalks and flashing beacons to encourage use by walking children; and

e. The potential for vehicular and pedestrian traffic impacts on Kirkland School Walk Routes as a result of proximity to marijuana retail outlets in Washington State is, as yet, unknown; and

f. The public safety risks associated with retail marijuana outlets in Washington State are, as yet, unknown; and

g. These interim zoning regulations are designed to avoid potential adverse consequences and provide the opportunity to gather data and study, draft, and adopt permanent regulations; and

h. The City Council desires to create regulations that address the particular needs of the residents and businesses of Kirkland and coordinate with I-502 and the rules promulgated by the Washington State Liquor Control Board regarding recreational marijuana; and

i. Under these interim regulations there remain other potential sites within the City where the zoning would permit retail marijuana

outlets and the properties appear to be located more than 1,000 feet from elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, or any game arcades (where admission is not restricted to persons age 21 or older), the minimum criteria of the State Liquor Control Board; and

j. The City Council has also determined that City staff shall draft permanent Zoning Code amendments for referral to the Planning Commission for review, public hearing, and recommendation by the Planning Commission.

Section 2. Repeal. Ordinance O-4434 is repealed.

Section 3. Interim Zoning Regulations.

a. Except as prohibited in subsections (b) and (c) below, marijuana retail outlets licensed by the Washington State Liquor Control Board and fully conforming to state law may locate in the following use zones:

1. Use zones where Retail Establishments are allowed;
2. Light Industrial Technology (LIT) zones; and
3. Totem Lake (TL) TL 7 and TL 9 zones.

b. No marijuana retail outlet may locate in the Market Street Corridor (MSC) MSC 1 and MSC 2 zones.

c. Marijuana retail outlets shall not locate on any site abutting a street segment or public right-of-way segment that includes a Kirkland School Walk Route as shown on Exhibit A.

d. Marijuana odor shall be contained within the retail outlet so that odor from the marijuana cannot be detected by a person with a normal sense of smell from any abutting use or property. If marijuana odor can be smelled from any abutting use or property, the marijuana retailer shall be required to implement measures, including but not limited to, the installation of the ventilation equipment necessary to contain the odor.

e. In addition to the security requirements promulgated by the Washington State Liquor Control Board in Washington Administrative Code (WAC) Chapter 315-55, during non-business hours, all useable marijuana, marijuana-infused product, and cash on the premises of a marijuana retail outlet shall be stored in a safe or in a substantially constructed and locked cabinet. The safe or cabinet shall be incorporated into the building structure or securely attached to the structure. Useable marijuana products that must be refrigerated or frozen may be stored in a locked refrigerator or freezer, provided the refrigerator or freezer is affixed to the building structure.

f. These interim zoning regulations shall be enforced using the procedures and penalties for violations of the Zoning Code established under Kirkland Municipal Code Chapter 1.12, "Code Enforcement."

Section 4. Definitions. As used in this ordinance, the following terms have the meanings set forth below:

- a. "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 plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, 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 seed of the plant which is incapable of germination.
- b. "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.
- c. "Marijuana retailer" means a person licensed by the State Liquor Control Board to sell useable marijuana and marijuana-infused products in a retail outlet.
- d. "Retail outlet" means a location licensed by the State Liquor Control Board for the retail sale of useable marijuana and marijuana-infused products.
- e. "Kirkland school walk routes" means the school walk routes adopted by the City Council based upon the walk routes identified by the Lake Washington School District within a one-mile radius of all public elementary schools in the City.
- f. "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

Section 5. Duration. The interim zoning regulations adopted by this Ordinance shall be in effect for a period of six months from the effective date of this ordinance and shall automatically expire on that date unless extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the Kirkland City Council.

Section 6. Work Plan. The City staff is directed to draft permanent Zoning Code amendments. The proposed amendments shall be referred to the Kirkland Planning Commission for review, public hearing, and recommendation for inclusion in the Kirkland Zoning Code.

Section 7. Severability. Should any provision of this Ordinance or its application to any person or circumstance be held invalid, the

remainder of the ordinance or the application of the provision to other persons or circumstances shall not be affected.

Section 8. Effective Date. This Ordinance shall be in force and effect five days after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to this Ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this ___ day of _____, 2014.

Signed in authentication thereof this ___ day of _____, 2014.

MAYOR

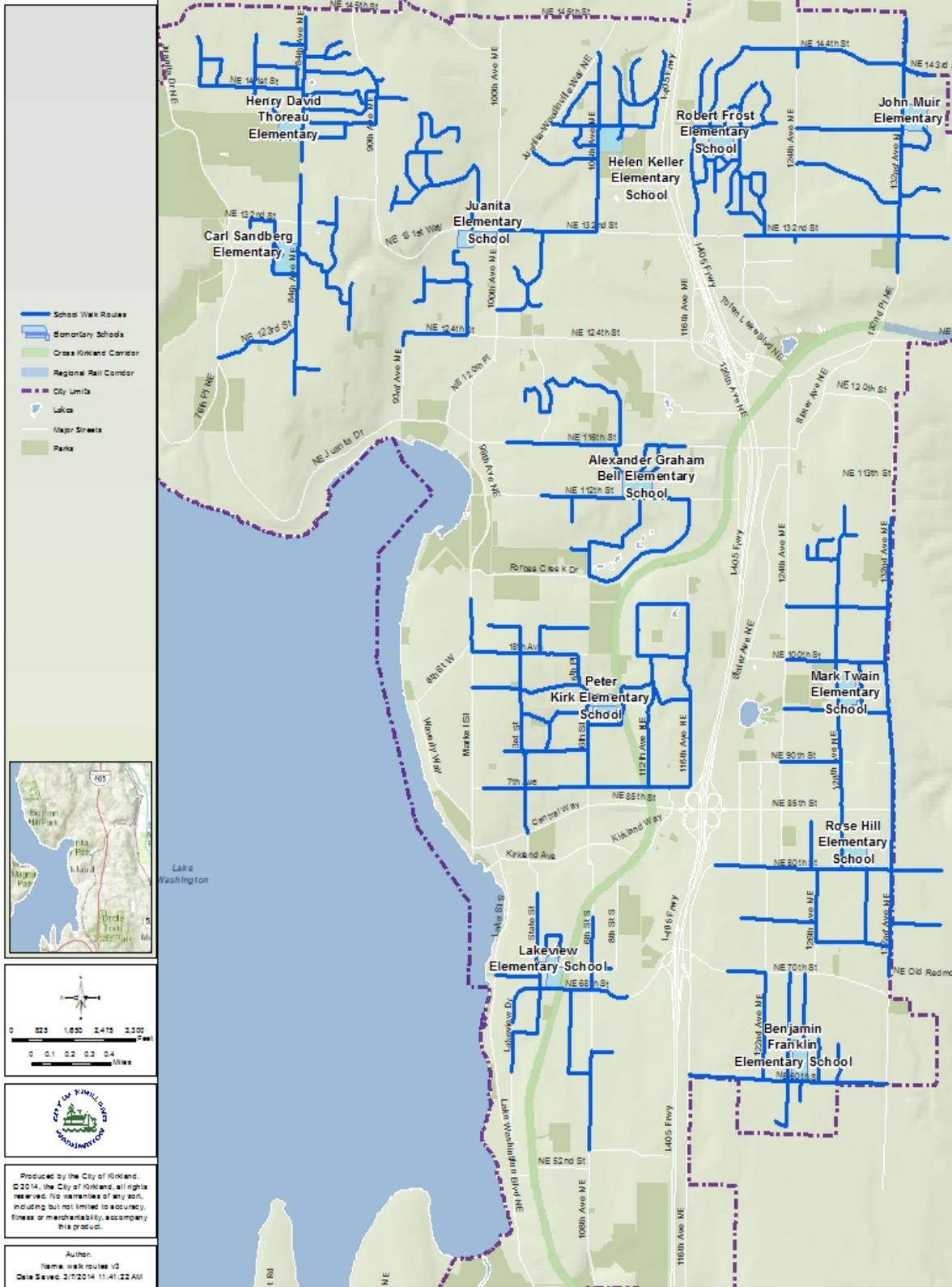
Attest:

City Clerk

Approved as to Form:

City Attorney

Kirkland School Walk Routes - March 18, 2014



PUBLICATION SUMMARY
OF ORDINANCE O-4439

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE AND ZONING, REPEALING AND REPLACING ORDINANCE O-4434, ADOPTING INTERIM ZONING REGULATIONS REGARDING THE RETAIL SALE OF RECREATIONAL MARIJUANA, INCLUDING LOCATIONAL RESTRICTIONS, PROVIDING FOR SEVERABILITY, AND APPROVING A PUBLICATION SUMMARY.

SECTION 1. Adopts findings for the interim regulations.

SECTION 2. Repeals Ordinance 4434.

SECTION 3. Sets forth interim zoning regulations.

SECTION 4. Defines terms used in the ordinance.

SECTION 5. Sets forth the duration of the ordinance.

SECTION 6. Sets forth the work plan.

SECTION 7. Provides a severability clause for the ordinance.

SECTION 8. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2014.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk