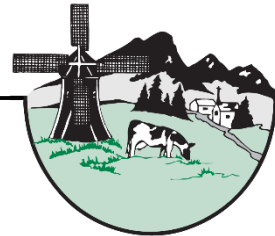


CITY OF LYNDEN

CITY COUNCIL



City Council - Regular Meeting
City Hall - 300 Fourth Street
November 20, 2023

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Summary Reports and Presentations

Approval of Minutes

- [1.](#) Draft Council Minutes – November 6, 2023

Citizen Comment

Consent Agenda

- [2.](#) Approval of Payroll and Claims
- [3.](#) Set Public Hearing for Proposed Nooksack Valley Disposal (NVD) 2024 Rate Increase
- [4.](#) Whatcom Conservation District 2024 Interlocal Agreement
- [5.](#) Welch Ecological Services Agreement 2024
- [6.](#) Set Date for the Final Public Hearing on the 2024 Preliminary Budget
- [7.](#) RES-23-1085-Set Public Hearing - 2024 Revisions to the Engineering Design and Development Standards Project Manual
- [8.](#) RES-23-1087-Real Estate Property Tax Levy Increase 2024

Public Hearing

- [9.](#) Public Hearing for ORD-23-1679-Real Estate Property Tax for 2024

Unfinished Business

New Business

- [10.](#) Set the Public Hearing: ORD-23-1680-Amending the Civil Penalties Code
- [11.](#) ORD-23-1679-Real Estate Property Tax for 2024
- [12.](#) RES-23-1086-Conditional Use Permit 23.01 for Premier Packing (Project Zebra)

Reports

- [13.](#) Draft Public Works Committee Minutes November 1, 2023

Executive Session

Adjournment

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Draft Council Minutes – November 6, 2023	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Draft Council Minutes – November 6, 2023	
Summary Statement:	Draft Council Minutes for Council review and possible approval.	
Recommended Action:	Review and approve draft minutes.	

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



November 6, 2023

1. CALL TO ORDER

Mayor Korthuis called to order the November 6, 2023 regular session of the Lynden City Council at 7:00 p.m. in the city's council chambers.

PLEDGE OF ALLEGIENCE

ROLL CALL

Members present: Councilors Gary Bode, Ron De Valois, Brent Lenssen, Nick Laninga, Kyle Strengholt, and Mark Wohlrab.

Members absent: Councilor Kuiken absent with notice.

Staff present: Community Development Director Heidi Gudde, Fire Chief Mark Billmire, Public Works Director Jon Hutchings, City Clerk Pam Brown, City Administrator John Williams, and City Attorney Bob Carmichael.

OATH OF OFFICE – None.

SUMMARY REPORTS AND PRESENTATIONS - None

APPROVAL OF MINUTES

Councilor De Valois moved, and Councilor Laninga seconded, to approve the October 16, 2023, regular council meeting minutes. Motion approved on 6-0 vote.

CITIZEN COMMENT

Cynthia Ripke-Kutsagoitz, Guide Meridian, Lynden

She spoke to the following topics:

- Support of Veterans Day events.
- Support of Engedi Refuge, a program that works with sex trafficking victims.
- Fluoride toothpaste.

Mikhail Nichols, Andress Lane, Lynden

Mr. Nichols spoke about his interactions with the city of Lynden's police department without providing specific details. He stated that the police officers were doing their job the best they can but believes there are some shortcomings that could be corrected. Mr. Nichols expressed gratitude to the PD for their assistance.

CITY OF LYNDEN



CITY COUNCIL
MINUTES OF REGULAR MEETING

2. CONSENT AGENDA

Approval of Claims – November 7, 2023

Manual Warrants No.	<u>28659</u>	through	<u>28659</u>		\$61.75
EFT Payment Pre-Pays					\$0.00
				Sub Total Pre-Pays	\$61.75
Voucher Warrants No.	<u>28662</u>	through	<u>28774</u>		\$659,096.08
EFT Payments					<u>\$652,755.50</u>
				Sub Total	\$1,311,851.58
				Total Accounts Payable	\$1,311,913.33

Payroll Liability to October 22 through November 4, 2023

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	\$560,947.32
Check Liability	\$0.00
Total Non-L&I Liabilities	\$560,947.32
Quarterly Liabilities	\$13,218.35

Total EFT & Other Liabilities **\$574,165.67**

Set the Public Hearing for the 2024 Property Tax Levy

2024 State Legislative Agenda

Contract Extension with Gordon Thomas Honeywell for State Lobbying Services

Contract Extension with CFM Advocates for Federal Lobbying Services

ORD-23-1675- Amend LMC9.08 (Blake Fix)

ORD-23-1676-Amend LMC 9.08, Remove Statutes (RCWs) Repealed by WA State

ORD-23-1677-Amend LMC 9.30, Concealed Carry Pistols

ORD-23-1678-Amendment to the 2023 Budget

Councilor Bode asked for clarification for ORD-23-1677. After some clarification of the item, the following motion was made.

Motion made by Councilor De Valois, seconded by Councilor Lenssen, to approve Consent Agenda. Motion approved 6-0.

Councilor Lenssen provided feedback concerning the November 6, 2023 packet. He stated that the context information was not clear and asked staff to provide greater clarity on the agenda items submitted for the council packets.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



3. PUBLIC HEARING

Public Hearing for the Preliminary 2024 Budget

Mayor opened the public hearing at 7:12 pm. Jon Henry, BC Avenue, Lynden asked a question about line items which was answered. Mayor closed the public hearing at 7:13 pm.

No action taken, public hearing only.

4. UNFINISHED BUSINESS

Ord-23-1674- Amendment to LMC 19.22 regarding Residential Patios and Decks

At the June 19 meeting the City Council heard but did not take action on an amendment to LMC 19.22 regarding the screening of covered patios. The Council indicated that additional review may be needed to reach a solution which would allow for a higher degree of enclosure while ensuring adequate ventilation. The Council voted to have the item reconsidered by the Community Development Committee (CDC) meeting and passed Resolution 23- 1076. Based on CDC feedback, revisions have been made to the section of code related to enclosure of patios and staff has also taken the opportunity to clarify other portions of this code to be consistent with current enforcement. Revisions, as recommended by the CDC, are reflected in ORD-23-1674.

Motion made by Councilor Lenssen, seconded by Councilor Bode, to approve ORD-23-1674 amending LMC 19.23.030(E) to clarify the development standards associated with residential porches, stoops, decks, and patios; to allow for a greater degree of enclosure of decks and patios that encroach into rear yard setbacks; and to authorize the Mayor's signature on the document. Motion passed on a 6-0 vote.

5. NEW BUSINESS - None

6. REPORTS

Councilor Lenssen, Community Development Committee, reported discussion of the following:

- Special Event Permit code criteria for tier levels and fees.
- Development Report – some things have slowed down a bit, but Commercial development remains strong.
- Council direction to staff regarding homeowner associations (HOAs) and whether HOAs leverage better quality developments.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



- The Senior/Community Center building's current condition and possible future costs and how to budget for those services.

Councilor Bode, Public Works Committee, reported discussion of the following:

- Interlocal agreement with Whatcom Conservation District.
- Proposed utility rate increases due to sewer plant upgrade costs to assist with new construction and increased number of businesses coming into the city.

Mayor Korthuis announced a 2024 opening for the LEOFF I board and the process for committee selection next year. This process is based on council seniority. The selection continues until all committees have been filled.

Gary Vis, Chamber Director

- The Chamber is seeing some slowdown in the local economy and thinks it wise for council and community to consider some upcoming financial strategies.

7. EXECUTIVE SESSION

The council did not hold an executive session.

8. ADJOURNMENT

November 6, 2023, regular session of the Lynden city council adjourned at 7:26 p.m. but then reconvened at 7:26 p.m. to address the upcoming Nooksack Valley Disposal rate increase for 2024.

Motion made by Councilor De Valois, seconded by Councilor Strengholt, to set a public hearing at the next council meeting to review the upcoming Nooksack Vally Disposal rates. Motion passed on a 6-0 vote.

Pamela D. Brown, City Clerk

Scott Korthuis, Mayor

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Approval of Payroll and Claims	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:	None	
Summary Statement:	Approval of Payroll and Claims	
Recommended Action:	Approval of Payroll and Claims	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Set Public Hearing for Proposed Nooksack Valley Disposal (NVD) 2024 Rate Increase	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Nooksack Valley Disposal Request for 2024 Rate Increase and Franchise Agreement Rate Adjustment Franchise Agreement Rate Adjustment Addendum	
Summary Statement:	<p>Nooksack Valley Disposal (NVD) is requesting a rate increase for their solid waste services due to their increasing disposal fees. NVD currently has a 20-year franchise agreement with the City of Lynden (through 2036) for curbside garbage pickup and recycling program services. The Public Works Committee reviewed the proposed increase at their November 1st meeting and concurred to recommend setting a Public Hearing for December 4, 2023.</p> <p>If approved these new rates would become part of the existing Franchise Agreement and take effect 45 days after the Public Hearing (January 18, 2024).</p>	
Recommended Action:	That City Council set a Public Hearing for December 4, 2023, to hear public comment on Nooksack Valley Disposal’s request for a 2024 rate increase.	

RATE ADJUSTMENT ADDENDUM
PURSUANT TO
FRANCHISE AGREEMENT
BETWEEN NOOKSACK VALLEY DISPOSAL
AND CITY OF LYNDEN

Pursuant to Section 7 of that certain Franchise Agreement granted to Nooksack Valley Disposal in 2016, Nooksack Valley Disposal proposes a rate adjustment (see below). The City Council of the City of Lynden approved the proposed rate adjustment at their December 4, 2023 meeting.

2024 RATES

Residential

Base Fee	\$ 7.40 per month
Per Cart	\$ 7.50 per dump
Optional Yard Waste	\$11.50 per month

Commercial

Can	\$ 4.50 per dump
Cart	\$ 8.60 per dump
1.0 Yard	\$24.30 per dump
1.5 Yards	\$31.40 per dump
2.0 Yards	\$39.90 per dump

Schools and Rest Homes

1.0 Yard	\$22.30 per dump
1.5 Yards	\$29.40 per dump
2.0 Yards	\$37.90 per dump

Dumpster Rental Fees

1.0 Yard	\$12.00 per month
1.5 Yards	\$13.00 per month
2.0 Yards	\$14.00 per month

The 2024 Rates replace the rates set forth in Section 6 of the Franchise Agreement. Any rates not replaced shall remain in full force and effect. This rate adjustment will be effective January 18, 2024.

City of Lynden

Nooksack Valley Disposal

By: Scott Korthuis, Mayor

By: Dan Leidecker, President

Dated: _____

Dated: _____

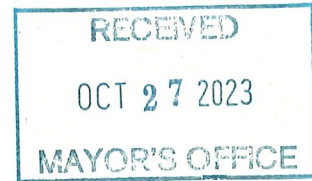
NOOKSACK VALLEY

D . I . S . P . O . S . A . L

10

P.O. Box 267 250 Birch Bay-Lynden Rd. Lynden, WA 98264 (360) 354-3400

Mayor Scott Korthuis
Lynden City Council
Lynden, WA 98264



Dear Mayor Scott and Council Members,

Nooksack Valley Disposal has been happy to provide both garbage and recycling services to the City of Lynden for over 40 years. Because of increasing disposal fees and other rising costs, we are coming to the City with a rate increase request, to become effective January 1, 2024.

Recycling and Disposal Services has announced they will be increasing our garbage disposal fees effective January 1 2024. Our cost per ton will be increased by 5.4%, or \$6.04 per ton more than we are currently charged. We are requesting a \$.20 per cart charge to cover this increase.

The markets for recycling have continued to remain very weak, and 2023 will be the most expensive year ever for processing costs for our company. Paper, plastic, and glass are currently charged near \$100 per ton or more at the processing facility in Ferndale. As a result, we are requesting a \$.40 per month increase to our base fee for residential recycling.

As outlined in our Municipal Solid Waste Agreement with the City of Lynden, Section 7A, we are giving request to revise our rates for residential and commercial services at least 60 days prior to their implementation. We have included a schedule with the current and proposed rates. The average household set out 2.6 carts of garbage per month this past year. The proposed increase would raise the average residential bill by \$.92 per month in total for garbage and recycling.

We continue to strive to provide excellent customer service, while maintaining our position as one of the lowest priced and most efficient providers of garbage and recycling pickup in Northwest Washington. We will continue to have some of the lowest prices of any of the comparable nearby cities. We look forward to continuing our good relationship with the City and to providing clean, safe, and dependable garbage and recycling services in the years ahead.

Sincerely,

A handwritten signature in blue ink that reads "Dan Leidecker".

Dan Leidecker, President

A handwritten signature in blue ink that reads "Calvin Den Hartog".

Calvin Den Hartog, General Manager

"Our business is picking up."

Printed on Recycled Paper

**Nooksack Valley Disposal and Recycling
Current and Proposed Rates
2023 and 2024**

<u>Residential</u>	<u>Current</u>	<u>Proposed</u>	<u>Increase Proposed</u>
Base Fee	\$ 7.00	\$ 7.40 per month	5.7%
Per Cart	\$ 7.30	\$ 7.50 per dump	2.7%
Optional Yardwaste	\$ 11.50	\$ 11.50 per month	0%

Commercial

Can	\$ 4.40	\$ 4.50	2.3%
Cart	\$ 8.40	\$ 8.60	2.4%
1-yard	\$ 23.70	\$ 24.30 per dump	2.5%
1.5 yard	\$ 30.60	\$ 31.40	2.6%
2-yard	\$ 38.90	\$ 39.90	2.6%

Schools and Rest Homes

1-yard	\$ 21.70	\$ 22.30 per dump	2.8%
1.5 yard	\$ 28.60	\$ 29.40	2.8%
2 yard	\$ 36.90	\$ 37.90	2.7%

Dumpster Rental Fees

1-yard	\$ 12.00	\$ 12.00 per month
1.5 yard	\$ 13.00	\$ 13.00
2-yard	\$ 14.00	\$ 14.00

NOOKSACK VALLEY

D ▲ I ▲ S ▲ P ▲ O ▲ S ▲ A ▲ L

P.O. Box 267 250 Birch Bay-Lynden Rd. Lynden, WA 98264 (360) 354-3400

The following is a comparison of garbage/recycling rates from cities in the area. The rates compare what a 60-68 gallon cart emptied every-other-week or weekly would cost. Every-other-week recycling is included in all prices. Some cities do not offer carts, so an equivalent volume using a 32-gallon container is used for comparison.

<u>City</u>	<u>EOW</u>		<u>Weekly</u>		<u>2-yd Dumpster</u>
Lynden (current)	\$21.60 per month		\$36.20 per month		\$38.90 per dump
Lynden (proposed)	\$22.40 per month	3.7%	\$37.40 per month	3.3%	\$39.90 per dump 2.6%
Anacortes	\$33.89 per month		\$47.18 per month		\$74.06 per dump
Bellingham	\$29.45 per month		\$53.93 per month		\$41.82 per dump
Duvall	\$33.97 per month		\$45.67 per month		\$47.25 per dump
Everett	\$28.62 per month		\$35.63 per month		\$35.61 per dump
Ferndale	\$23.54 per month		\$41.92 per month		\$66.98 per dump
Friday Harbor	\$36.00 per month		\$68.00 per month		\$100.00 per dump
Marysville	\$32.59 per month		\$50.68 per month		\$46.70 per dump
Monroe	\$22.69 per month		\$32.89 per month		\$43.74 per dump
Mt. Vernon	\$34.24 per month		\$46.89 per month		\$38.84 per dump
Oak Harbor	\$23.38 per month		\$39.19 per month		\$50.41 per dump
Sedro-Wooley	\$34.25 per month		\$42.50 per month		\$52.63 per dump

The typical household in Lynden sets out an average of 2.6 carts per month.

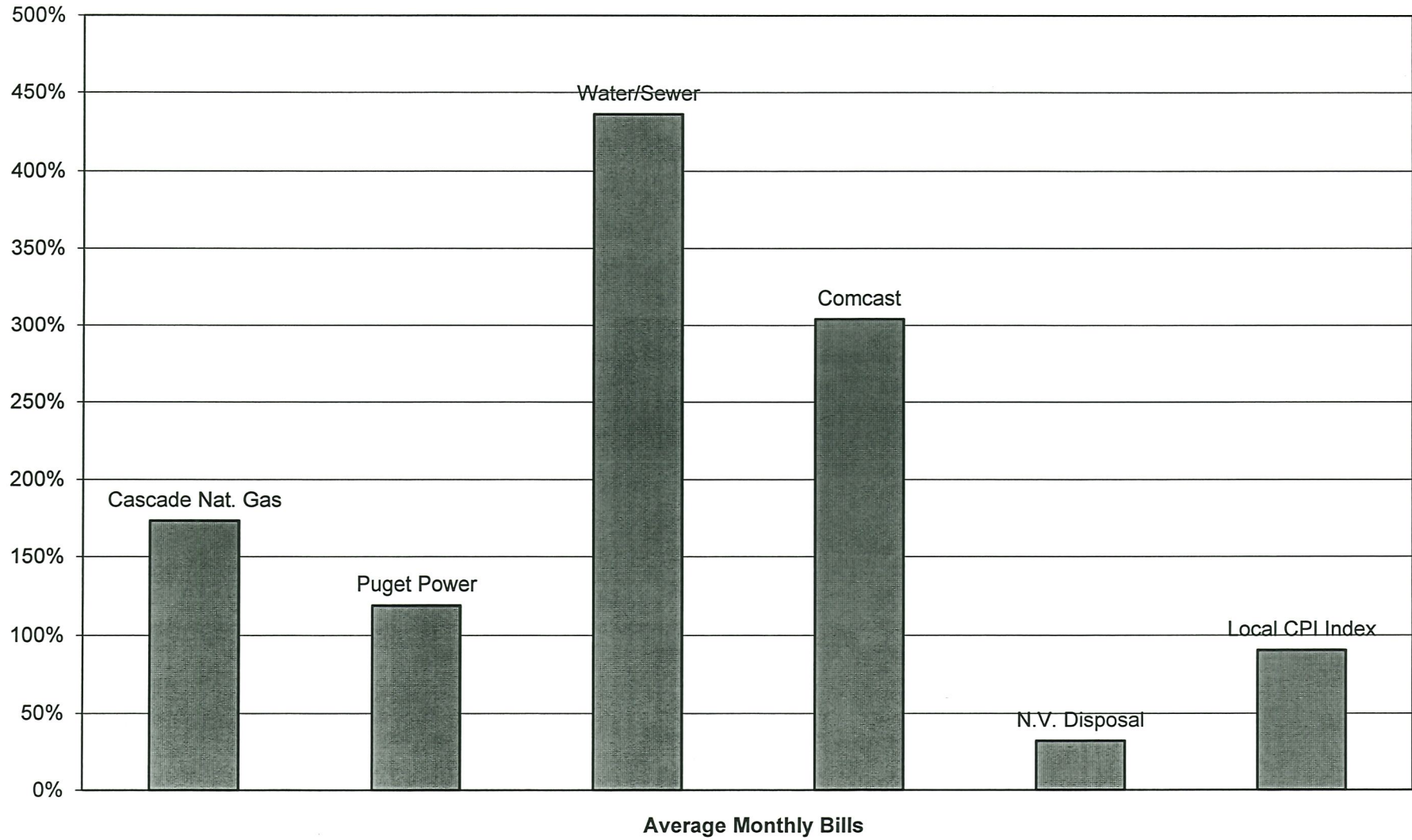
Lynden Yardwaste Rates are \$8.50 for EOW cart, \$11.50 for Weekly cart, compared to \$12.62 for EOW and \$25.34 for 2 carts EOW in Bellingham and \$15.14 for EOW and \$30.24 for 2 carts EOW in Ferndale.

"Our business is picking up."

NOOKSACK VALLEY DISPOSAL AND RECYCLING
 STATEMENT OF OPERATIONS - LYNDEN
 FOR THE 12 MONTHS ENDING SEPTEMBER 30, 2023

	<u>Refuse</u>	<u>Recycling</u>
REVENUES:		
Residential	\$ 1,391,811	\$ 350,612
Commercial	\$ 1,398,938	
Pass-through dump fees	\$ 159,509	
 Total revenues	 \$ 2,950,258	 \$ 350,612
OPERATING EXPENSES:		
Wages	\$ 601,516	\$ 148,773
Dump fees/Recycle Fees	\$ 1,000,991	\$ 75,010
Pass-through dump fees	\$ 159,509	\$ -
Repairs and maintenance	\$ 54,396	\$ 10,346
Fuel and oil	\$ 142,651	\$ 23,217
Tires and tubes	\$ 31,484	\$ 5,370
Depreciation	\$ 168,857	\$ 24,032
Insurance	\$ 23,050	\$ 6,542
Medical insurance	\$ 83,700	\$ 25,955
Business taxes	\$ 70,332	\$ 6,896
Property taxes	\$ 6,100	\$ 946
Taxes and licenses	\$ 7,122	\$ 1,204
Payroll taxes	\$ 73,208	\$ 17,014
Retirement fund	\$ 88,906	\$ 17,259
Utilities	\$ 4,270	\$ 1,202
Telephone	\$ 976	\$ 273
Office	\$ 23,342	\$ 5,832
Postage	\$ 14,184	\$ 4,016
Advertising	\$ 1,440	\$ 399
Travel	\$ 3,018	\$ 355
Dues and subscriptions	\$ 7,711	\$ 1,188
Professional fees	\$ 15,256	\$ 2,920
Donations	\$ 1,834	\$ 350
Miscellaneous	\$ 1,496	\$ 284
 Total operating expenses	 \$ 2,585,350	 \$ 379,383
 INCOME (LOSS) FROM OPERATIONS	 \$ 364,908	 \$ (28,771)

1998-2023 Rate Changes



CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	November 20, 2023	
Name of Agenda Item:	Whatcom Conservation District 2024 Interlocal Agreement	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
Attachments:		
Contract		
Summary Statement:		
<p>Staff is recommending another Interlocal Agreement with the Whatcom Conservation District (WCD) for a Stormwater and Water Conservation Community Education and Outreach Program in 2024. Some of their work scope fulfills City requirements under its NPDES Phase II Stormwater Permit. Their water conservation efforts fulfill certain Water Use Efficiency requirements from the State Department of Health.</p> <p>Additionally, through this agreement, the City participates in the Nooksack Basin Water Quality studies that evaluate results of fecal coliform testing to identify sources of contamination. This aids Whatcom County's Portage Bay Shellfish District.</p> <p>The Whatcom Conservation District Board approved this Interlocal Agreement at their November meeting. The Public Works Committee reviewed this agreement at their meeting on November 1, 2023, and concurred to recommend approval by City Council.</p>		
Recommended Action:		
That City Council approve the Interlocal with the Whatcom Conservation District and authorize the Mayor's signature on the agreement.		

**INTERLOCAL AGREEMENT
CITY OF LYNDEN - WHATCOM CONSERVATION DISTRICT**

Stormwater and Water Conservation Community Education and Outreach Program

This Agreement is made and entered into by the City of Lynden, a Washington municipal corporation, hereinafter referred to as the “City”, and the Whatcom Conservation District, a Washington governmental subdivision, hereinafter referred to as the “WCD”, collectively referred to as “Parties”, to establish an arrangement pursuant to RCW Chapter 39.34 wherein the City will provide funding to the WCD to provide community education and outreach to the mutual advantage of each jurisdiction.

WHEREAS, Whatcom County and WCD are currently working together on a Pollution Identification and Correction (PIC) program as high priority focus under the Portage Bay Shellfish Recovery Plan; and

WHEREAS, a PIC program is a data-driven program guiding pollution tracking activities to areas with the greatest water quality problems to improve and protect water quality; and

WHEREAS, the Fishtrap Creek Watershed has been identified as a contributing source of bacteria within the Portage Bay Shellfish Protection District; and

WHEREAS, the City operates a Municipal Separate Storm Sewer System (MS4) under an NPDES Phase II Stormwater Permit issued by the Washington State Department of Ecology, which includes fecal coliform monitoring to address Total Maximum Daily Load (TMDL) limits on the Nooksack River; and

WHEREAS, the City’s MS4 discharges stormwater into Fishtrap Creek, which discharges into the Nooksack River, and fecal coliform counts taken by Whatcom County at various locations on Fishtrap Creek within the City limits exceed Washington Department of Health (DOH) shellfish standards; and

WHEREAS, the sampling methodology and the public information materials that have been developed under the existing Whatcom County and WCD partnership could be easily extended and adapted to serve the needs of the City; and

WHEREAS, the most efficient use of resources is to have the WCD expand its outreach and education programs consistent with the specific needs of the City to help improve and protect water quality and quantity in Fishtrap Creek and the Nooksack River; which are part of the Portage Bay Shellfish Protection District; and

WHEREAS, the City is expanding its water conservation program to include educational outreach on conservation within the public schools; and

WHEREAS, the WCD is equipped to provide the additional water conservation public outreach services needed by the City; and

WHEREAS, it is in the best interest of each party to enter into this Interlocal Agreement; and

WHEREAS, the recitals herein are a material part of this agreement;

NOW THEREFORE, the WCD and City agree as follows:

- I. *Purpose:* The purpose of this Agreement is to set the terms whereby the City will make available funds to the WCD to implement a community education and outreach program for stormwater pollution prevention and water conservation to residents within the City of Lynden.
- II. *Administration:* No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- III. *Whatcom Conservation District Responsibilities:* The WCD hereby agrees to provide services as described in Exhibit A, Scope of Work, attached hereto.
- IV. *City Responsibilities:* The City hereby agrees to reimburse the WCD, not to exceed the total budget amount allocated to the WCD as shown in Exhibit B attached hereto, for the costs in providing and performing the services stated in the scope of work.
- V. *Payment:* The WCD shall submit itemized invoices in a format approved by the City. Each request for payment shall include invoices that detail work performed and supplies or materials purchased. The City agrees to pay WCD on a monthly basis, commensurate with portions of the work completed, for performing the work outlined in the scope of work (Exhibit A). WCD's compensation shall be paid monthly on account, for the services performed during that month, with payment due within 30 days of the invoice date. The City of Lynden Finance Department must receive invoices from WCD by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing in the current month's run. The Finance Department is required to seek City Council approval to pay invoices during the second Council meeting of the month (third Monday) before payment can be rendered. All invoices must include the services rendered, according to the scope of work (Exhibit A) for which payment is to be rendered. WCD is also responsible for providing a cost tracking report for declining budget balances on invoices. Invoices will be reviewed for completeness before payment will be authorized. The City will compensate the WCD for services rendered within thirty (30) days following receipt of an approved invoice, provided all other terms and conditions of the contract have been met and are certified as such by the Contract Administrator.
- VI. *Term:* This Agreement shall be effective from January 1, 2024 through December 31, 2024; however, this agreement may be extended an additional year if both parties agree to the terms.
- VII. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the City of Lynden Public Works Department Director and the WCD District Manager, or their respective designees.
- VIII. *Treatment of Assets and Property:* No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- IX. *Relationship of the Parties:* The Parties are separate entities organized under the laws of the State of Washington and this Agreement is not intended to create any new legal or corporate entity. No agent, employee, servant, or representative of any party shall be deemed to be an

employee, agent, servant, or representative or any other party for any purpose. Each party will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement.

- X. *Indemnification:* Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.
- XI. *Non-discrimination in Employment and Client Services:* Neither Party shall discriminate against any person on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical handicap. No Party shall discriminate against any employee or applicant for employment because of handicap; provided that, this provision shall not apply if the particular disability prevents proper performance of the work involved.
- XII. *Termination:* This Agreement may be terminated by either party effective upon sixty (60) days written notice, mailed postage pre-paid by certified mail, return receipt requested, to the other party's last known address for the purposes of giving notice under this section. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- XIII. *Modifications:* This Agreement may be changed, modified, amended or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- XIV. *Applicable Law:* In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising here from shall be in the Superior Court of the State of Washington in and for Whatcom County.
- XV. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.
- XVI. *Entire Agreement:* This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.
- XVII. *Counterparts:* This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.
- XVIII. *Effective Date:* This Agreement shall be in full force and effect upon filing with the Whatcom

County Auditor or upon listing by subject on the City’s web site, whichever method of filing is chosen.

IN WITNESS WHEREOF, the Parties have signed this Agreement this ____ day of _____, 2023.

WHATCOM CONSERVATION DISTRICT

CITY OF LYNDEN

By: _____
Brandy Reed, WCD District Manager

By: _____
Scott Korthuis, Mayor

Approved as to form:

Bob Carmichael, City Attorney

Jon Hutchings Director of Public Works

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM).

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State
of Washington, residing at_____.
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM).

I certify that I know or have satisfactory evidence that Brandy Reed is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the District Manager for the Whatcom Conservation District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

NOTARY PUBLIC in and for the State
of Washington, residing at_____.
My commission expires: _____

EXHIBIT A - SCOPE OF WORK

Task 1: Program Administration

The WCD will track and report education and outreach activities and landowner assistance provided as part of the Community Education and Outreach Program.

Deliverables:

1. Invoices will be submitted by the 15th of every month or quarterly if no work was performed in a given month.
2. A short progress report summarizing work performed during the invoice period will be included.
3. Annual written reports to include a summary of outreach & education efforts
4. Attend City of Lynden Stormwater meetings when needed

Task 2: Stormwater Education and Outreach

WCD will collaborate with the City to implement a community education and outreach program for stormwater pollution prevention to residents within the City of Lynden.

Tasks include, but are not limited to the following:

- Develop and distribute education materials on Stormwater
- Implement, monitor and support of pet waste educational campaign
- Coordinate and evaluate Septic Smart initiative
- Coordinate and evaluate school-based Stormwater
- Coordinate public participation activities
- Coordinate water quality sampling efforts to identify areas of concern
- Partner with other organizations to amplify efforts
- Assist with developing supplemental funding proposals as needed

Deliverables:

1. Educational materials generated
2. Report on number of students, teachers and classrooms visited
3. Water Quality data will be compiled and reported to City
4. Document response procedure for water quality reporting
5. Reports on other jurisdictions efforts in Stormwater
6. Other projects for specific audiences as needed

Task 3: Water Conservation Education and Outreach

WCD will collaborate with the City to implement a community education and outreach program for water conservation to residents within the City of Lynden.

Tasks include, but are not limited to the following:

- Develop and distribute education materials on Water Conservation
- Coordinate and evaluate school-based Water Conservation education program
- Coordinate and administer water conservation rebate program and home audit
- Partner with other organizations to amplify efforts
- Assist with developing supplemental funding proposals as needed

Deliverables:

1. Educational materials generated (CCR, web design, print materials)
2. Report on number of students, teachers and classrooms visited
3. Report on number of rebate applications and home audits completed
4. Other projects for specific audiences as needed

Cost Center	Task 1: Admin	Task 2: Stormwater	Task 3: Water Conservation	Documentation Needed with Invoice
Salary & Benefits	\$ 5,061.84	\$ 28,232.18	\$ 14,291.20	Timesheets
Overhead 30%	\$ 1,518.55	\$ 8,469.65	\$ 4,287.36	
Total personnel plus overhead	\$ 6,580.39	\$ 36,701.83	\$ 18,578.56	
Supplies/postage		\$ 1,000.00	\$ 1,000.00	Receipts or invoices
Mileage		\$ 150.00	\$ 100.00	Mileage log or travel voucher
Total	\$ 6,580.39	\$ 37,851.83	\$ 19,678.56	
	Contract total	Salary & Benefits		\$ 47,585.22
		Overhead 30%		\$ 14,275.57
		total personnel plus overhead		\$ 61,860.78
		Supplies/postage		\$ 2,000.00
		Mileage		\$ 250.00
		Total		\$ 64,110.78

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	November 20, 2023	
Name of Agenda Item:	Welch Ecological Services Agreement 2024	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Contract		
Summary Statement:		
<p>Welch Ecological Services has provided support for the City’s National Pollution Discharge Elimination System (NPDES) stormwater permit since the City was reclassified to Phase II in 2014. The contract for 2024 includes support to the City for the following:</p> <ol style="list-style-type: none"> Administration of the Municipal Stormwater Management Program, including annual reporting; Stormwater Management Planning; Education, Outreach and Public Involvement; Illicit Discharge Detection and Elimination; Controlling Runoff form New Development, Redevelopment, and Construction Sites; Operations and Maintenance Stormwater Protocols; Source Control Program; Grant Funding Application and Administration; Industrial Stormwater Permits for the Airport and Wastewater Treatment Plant. <p>The Public Works Committee reviewed this contract at their meeting on November 1 and concurred to recommend renewing the contract with Welch Ecological Services. The funding for this contract is included in the 2024 Stormwater (Fund 410) Budget which includes grant funding from the Department of Ecology.</p>		
Recommended Action:		
That City Council approve the agreement with Welch Ecological Services for 2024 and authorize the Mayor’s signature on the contract..		

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

**CITY OF LYNDEN
300 4TH STREET
LYNDEN, WASHINGTON 98264**

AND

**WELCH ECOLOGICAL SERVICES
1155 NORTH STATE ST #411
BELLINGHAM, WASHINGTON 98225**

SERVICES: NPDES Phase II Stormwater Permit Compliance Support

THIS AGREEMENT combines all understanding between the Parties regarding services for the Project named above and supersedes all prior proposals, quotations, solicitations, negotiations, representations, agreements, or understandings, whether written or oral.

The performance of the services described here, as well as payment for such services, shall be on the terms and conditions presented in this Agreement and the following Sections which are attached and incorporated by reference which, taken together, shall constitute the whole Agreement.

- Section 1 - Relationship of the Parties
- Section 2 - Compensation
- Section 3 - General Provisions
- Section 4 - Scope of Services
- Section 5 - Extent of Agreement

SECTION 1: RELATIONSHIP OF THE PARTIES

The City of Lynden hereby contracts with Welch Ecological Services ("Consultant") to perform the services described in Exhibit A of this Agreement.

This Agreement shall inure to the benefit of and be binding upon the successors, assigns, and legal representatives of each of the Parties hereto. The Consultant may use subconsultants and will notify and obtain approval from the City prior to contracting with a subconsultant(s). Any other assignment or transfer of an interest in this Agreement, by either Party, without the written consent of the other shall be void.

SECTION 2: COMPENSATION

Compensation to the Consultant shall be in accordance with the Consultant's budget for the Scope of Work described in Exhibit A.

The budgeted total cost for each requested service shall be a "not to exceed" cost. The City shall pay all the Consultant's invoices in accordance with Section 3.2 of this Agreement.

SECTION 3: GENERAL PROVISIONS

3.1 SERVICES

The Consultant shall be consultant and advisor to the City and shall not be agent or representative of the City. The Consultant represents that the studies, projections, plans, reports, design drawings, specifications, cost estimates, and all other engineering, consulting, and analytical services furnished under this Contract will be in accordance with generally accepted practices.

The Consultant hereby agrees to exercise usual and customary care in efforts to comply with all federal; state and local laws, rules and ordinances applicable to the work and to this Agreement in force at the time of Consultant's performance of the work hereunder.

The Consultant makes no other representation or warranty, express or implied.

3.2 PAYMENT CONDITIONS

The City agrees to pay the Consultant on a monthly basis, during the term of the project, commensurate with portions of the work completed. The Consultant's compensation shall be paid monthly on account, for the services performed during that month, with payment due within 30 days of the invoice date. The City of Lynden, Finance Department, must receive invoices from vendors by the 5th of each month (or the following Monday if the 5th falls on a weekend day) for processing in the current month's run. The Finance Department is required to seek City Council approval to pay invoices during the second City Council meeting of the month (third Monday) before payment can be rendered. **All invoices must include the Project name and number and the services rendered, according to the approved scope of work, for which payment is to be rendered. Consultant is responsible for providing a cost tracking report for fund allocations and for declining budget balances on invoices. Invoices and supporting documentation will be reviewed for completeness before payment will be authorized.**

The Consultant will not incur any liability for damages of any type or nature when the performance is stopped as a result of stopping performance of services due to the failure of the City to pay for services rendered.

3.3 GENERAL CITY RESPONSIBILITIES

The City shall provide full information regarding its requirements for the services to be performed by the Consultant, and any circumstances known to the City that would hinder the Consultants performance or make performance by the Consultant more difficult or expensive than would ordinarily be expected. The City shall furnish any required information and services, and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Consultant's services. If the City observes or otherwise becomes aware of any fault or defect in the services performed by the Consultant, the City shall promptly give written notice thereof to the Consultant.

3.4 RESPONSIBILITY

The Consultant represents that the services shall be performed within the limits prescribed by this Agreement in a manner consistent with that type of care and skill ordinarily exercised by other consultants under similar circumstances. No other representations to the City, express or implied, and no warranty or guarantee is included or intended in the Agreement, or in any report, opinion, document, or otherwise. The Consultant shall not accept other tasks, within the City of Lynden, that could be viewed as a conflict of interest.

3.5 LIABILITY FOR CLAIMS

The City shall, to the extent of its negligence and/or the negligence of its agents or employees, defend and indemnify the Consultant against any and all liability for personal injury (including death resulting therefrom) or property damage of any kind, sustained by any person and caused by or resulting from the concurrent negligence of the City, its agents, or employees, and the

Consultant, its agents, or employees. Likewise, the Consultant, shall, to the extent of its negligence and/or the negligence of its agents or employees, defend and indemnify the City against any and all liability for personal injury (including death resulting therefrom) or property damage of any kind, sustained by any person and caused by or resulting from the concurrent negligence of the Consultant, its agents, or employees, and the City, its agents, or employees. For purposes of this provision, the City and Consultant agree to waive the statutory immunity under Title 51 of the Revised Code of Washington, and the parties, by this Agreement, certify and warrant that its waiver of statutory immunity was mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

3.6 INDEMNIFICATION

The City agrees that the following language shall be included in any agreement between the City and any third person and/or any third person and fourth person ("Subconsultant") for work of any kind or nature to be performed in connection with the Project, including without limitation, construction services.

"The Consultant shall defend, indemnify, and hold harmless the City and its respective officers, agents, and employees, from and against all damages, claims, losses, demands, suits, judgments, actions, and costs, including reasonable attorney's fees and expenses, arising out of or resulting from the performance of the work, provided that any such damages, claim, loss, demand, suit, judgment, cost, or expense:

- (1) Is attributable to bodily injury, sickness, disease, or death or to injury to, or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom or to purely economic loss; and
- (2) Is caused in whole or in part by any negligent act or omission on the part of the Subconsultant, anyone directly or indirectly employed by any one of them, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- (3) It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Consultant and City. The provisions of this section shall survive the expiration or termination of this Agreement."

3.7 INSURANCE

The Consultant as co-owner of Welch Ecological Services does not require insurance coverage for claims under the Workmen's Compensation Act and claims for bodily injury, death, or property damage, which might arise from the performance of their services under this Agreement. Limits of liability shall be as follows:

Professional Liability/ Errors & Omissions	\$1,000,000	each occurrence
Professional Liability/Errors & Omissions	\$1,000,000	annual aggregate
Comprehensive General	\$1,000,000	each occurrence
Liability	\$2,000,000	annual aggregate
Automobile Liability	N/A	No commercial vehicles
Worker's Compensation	N/A	No Employees

The City of Lynden shall be listed as additional insured on all applicable certificates of insurance. Consultant will provide City with current insurance certificate upon request.

3.8 OPPORTUNITY TO REMEDY

The parties agree that in the event of alleged error or omission by the Consultant in performance of services under the Scope of Services, the City shall notify the Consultant promptly in writing of that fact and allow the Consultant a reasonable time to remedy the problem. Upon notice the Consultant shall promptly review and remedy the problem at the cost of the Consultant. Where responsibility for a problem may be shared by the Consultant and others, the Consultant shall endeavor to remedy the Consultant's share, at the cost of the Consultant, and to cooperate with others involved. If the Consultant demonstrates that it is not at fault, for a problem identified by the City under this Section, the City shall reimburse the Consultant for its costs of investigating the problem.

3.9 CONTRACT TERM AND TERMINATION

- A. This Agreement shall have a term of one (1) year ("Term"), commencing on January 1, 2024, through December 31, 2024, and may be extended by mutual written agreement of the Parties. Nothing in this section shall prohibit or otherwise restrict the City's ability to terminate this Agreement at any time for convenience or for cause as set forth in Section 3.
- B. **Termination Without Cause.** Either Party may, at its sole discretion, terminate this Agreement by giving the other Party a 60-day written Notice of Termination. The City shall pay the Consultant for services rendered under the Scope of Work up to the date such written Notice of Termination is issued, and for such services provided in good faith thereafter up to the effective termination date; provided that, the City shall have the authority to require the Consultant to stop work at any time following issuance of the Notice of Termination by providing such additional written notice.
- C. **Termination with Cause.** If the Consultant fails to perform the Scope of Services in the manner called for in this Agreement, or unreasonably delays, postpones, or abandons performance thereof, or if the Consultant fails to comply with any other provision of this Agreement and fails to correct such noncompliance within five (5) business days of receiving the City's written notice thereof, the City may immediately terminate this Agreement for cause by providing written notice thereof. If payment due from City to Consultant becomes delinquent by more than sixty (60) days, the Consultant may terminate this Agreement.

3.10 OWNERSHIP AND USE OF DOCUMENTS

- A. Drawings, specifications, documents, and electronic files prepared by the Consultant pursuant to this Agreement shall become the property of the City upon final payment to the Consultant. The Consultant may retain copies, including reproducible copies of drawings and specifications for information and reference. The Consultant does not intend or represent such drawings and specifications to be suitable for reuse by the City or others for purposes beyond the Scope of Work. The City shall retain copyrights to any and all documents produced by it during the course of this Agreement. The City shall indemnify, hold harmless, and defend the Consultant from and against any and all claims asserted by any party in any manner resulting from unauthorized use by the City, of the Consultant-prepared drawings, specifications, or other documents.

- B. The Consultant shall maintain books, records, and documents that sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as necessary to ensure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other government officials authorized by law to monitor this Agreement.
- C. The Consultant shall retain all books, records, documents, and other material relevant to this Agreement for six (6) years following its expiration or termination. The Consultant agrees that the City or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

3.11 DISPUTE RESOLUTION

Any dispute arising out of the terms and conditions of this Agreement shall be subject to the following mediation process, as a condition precedent to filing any legal cause of action. If a dispute shall arise, a meeting shall be held promptly between the Parties to attempt in good faith to negotiate a resolution to the dispute. For purposes of this Section 12, “promptly” shall mean within fourteen (14) calendar days of a Party requesting a meeting to resolve a dispute. If within ten (10) days after such meeting the Parties have not succeeded in resolving the dispute, the dispute shall be mediated. Either Party may provide written notice to the other that the dispute shall be submitted to mediation and a mediator shall be selected. In the event that within seven (7) days of receipt of said written notice the Parties are unable to agree on a mediator, either Party may request appointment of a mediator by any Judge of the Whatcom County Superior Court, sitting in Chambers, and the Judge is hereby authorized to select a mediator. Both Parties shall cooperate to assure that mediation occurs in a timely manner and both Parties shall supply all materials provided to the mediator to the other Party at least two (2) days before mediation. Engaging in mediation shall not affect any claim, right, remedy, or defense of either Party. Should mediation prove unsuccessful, all claims, rights, remedies and defenses of each Party shall be preserved. Mediation shall be terminated upon (a) successful resolution of the dispute; (b) written declaration by the mediator of an impasse between the Parties; or (c) following completion of two or more mediation sessions held on separate days, written declaration by one of the Parties of an impasse. Each Party shall share equally in the fees and expenses associated with mediation, including fees and expenses of the mediator; provided that, each Party shall bear its own costs, including witness fees, and costs, associated with mediation.

3.12 CLAIMS AND DISPUTES

At the City's request, and only if the City and the Consultant first agree on compensation to the Consultant, the Consultant will assist the City in reviewing and evaluating claims and disputes, preparing information for the City's legal counsel, providing services as witness in litigation or arbitration to which the City is a party, and providing other services in connection with actual or potential claims or disputes, regardless of whether or not the Consultant is named in such legal action. In no case shall the Consultant be obligated to provide such services until the method of compensation therefore is agreed.

3.13 COMPLIANCE WITH EQUAL OPPORTUNITY LEGISLATION

The Consultant agrees to comply with all federal, state, and local laws governing equal opportunity employment. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, marital status, national origin, or the presence of any sensory, mental, or physical handicap, unless based on a bona fide occupational qualification. Such action includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Consultant further agrees to maintain notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause.

The Consultant will ensure that applicants for employment, and all employees during their employment, are treated without regard to race, creed, color, sex, age, marital status, national origin, or the presence of any sensory, mental, or physical handicap, unless based on a bona fide occupational qualification. The Consultant agrees to take affirmative action to ensure that all of its employees, agents, and subconsultants adhere to this provision.

The Consultant will make positive efforts to utilize small businesses and minority-owned business sources of supplies and services. Efforts will allow these sources the maximum feasible opportunity to compete for sub-agreements and contracts to be performed utilizing federal grant funds.

3.14 REFERENCE INFORMATION

If the Consultant is required by the City to rely upon information provided by or through the City or a third party to perform the Consultant's services, the Consultant shall not be liable for errors or omissions in the Consultant's services caused by errors or omissions in said information.

3.15 ADDITIONAL TAXES

Since the Consultant's costs can be adversely affected through the application of new, additional, or retroactive taxes or charges (for instance, a sales tax on services or a new income tax), amounts due to the Consultant shall be increased equitably to compensate for any additional taxation charges, over those currently in effect, or for taxes retroactively determined to be due on services rendered, or on products delivered by the Consultant to the City.

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by and between the City and the Consultant, that this Agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit in equity, or judicial proceeding, for the enforcement of this Agreement, or any of the provisions contained therein, shall be instituted and maintained only in the Whatcom County Superior Court, Bellingham, Washington.

3.16 SUBCONTRACTING OR ASSIGNMENT.

The Consultant shall not subcontract or assign any portion of this Agreement beyond what is addressed in the attached Scope of Work without prior written approval of the City. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment made

pursuant to this Agreement and Consultant shall incorporate by reference this Agreement in its contracts with its subconsultant(s) or assignees.

3.17 FORCE MAJEURE.

Neither Party shall be liable to the other Party for failure or delay in performance of this Agreement due to acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either Party or as otherwise defined by law, provided the delayed Party shall make reasonable efforts to avoid or mitigate such delay and shall promptly notify the other Party in writing of the cause of the delay and its extent.

SECTION 4: SCOPE OF SERVICES

The Consultant agrees to perform the services requested per the attached Exhibit A Scope of Services.

The Consultant will make every attempt to complete the work within the estimated budget. However, should changes in the Scope of Service require the Consultant to expend more time or incur more expenses than anticipated, the Consultant will notify the City, and upon concurrence by the City, an amendment to the Agreement will be prepared and executed.

SECTION 5: EXTENT OF AGREEMENT

This Agreement contains all of the terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement. This Agreement may only be amended by written agreement of the parties.

SECTION 6: NOTICES

In every case where, under any of the provisions of this Agreement or in the opinion of either the City or the Consultant or otherwise, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the Public Works Director, if given by the Consultant, or to the President or Secretary of the Consultant personally, if given by the City; or (2) mail the same or a copy thereof by registered or certified mail, postage prepaid, addressed to the other party at such address as may have theretofore been designated in writing by such party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the City for the purpose of mailing such notices shall be as follows:

City of Lynden
Public Works Director
300 4th Street
Lynden, Washington 98264

and the address of the Consultant shall be as follows:

Welch Ecological Services LLC
Karen F. Welch, M.E.M.
Principal Hydrologist
1155 North State St. #411
Bellingham WA 98225

STATE OF WASHINGTON)
) ss
COUNTY OF)

I certify that I know or have satisfactory evidence that Scott Korthuis signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: _____

NOTARY PUBLIC in and for the State of Washington,
Residing at _____.
My commission expires _____.

EXHIBIT A

**Scope of Work
NPDES Phase II Stormwater Permit
Compliance Support for the City of Lynden**

Welch Ecological Services, LLC has prepared this Scope of Work to provide compliance support to the City of Lynden for meeting the terms and conditions of its Western Washington Phase II Municipal Stormwater (NPDES) Permit requirements for calendar year 2024. Welch Ecological will work in conjunction with subconsultant Peak Sustainability Group (formerly Kulshan Services, LLC). Also, included in this scope of work is support for tasks related to grant funding opportunities, the industrial stormwater permits for the Lynden Municipal Airport, and the discharge permit for the Wastewater Treatment Plant.

NPDES Phase II Permit Tasks:

Task 1: Provide support for continuing to develop and implement a Municipal Stormwater Management Program

Welch Ecological Services will provide support for continued development and implementation of the City of Lynden’s municipal stormwater management program (SWMP). The SWMP shall include ongoing tasks for gathering, tracking, maintaining, and using information to evaluate the efficacy of the overall program. This scope outlines tasks associated with completing the requirements of the current permit, effective through July 31, 2024, as well as the 2024 elements pursuant to the next permit issuance which will become effective August 1, 2024 and be authoritative through July 31, 2029. The 2024 tasks will primarily be to keep the developed programs ongoing at the appropriate level and evolving to include the new permit tasks that have been added. Our efforts will remain focused on translating the new permit requirements and laying the foundation for new elements. At the appropriate juncture, established programs have been and will continue to be delegated to City Staff for implementation with oversight by Welch Ecological Services.

We will continue to revise cost tracking procedures. Training of staff on new LID code, IDDE, pollution source control, and O&M procedures will occur through stormwater committee meetings and crew safety meetings. We will work with Whatcom Conservation District and the regional educational group to cover further development of social marketing strategies and effectiveness monitoring. On-call response and compliance documentation will also continue. Additionally, we will continue participation in the North Sound NPDES Coordinators group where pertinent issues regarding the new permit issuance and requirements are often on the agenda.

Welch Ecological will draft the annual Stormwater Management Program report for submittal to Ecology by March 31, 2024. The City will be alerted of due dates for notification of Status & Trends water quality monitoring option and Effectiveness & Source Identification studies options and associated pay-in due dates.

The following sections of this scope detail the tasks by permit element. This scope outlines two additional tasks: providing support for positioning the City for grant funding, and aiding the City on

reporting requirements associated with their industrial stormwater permit at the Airport and discharge permit at the Wastewater Treatment Plant.

Task 2: Provide support to the City on Stormwater Management Planning

Support will be provided to the City on continued Stormwater Management Planning including coordination with other NPDES permittees. The main focus of this years’ effort will be to document internal coordination with long-range planning efforts especially working with the Planning Department on stormwater elements in the update to the GMA required Comprehensive Plan. Efforts will also capture the state of the short-term actions identified in the Stormwater Management Action Plan (SMAP) for sub-basin #9, the Central Business District.

Coordinating with long-range plan updates

Welch Ecological Services will report to Ecology on how planning efforts (Comprehensive Plan, Growth Management, transportation plans etc.) addressed water quality improvements and watershed protection assessments.

Stormwater Management Action Plan (SMAP)

Summary reports will document the status of implementation of the completed SMAP. Additional efforts will focus on laying the foundation for the future efforts in Stormwater Management Action Planning. Information will be compiled to inform the decision to either develop a new SMAP for a new selected high priority area or add specific action items, both short-term and long-term, to the existing SMAP for sub-basin #9.

Task 3: Provide support to the City on Education and Outreach and Public Involvement

Welch Ecological Services will coordinate with WCD and provide oversight on their tasks developing the education and outreach arm of the Stormwater Management Program. This will include continuing to monitor the efforts already begun and overseeing the development and launching of new campaigns (such as behavior change monitoring, youth programs, and social marketing campaigns, Don’t Wait to Inflate). We will work with WCD on the new permit addition of property owners as a new target audience and the educational materials regarding new source control BMPs for PCBs. Welch Ecological will manage the overall extent of their efforts to ensure compliance with and that timelines specified in the permit are met. We will review and submit to Ecology a report on the evaluation and of Behavior Change campaign with the annual report submittal March 31, 2024.

Task 4: Provide support to the City on Mapping and Documentation

Welch Ecological Services will provide the City with guidance on new mapping and documentation requirements. We will work with City Staff to make sure mapping of required features are kept up to date. This will include delineating tributary conveyances to all known outfalls 24” or greater and characterizing land use. We will lay the foundation for new mapping requirements including mapping tributary basins to outfalls that have stormwater treatment and flow control BMPs/facilities owned or operated by the permittee. In addition, we will begin to evaluate methods for mapping tree canopy based on available, existing data as this will be required during the new permit term.

Task 5: Provide support to the City on Illicit Discharge Detection and Elimination

Welch Ecological Services will provide the City with Illicit Discharge Detection and Elimination (IDDE) support for program implementation and additional program development including spill

response documentation, outfall monitoring, hot spot trending response, tracing sources of illicit discharges, and building on the procedures for eliminating discharges and connections. We will continue to coordinate with Whatcom County, Whatcom Clean Water Program Pollution Identification and Correction Field Staff Team, and Whatcom Conservation District (WCD) on stormwater water quality issues. This includes on-call response, follow up and documentation of spill reports and filing ERTS with Ecology or responding to ERTS referred from Ecology. The program to detect and identify non-stormwater discharges and illicit connections will continue to ensure that the efforts cover the specified level required by the permit and field screening methods will be documented. We will work on code revisions to address the new requirements for emergency firefighting activities and allowable discharges of external building washdown taking into account the new emphasis on PCBs in building materials.

All data collected on spills, illicit discharges, illicit connections will be recorded in Ecology’s WQWebIDDE system. Staff training will continue and consultants will employ updated methods using the current IC/ID Ecology approved manual (Herrara and Aspect, 2020).

Task 6: Provide support to the City on Controlling Runoff from New Development, Redevelopment, and Construction Sites

Welch Ecological Services will provide the City with support on runoff control code revisions to provide clearer regulatory mechanisms for legal authority to inspect stormwater facilities and include Appendix 10 of the 2019 NPDES (and 2024 Permit once adopted). Permit and review new development using procedures as documented in the most current version of Ecology’s Stormwater Management Manual for Western Washington (under review currently expected in 2024). City runoff development standards and code revisions will be drafted to continue to encourage Low impact development (LID) techniques and barriers to its use will be identified. The impact of the new permit language specific to roads/ pavement maintenance and underground utility project will be explored. The Engineering Design and Development Standards will be updated as needed to reflect the expected adoption of a new version of the Ecology Stormwater Manual. Staff training will continue.

Task 7: Provide support to the City on Stormwater Management for Existing Development

The Stormwater Management for Existing Development (SMED) element is a new permit feature. Welch Ecological Services will provide support for developing a program to control or reduce stormwater discharges to waters of the State from areas of existing development. Work will be started to help prioritize the pathway that the City should take to meet the requirement to implement stormwater facility retrofits. Several options will be assessed including implementing strategic stormwater investments identified in the SMAP or identifying opportunistic stormwater investments by leveraging projects outside of the SMAP. A plan will be developed over the next few years to meet the permit assigned “level of effort” as defined as an equivalent acreage of improvements (determined as a function of population). Funding sources and scheduling specifics will be determined over the next few years.

Task 8: Source Control Program for Existing Development

Welch Ecological Services will provide continued support for implementing the Source Control Program for existing development. We will work with City Staff to continue to develop, document, manage, and implement the standard operating procedures of the program. The first step will be to continue to filter and update the business inventory. The result of the re-assessment will be to

settle on the new count or number of businesses that will require inspections in 2024. Business Inspections will be conducted at a rate equal to 20% of current businesses listed as potential pollutant generating enterprises and 100% of complaints.

The City entered into an interlocal agreement with the Whatcom County Health and Community Services to partner on business inspections as part of the Source Control Program. County Health is under contract with the Department Ecology to perform a Pollutant Prevention Assistance program in Whatcom County and has agreed to conduct source control inspections for a selected set of potential pollutant generating business within the City of Lynden. These inspections will continue to be a component of the City’s program.

We will coordinate with City Staff and County Health to meet this target and continue code review and clarification of enforcement policy. We will work with other Whatcom County entities to address regional issues and share resources and lessons learned with particular emphasis on a regional approach to addressing pollutant generation from and inspection of mobile businesses. Recordkeeping of the Business Inspection program will be a priority. City staff will be trained and certified on source control inspection methods and BMPs.

Task 9: Provide support to the City on Operations and Maintenance Stormwater Protocols

Welch Ecological Services will provide support for implementing policies, protocols, and outlining good housekeeping procedures for municipal activities. The Municipal O&M plan, maintenance standards and protocol review will address activities on land managed or maintained by the City including streets, parking lots, roads, highways, buildings, parks, open space, road right-of-ways, maintenance yards, and stormwater facilities. We will develop protocol to address the new permit focus on roads and PCBs in building materials. The public catch basin inspection and cleaning and regulated private stormwater facility inspection programs will continue to be implemented by City Staff with oversight from Welch Ecological Service to ensure that all permit required target dates and deliverables are met. Recordkeeping protocols will be re-visited to streamline the tracking of individual inspection and status thereof. Staff training on pollution prevention will be conducted. In addition, as part of the Business inspection program, we will continue to work with City staff to reduce stormwater impacts from City facilities including maintenance shops and Fire, Police and WWTP sites.

The Enhanced Maintenance Plan will be finalized and revised to ensure Ecology’s approval. Purchase of a new Sweeper Truck will occur and the new enhanced street sweeping program will be launched. Metrics will be tracked, documented and assessed so that adaptive management can occur as needed per the adopted Enhanced Maintenance Plan. Progress reports will be drafted to meet the grant stipulated deliverables.

Task 10: Compliance with Total Maximum Daily Load Requirements

Welch Ecological Services will provide support on meeting the following specific TMDL requirements set for Lynden in Appendix 2 of the 2019 Phase II Permit:

- With each annual report, City of Lynden shall submit the monitoring results and an up-to-date Stormwater Capital Improvement Plan to address existing deficiencies in the stormwater treatment and conveyance system.

We will support the City in meeting the monitoring and reporting requirements for the BC Avenue fecal sampling program through the end of the current permit term (BC Avenue fecal sampling will likely not be required once the new permit becomes effective). The stormwater capital improvement plan will be updated annually to fulfill the additional Appendix 2 requirement. The new 2024 permit, if adopted as proposed, will have a different set of requirements for TMDL compliance. The new requirements ask for increased efforts under other program elements: Business Inspections, Education & Outreach, Operations and Maintenance, and IDDE. A TMDL report will accompany the Annual Report submittal to Ecology.

Other Tasks not related to the Municipal Stormwater permit:

Task 11: Provide support for submitting applications for Grant Funding

Welch Ecological Services will provide support to position the City for grant funding and consultation as needed on existing grants and grant agreement negotiations. Documentation for quarterly reports will be completed as requested to meet the capacity grant reporting requirements and Enhanced Maintenance/Sweeper Plan Grant.

Task 12: Provide support to the City on the Industrial Stormwater permit for the Airport and NPDES Discharge permit for the Wastewater Treatment Plant

Subtask 12a: Welch Ecological Services will provide the City support on the Airport Industrial Stormwater permit water quality monitoring and annual report submittal.

Subtask 12b: Welch Ecological Services will continue follow-up with the Wastewater Plant Superintendent should questions or revisions arise on the submitted Nooksack River Dissolved Oxygen study.

SCHEDULE

Welch Ecological Services will begin work once we have authorization to proceed.

COST ESTIMATE

The cost for our proposed Scope of Services has been prepared based the following rates applicable from January 1, 2024 to December 31, 2024:

<u>Labor Category</u>	<u>Billable Rate per Hour</u>
Karen F. Welch, WES*	\$130.00
Reid Armstrong, PSG*	\$105.00

*WES is Welch Ecological Services, LLC; PSG is Peak Sustainability Group (formerly Kulshan Services, LLC).

The following Table provides a breakdown of fees by task and firm.

ESTIMATED FEES

Task #	Description of Scope	WES	PSG	Task Total
Task 1.	Provide support for continuing development and implementation of a Municipal Stormwater Program	\$ 37,310	\$ 2,100	\$ 39,410
Task 2.	Provide support on continued development of a Stormwater Management Planning efforts	\$ 14,300	\$ 1,155	\$ 15,455
Task 3.	Provide support for coordinating with Whatcom Conservation District on the Education and Outreach portion of the Stormwater Program.	\$ 4,810	\$ 2,100	\$ 6,910
Task 4.	Provide support on Mapping and documentation requirements.	\$ 12,610	\$ 1,260	\$ 13,870
Task 5.	Provide support to the City on Illicit Discharge Detection and Elimination	\$ 12,480	\$ 13,020	\$ 25,500
Task 6.	Provide support on Controlling Runoff from New Development, Redevelopment, and Construction Sites.	\$ 4,680	\$ -	\$ 4,680
Task 7.	New Element Provide support on Stormwater Management for Existing Development (SMED)	\$ 6,240	\$ -	\$ 6,240
Task 8.	Provide support on the Source Control/Business Inspection Program development and implementation	\$ 4,680	\$ -	\$ 4,680
Task 9.	Provide support to the City on Operations and Maintenance Protocols to reduce stormwater impacts	\$ 12,480	\$ 4,725	\$ 17,205
Task 10.	Provide support on Compliance with TMDL	\$ 10,140	\$ -	\$ 10,140
Task 11.	Provide support to the City to position for grant funding	\$ 2,080	\$ -	\$ 2,080
Task 12.	Non Municipal Permit Support - Industrial Stormwater and Discharge permits	\$ 2,080	\$ -	\$ 2,080
	Subtask 12a : Provide support to the City on the industrial stormwater permit for the Airport	\$ 2,340	\$ -	\$ 2,340
	Subtask 12b : Provide support to the City on the NPDES discharge permit for the wastewater treatment plant	\$ 1,040	\$ -	\$ 1,040
Expenses	Lab Analyses			\$ 3,000
	Mileage Round Trip to Lynden			\$ 1,510
			Total	
			Budget	\$ 156,140

We will not exceed the total fee for this Scope of Work without prior authorization. If project requirements change or unforeseen conditions are encountered that will require services beyond the scope outlined above, we will bring these to your attention and seek approval for modification to the scope of services and budget as appropriate.

Please provide us with authorization to proceed by signing in the space provided below and returning a copy for our files. If any questions arise regarding this proposal, please do not hesitate to give me a call (360-303-1051) or send me an email (karenfwelch@comcast.net) so that I can help clarify your questions.

Sincerely,

WELCH ECOLOGICAL SERVICES, LLC

AUTHORIZATION TO PROCEED



Karen F. Welch, MEM
Principal Hydrologist

Client: _____

Date: 10/23/2023

Date: _____

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Set Date for the Final Public Hearing on the 2024 Preliminary Budget	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
None		
Summary Statement:		
As published, 7:00PM on December 4, 2023 is the time and date set for the Final Public Hearing on the 2024 Preliminary Budget as presented to the City Council by Mayor Korthuis at the October 16th City Council meeting.		
Recommended Action:		
Set the date and conduct the required public hearing at that time.		

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Resolution No. 23-1085 – Set Public Hearing – 2024 Revisions to the Engineering Design and Development Standards Project Manual	
Section of Agenda:	Consent	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:	Draft Resolution No. 23-1085	
Summary Statement:	<p>The Engineering Design and Development Standards Project Manual was originally adopted by City Council on April 5, 2004, and was last updated on January 1, 2023. These standards are required by the State’s Growth Management Act and include street, water, sewer, and storm drainage standards to be used for all new and replacement construction.</p> <p>In response to inquiries, changes in technology, and the feedback from customers, additions, deletions and/or clarifications have been made to the project manual. The manual also addresses access issues, permitting processes and procedures, and includes various forms necessary in the development process. Staff is updating the Manual annually and presents Resolution No. 23-1085 along with a list of revisions for Council review.</p> <p>The Public Works Committee reviewed the updates at their November 1, 2023, meeting and recommended that City Council set a Public Hearing for December 4, 2023, to hear comments on the proposed revisions.</p>	
Recommended Action:	That City Council set a Public Hearing date of December 4, 2023, to hear comments on Resolution No. 23-1085 Revisions to the Engineering Design and development Standards Project Manual.	

RESOLUTION NO. 23-1085

**A RESOLUTION REVISING THE ENGINEERING DESIGN AND
DEVELOPMENT STANDARDS PROJECT MANUAL
FOR THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON
AMENDING RESOLUTION NO. 1026**

WHEREAS, the City of Lynden, Whatcom County, Washington last adopted the Design and Development Standards Project Manual in January 2024 with Resolution No. 1054; and

WHEREAS, the following sections of the Design and Development Standards Project Manual have been revised and updated as follows:

LIST OF REVISED TEXT BY DIVISION

DIVISION 1 TABLE OF CONTENTS

No updates.

DIVISION 2 APPLICANTS CHECKLIST

No updates.

DIVISION 3 CONSTRUCTION PLAN REQUIREMENTS

No updates.

DIVISION 4 STREET DESIGN STANDARDS

Section 4.16.F Updated buffer planting requirements.

DIVISION 5 SITE ACCESS/DRIVEWAYS

Section 5.5.A.3 Corrected error in the word “shall.”

Section 5.5 Removed extra Table 5-2

DIVISION 6 WATER DESIGN STANDARDS

Section 6.2.K Clarified color requirements for paint on hydrants in the City of Lynden.

Section 6.3.A Clarified individual lot metering requirements.

Section 6.3.J Updated setter requirements with additional options.

DIVISION 7 SEWER DESIGN STANDARDS

No updates.

DIVISION 8 STORM DRAINAGE AND EROSION CONTROL

No updates.

DIVISION 9 STANDARD FORMS

No updates.

DIVISION 10 PERMIT APPLICATIONS

No updates.

LIST OF REVISED FIGURES BY DIVISION:

DIVISION 6 WATER DESIGN STANDARDS

Figure 6-1

- Updated hydrant assembly elbow to 90 degrees.

Figure 6-3

- Clarified gravel requirements.
- Added note stating to add risers as required.
- Added specified air relief valve model.
- Added slope to Type K copper pipe.
- Added height range from finish grade to cast iron valve box.

Figure 6-16

- Updated Figure Name

Figure 6-17

- Updated Figure Name

DIVISION 7 SEWER DESIGN STANDARDS

Figure 7-5

- Removed 8" diameter labels from cleanout detail.

Figure 7-12

- Added height range from finish grade to galv. screen openings of the air intake/exhaust vent.
- Added vent pipe and corresponding height range to air intake/exhaust vent.

DIVISION 7 SEWER DESIGN STANDARDS

Figure 8-1

- Updated to show herringbone grate.

Figure 8-4

- Updated to show herringbone grate.

NOW, THEREFORE BE IT RESOLVED by the Lynden City Council of the City of Lynden, Washington, as follows:

Section 1: That the aforesaid Project Manual be adopted as revised as the official Design and Development Standards Project Manual for the City of Lynden, Whatcom County, Washington.

Section 2: BE IT FURTHER RESOLVED that any resolutions or parts of resolutions in conflict herewith are hereby repealed insofar as they conflict with the provisions of this resolution.

Section 3: If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Resolution. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections,

sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this Resolution should be declared invalid or unconstitutional, then the original Resolution or Resolutions shall be in full force and effect.

Section 4: This resolution shall be in full force and effect on January 1, 2024.

PASSED BY THE CITY COUNCIL of the City of Lynden, Whatcom County, Washington, on the ____ day of December 2023 and signed and approved by the Mayor on the same date.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	November 20, 2023	
Name of Agenda Item:	RES-23-1087 Real Estate Property Tax Levy Increase 2024	
Section of Agenda:	Consent	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
RES-23-1087 Real Estate Property Tax Levy Increase 2024		
Summary Statement:		
<p>All taxing jurisdictions are required, due to the passage of Referendum 47 in 1997, to pass a resolution specifically indicating the increase in tax levy if any, from the previous year, excluding the increase due to new construction, improvements to property, or any increase in the value of state assessed property.</p> <p>The limit factor for a taxing jurisdiction with a population of 10,000 or over is the lesser of 1% or the rate of inflation. Given the current rate of inflation (3.67%) the City is allowed by statute RCW 84.55.005 to increase the Levy 1% or bank this capacity for future use.</p> <p>The City Council has deemed it necessary due to the City's funding requirements to increase the regular property tax levy by the full 1% allowed.</p> <p>Resolution No. RES-23-1087 (attached) reflects the City Council's requirement to not "bank" any real property taxes in 2024 and approve the legally allowed 1% increase in the 2024 real property taxes.</p>		
Recommended Action:		
For the City Council to approve RES-23-1087 and authorize the Mayor's signature.		

RESOLUTION NO. RES-23-1087

**A RESOLUTION
INCREASING THE REAL PROPERTY TAX LEVY
FOR THE CITY OF LYNDEN, WASHINGTON**

WHEREAS, the Lynden City Council has properly given notice of the public hearing held November 20, 2023 to consider the City of Lynden Property Tax Levy for the 2024 calendar year, pursuant to RCW 84.55.120; and

WHEREAS, the Council, after hearing, and after duly considering all relevant evidence and testimony presented, have determined that the City of Lynden requires an increase in property tax levy from the previous year, in addition to the increase resulting from the addition of new construction and improvements to property and any increase in the value of state-assessed property, to discharge the expected expenses and obligations of the City of Lynden.

WHEREAS, under statute RCW 84.55.005(2) (c), the limit factor for a taxing jurisdiction with a population of 10,000 or over is the lesser of 1% or the rate of inflation; and

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12 month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable; and

WHEREAS, "inflation" for September 2023 is 3.67%, meaning the taxes levied in the City of Lynden in 2023 for collection in 2024 by statute are allowed to increase 1% except for the amounts resulting from new construction and improvements to property, and any increase in the value of state assessed utility property; and

NOW THEREFORE, BE IT RESOLVED, the Lynden City Council authorizes a 1% (\$33,537.60) increase in the 2024 regular property tax levy, in addition to the increase resulting from new construction and improvements to property and any increase in the value of state-assessed property. The Lynden City Council does not wish to "bank" any additional capacity.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, _____ IN FAVOR, _____ AGAINST AND SIGNED BY THE MAYOR THIS _____ DAY OF NOVEMBER 2023.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Public Hearing for ORD-23-1679 Real Estate Property Tax for 2024	
Section of Agenda:	Public Hearing	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
ORD-23-1679 – Real Estate Property Tax for 2024		
Summary Statement:		
<p>As published, 7:00PM on November 20, 2023 is the time and date set for the Public Hearing on the 2024 Property Tax Levy as presented to the City Council by Mayor Korthuis at the October 16th City Council meeting. Upon completion of the public hearing with no items outstanding the 2024 Property Tax Levy will be presented to the City Council for adoption.</p>		
Recommended Action:		
Conduct the required Public Hearing and consider any commentary by the public regarding the 2024 Property Tax Levy.		

ORDINANCE NO. ORD-23-1679

**AN ORDINANCE FOR THE CITY OF LYNDEN, WASHINGTON
LEVYING TAXES FOR GENERAL MUNICIPAL PURPOSES FOR
TAXES COLLECTIBLE AND PAYABLE IN 2024
IN THE CITY OF LYNDEN, WASHINGTON**

The City Council of the City of Lynden does ordain as follows:

Section A. The City of Lynden hereby levies, for 2024 taxes, for the purpose of meeting the expenditures of the City of Lynden, Washington, for the year 2024, the following specific sums:

CURRENT EXPENSE FUND	\$3,304,256
BERTHUSEN PARK	\$65,000
2012 LTGO REFUNDING BOND DEBT	<u>\$540,750</u>
TOTAL	\$3,910,006

Section B. In order to raise said specific sums, there is needed a levy of \$1.05369 per thousand dollars of assessed valuation of the property in the City of Lynden as shown by the assessment roll for the year 2023.

Section C. Any ordinance or parts of ordinances in conflict herewith are hereby amended.

Section D. This ordinance amends Ordinance No. 1663 and shall take effect and be in force from and after its passage by the City Council and after its approval by the Mayor, if approved, otherwise, as provided by law and five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, _____ IN FAVOR,
_____ AGAINST AND SIGNED BY THE MAYOR THIS _____ DAY OF NOVEMBER 2023.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Set the Public Hearing for Ord 23-1680 Amending Civil Penalties Code	
Section of Agenda:	New Business	
Department:	City Administration	
Council Committee Review:	<input checked="" type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	Legal Review:	
	<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Draft Ord 23-1680 with redline exhibit of proposed changes.		
Summary Statement:		
<p>Over the last 12 months City Administration, staff, and legal counsel, Luke Phifer, have been drafting an update to the City’s civil penalties code. They are now prepared to introduce the amendment for Council’s review.</p> <p>The City’s current code is in need of this update as it includes numerous criminal misdemeanor penalties for offenses that would be more appropriately classified as civil infractions. Additionally, although the code recognizes the authority of the City to fine violators, it provides only broad guidance on what dollar amount could be used under this authority.</p> <p>The revised code carefully defines general penalties, civil infractions, misdemeanors, and gross misdemeanors. It assigns penalties to infractions which would be classified as C-1 through C-9 depending on the severity of the violation. The amended code also establishes a uniform process for citing and correcting violations, a critical tool for staff seeking to provide fair and consistent enforcement of the city’s code provisions.</p> <p>To implement a revision of this nature it is necessary to amend numerous existing penalty provisions throughout the municipal code. The bulk of the civil penalties code will be located in Chapter 1 of the Lynden Municipal Code but many other chapters would also be amended to classify infractions and identify corrective processes.</p> <p>Council and its committees are asked to review the draft ordinance with the intent to hear at the January 2, 2024, meeting.</p>		
Recommended Action:		
Motion to set the public hearing for January 2, 2024 , to consider Ord 23-1680 regarding an Amendment to the city’s Civil Penalties Code.		

ORDINANCE NO. 23-1680

AN ORDINANCE OF THE CITY OF LYNDEN AMENDING THE GENERAL PENALTY PROVISIONS of LYNDEN MUNICIPAL CODE 1.24, ADOPTING A NEW CHAPTER 1.34 TO THE LYNDEN MUNICIPAL CODE ADDRESSING CODE ENFORCEMENT, AND AMENDING NUMEROUS PROVISIONS OF THE LYNDEN MUNICIPAL CODE FOR THE PURPOSE OF INCORPORATING THE REVISED PENALTIES AND CODE ENFORCEMENT SYSTEM.

WHEREAS, the City of Lynden is a noncharter code city operating under the mayor-council plan of government as set forth in RCW Chapter 35A.12; and

WHEREAS, RCW 35A.11.020 authorizes the legislative bodies of code cities to impose penalties for violations of local ordinances; and

WHEREAS, RCW 53A.11.020 further provides that such penalties may constitute a misdemeanor, a gross misdemeanor, or a civil violation; and

WHEREAS, RCW 7.80.010 confirms that a city may establish by ordinance its own system for hearing and determining civil infractions; and

WHEREAS, the Lynden Municipal Code currently contains a range of different penalty provisions; and

WHEREAS, the City desires to establish set penalty amounts that may be adopted by reference in other provisions of the municipal code; and

WHEREAS, the City also desires to establish a uniform process for enforcing violations of certain titles of the municipal code; and

WHEREAS, to implement the new penalty and enforcement process, it is necessary to amend numerous existing penalty provisions throughout the Lynden Municipal Code; and

WHEREAS, the attached **Exhibit A**, which is hereby fully incorporated by reference, shows the proposed revisions to the municipal code in redline; and

WHEREAS, the foregoing recitals are material findings and declarations of the Lynden City Council.

NOW, THEREFORE, LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1: Lynden Municipal Code Chapter 1.24 titled “General Penalty and Enforcement” is hereby repealed in its entirety and a new Chapter 1.24 titled “General Penalty” is hereby adopted, which shall read as follows:

1.24.010 – Classification of Penalties.

Penalties are classified as follows:

A. *General Penalty.* Whenever the performance of any act is specifically prohibited or required by any law or section within this code and no penalty for violating such law or section is imposed, the penalty for performance of such required act or omission shall be a civil infraction.

B. *Civil Infraction*. Unless otherwise provided by law or this code, a person found guilty of committing a civil infraction under this code shall be subject to a monetary fine of not more than \$500.00. Statutory assessments shall be imposed in addition to any monetary fine for a civil infraction. A civil infraction may also be referred to within this code as a “civil violation.”

C. *Misdemeanor*. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine. (RCW 9.92.030). Statutory assessments shall be imposed in addition to any monetary fine for a misdemeanor offense.

D. *Gross Misdemeanor*. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine (RCW 9.92.020). Statutory assessments shall be imposed in addition to any monetary fine for a gross misdemeanor offense.

1.24.020 - Continuing Offenses.

Each day during any portion of which a violation of any provision of this code is committed or is permitted is deemed to be the commission of a separate offense.

1.24.030 – Principles of Liability.

The following statutes of the state of Washington are adopted by reference, as presently constituted or hereafter amended, and made a part of this code:

- A. RCW 9A.08.010, General requirements of culpability
- B. RCW 9A.08.020, Liability of conduct of another, complicity
- C. RCW 9A.08.030, Criminal liability of corporations and persons acting under a duty to act on their behalf.

1.24.040 – Penalties for Civil Infractions – Designated.

Specific, non-deferrable, non-suspendable civil penalties are adopted by category reference in other sections of this code with a specific civil penalty to be imposed for each category of civil infraction as follows:

Category	Penalty
C-1	\$25
C-2	\$50
C-3	\$75

C-4	\$100
C-5	\$250
C-6	\$300
C-7	\$350
C-8	\$500
C-9	\$1,000

SECTION 2: A new Lynden Municipal Code Chapter 1.34 titled “Compliance and Enforcement” is hereby adopted, which shall read as follows:

1.34.010 – Title.

This chapter shall be called “Compliance and Enforcement.”

1.34.020 – Applicability & Purpose.

A. This chapter sets forth the procedures for enforcing violations of the following provisions of the Lynden Municipal Code as now in effect or hereafter amended:

- Title 8 (Health and Safety), Except for Chapter 8.16 (Litter);
- Title 12 (Streets, Sidewalks and Public Places);
- Title 15 (Building and Construction);
- Title 16 (Environmental Policy);
- Title 17 (Land Development);
- Title 18 (Subdivisions);
- Title 19 (Zoning); and
- Such other code provisions, ordinances, resolutions, or public rules that adopt this chapter by reference.

C. The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith. The City shall have any and all remedies available to it in law and equity.

D. It is the express and specific purpose and intent of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefitted by the terms of this chapter.

E. Nothing contained in this chapter is intended or shall be construed to create or form the basis of any liability on the part of the City, its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

1.34.030 – Definitions.

All definitions contained in LMC 17.01.030 apply to this chapter. In addition, the following words and phrases used in this chapter shall have the following meanings:

- A. “Abate” means to repair, replace, remove, destroy, demolish, board-up, or otherwise remedy a condition which constituted a civil infraction by such means, in such a manner, and to such extent as the Enforcement Official determines is necessary in the interest of the general health, safety, and welfare of the community.
- B. “Enforcement Official” means the City official designated by code with enforcement authority of a particular title, chapter, section, or provision thereof and may include any of the following:
 - (1) The Chief of Police
 - (2) The City Administrator
 - (3) The Director of the department generally responsible for enforcement of the Lynden Municipal Code provision which is the subject of a violation including, but not limited to:
 - i. The Public Works Director (for violations of Titles 12-13)
 - ii. The Community Development Director (for violations of Titles 15-19)
 - iii. The Parks Director (for violations of Chapter 12.24)
 - (4) A Code Enforcement Officer, serving under the direction of the Community Development Director or Building Official;
 - (5) Any designee duly appointed by any of the officials identified in subsections B (1)-(3) above.

Any of the officials identified in subsections B (1) – (5) above may act as an Enforcement Official pursuant to violations of Lynden Municipal Code Title 8.

- C. “Determination of Compliance” means a written statement from the City that the violation(s) identified in a Voluntary Correction Agreement, Civil Regulatory Order, or other notice has been sufficiently abated, remediated, or otherwise resolved.
- D. “Emergency” means a situation or civil violation which, in the opinion of an Enforcement Official, requires immediate action to prevent or eliminate an imminent threat to the public health, safety, or welfare of persons or property.
- E. “Hearing Examiner” means the Lynden Hearing Examiner and the office thereof established pursuant to Lynden Municipal Code Chapter 2.09.
- F. “Person Responsible for the Violation” means the person or persons, firm, corporation, partnership, joint venture, limited liability company, or other legal entity who caused, or is

reasonably believed by an Enforcement Official to have caused, the violation and/or the owner, lessor, tenant, or other person entitled to control, use, and/or occupy the property and/or premises where a civil violation occurs.

G. "Remediate" means to restore a site to a condition that complies with critical area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety, or welfare.

H. "Violation" means:

- (1) An act or omission contrary to any regulation or provision of the Lynden Municipal Code; and
- (2) An act or omission contrary to the conditions of any permit, notice, order, or stop work order issued pursuant to any such regulation or provision.

1.34.035 – Declaration of Public Nuisance.

All violations of the following are determined to be detrimental to the public health, safety, and environment, and are declared to be public nuisances:

- 1. Title 8 (Health and Safety);
- 2. Chapter 13.24.130;
- 3. Chapter 13.24.160;
- 4. Title 12 (Streets, Sidewalks and Public Places)
- 5. Title 15 (Building and Construction);
- 6. Title 16 (Environmental Policy);
- 7. Title 17 (Land Development);
- 8. Title 18 (Subdivisions); and
- 9. Title 19 (Zoning).

1.34.040 – Enforcement, Authority, and Administration.

A. In order to discourage public nuisances and otherwise promote compliance with applicable code provisions, an Enforcement Official may, in response to field observations, investigations, or reliable complaints, determine that violations of the provisions listed in LMC 1.34.020, or any other provision which adopts the compliance and enforcement scheme established in Chapter 1.34, have occurred or are occurring, and may:

- (1) Enter into a Voluntary Correction Agreement with a person responsible for the violation(s);
- (2) Issue Civil Regulatory Orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;
- (3) Require abatement by the Person Responsible for the Violation or undertake summary abatement and charge the reasonable costs of such work as authorized by this chapter;
- (4) Order work stopped at a site by means of a stop work order, and if such order is not complied with, assess civil penalties as authorized by this chapter and/or other applicable code sections;
- (5) Suspend, revoke, or modify any permit previously issued by the City or deny a permit application as authorized by this chapter and/or other applicable code sections when other efforts to achieve compliance have failed;
- (6) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute violations; and
- (7) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Whatcom County.

B. The City has established its own Civil Infraction system for the enforcement of civil violations and nuisances pursuant to the authority of RCW 35A.11.020 and RCW 7.80.010(5), as presently enacted or hereafter amended.

C. The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the titles listed in LMC 1.34.020 in any other manner authorized by law.

D. *Obligation of Person Responsible for Violation.* The Person Responsible for the Violation shall achieve full code compliance. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having the property brought into compliance to the extent reasonably practicable under the circumstances, as determined by the Enforcement Official.

E. *Right of Entry.* The Enforcement Official is authorized to enter upon property or premises at any reasonable time to determine whether a civil violation has occurred or is occurring, or to enforce any provision of the Lynden Municipal Code. The Enforcement Official may make examinations, surveys, and studies as may be necessary in the performance of their duties. If the premises is occupied, the Enforcement Official shall present credentials and request entry. If an owner, occupant, or agent refuses the Enforcement Official entry, the City may seek an administrative or criminal search warrant.

1.34.050 – Voluntary Correction Agreement.

A. *Applicability.* This section applies whenever the Enforcement Official determines that a violation has occurred or is occurring.

B. *General.* The Enforcement Official shall have the discretion to secure voluntary correction by contacting the Person Responsible for the Violation, explaining the violation, and requesting correction.

C. *Issuance of Voluntary Correction Agreement.* A Voluntary Correction Agreement may be entered into between the Person Responsible for the Violation and the City, acting through the Enforcement Official. The Mayor is authorized to sign a Voluntary Correction agreement on behalf of the City.

D. *Content.* The Voluntary Correction Agreement is a contract between the City and the Person Responsible for the Violation under which such person agrees to correct the violation within a specified time and according to specific conditions. The Voluntary Correction Agreement shall include, at a minimum, the following:

- (1) The name and address of the Person Responsible for the Violation;
- (2) The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
- (3) A description of the violation(s) and a reference to the provision(s) of the City code which has been violated;
- (4) The necessary corrective action to be taken, and the date by which the correction must be completed;
- (5) An agreement by the Person Responsible for the Violation that the City may inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
- (6) The amount of the minimum civil penalty that will be imposed if the terms of the Voluntary Correction agreement are not complied with; and
- (7) A statement that if the City determines that the terms of the Voluntary Correction Agreement are not complied with, the City may impose any remedy authorized by this chapter, including:
 - I. Assessment of the civil penalties identified in the Voluntary Correction Agreement;
 - II. Abatement of the violation at expense of Person Responsible for Violation;
 - III. Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses; and
 - IV. Suspension, revocation, or limitation of any related permit(s).

(8) A statement that the Person Responsible for the Violation knowingly waives the right to a hearing.

E. *Right to a Hearing Waived.* In consideration of the City’s agreement to enter into a Voluntary Correction Agreement, the Person Responsible for the Violation shall have no right to an administrative or judicial hearing, under this chapter or otherwise, regarding the matter of the violation or the required corrective action.

F. *Administrative Review of Compliance.* After the Person Responsible for the Violation has given written notice to the City of completion of the corrective action required under the Voluntary Correction Agreement, the Enforcement Official shall, within five working days, determine if the corrective action is complete. If the Enforcement Official determines that the corrective action is not complete, the Enforcement Official shall so notify the Person Responsible for the Violation in writing. The Person Responsible for the Violation shall have seven business days from the date of mailing of said notice in which to file an appeal with the Enforcement Official for review of such determination by the Hearing Examiner. Said review shall be completed and a decision issued by the Hearing Examiner within thirty days of receipt of a timely appeal. The only issue subject to review during an appeal at this stage shall be whether there has been complete compliance with the terms of the Voluntary Correction Agreement.

G. *Extension and Modification.* An extension of the time limit to complete the corrective action or a modification of the required corrective action may be granted by the Enforcement Official, in writing, if in the judgment of the Enforcement Official the Person Responsible for the Violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction required under the original agreement impossible or impractical.

H. *Abatement by the City.* The City may abate the violation in accordance with Section 1.34.100 if the terms of the Voluntary Correction Agreement are not complied with.

I. *Monetary Penalty.*

(a) The Enforcement Officer may reduce or waive any related monetary penalties if the violation(s) are corrected or mitigated according to the terms and schedule of a Voluntary Correction Agreement.

(b) If the terms of the Voluntary Correction Agreement are not met, the Person Responsible for the Violation may be assessed a monetary penalty not to exceed \$1,000 for each violation. Each separate day, event, action, or occurrence shall constitute a separate violation. In addition, such person shall be liable for all costs and expenses of abatement, as set forth in Section 1.34.100(C). Penalties will begin to accrue from the date the Voluntary Correction Agreement was issued. The date the City completes the abatement shall be the last day a monetary penalty may be imposed.

1.34.060 – Civil Regulatory Order.

When the Enforcement Official determines that a violation has occurred or is occurring and does not secure voluntary correction pursuant to Section 1.34.050, the Enforcement Official may issue a Civil Regulatory Order to the Person Responsible for the Violation.

1.34.061 – Civil Regulatory Order – Issuance & Service.

A. *Issuance.* When the Enforcement Official determines that a violation has occurred or is occurring, the Enforcement Official may issue a Notice of Civil Regulatory Order to any Person Responsible for the Violation.

B. *Person Receiving Notice – Identification and Detention.* A person who is to receive a Notice of Civil Regulatory Order is required to identify themselves to the Enforcement Official by giving their name, address, and date of birth. Upon the request of the Enforcement Official, the person shall produce reasonable identification.

A Person Responsible for the Violation who is unable or unwilling to reasonably identify themselves to the Enforcement Official may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing the Notice of Civil Regulatory Order.

C. *Contents.* The Notice of Civil Regulatory Order shall include, at a minimum, the following:

1. The name and address of the Person Responsible for the Violation;
2. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
3. A statement that the Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;
4. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;
5. A statement of the specific violation for which the notice was issued;
6. A statement of the monetary penalty established for the civil infraction, including any portion of said penalty that may be suspended, conditioned on timely correction, abatement, or remediation;
7. A statement that the recipient must respond to the notice as provided in this chapter within fifteen days by (1) providing evidence that the violation has been sufficiently corrected, abated, or remediated, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.

- 8. A statement that at any hearing to contest the determination, the rules for Hearing Examiner Proceedings established pursuant to LMC Chapter 2.09 will apply; and
- 9. A statement that failure to respond to a Notice of Civil Regulatory Order within fifteen days or to appear at a requested hearing is a misdemeanor and may be punished by a fine, imprisonment, or by both such fine and imprisonment; and
- 10. A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for purposes of explaining mitigating circumstances will result in a default judgment against the Person Responsible for the Violation in the amount of the penalty. In addition, the failure to appear may be referred to the prosecuting attorney for criminal prosecution for failure to respond and/or appear.

The Notice of Civil Regulatory Order may also include the following, as applicable:

- 11. A statement of the steps required to correct, abate, or remediate the violation;
- 12. The date by which the required corrective action, abatement, or remediation must be completed by; and/or
- 13. An order to stop work, but only if in the judgment of the Enforcement Official the subject continuing violation of this code will materially impair the Enforcement Official's ability to secure compliance with the code, when the continuing violation threatens the health or safety of the public, or when the continuing violation is likely causing ongoing environmental damage. Said stop work order shall specify the violation and may prohibit any or all work or other activity at the site until the required correction, abatement, or remediation is completed and a Determination of Compliance is issued by the Enforcement Official.

D. *Service.* Service of the Notice of Civil Regulatory Order shall be made by one or more of the following methods:

- A. By personal service on the Person Responsible for the Violation;
- B. If the violation involves a business, by personal service on any employee of the business of a suitable age and discretion;
- C. By mailing a copy of the notice by regular first-class mail to the last known address of the Person Responsible for the Violation; or
- D. For violations involving real property, by placing the notice in a conspicuous place on the property where the violation is occurring.

Service shall be deemed effective upon personal service, or one business day following the posting of the notice upon the property, or three days following placement of the notice in the U.S. mail, postage prepaid.

E. *Determination Final Unless Contested.* A Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in LMC 1.34.062.

1.34.062 – Civil Regulatory Order – Response.

A. A person who receives a Notice of Civil Regulatory Order shall respond to the notice within fifteen days of the date the notice was served by either (1) providing evidence that the violation has been sufficiently corrected, abated, or remediated, and paying any penalty prescribed in the order, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.

B. *Declaration of Compliance.* If the Person Responsible for Violation provides evidence the violation has been corrected and/or pays any prescribed penalty, an Enforcement Official will undertake further investigation to determine whether compliance has been achieved. If compliance has been achieved, the Enforcement Officer will issue a Determination of Compliance within five business days to the person(s) named in the order. If the Enforcement Official determines that compliance has not been achieved, they may elect to issue a new Civil Regulatory Order or pursue any other action available in law or equity.

C. *Hearing Examiner Appeal.* A Civil Regulatory Order may be appealed to the Hearing Examiner within 15 days of the effective service of the order by filing a statement of appeal with the Enforcement Official. A statement of appeal shall include the following:

1. The name of the appellant,
2. The date of the Civil Regulatory Order, and
3. An explanation of the grounds for appeal, including citation to applicable sections of the Lynden Municipal Code or other legal authority.

If an appeal is not timely filed with the Enforcement Official, the Civil Regulatory order becomes a final order. The final order, including the collection of penalties and required correction, abatement, or remediation, may be enforced by the City Attorney in Whatcom County Superior Court.

D. *Explanation of Mitigating Circumstances.* Within 15 days of the effective service of a Civil Regulatory Order, the Person Responsible for the Violation may request a hearing with the Enforcement Official for the purpose of explaining any mitigating circumstances surrounding the violation. The hearing shall be an informal proceeding. The Person Responsible for the Violation may not subpoena witnesses. The determination that a violation has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. Within 10 days of the hearing, the Enforcement Official will provide the Person Responsible for the Violation a written notice of the decision and any revisions to the Civil Regulatory Order.

E. Any person who fails to comply with a Notice of Civil Regulatory Order is guilty of a misdemeanor regardless of the disposition of the Notice of Civil Regulatory Order.

F. A person who willfully fails to pay a monetary penalty under this chapter may, unless indigent, be found in contempt of a court as provided in Chapter 7.21 RCW.

1.34.070 – Penalties.

A. *Monetary Penalty.* If corrective action is not completed by the date specified in a Notice of Civil Regulatory Order, a daily C-4 penalty (see LMC 1.24.040) shall commence. The daily monetary penalty shall increase to a C-5 penalty (see LMC 1.24.040) if corrective action is not completed by the second deadline established in the initial or any subsequent Notice of Civil Regulatory Order. The daily monetary penalty shall increase to a C-8 penalty (see LMC 1.24.040) per day if the corrective action is not completed by the third deadline established in the initial or any subsequent Notice of Civil Regulatory Order. This penalty shall be in addition to any penalty imposed in the Civil Regulatory Order for the underlying violation(s) and any penalty pursuant to a Voluntary Correction Order entered into prior to issuance of the Civil Regulatory Order. Civil fines shall be paid into the City’s general fund.

B. *Restitution.* The Hearing Examiner or a reviewing court may also order a person found to have committed a violation to make restitution and perform abatement or remediation.

C. *Collection of Monetary Penalty.* Civil penalties imposed under this section shall be due immediately and payable upon issuance and receipt of a Notice of Civil Regulatory Order. The City may, but is not required to, send the Person Responsible for the Violation periodic statements of the total monetary penalty currently due. If a penalty remains unpaid thirty days after it becomes due and payable, the City Attorney is authorized to take all actions available to collect the full amount owed. The City Attorney is authorized to take all actions available to collect the monetary penalty.

D. *Continued Duty to Correct.* Payment of a monetary penalty pursuant to this section does not relieve the Person Responsible for the Violation of the duty to correct, abate, or remediate the violation as called for in the Civil Regulatory Order.

E. *Compromise, Settlement, and Disposition of Disputes.* The Enforcement Official or the City Attorney may negotiate a settlement or compromise, or otherwise dispose of a dispute enforced under this chapter when to do so would be in the best interests of the City.

1.34.090 – Civil Regulatory Order – Appeal.

A. *How to Appeal.* The person to whom a Notice of Civil Regulatory Order is issued pursuant to this chapter may appeal to the Hearing Examiner by sending a written notice of appeal to the Enforcement Official along with the applicable appeal fee established by resolution of the City Council, if any, within 15 calendar days from the date of effective service of the Notice of Civil Regulatory Order. The written notice of appeal shall contain, at a minimum, the following information:

- 1. A brief statement identifying the decision being appealed;

- 2. The name and address of the appellant;
- 3. A brief statement identifying the relief sought and the reasons why the Enforcement Official's determination should be reversed, modified, or set aside; and
- 4. Identification of any witness testimony, photographs, or documentary evidence to be presented.

B. *Effect of Appeal.* The monetary penalty for a continuing violation does not continue to accrue during the pendency of the appeal. However, the Hearing Examiner may impose a daily monetary penalty from the effective date of service of the Notice of Civil Regulatory Order if the Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance. All other provisions of the Civil Regulatory Order remain in effect during the pendency of the appeal.

C. *Date of Hearing.* Within 10 days of the Enforcement Official's receipt of a timely written notice of appeal, the Hearing Examiner shall set a public hearing for a date within 45 days, unless a longer period is agreed to by both parties.

D. *Conduct of Hearing.* The Hearing Examiner shall conduct the hearing according to the Hearing Examiner Procedural Rules established pursuant to LMC 2.09.

E. *Preponderance of the Evidence Standard.* For each violation appealed, the Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that (1) a violation has occurred, and (2) that the required corrective action is reasonable.

F. *Decision.* The Hearing Examiner shall affirm, vacate, or modify the City's decision regarding each alleged violation appealed and the related required corrective action, with or without written conditions.

G. *Notice of Decision.* The Hearing Examiner's decision shall be mailed to the Appellant, Enforcement Official, and City Attorney within 14 days of the hearing. The decision shall contain, at a minimum, the following:

- 1. The decision regarding the alleged violation, including findings of fact and conclusions of law based thereon;
- 2. A statement that noncompliance with the Hearing Examiner's decision is punishable as a misdemeanor under LMC 1.34.90(I).

I. *Effect of Decision.* The decision of the Hearing Examiner shall constitute the final decision of the City. If a notice of appeal is not timely filed, the failure to comply with the decision of the Hearing Examiner shall constitute a misdemeanor. In addition to criminal punishment pursuant to this subsection, the City may pursue abatement as provided for in this chapter.

1.34.100 – Abatement by the City.

A. *Summary Abatement.* Whenever a condition constitutes an immediate threat to the public health, public safety, public welfare, or to the environment, the City may summarily and without

prior notice abate the condition. Written notice of such abatement, including the reason(s) for it, shall be given to the Person Responsible for the Violation as soon as reasonably practicable after the abatement.

B. *Judicial Abatement.* Alternatively, the City may at any time seek a judicial abatement order from Whatcom County Superior Court to abate a condition which continues to be a violation of this code when other methods of remedial action have failed to produce compliance.

C. *Cost of Summary Abatement.* In addition to any other penalty imposed under this chapter, the City may levy a special assessment on the property or premises where a nuisance is situated to reimburse the City for the expense of the abatement of said nuisance, in accordance with the requirements of RCW 35A.21.405, as presently enacted or as hereafter amended.

D. *Other Methods Not Excluded.* Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with another ordinance or the laws of the state of Washington.

1.34.130 – Interference with Code Enforcement Unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a Civil Regulatory Order, stop work order, emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation being processed under this chapter shall be guilty of a gross misdemeanor.

1.34.140 – Conflicts.

In the event of a conflict between this chapter and any other provision of the Lynden Municipal Code or City ordinance, this chapter shall control.

1.34.150 – Severability.

If any section, subsection, clause, paragraph, phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity of any other section, subsection, clause, paragraph, phrase, or word of this chapter.

SECTION 3: The following provisions of the Lynden Municipal Code are hereby amended to read as follows:

2.09.040 - Jurisdiction-duties—powers.

A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.

B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:

1. Appeals of the determinations of the fees and dedications made under Chapters 3.28, 3.40, 3.44, and 19.67 LMC;
2. Appeals of dangerous dog declarations under Chapter 6.09 LMC;
3. Appeals of determinations of eligibility for relocation assistance under Chapter 12.36 LMC;
4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user's wastewater and/or collection services, under Chapter 13.12 LMC;
5. Appeals of the city's computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Chapter 13.24 LMC;
6. Challenges of the written interpretations and/or decisions of the public works director made under Chapter 13.28 LMC;
7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city's computation of the applicable fees assessed, under Chapter 13.32 LMC;
8. Appeals of the determination of the Community Development Director regarding moving buildings under Chapter 15.05 LMC;
9. Appeals of the determination of the building code official as described in Chapter 15.14 LMC;
10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Chapter 16.05 LMC, including related procedural and substantive issues;
11. Appeal of director's final critical area determinations;
12. All applications for shoreline permits or revisions to shoreline permits under Chapter 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;
13. Under Chapter 16.12 LMC, Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;
14. Appeals of the imposition of penalties or of the Community Development Director's decision on mitigation or revision under Chapter 16.16 LMC;
15. Appeals of the administrative approvals described in LMC Sections 17.09.010 and 17.09.020;

- 16. Appeals of administrative interpretations and approvals under LMC Section 17.11.010;
- 17. Appeals of civil regulatory orders and civil fines issued under Chapter 1.34 LMC;
- 18. Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Chapter 17.15 LMC;
- 19. Amortization periods for nonconforming signs;
- 20. All variances from the requirements of Title 19, except variances from the requirements of Chapter 19.33 LMC and LMC Sections 19.22.030, 19.22.040, and 19.22.050, and except where the variance is part of a project application being decided upon by a different hearing body;
- 21. Appeals of determinations of building official as described in LMC Section 19.42.040;
- 22. Appeals of administrative interpretations made under Chapter 19.59 LMC; and
- 23. Appeals of a determination of incomplete abatement under a voluntary correction order made under LMC Section 1.34.050(F) and
- 24. Other actions as required by this code.

C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.

D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.

E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.

F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside

over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions and orders; and to adopt procedures consistent with Section 2.09.050.

G. With the exception of shoreline permit applications, and revisions heard by the hearing examiner, and decisions on appeals of Civil Regulatory Orders, the hearing examiner's decision on these the matters identified in subsection (B) shall be final unless timely appealed to the city council following the procedures in [Chapter 17.11 LMC](#). The city council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears and on appeals of Civil Regulatory Orders. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the shoreline hearings board.

2.10.070 - Violation—Penalty.

It shall be a misdemeanor, for any person during a disaster:

- A. To willfully obstruct, hinder or delay any member of the emergency management organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;
- B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of a nature as to give, or be likely to give, assistance to the enemy, or to imperil the lives or property of inhabitants of the city, or to prevent, hinder or delay the defense or protection thereof;
- C. To wear, carry or display, without authority, any means of identification specified by the department of emergency management of the state.

3.28.180 - Noncompliance—Penalty.

A violation of any provision of this chapter including, but not limited to:

- A. Failing or refusing to apply for a utility occupation license,
- B. Failing or refusing to make tax returns or to pay the tax and/or any applicable penalty when due, or
- C. Making a false statement or representation in connection with any such application

is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence. Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence.

3.12.070 - Penalties.

Any seller who fails or refuses to collect the tax as required with the intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor.

3.36.060 - Penalty.

A violation of any provision of this chapter or any lawful rule or regulation adopted pursuant hereto is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each day of violation will be considered a separate offense.

5.02.110 - Violation—Penalty.

A violation of any of the provisions of this chapter or any lawful rule or regulation adopted by the city clerk pursuant thereto is a civil infraction and shall subject the violator to a C-5 penalty (see LMC 1.24.040).

5.04.040 - Violation—Penalty.

Violation of any provision of this chapter is a misdemeanor.

5.12.080 - Violation—Penalty.

A violation of any of the provisions of this chapter is a misdemeanor.

8.04.090 - Violation—Penalty.

A violation of any of the provisions of this chapter is a civil infraction and shall subject the person responsible for the violation to a C-3 penalty (see LMC 1.24.040).

8.16.080 - Penalties.

A. It is a civil infraction for a person to litter in an amount less than or equal to one cubic foot. Such civil violation shall subject the violator to a C-2 penalty (see LMC 1.24.040).

B. It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

C. Is it a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

8.24.050 - Penalty for noncompliance.

The failure or refusal to comply with any of the provisions of any sections of this Chapter 8.24 is a civil infraction and shall subject the violator to a C-2 penalty (see LMC 1.24.040).

9.04.090 - Promise of court appearance, non-appearance penalty, fail to pay.

Any person arrested for violation of this title, or Title 10, who is eligible for release on personal recognizance shall give his or her written promise to appear in municipal court at an agreed time in order to secure release pending said appearance.

A. Any person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

B. Any person who willfully fails to pay a monetary penalty or to perform community service as required by the Municipal Court under this title or Title 10 may be found in contempt of court as provided in RCW Chapter 7.21.

C. Any person who willfully fails to respond to five or more notices of parking infraction issued pursuant to Lynden Municipal Code Title 10 shall be guilty of a misdemeanor regardless of the disposition of the notices of infraction.

D. Violating a written promise to appear or failure to respond to a criminal citation or summons, as directed by the citation or summons, shall be punishable as a misdemeanor. The penalty for failure to respond to a civil or traffic infraction shall be a C-1 penalty (see LMC 1.24.040). The penalty for failure to respond to five or more parking infractions shall be a C-1 penalty (see LMC 1.24.040) per infraction.

9.22.110 - Order of abatement—Procedures authorized—Penalties designated.

A. If the existence of a nuisance is admitted or established in an action as provided for in Section 9.22.120, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in Sections 9.22.070 and 9.22.080 and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not sold.

B. Such judgment shall impose a C-5 penalty (see LMC 1.24.040) for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, which penalty shall be collected by execution as a civil action, and when collected, shall be paid into the current expense fund of the city.

C. The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in Section 9.22.080.

D. Owners of unsold personal property and contents so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.

E. Contempt under the provisions of this section shall be a misdemeanor.

9.24.070 - Sitting or lying on public sidewalks prohibited.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or upon a blanket, chair, stool, planter, fountain, railing, or any other object placed upon a public sidewalk, during the hours between seven a.m. and nine p.m. in the following zones:

1. Central Business District ("CBD"). The Central Business District, for the purposes of this Section, is the area bounded by the streets hereafter named, including said streets and their abutting sidewalks:

- a. The south side of the west half of Front Street between Second and Third Streets;
- b. Front Street between Third Street and Seventh Street;
- c. Third, Fourth, Fifth and Sixth Streets between Front Street and Grover Street;
- d. Seventh Street between Front Street and Grover Street, except the north half of the west side thereof;
- e. The north side of Grover Street between Fourth Street and Sixth Street;
- f. All city owned parking lots including the library parking lot, but excluding the Lynden Community Center parking lot and the public parking lot located at the northeast corner of Fourth and Grover Streets;
- g. The south half of the west side of Fourth Street between Grover Street and Liberty Street;
- h. The south half of Fifth Street between Grover Street and Liberty Street;
- i. The north side of Front Street between Seventh Street and Eighth Street;
- j. The east side of Seventh Street between Front Street and Judson Alley.

B. Exceptions. The prohibitions in subsection A shall not apply to any person:

- 1. Sitting or lying down on a sidewalk due to a medical emergency.

- 2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk.
- 3. Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting or similar event conducted on the public sidewalk pursuant to a street use or other applicable permit;
- 4. Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
- 5. Sitting on a public sidewalk within a bus stop zone while waiting for public or private transportation.

Nothing in any of these exceptions shall be construed to permit any conduct which is prohibited by LMC Section 9.24.005 (RCW 9A.84.030 B Disorderly Conduct) or LMC Section 9.24.040 (Pedestrian Interference).

C. No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.

D. A violation of this section is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040), plus statutory assessment. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

9.24.120 - Public disturbance noise.

A. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise. The following sounds are determined to be public disturbance noises:

- 1. The frequent, repetitive, or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.
- 2. Frequent, repetitive, or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residentially zoned area, so as to unreasonably disturb or interfere with the peace, comfort and repose of others.
- 3. Frequent, repetitive, or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort, and repose of a person or persons on public or private property, other than the property from which the sound emanates, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings.

4. Sound from motor vehicle audio sound systems including, without limitation, tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the vehicle itself.

5. Sound from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source and outside the property of the operator.

6. Construction and industrial noises, including but not limited to, motorized construction and equipment operation, hammering, blasting, drilling and sawing in residentially zoned areas, between the hours of ten p.m. and seven a.m., which unreasonably disturb or interfere with the peace, comfort and repose of others; provided that this subsection shall not apply to noises caused by projects required in an emergency to repair public facilities or utilities or to prevent immediate damage or harm to persons or property; and further provided that this subsection shall not apply if the city council grants a variance from the provisions of this subsection for the construction or repair of a public facility or utility upon a finding that it is either necessary or in the public interest for all or a portion of the work to be performed between the hours of ten p.m. and seven a.m. The council may impose such conditions as it deems appropriate upon the granting of a variance.

7. Subsections 3 and 5 shall not apply to regularly scheduled events at parks or the Northwest Washington Fairgrounds, such as public address systems for games and activities or park concerts. Provided, that the foregoing enumeration of acts and noises are not to be construed as excluding other acts and noises which offend the public peace.

B. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction and shall be subject to a C-5 penalty (see LMC 1.24.040).

2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a misdemeanor and shall be as set forth in LMC 9.04.050.

9.24.130 - Public disturbance/barking dogs.

A. No person shall cause or permit or allow any dog or dogs owned, harbored, controlled or kept by them in the city to remain outside of the dwelling of such a person while such animal is causing excessive or frequent noise, such as habitual howling, yelping or barking, which noise disturbs or is likely to disturb the comfort or repose of any person in the neighborhood. A violation of this section is declared a public nuisance and adverse to the public welfare and is punishable as follows:

B. Penalties.

- 1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be subject to a C-4 penalty (see LMC 1.24.040).
- 2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a misdemeanor and shall be punished as set forth in LMC 9.04.050.

9.56.080 - Driving, riding or walking on runways—Prohibited—Penalties.

A. It shall be illegal for any person to drive a motor vehicle, ride a bicycle or walk on the runways of the Lynden municipal airport. Runways are those areas designated for the take-off and landing of aircraft and shall not include the those areas designated for the parking or storage of aircraft.

B. This section does not apply to emergency personal responding to an emergency.

C. A violation of this section is a civil infraction and shall subject the violator to the following penalties:

First Violation:	C-5 Penalty (see LMC 1.24.040)
Each Subsequent Violation Within a Twelve (12) Month Period:	Misdemeanor punishable as provided by LMC 9.04.050

9.60.140 - Handbills and posters—Violation—Penalty.

Any person violating any provision of this chapter shall be guilty of a misdemeanor.

10.04.060 - Violation—Penalty.

Unless another penalty is expressly provided by law in the MTO or in the statutes that are adopted by reference in Section 10.04.010, any person who is convicted of violating or failing to comply with any of the provisions of the ordinance codified in this chapter shall be guilty of a civil infraction and subject to a C-4 penalty (see LMC 1.24.040).

10.08.090 - Parking restrictions between nine a.m. and five-thirty p.m. on certain streets—Violation and penalty schedule.

A. When corresponding time limit signs are posted, it is unlawful for any person to park any motor vehicle on the following streets between nine a.m. and five-thirty p.m. for a period of time exceeding three hours except on Saturdays and Sundays or days designated as state holidays:

- 1. The south side of the west half of Front Street between Second and Third Streets;

- 2. Front Street between Third Street and Seventh Street;
- 3. Other areas signed or appropriately marked as a three hour parking limit.

B. It is unlawful for any person to park any motor vehicle for a period of time longer than fifteen minutes in any parking space signed or appropriately marked as a fifteen-minute parking limit.

C. A violation of any provision of this section is a civil infraction and shall subject the violator to the following penalties:

- 1. First offense within any twelve months: a written warning;
- 2. Second offense within twelve months: a second written warning. The second warning shall notify the defendant that subsequent violations within twelve months of the first violation will be punishable subject the violator to the monetary penalties set forth in subsection 3 below.
- 3. Third and subsequent offense within twelve months:

Third violation within twelve months:	C-1 Penalty
Fourth violation within twelve months:	C-2 Penalty
Fifth violation within twelve months:	C-3 Penalty
Sixth violation and all subsequent violations within twelve months:	C-4 Penalty

10.08.100 - Parking prohibited on certain streets.

A. It is unlawful for any person to park any motor vehicle on any portion of Bradley Road within the city limits of Lynden.

B. A violation of this provision is a civil infraction and shall subject the violator to a C-2 penalty (see LMC 1.24.040).

10.16.030 - Penalties.

A. A violation of this chapter is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each time a vehicle is used contrary to this chapter such occasion shall constitute a separate offense within the meaning of this chapter.

B. The city of Lynden shall have a lien against the vehicle used contrary to this chapter in the amount of the penalty imposed and shall foreclose on such lien according to law, including costs and attorney's fees, if the penalty is not paid as required.

C. In his discretion, the officer may issue a notice of civil infraction and release the driver upon his signature, or he may require the driver or owner to deposit with the municipal court clerk a sum equal to a C-4 penalty (see LMC 1.24.040) prior to release of the vehicle as a guaranty of appearance in court.

10.18.030 - Violation—Penalty.

A violation of any provision of this chapter is a civil infraction and shall subject the violator to a C-3 penalty (see LMC 1.24.040). Furthermore, the device ridden at the time of the violation shall be subject to impound by the city for a period of ten days.

12.16.065 - Vehicle weight limited when—Exceptions—Penalty.

A. Whenever in the opinion of the city engineer it becomes necessary to place weight limits on streets in the city to avoid unnecessary damage to such streets caused by freezing and thawing, there shall be imposed a maximum weight limit of five tons gross vehicle weight on all streets in the city except the following:

- 1. Front Street from the west city limits to First Street;
- 2. Main Street from the west city limits to Third Street;
- 3. Third Street from Front Street to the north city limits.

B. Special exceptions may be made by the city engineer in the case of extraordinary need. Such weight restrictions shall be effective upon posting of notice of such weight restrictions on such streets.

C. A violation of this Section is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).

12.24.190 - Violations—Penalty.

Any violation of any provision of this chapter shall constitute a civil infraction and shall subject the violator to a C-3 penalty (see LMC 1.24.040). Each and every calendar day during any portion of which any violation of this chapter is committed, continued or permitted by any such person shall constitute a separate offense.

12.28.060 - Penalty.

A violation of any of the provisions of this chapter is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).

15.02.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the Planning & Community Development Department, the building permit holder shall be subject to a C-5 penalty (see LMC 1.24.040).

15.03.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the Planning and Community Development Department, the building permit holder shall be subject to a C-5 penalty (see LMC 1.24.040). For every additional day the work remains uncompleted, the building permit holder shall be subject to an additional C-1 penalty (see LMC 1.24.040).

16.12.040 - Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of permit or approval conditions and safeguards established in connection with such conditions) shall constitute a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040). In addition, the person responsible for the violation shall pay all costs and expenses involved in the case. Nothing in this chapter contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

16.16.140 - Offense and penalty.

A violation of, or failure to comply with, any provision of this chapter is a civil infraction and shall subject the violator to a C-8 penalty (see LMC 1.24.040).

A failure to comply with a provision of this chapter occurs when a party:

- (1) Develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or
- (2) Fails to comply with mitigation requirements imposed pursuant to this chapter.

17.13.010 - Enforcing official—Authority.

The director shall be responsible for enforcing Titles 15 through 19 of this code, and may adopt administrative rules to meet that responsibility. The director may delegate enforcement responsibility to the city engineer, director of public works, building official, fire chief or chief of police as appropriate.

17.13.020 - General penalty.

Compliance with the requirements of Titles 15 through 19 of this code, shall be mandatory. The provisions for enforcing and obtaining compliance established in Chapter 1.34 shall apply to any

violation of those titles. The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies.

17.13.050 - Civil fines.

A. *Failure to obtain necessary permit.* The failure to obtain any necessary permit required under the Development Code is a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

B. *Other violation of the Development Code.* A violation of any provision of the Development Code for which a penalty is not specified shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

19.49.060 - Content—Violations.

Any CUP that is issued, shall certify the location, nature and extent of the uses, together with all conditions that are imposed and other information deemed necessary for the issuance of the permit. A copy of the permit shall be kept on file and reviewed annually by the director. If at any time it is found that the use no longer complies with the conditions specified therein the owner shall be declared in violation of this chapter. Any such violation is a civil infraction and shall subject the person responsible for the violation to a C-9 penalty (see LMC 1.24.040) and/or revocation of the conditional use permit.

19.57.160 - Violations.

A. If the Community Development Director finds that the home occupation use violates the conditions of a home occupation use permit or this chapter, the Community Development Director shall notify the permit holder or licensee in writing of the decision that the home occupation use permit or business license shall be suspended or revoked unless the violation is abated.

Appeal of the Community Development Director’s administrative decision to suspend or revoke a home occupation use permit or business license may be appealed according to the procedures set forth in LMC 17.11.

19.59.240 - Violation—Penalty.

A. A violation of any term or provision of this chapter or of any permit hereunder, or failure to comply with a lawful order of the city planner Community Development Director as provided in this chapter is a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

B. Each calendar day of any continuing violation shall be deemed a separate and distinct violation.

SECTION 4: The following provisions of the Lynden Municipal Code are hereby repealed in their entirety:

~~9.04.085 – Person receiving civil infraction notice—Identification and detention.~~

~~A person who is to receive a notice of infraction under the Lynden Municipal Code is required to identify himself or herself to the enforcement officer by giving his or her name, address and date of birth. Upon request of the officer, the person shall produce reasonable identification, including a driver's license or identicard.~~

~~The officer may detain the person for a reasonable period of time necessary to confirm the identity of the person, to check for outstanding warrants and to complete and issue the notice of civil infraction.~~

~~17.13.040 – Civil regulatory order.~~

~~A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.~~

~~B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.~~

~~C. Content. A civil regulatory order shall set forth:~~

- ~~1. The name and address of the person to whom it is directed;~~
- ~~2. The location and specific description of the violation;~~
- ~~3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;~~
- ~~4. An order that the violation immediately cease, or that the potential violation be avoided;~~
- ~~5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;~~
- ~~6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;~~
- ~~7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.~~

~~D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including, but not limited to, replacement, repair, supplementation, revegetation or restoration.~~

~~E. Appeal. A civil regulatory order may be appealed in an open record appeal to the hearing examiner in accordance with Chapter 17.11 of this code.~~

SECTION 5: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION 6: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

AFFIRMATIVE VOTE IN FAVOR, AND _____ AGAINST, AND SIGNED BY THE MAYOR
THIS ___ DAY OF _____ 2024.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

ROBERT CARMICHAEL, City Attorney

EXHIBIT A

ORDINANCE NO. 23-1680

Showing amendments to the Lynden Municipal Code. Underlines indicate additions and strikethroughs indicate deletions.

Chapter 1.24 – GENERAL PENALTY ~~AND ENFORCEMENT~~

1.24.010 – Classification of Penalties.

Penalties are classified as follows:

A. *General Penalty.* Whenever the performance of any act is specifically prohibited or required by any law or section within this code and no penalty for violating such law or section is imposed, the penalty for performance of such required act or omission shall be a civil infraction.

B. *Civil Infraction.* Unless otherwise provided by law or this code, a person found guilty of committing a civil infraction under this code shall be subject to a monetary fine of not more than \$500.00. Statutory assessments shall be imposed in addition to any monetary fine for a civil infraction. A civil infraction may also be referred to within this code as a “civil violation.”

C. *Misdemeanor.* Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine. (RCW 9.92.030). Statutory assessments shall be imposed in addition to any monetary fine for a misdemeanor offense.

D. *Gross Misdemeanor.* Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine (RCW 9.92.020). Statutory assessments shall be imposed in addition to any monetary fine for a gross misdemeanor offense.

1.24.015 – General penalty.

~~A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of any ordinance contained in Title 9, 15, 16, 17, 18, or 19 of the Lynden Municipal Code is guilty of a misdemeanor. Any person violating any of the other provisions or failing to comply with any of the other mandatory requirements of the other titles of this code shall be guilty of a civil infraction. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a misdemeanor under the ordinances of the city shall be punished by a fine not to exceed one thousand dollars. Except in cases where a fixed monetary fine is prescribed by an ordinance, any person found to have committed a civil infraction shall pay a civil penalty of not more than five hundred dollars.~~

~~B. Each such person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of the ordinances of the city is committed, continued or permitted by any such person, and he or she is punishable accordingly.~~

1.24.020 - Violator's written promise to appear in court—Approval required. Continuing Offenses.

~~Any person arrested or charged with violation or violations of any portion of the city ordinances including sections and/or portions enacted hereinafter may, with approval of the presiding judge or person or persons acting on behalf of the presiding judge, give his or her written promise to appear in proper court, be it the municipal court of the city of Lynden or the Whatcom County District Court at any agreed time.~~

~~Each day during any portion of which a violation of any provision of this code is committed or is permitted is deemed to be the commission of a separate offense.~~

1.24.030 – Principles of Liability.

The following statutes of the state of Washington are adopted by reference, as presently constituted or hereafter amended, and made a part of this code:

- A. RCW 9A.08.010, General requirements of culpability
- B. RCW 9A.08.020, Liability of conduct of another, complicity
- C. RCW 9A.08.030, Criminal liability of corporations and persons acting under a duty to act on their behalf.

1.24.040 – Penalties for Civil Infractions – Designated.

Specific, non-deferrable, non-suspendable civil penalties are adopted by category reference in other sections of this code with a specific civil penalty to be imposed for each category of civil infraction as follows:

<u>Category</u>	<u>Penalty</u>
<u>C-1</u>	<u>\$25</u>
<u>C-2</u>	<u>\$50</u>
<u>C-3</u>	<u>\$75</u>
<u>C-4</u>	<u>\$100</u>
<u>C-5</u>	<u>\$250</u>
<u>C-6</u>	<u>\$300</u>
<u>C-7</u>	<u>\$350</u>
<u>C-8</u>	<u>\$500</u>
<u>C-9</u>	<u>\$1,000</u>

Chapter 1.34 – COMPLIANCE AND ENFORCEMENT

1.34.010 – Title.

This chapter shall be called “Compliance and Enforcement.”

1.34.020 – Applicability & Purpose.

A. This chapter sets forth the procedures for enforcing violations of the following provisions of the Lynden Municipal Code as now in effect or hereafter amended:

-Title 8 (Health and Safety), Except for Chapter 8.16 (Litter);

-Title 12 (Streets, Sidewalks and Public Places);

-Title 15 (Building and Construction);

Title 16 (Environmental Policy);

-Title 17 (Land Development);

-Title 18 (Subdivisions);

-Title 19 (Zoning); and

-Such other code provisions, ordinances, resolutions, or public rules that adopt this chapter by reference.

C. The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith. The City shall have any and all remedies available to it in law and equity.

D. It is the express and specific purpose and intent of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefitted by the terms of this chapter.

E. Nothing contained in this chapter is intended or shall be construed to create or form the basis of any liability on the part of the City, its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

1.34.030 – Definitions.

All definitions contained in LMC 17.01.030 apply to this chapter. In addition, the following words and phrases used in this chapter shall have the following meanings:

- A. “Abate” means to repair, replace, remove, destroy, demolish, board-up, or otherwise remedy a condition which constituted a civil infraction by such means, in such a manner, and to such extent as the Enforcement Official determines is necessary in the interest of the general health, safety, and welfare of the community.

- B. “Enforcement Official” means the City official designated by code with enforcement authority of a particular title, chapter, section, or provision thereof and may include any of the following:
 - (1) The Chief of Police
 - (2) The City Administrator
 - (3) The Director of the department generally responsible for enforcement of the Lynden Municipal Code provision which is the subject of a violation including, but not limited to:
 - i. The Public Works Director (for violations of Titles 12-13)
 - ii. The Community Development Director (for violations of Titles 15-19)
 - iii. The Parks Director (for violations of Chapter 12.24)
 - (4) A Code Enforcement Officer, serving under the direction of the Community Development Director or Building Official;
 - (5) Any designee duly appointed by any of the officials identified in subsections B (1)-(3) above.

Any of the officials identified in subsections B (1) – (5) above may act as an Enforcement Official pursuant to violations of Lynden Municipal Code Title 8.

- C. “Determination of Compliance” means a written statement from the City that the violation(s) identified in a Voluntary Correction Agreement, Civil Regulatory Order, or other notice has been sufficiently abated, remediated, or otherwise resolved.
- D. “Emergency” means a situation or civil violation which, in the opinion of an Enforcement Official, requires immediate action to prevent or eliminate an imminent threat to the public health, safety, or welfare of persons or property.
- E. “Hearing Examiner” means the Lynden Hearing Examiner and the office thereof established pursuant to Lynden Municipal Code Chapter 2.09.
- F. “Person Responsible for the Violation” means the person or persons, firm, corporation, partnership, joint venture, limited liability company, or other legal entity who caused, or is reasonably believed by an Enforcement Official to have caused, the violation and/or the owner, lessor, tenant, or other person entitled to control, use, and/or occupy the property and/or premises where a civil violation occurs.
- G. “Remediate” means to restore a site to a condition that complies with critical area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety, or welfare.

H. “Violation” means:

- (1) An act or omission contrary to any regulation or provision of the Lynden Municipal Code; and
- (2) An act or omission contrary to the conditions of any permit, notice, order, or stop work order issued pursuant to any such regulation or provision.

1.34.035 – Declaration of Public Nuisance.

All violations of the following are determined to be detrimental to the public health, safety, and environment, and are declared to be public nuisances:

- 1. Title 8 (Health and Safety);
- 2. Chapter 13.24.130;
- 3. Chapter 13.24.160;
- 4. Title 12 (Streets, Sidewalks and Public Places)
- 5. Title 15 (Building and Construction);
- 6. Title 16 (Environmental Policy);
- 7. Title 17 (Land Development);
- 8. Title 18 (Subdivisions); and
- 9. Title 19 (Zoning).

1.34.040 – Enforcement, Authority, and Administration.

A. In order to discourage public nuisances and otherwise promote compliance with applicable code provisions, an Enforcement Official may, in response to field observations, investigations, or reliable complaints, determine that violations of the provisions listed in LMC 1.34.020, or any other provision which adopts the compliance and enforcement scheme established in Chapter 1.34, have occurred or are occurring, and may:

- (1) Enter into a Voluntary Correction Agreement with a person responsible for the violation(s);
- (2) Issue Civil Regulatory Orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;
- (3) Require abatement by the Person Responsible for the Violation or undertake summary abatement and charge the reasonable costs of such work as authorized by this chapter;
- (4) Order work stopped at a site by means of a stop work order, and if such order is not complied with, assess civil penalties as authorized by this chapter and/or other applicable code sections;

(5) Suspend, revoke, or modify any permit previously issued by the City or deny a permit application as authorized by this chapter and/or other applicable code sections when other efforts to achieve compliance have failed;

(6) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute violations; and

(7) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Whatcom County.

B. The City has established its own Civil Infraction system for the enforcement of civil violations and nuisances pursuant to the authority of RCW 35A.11.020 and RCW 7.80.010(5), as presently enacted or hereafter amended.

C. The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the titles listed in LMC 1.34.020 in any other manner authorized by law.

D. *Obligation of Person Responsible for Violation.* The Person Responsible for the Violation shall achieve full code compliance. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having the property brought into compliance to the extent reasonably practicable under the circumstances, as determined by the Enforcement Official.

E. *Right of Entry.* The Enforcement Official is authorized to enter upon property or premises at any reasonable time to determine whether a civil violation has occurred or is occurring, or to enforce any provision of the Lynden Municipal Code. The Enforcement Official may make examinations, surveys, and studies as may be necessary in the performance of their duties. If the premises is occupied, the Enforcement Official shall present credentials and request entry. If an owner, occupant, or agent refuses the Enforcement Official entry, the City may seek an administrative or criminal search warrant.

1.34.050 – Voluntary Correction Agreement.

A. *Applicability.* This section applies whenever the Enforcement Official determines that a violation has occurred or is occurring.

B. *General.* The Enforcement Official shall have the discretion to secure voluntary correction by contacting the Person Responsible for the Violation, explaining the violation, and requesting correction.

C. *Issuance of Voluntary Correction Agreement.* A Voluntary Correction Agreement may be entered into between the Person Responsible for the Violation and the City, acting through the Enforcement Official. The Mayor is authorized to sign a Voluntary Correction agreement on behalf of the City.

D. *Content.* The Voluntary Correction Agreement is a contract between the City and the Person Responsible for the Violation under which such person agrees to correct the violation within a

specified time and according to specific conditions. The Voluntary Correction Agreement shall include, at a minimum, the following:

- (1) The name and address of the Person Responsible for the Violation;
- (2) The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
- (3) A description of the violation(s) and a reference to the provision(s) of the City code which has been violated;
- (4) The necessary corrective action to be taken, and the date by which the correction must be completed;
- (5) An agreement by the Person Responsible for the Violation that the City may inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
- (6) The amount of the minimum civil penalty that will be imposed if the terms of the Voluntary Correction agreement are not complied with; and
- (7) A statement that if the City determines that the terms of the Voluntary Correction Agreement are not complied with, the City may impose any remedy authorized by this chapter, including:
 - I. Assessment of the civil penalties identified in the Voluntary Correction Agreement;
 - II. Abatement of the violation at expense of Person Responsible for Violation;
 - III. Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses; and
 - IV. Suspension, revocation, or limitation of any related permit(s).
- (8) A statement that the Person Responsible for the Violation knowingly waives the right to a hearing.

E. Right to a Hearing Waived. In consideration of the City’s agreement to enter into a Voluntary Correction Agreement, the Person Responsible for the Violation shall have no right to an administrative or judicial hearing, under this chapter or otherwise, regarding the matter of the violation or the required corrective action.

F. Administrative Review of Compliance. After the Person Responsible for the Violation has given written notice to the City of completion of the corrective action required under the Voluntary Correction Agreement, the Enforcement Official shall, within five working days, determine if the corrective action is complete. If the Enforcement Official determines that the corrective action is not complete, the Enforcement Official shall so notify the Person Responsible for the Violation in writing. The Person Responsible for the Violation shall have seven business days from the date of mailing of said notice in which to file an appeal with the

Enforcement Official for review of such determination by the Hearing Examiner. Said review shall be completed and a decision issued by the Hearing Examiner within thirty days of receipt of a timely appeal. The only issue subject to review during an appeal at this stage shall be whether there has been complete compliance with the terms of the Voluntary Correction Agreement.

G. *Extension and Modification.* An extension of the time limit to complete the corrective action or a modification of the required corrective action may be granted by the Enforcement Official, in writing, if in the judgment of the Enforcement Official the Person Responsible for the Violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction required under the original agreement impossible or impractical.

H. *Abatement by the City.* The City may abate the violation in accordance with Section 1.34.100 if the terms of the Voluntary Correction Agreement are not complied with.

I. *Monetary Penalty.*

(a)The Enforcement Officer may reduce or waive any related monetary penalties if the violation(s) are corrected or mitigated according to the terms and schedule of a Voluntary Correction Agreement.

(b) If the terms of the Voluntary Correction Agreement are not met, the Person Responsible for the Violation may be assessed a monetary penalty not to exceed \$1,000 for each violation. Each separate day, event, action, or occurrence shall constitute a separate violation. In addition, such person shall be liable for all costs and expenses of abatement, as set forth in Section 1.34.100(C). Penalties will begin to accrue from the date the Voluntary Correction Agreement was issued. The date the City completes the abatement shall be the last day a monetary penalty may be imposed.

1.34.060 – Civil Regulatory Order.

When the Enforcement Official determines that a violation has occurred or is occurring and does not secure voluntary correction pursuant to Section 1.34.050, the Enforcement Official may issue a Civil Regulatory Order to the Person Responsible for the Violation.

1.34.061 – Civil Regulatory Order – Issuance & Service.

A. *Issuance.* When the Enforcement Official determines that a violation has occurred or is occurring, the Enforcement Official may issue a Notice of Civil Regulatory Order to any Person Responsible for the Violation.

B. *Person Receiving Notice – Identification and Detention.* A person who is to receive a Notice of Civil Regulatory Order is required to identify themselves to the Enforcement Official by giving their name, address, and date of birth. Upon the request of the Enforcement Official, the person shall produce reasonable identification.

A Person Responsible for the Violation who is unable or unwilling to reasonably identify themselves to the Enforcement Official may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing the Notice of Civil Regulatory Order.

C. Contents. The Notice of Civil Regulatory Order shall include, at a minimum, the following:

1. The name and address of the Person Responsible for the Violation;
2. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
3. A statement that the Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;
4. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;
5. A statement of the specific violation for which the notice was issued;
6. A statement of the monetary penalty established for the civil infraction, including any portion of said penalty that may be suspended, conditioned on timely correction, abatement, or remediation;
7. A statement that the recipient must respond to the notice as provided in this chapter within fifteen days by (1) providing evidence that the violation has been sufficiently corrected, abated, or remediated, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.
8. A statement that at any hearing to contest the determination, the rules for Hearing Examiner Proceedings established pursuant to LMC Chapter 2.09 will apply; and
9. A statement that failure to respond to a Notice of Civil Regulatory Order within fifteen days or to appear at a requested hearing is a misdemeanor and may be punished by a fine, imprisonment, or by both such fine and imprisonment; and
10. A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for purposes of explaining mitigating circumstances will result in a default judgment against the Person Responsible for the Violation in the amount of the penalty. In addition, the failure to appear may be referred to the prosecuting attorney for criminal prosecution for failure to respond and/or appear.

The Notice of Civil Regulatory Order may also include the following, as applicable:

11. A statement of the steps required to correct, abate, or remediate the violation;

- 12. The date by which the required corrective action, abatement, or remediation must be completed by; and/or
- 13. An order to stop work, but only if in the judgment of the Enforcement Official the subject continuing violation of this code will materially impair the Enforcement Official's ability to secure compliance with the code, when the continuing violation threatens the health or safety of the public, or when the continuing violation is likely causing ongoing environmental damage. Said stop work order shall specify the violation and may prohibit any or all work or other activity at the site until the required correction, abatement, or remediation is completed and a Determination of Compliance is issued by the Enforcement Official.

D. Service. Service of the Notice of Civil Regulatory Order shall be made by one or more of the following methods:

- A. By personal service on the Person Responsible for the Violation;
- B. If the violation involves a business, by personal service on any employee of the business of a suitable age and discretion;
- C. By mailing a copy of the notice by regular first-class mail to the last known address of the Person Responsible for the Violation; or
- D. For violations involving real property, by placing the notice in a conspicuous place on the property where the violation is occurring.

Service shall be deemed effective upon personal service, or one business day following the posting of the notice upon the property, or three days following placement of the notice in the U.S. mail, postage prepaid.

E. Determination Final Unless Contested. A Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in LMC 1.34.062.

1.34.062 – Civil Regulatory Order – Response.

A. A person who receives a Notice of Civil Regulatory Order shall respond to the notice within fifteen days of the date the notice was served by either (1) providing evidence that the violation has been sufficiently corrected, abated, or remediated, and paying any penalty prescribed in the order, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.

B. Declaration of Compliance. If the Person Responsible for Violation provides evidence the violation has been corrected and/or pays any prescribed penalty, an Enforcement Official will undertake further investigation to determine whether compliance has been achieved. If compliance has been achieved, the Enforcement Officer will issue a Determination of Compliance within five business days to the person(s) named in the order. If the Enforcement

Official determines that compliance has not been achieved, they may elect to issue a new Civil Regulatory Order or pursue any other action available in law or equity.

C. *Hearing Examiner Appeal.* A Civil Regulatory Order may be appealed to the Hearing Examiner within 15 days of the effective service of the order by filing a statement of appeal with the Enforcement Official. A statement of appeal shall include the following:

- 1. The name of the appellant,
- 2. The date of the Civil Regulatory Order, and
- 3. An explanation of the grounds for appeal, including citation to applicable sections of the Lynden Municipal Code or other legal authority.

If an appeal is not timely filed with the Enforcement Official, the Civil Regulatory order becomes a final order. The final order, including the collection of penalties and required correction, abatement, or remediation, may be enforced by the City Attorney in Whatcom County Superior Court.

D. *Explanation of Mitigating Circumstances.* Within 15 days of the effective service of a Civil Regulatory Order, the Person Responsible for the Violation may request a hearing with the Enforcement Official for the purpose of explaining any mitigating circumstances surrounding the violation. The hearing shall be an informal proceeding. The Person Responsible for the Violation may not subpoena witnesses. The determination that a violation has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. Within 10 days of the hearing, the Enforcement Official will provide the Person Responsible for the Violation a written notice of the decision and any revisions to the Civil Regulatory Order.

E. Any person who fails to comply with a Notice of Civil Regulatory Order is guilty of a misdemeanor regardless of the disposition of the Notice of Civil Regulatory Order.

F. A person who willfully fails to pay a monetary penalty under this chapter may, unless indigent, be found in contempt of a court as provided in Chapter 7.21 RCW.

1.34.070 – Penalties.

A. *Monetary Penalty.* If corrective action is not completed by the date specified in a Notice of Civil Regulatory Order, a daily C-4 penalty (see LMC 1.24.040) shall commence. The daily monetary penalty shall increase to a C-5 penalty (see LMC 1.24.040) if corrective action is not completed by the second deadline established in the initial or any subsequent Notice of Civil Regulatory Order. The daily monetary penalty shall increase to a C-8 penalty (see LMC 1.24.040) per day if the corrective action is not completed by the third deadline established in the initial or any subsequent Notice of Civil Regulatory Order. This penalty shall be in addition to any penalty imposed in the Civil Regulatory Order for the underlying violation(s) and any penalty pursuant to a Voluntary Correction Order entered into prior to issuance of the Civil Regulatory Order. Civil fines shall be paid into the City’s general fund.

B. *Restitution.* The Hearing Examiner or a reviewing court may also order a person found to have committed a violation to make restitution and perform abatement or remediation.

C. Collection of Monetary Penalty. Civil penalties imposed under this section shall be due immediately and payable upon issuance and receipt of a Notice of Civil Regulatory Order. The City may, but is not required to, send the Person Responsible for the Violation periodic statements of the total monetary penalty currently due. If a penalty remains unpaid thirty days after it becomes due and payable, the City Attorney is authorized to take all actions available to collect the full amount owed. The City Attorney is authorized to take all actions available to collect the monetary penalty.

D. Continued Duty to Correct. Payment of a monetary penalty pursuant to this section does not relieve the Person Responsible for the Violation of the duty to correct, abate, or remediate the violation as called for in the Civil Regulatory Order.

E. Compromise, Settlement, and Disposition of Disputes. The Enforcement Official or the City Attorney may negotiate a settlement or compromise, or otherwise dispose of a dispute enforced under this chapter when to do so would be in the best interests of the City.

1.34.090 – Civil Regulatory Order – Appeal.

A. How to Appeal. The person to whom a Notice of Civil Regulatory Order is issued pursuant to this chapter may appeal to the Hearing Examiner by sending a written notice of appeal to the Enforcement Official along with the applicable appeal fee established by resolution of the City Council, if any, within 15 calendar days from the date of effective service of the Notice of Civil Regulatory Order. The written notice of appeal shall contain, at a minimum, the following information:

1. A brief statement identifying the decision being appealed;
2. The name and address of the appellant;
3. A brief statement identifying the relief sought and the reasons why the Enforcement Official's determination should be reversed, modified, or set aside; and
4. Identification of any witness testimony, photographs, or documentary evidence to be presented.

B. Effect of Appeal. The monetary penalty for a continuing violation does not continue to accrue during the pendency of the appeal. However, the Hearing Examiner may impose a daily monetary penalty from the effective date of service of the Notice of Civil Regulatory Order if the Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance. All other provisions of the Civil Regulatory Order remain in effect during the pendency of the appeal.

C. Date of Hearing. Within 10 days of the Enforcement Official's receipt of a timely written notice of appeal, the Hearing Examiner shall set a public hearing for a date within 45 days, unless a longer period is agreed to by both parties.

D. Conduct of Hearing. The Hearing Examiner shall conduct the hearing according to the Hearing Examiner Procedural Rules established pursuant to LMC 2.09.

E. Preponderance of the Evidence Standard. For each violation appealed, the Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that (1) a violation has occurred, and (2) that the required corrective action is reasonable.

F. Decision. The Hearing Examiner shall affirm, vacate, or modify the City’s decision regarding each alleged violation appealed and the related required corrective action, with or without written conditions.

G. Notice of Decision. The Hearing Examiner’s decision shall be mailed to the Appellant, Enforcement Official, and City Attorney within 14 days of the hearing. The decision shall contain, at a minimum, the following:

1. The decision regarding the alleged violation, including findings of fact and conclusions of law based thereon;
2. A statement that noncompliance with the Hearing Examiner’s decision is punishable as a misdemeanor under LMC 1.34.90(l).

I. Effect of Decision. The decision of the Hearing Examiner shall constitute the final decision of the City. If a notice of appeal is not timely filed, the failure to comply with the decision of the Hearing Examiner shall constitute a misdemeanor. In addition to criminal punishment pursuant to this subsection, the City may pursue abatement as provided for in this chapter.

1.34.100 – Abatement by the City.

A. Summary Abatement. Whenever a condition constitutes an immediate threat to the public health, public safety, public welfare, or to the environment, the City may summarily and without prior notice abate the condition. Written notice of such abatement, including the reason(s) for it, shall be given to the Person Responsible for the Violation as soon as reasonably practicable after the abatement.

B. Judicial Abatement. Alternatively, the City may at any time seek a judicial abatement order from Whatcom County Superior Court to abate a condition which continues to be a violation of this code when other methods of remedial action have failed to produce compliance.

C. Cost of Summary Abatement. In addition to any other penalty imposed under this chapter, the City may levy a special assessment on the property or premises where a nuisance is situated to reimburse the City for the expense of the abatement of said nuisance, in accordance with the requirements of RCW 35A.21.405, as presently enacted or as hereafter amended.

D. Other Methods Not Excluded. Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with another ordinance or the laws of the state of Washington.

1.34.130 – Interference with Code Enforcement Unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a Civil Regulatory Order, stop work order, emergency order, or intentionally obstructs, impedes, or

interferes with lawful attempts to correct a violation being processed under this chapter shall be guilty of a gross misdemeanor.

1.34.140 – Conflicts.

In the event of a conflict between this chapter and any other provision of the Lynden Municipal Code or City ordinance, this chapter shall control.

1.34.150 – Severability.

If any section, subsection, clause, paragraph, phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity of any other section, subsection, clause, paragraph, phrase, or word of this chapter.

2.09.040 - Jurisdiction-duties—powers.

A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.

B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:

1. Appeals of the determinations of the fees and dedications made under Chapters [3.28](#), [3.40](#), [3.44](#), and [19.67](#) LMC;
2. Appeals of dangerous dog declarations under [Chapter 6.09](#) LMC;
3. Appeals of determinations of eligibility for relocation assistance under [Chapter 12.36](#) LMC;
4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user's wastewater and/or collection services, under [Chapter 13.12](#) LMC;
5. Appeals of the city's computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under [Chapter 13.24](#) LMC;
6. Challenges of the written interpretations and/or decisions of the public works director made under [Chapter 13.28](#) LMC;
7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city's computation of the applicable fees assessed, under [Chapter 13.32](#) LMC;

- 8. Appeals of the determination of the ~~planning director~~ Community Development Director regarding moving buildings under [Chapter 15.05](#) LMC;
- 9. Appeals of the determination of the building code official as described in [Chapter 15.14](#) LMC;
- 10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under [Chapter 16.05](#) LMC, including related procedural and substantive issues;
- 11. Appeal of director's final critical area determinations;
- 12. All applications for shoreline permits or revisions to shoreline permits under [Chapter 16.08](#) LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;
- 13. Under [Chapter 16.12](#) LMC, Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;
- 14. Appeals of the imposition of penalties or of the ~~planning director's~~ Community Development Director's decision on mitigation or revision under [Chapter 16.16](#) LMC;
- 15. Appeals of the administrative approvals described in LMC Sections [17.09.010](#) and [17.09.020](#);
- 16. Appeals of administrative interpretations and approvals under LMC [Section 17.11.010](#);
- 17. Appeals of civil regulatory orders and civil fines issued under ~~Chapter 17.13~~ [Chapter 1.34](#) LMC;
- 18. Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under [Chapter 17.15](#) LMC;
- 19. Amortization periods for nonconforming signs;
- 20. All variances from the requirements of [Title 19](#), except variances from the requirements of [Chapter 19.33](#) LMC and LMC Sections [19.22.030](#), [19.22.040](#), and [19.22.050](#), and except where the variance is part of a project application being decided upon by a different hearing body;
- 21. Appeals of determinations of building official as described in LMC [Section 19.42.040](#);
- 22. Appeals of administrative interpretations made under Chapter 19.59 LMC; and
- 23. ~~Other actions as required by this code.~~ Appeals of a determination of incomplete abatement under a voluntary correction order made under LMC Section 1.34.050(F) and
- 24. Other actions as required by this code.

C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as

part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.

D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.

E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.

F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions and orders; and to adopt procedures consistent with [Section 2.09.050](#).

G. With the exception of shoreline permit applications, ~~and~~ and decisions on appeals of Civil Regulatory Orders, the hearing examiner's decision on ~~these the~~ matters identified in subsection (B) shall be final unless timely appealed to the city council following the procedures in [Chapter 17.11](#) LMC. The city council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears and on appeals of Civil Regulatory Orders. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the shoreline hearings board.

2.10.070 - Violation—Penalty.

It shall be a misdemeanor, ~~punishable by a fine of not to exceed five hundred dollars, or by imprisonment for not to exceed three months, or both,~~ for any person during a disaster:

A. To willfully obstruct, hinder or delay any member of the emergency management organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;

B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of a nature as to give, or be likely to give, assistance to the enemy, or to imperil the

lives or property of inhabitants of the city, or to prevent, hinder or delay the defense or protection thereof;

C. To wear, carry or display, without authority, any means of identification specified by the department of emergency management of the state.

3.28.180 - Noncompliance—Penalty.

A violation of any provision of this chapter including, but not limited to:

- A. Failing or refusing to apply for a utility occupation license,
- B. Failing or refusing to make tax returns or to pay the tax and/or any applicable penalty when due, or
- C. Making a false statement or representation in connection with any such application

~~is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence. Any person subject to this chapter, who fails or refuses to apply for a utility occupation license or to make tax returns or to pay the tax or penalties when due, or who makes any false statement or representation in or in connection with any such application, or who otherwise violates or refuses to comply with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and each such person is guilty of a separate offense for e~~
Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence, and upon any conviction of any such violation, such person shall be punished by a fine not to exceed one thousand dollars for each day or portion thereof which such person is found guilty of noncompliance with the provisions of this chapter.

3.12.070 - Penalties.

Any seller who fails or refuses to collect the tax as required with the intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor, ~~and upon conviction thereof shall be fined no more than five hundred dollars or imprisoned for not more than six months, or by both such fine and imprisonment.~~

3.36.060 - Penalty.

~~A violation of any provision of this chapter That any person, firm or corporation violating or failing to comply with the provisions of this chapter~~ or any lawful rule or regulation adopted pursuant hereto is a civil infraction and shall upon conviction be punished by a fine in a sum not to exceed five hundred dollars subject the violator to a C-4 penalty (see LMC 1.24.040). Each day of violation will be considered a separate offense.

5.02.110 - Violation—Penalty.

~~Any person violating or failing to comply~~ A violation of with any of the provisions of this chapter or any lawful rule or regulation adopted by the city clerk pursuant thereto is a civil infraction and, upon conviction thereof, shall subject the violator to a C-5 penalty (see LMC 1.24.040), ~~be punished by a fine in any sum not to exceed three hundred dollars.~~

5.04.040 - Violation—Penalty.

Violation of any provision of this chapter is a misdemeanor, ~~and punishable by a fine of five hundred dollars and/or six months in the county jail.~~

5.12.080 - Violation—Penalty.

~~Each person convicted of a violation of the provisions of the ordinance codified in this chapter shall upon conviction thereof be subject to a fine of two hundred fifty dollars or imprisonment in the county jail for not to exceed ninety days.~~ A violation of any of the provisions of this chapter is a misdemeanor.

8.04.090 - Violation—Penalty.

~~Any person, firm or corporation violating the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor.~~ A violation of any of the provisions of this chapter is a civil infraction and shall subject the person responsible for the violation to a C-3 penalty (see LMC 1.24.040).

8.16.080 - ~~Violation deemed misdemeanor—Penalty~~Penalties.

~~Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be subject upon conviction to a fine of not less than twenty five dollars nor more than one hundred dollars or by imprisonment for not less than ten days nor more than thirty days or by both such fine and imprisonment.~~

A. It is a civil infraction for a person to litter in an amount less than or equal to one cubic foot. Such civil violation shall subject the violator to a C-2 penalty (see LMC 1.24.040).

B. It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

C. Is it a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

8.24.050 - Penalty for noncompliance.

The failure or refusal to comply with any of the provisions of any sections of this [Chapter 8.24](#) is a civil infraction and shall subject the ~~offender-violator~~ to a ~~C-2 penalty (see LMC 1.24.040). fine in the amount of three hundred dollars.~~

~~9.04.085 – Person receiving civil infraction notice—Identification and detention.~~

~~A person who is to receive a notice of infraction under the Lynden Municipal Code is required to identify himself or herself to the enforcement officer by giving his or her name, address and date of birth. Upon request of the officer, the person shall produce reasonable identification, including a driver's license or identicard.~~

~~The officer may detain the person for a reasonable period of time necessary to confirm the identity of the person, to check for outstanding warrants and to complete and issue the notice of civil infraction.~~

9.04.090 - Promise of court appearance, non-appearance penalty, fail to pay.

Any person arrested for violation of this title, or Title [9-10](#), who is eligible for release on personal recognizance shall give his or her written promise to appear in municipal court at an agreed time in order to secure release pending said appearance.

A. Any person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

B. Any person who willfully fails to pay a monetary penalty or to perform community service as required by the Municipal Court under this title or [Title 10](#) may be found in contempt of court as provided in RCW Chapter 7.21.

C. Any person who willfully fails to respond ~~as provided in this title or Lynden Municipal Coded Title 9~~ to five or more notices of parking infraction issued pursuant to Lynden Municipal Code Title [9-10](#) shall be guilty of a misdemeanor regardless of the disposition of the notices of infraction.

D. Violating a written promise to appear or failure to respond to a criminal citation or summons, as directed by the citation or summons, shall be punishable as a misdemeanor. The penalty for failure to respond to a civil or traffic infraction shall be a ~~fine of twenty five dollars C-1 penalty (see LMC 1.24.040)~~. The penalty for failure to respond to five or more parking infractions shall be a ~~fine of twenty five dollars C-1 penalty (see LMC 1.24.040)~~ per infraction.

9.22.110 - Order of abatement—Procedures authorized—Penalties designated.

A. If the existence of a nuisance is admitted or established in an action as provided for in [Section 9.22.120](#), or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in Sections [9.22.070](#) and [9.22.080](#) and shall direct the sale of such

thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not sold.

B. Such judgment shall impose a ~~C-5~~ penalty (~~see LMC 1.24.040~~) ~~of two hundred fifty dollars~~ for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, which penalty shall be collected by execution as a civil action, and when collected, shall be paid into the current expense fund of the city.

C. The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in [Section 9.22.080](#).

D. Owners of unsold personal property and contents so seized must appear and claim the same within ten days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.

E. ~~A party found guilty of contempt~~ Contempt under the provisions of this section shall be ~~punished by a fine of not less than two hundred dollars or more than one thousand dollars, or by imprisonment in the county jail not less than three nor more than six months, or by both fine and imprisonment a misdemeanor.~~

9.24.070 - Sitting or lying on public sidewalks prohibited.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or upon a blanket, chair, stool, planter, fountain, railing, or any other object placed upon a public sidewalk, during the hours between seven a.m. and nine p.m. in the following zones:

1. Central Business District ("CBD"). The Central Business District, for the purposes of this Section, is the area bounded by the streets hereafter named, including said streets and their abutting sidewalks:

- a. The south side of the west half of Front Street between Second and Third Streets;
- b. Front Street between Third Street and Seventh Street;
- c. Third, Fourth, Fifth and Sixth Streets between Front Street and Grover Street;
- d. Seventh Street between Front Street and Grover Street, except the north half of the west side thereof;
- e. The north side of Grover Street between Fourth Street and Sixth Street;

- f. All city owned parking lots including the library parking lot, but excluding the Lynden Community Center parking lot and the public parking lot located at the northeast corner of Fourth and Grover Streets;
- g. The south half of the west side of Fourth Street between Grover Street and Liberty Street;
- h. The south half of Fifth Street between Grover Street and Liberty Street;
- i. The north side of Front Street between Seventh Street and Eighth Street;
- j. The east side of Seventh Street between Front Street and Judson Alley.

B. Exceptions. The prohibitions in subsection A shall not apply to any person:

- 1. Sitting or lying down on a sidewalk due to a medical emergency.
- 2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk.
- 3. Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting or similar event conducted on the public sidewalk pursuant to a street use or other applicable permit;
- 4. Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
- 5. Sitting on a public sidewalk within a bus stop zone while waiting for public or private transportation.

Nothing in any of these exceptions shall be construed to permit any conduct which is prohibited by LMC Section 9.24.005 (RCW 9A.84.030 B Disorderly Conduct) or LMC [Section 9.24.040](#) (Pedestrian Interference).

C. No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.

D. A violation of this section ~~shall be~~ is a civil infraction and shall subject the violator to a ~~fine of up to two hundred fifty dollars~~ C-4 penalty (see LMC 1.24.040), plus statutory assessment. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty. ~~The default amount shall be one hundred dollars.~~

9.24.120 - Public disturbance noise.

A. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise. The following sounds are determined to be public disturbance noises:

1. The frequent, repetitive, or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.
2. Frequent, repetitive, or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residentially zoned area, so as to unreasonably disturb or interfere with the peace, comfort and repose of others.
3. Frequent, repetitive, or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort, and repose of a person or persons on public or private property, other than the property from which the sound emanates, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings.
4. Sound from motor vehicle audio sound systems including, without limitation, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the vehicle itself.
5. Sound from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source and outside the property of the operator.
6. Construction and industrial noises, including but not limited to, motorized construction and equipment operation, hammering, blasting, drilling and sawing in residentially zoned areas, between the hours of ten p.m. and seven a.m., which unreasonably disturb or interfere with the peace, comfort and repose of others; provided that this subsection shall not apply to noises caused by projects required in an emergency to repair public facilities or utilities or to prevent immediate damage or harm to persons or property; and further provided that this subsection shall not apply if the city council grants a variance from the provisions of this subsection for the construction or repair of a public facility or utility upon a finding that it is either necessary or in the public interest for all or a portion of the work to be performed between the hours of ten p.m. and seven a.m. The council may impose such conditions as it deems appropriate upon the granting of a variance.
7. Subsections 3 and 5 shall not apply to regularly scheduled events at parks or the Northwest Washington Fairgrounds, such as public address systems for games and activities or park concerts. Provided, that the foregoing enumeration of acts and noises are not to be construed as excluding other acts and noises which offend the public peace.

B. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction and shall ~~be punished by a fine not to exceed two hundred fifty dollars~~ be subject to a C-5 penalty (see LMC 1.24.040).
2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a ~~criminal~~ misdemeanor and shall be punished ~~by~~

~~a fine not to exceed five hundred dollars or imprisonment not to exceed ninety days or by both such fine and imprisonment as set forth in LMC 9.04.050.~~

9.24.130 - Public disturbance/barking dogs.

A. No person shall cause or permit or allow any dog or dogs owned, harbored, controlled or kept by them in the city to remain outside of the dwelling of such a person while such animal is causing excessive or frequent noise, such as habitual howling, yelping or barking, which noise disturbs or is likely to disturb the comfort or repose of any person in the neighborhood. A violation of this section is declared a public nuisance and adverse to the public welfare and is punishable as follows:

B. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be ~~punished by a fine not to exceed two hundred fifty dollars~~ subject to a C-4 penalty (see LMC 1.24.040).

2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a ~~criminal~~-misdemeanor and shall be ~~punished by a fine not to exceed five hundred dollars or imprisonment not to exceed ninety days, or by both such fine and imprisonment as set forth in LMC 9.04.050.~~

9.56.080 - Driving, riding or walking on runways—Prohibited—Penalties.

A. It shall be illegal for any person to drive a motor vehicle, ride a bicycle or walk on the runways of the Lynden municipal airport. Runways are those areas designated for the take-off and landing of aircraft and shall not include the those areas designated for the parking or storage of aircraft.

B. This section does not apply to emergency personal responding to an emergency.

C. A ~~persons first~~-violation of this section ~~shall be an is a civil~~ infraction ~~punishable by a fine of two hundred fifty dollars. Second an subsequent violations shall be misdemeanors and punishable as provided by LMC 9.04.050.~~ and shall subject the violator to the following penalties:

First Violation:

C-5 Penalty (see LMC 1.24.040)

Each Subsequent Violation Within a Twelve (12) Month Period:

Misdemeanor punishable as provided by LMC

9.04.050

9.60.140 - Handbills and posters—Violation—Penalty.

Any person violating any provision of this chapter shall be guilty of a misdemeanor, ~~punishable upon conviction thereof by fine of not more than two hundred fifty dollars or by imprisonment in~~

~~the county jail for a period of not more than five days, or by both such fine and imprisonment in the discretion of the Lynden municipal court judge.~~

10.04.060 - Violation—Penalty.

Unless another penalty is expressly provided by law in the MTO or in the statutes that are adopted by reference in [Section 10.04.010](#), any person who is convicted of violating or failing to comply with any of the provisions of the ordinance codified in this chapter shall be ~~punished by a fine of not more than two hundred fifty dollars or by imprisonment not to exceed ninety days guilty of a civil infraction and subject to a C-4 penalty (see LMC 1.24.040).~~

10.08.090 - Parking restrictions between nine a.m. and five-thirty p.m. on certain streets—Violation and penalty schedule.

A. ~~When corresponding time limit signs are posted, it is~~ unlawful for any person to park any motor vehicle on the following streets between nine a.m. and five-thirty p.m. for a period of time exceeding three hours except on Saturdays and Sundays or days designated as state holidays:

1. The south side of the west half of Front Street between Second and Third Streets;
2. Front Street between Third Street and Seventh Street;
3. Other areas signed or appropriately marked as a three hour parking limit.

B. It is unlawful for any person to park any motor vehicle for a period of time longer than fifteen minutes in any parking space signed or appropriately marked as a fifteen-minute parking limit.

C. ~~Any person violating any provision of this section shall be deemed guilty of an infraction and shall be punished as follows for each violation. A violation of any provision of this section is a civil infraction and shall subject the violator to the following penalties:~~

1. First offense within any twelve months: a written warning;
2. Second offense within twelve months: a second written warning. The second warning shall notify the defendant that subsequent violations within twelve months of the first violation will ~~be punishable subject the violator to the monetary penalties set forth in subsection 3 below, by a fine of not less than twenty-five dollars which The penalty fine shall increase to fifty dollars for the fourth violation within twelve months, seventy-five dollars for the fifth violation within twelve months and one hundred dollars for the sixth and all subsequent violations within twelve months.~~
3. Third and subsequent offense within twelve months: ~~a fine of twenty-five dollars which fine shall increase to fifty dollars for the fourth violation within twelve months, seventy-five dollars for the fifth violation within twelve months and one hundred dollars for the sixth and all subsequent violations within twelve months.~~

Third violation within twelve months:

C-1 Penalty

Fourth violation within twelve months:

C-2 Penalty

<u>Fifth violation within twelve months:</u>	<u>C-3 Penalty</u>
<u>Sixth violation and all subsequent violations within twelve months:</u>	<u>C-4 Penalty</u>

10.08.100 - Parking prohibited on certain streets.

A. It is unlawful for any person to park any motor vehicle on any portion of Bradley Road within the city limits of Lynden.

~~B. It is unlawful for any person to park on any portion of Evergreen Street within the city limits of Lynden.~~

~~C. It is unlawful for any person to park on any portion of Agronomy Way within the city limits of Lynden.~~

~~D. Any person violating a violation of this provision is a civil infraction and shall be deemed guilty of an infraction and shall be fined not less than five dollars and not more than two hundred fifty dollars subject the violator to a C-2 penalty (see LMC 1.24.040).~~

10.16.030 - Penalties.

A. ~~Any person violating a violation of~~ this chapter ~~shall be guilty of is~~ a civil infraction and ~~upon conviction thereof shall be fined not more than five hundred dollars shall subject the violator to a C-4 penalty (see LMC 1.24.040).~~ Each time a vehicle is used contrary to this chapter such occasion shall constitute a separate offense within the meaning of this chapter.

B. The city of Lynden shall have a lien against the vehicle used contrary to this chapter in the amount of the ~~fine penalty~~ imposed and shall foreclose on such lien according to law, including costs and attorney's fees, if the ~~fine penalty~~ is not paid as required.

C. In his discretion, the officer may issue a notice of civil infraction and release the driver upon his signature, or he may require the driver or owner to deposit with the municipal court clerk a sum equal to a C-4 penalty (see LMC 1.24.040) ~~not to exceed five hundred dollars~~ prior to release of the vehicle as a guaranty of appearance in court.

10.18.030 - Violation—Penalty.

~~Any person violating a violation of~~ any provision of this chapter ~~shall be guilty of an is a civil~~ infraction and shall ~~be punished by the imposition of a monetary penalty of not more than two hundred fifty dollars, subject the violator to a C-3 penalty (see LMC 1.24.040), further, Furthermore,~~ the device ridden at the time of the violation shall be subject to impound by the city for a period of ten days.

12.16.065 - Vehicle weight limited when—Exceptions—Penalty.

A. Whenever in the opinion of the city engineer it becomes necessary to place weight limits on streets in the city to avoid unnecessary damage to such streets caused by freezing and thawing, there shall be imposed a maximum weight limit of five tons gross vehicle weight on all streets in the city except the following:

1. Front Street from the west city limits to First Street;
2. Main Street from the west city limits to Third Street;
3. Third Street from Front Street to the north city limits.

B. Special exceptions may be made by the city engineer in the case of extraordinary need. Such weight restrictions shall be effective upon posting of notice of such weight restrictions on such streets.

C. ~~Violation~~ A violation of this Section ~~shall be a misdemeanor punishable by a fine of not more than five hundred dollars~~ is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).

12.24.190 - Violations—Penalty.

Any violation of any provision of this chapter shall constitute a civil infraction and shall subject the violator to a ~~monetary penalty as provided in the Lynden Municipal Code C-3 penalty (see LMC 1.24.040).~~ Each and every calendar day during any portion of which any violation of this chapter is committed, continued or permitted by any such person shall constitute a separate offense.

12.28.060 - Penalty.

~~The penalty per violation of this chapter shall be at the rates set forth in the adopted annual budget. A violation of any of the provisions of this chapter is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).~~

15.02.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the ~~public works department~~ Planning & Community Development Department, the building permit holder shall be ~~fined the sum of two hundred fifty dollars plus twenty five dollars per day for each day the work remains uncompleted subject to a C-5 penalty (see LMC 1.24.040).~~ For every additional day the work remains uncompleted, the building permit holder shall be subject to an additional C-1 penalty (see LMC 1.24.040).

15.03.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the ~~public works department~~ Planning and Community Development Department, the building permit holder shall be ~~fined the sum of two hundred fifty~~

~~dollars plus twenty five dollars per day for each day the work remains uncompleted, subject to a C-5 penalty (see LMC 1.24.040). For every additional day the work remains uncompleted, the building permit holder shall be subject to an additional C-1 penalty (see LMC 1.24.040).~~

16.12.040 - Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of permit or approval conditions and safeguards established in connection with such conditions) shall constitute ~~a misdemeanor~~ civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040. ~~Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one thousand dollars or imprisoned for not more than one hundred eighty days, or both, for each violation, and in~~ In addition, the person responsible for the violation shall pay all costs and expenses involved in the case. Nothing in this chapter contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

16.16.140 - Offense and penalty.

~~A. Any person, firm, partnership, limited liability company, corporation, or other legal entity that fails to comply or causes the failure to comply with any provision of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which such a violation is found to have occurred shall constitute a separate offense.~~

~~B. The city may levy civil penalties against any person, firm, partnership, limited liability company, corporation, or other legal entity for failure to comply or causing a failure to comply with of any of the provisions of this chapter. The civil penalty shall be assessed as a one-time penalty of five hundred dollars and/or a maximum rate of five hundred dollars per day per violation.~~

~~A violation of, or failure to comply with, any provision of this chapter is a civil infraction and shall subject the violator to a C-8 penalty (see LMC 1.24.040).~~

~~C.~~ A failure to comply with a provision of this chapter occurs when a party:

- (1) Develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or
- (2) Fails to comply with mitigation requirements imposed pursuant to this chapter.

~~D. The penalty provided in subsection (B) above shall be imposed by serving the responsible party with a notice in writing, either by certified mail with return receipt requested, or by personal service. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.~~

~~E. Within thirty days after the notice is received, the party incurring the penalty may apply in writing to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the planning director may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper. The planning director's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal of said decision with the planning director within fourteen days of its issuance.~~

17.13.010 - Enforcing official—Authority.

The director shall be responsible for enforcing Titles ~~16~~ 15 through 19 of this code, and may adopt administrative rules to meet that responsibility. The director may delegate enforcement responsibility to the city engineer, director of public works, building official, fire chief or chief of police as appropriate.

17.13.020 - General penalty.

Compliance with the requirements of Titles ~~16~~ 15 through 19 of this code, shall be mandatory. The ~~general penalties and remedies established at Chapter 1.24 of this code, for such violations provisions for enforcing and obtaining compliance established in Chapter 1.34~~ shall apply to any violation of those titles. The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies.

~~**17.13.040 – Civil regulatory order.**~~

~~A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.~~

~~B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.~~

~~C. Content. A civil regulatory order shall set forth:~~

- ~~1. The name and address of the person to whom it is directed;~~
- ~~2. The location and specific description of the violation;~~
- ~~3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;~~
- ~~4. An order that the violation immediately cease, or that the potential violation be avoided;~~
- ~~5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;~~

~~6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;~~

~~7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.~~

~~D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including, but not limited to, replacement, repair, supplementation, revegetation or restoration.~~

~~E. Appeal. A civil regulatory order may be appealed in an open record appeal to the hearing examiner in accordance with Chapter 17.11 of this code.~~

17.13.050 - Civil fines.

~~A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit or who fails to comply with a civil regulatory order shall be subject to a civil fine.~~

~~A. Failure to obtain necessary permit. The failure to obtain any necessary permit required under the Development Code is a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).~~

~~B. Amount. The civil fine assessed shall not exceed one thousand dollars for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.~~

~~B. Other violation of the Development Code. A violation of any provision of the Development Code for which a penalty is not specified shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).~~

~~C. Notice. A civil fine shall be imposed by a written notice and shall be effective when served or posted as set forth in Section 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.~~

~~D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid thirty days after it becomes due and payable, the director may take actions necessary to recover the fine. Civil fines shall be paid into the city's general fund.~~

~~E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the director for remission of the fine. The director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.~~

~~F. Appeal. Following the director's final determination on a timely application for remission, the civil fine imposed may be appealed to the hearing examiner in an open record hearing as set forth in Chapter 17.11 of this code.~~

19.49.060 - Content—Violations.

Any CUP that is issued, shall certify the location, nature and extent of the uses, together with all conditions that are imposed and other information deemed necessary for the issuance of the permit. A copy of the permit shall be kept on file and reviewed annually by the ~~planner director~~. If at any time it is found that the use no longer complies with the conditions specified therein the owner shall be declared in violation of this chapter. ~~Remedies of the city may include criminal enforcement~~ Any such violation is a civil infraction and shall subject the person responsible for the violation to a C-9 penalty (see LMC 1.24.040) and/or revocation of the conditional use permit.

19.57.160 - Violations.

A. If the ~~planning director~~ Community Development Director finds that the home occupation use violates the conditions of a home occupation use permit or this chapter, the ~~planning director~~ Community Development Director shall notify the permit holder or licensee in writing of the decision that the home occupation use permit or business license shall be suspended or revoked unless the violation is abated.

~~B. The permit holder or licensee may request a hearing within fourteen days of receipt of the notice. Should no hearing be requested, the planning director's decision shall be the final decision of the city of Lynden. If a hearing is requested, the planning commission shall issue its recommendation to the city council on the planning director's decision which may include additional conditions consistent with this chapter, after a public hearing of which, notice is provided pursuant to Lynden Municipal Code Section 17.07.030 and the city council shall make the final decision for the city of Lynden. Appeal of the Community Development Director's administrative decision to suspend or revoke a home occupation use permit or business license may be appealed according to the procedures set forth in LMC 17.11.~~

19.59.240 - Violation—Penalty.

A. ~~Any person who violates~~ A violation of any term or provision of this chapter or of any permit hereunder, or ~~has failed~~ failure to comply with a lawful order of the city planner Community Development Director as provided in this chapter, ~~shall be guilty of a misdemeanor, is a civil infraction and shall be punishable as set forth in Section 9.04.050 of this code subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).~~

B. Each calendar day of any continuing violation shall be deemed a separate and distinct violation.

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	November 20, 2023	
Name of Agenda Item:	ORD-23-1679 Real Estate Property Tax for 2024	
Section of Agenda:	New Business	
Department:	Finance	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	Legal Review:
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
ORD-23-1679 Real Estate Property Tax for 2024		
Summary Statement:		
<p>The City of Lynden is required by State regulations to adopt the proposed 2024 property tax levy. Attached is a copy of the proposed Ordinance. The mil rate has been calculated on preliminary information received to date from the Whatcom County Assessor's Office. When comparing preliminary 2022 levy assessment rates to 2023 levy assessment rates, the decrease is estimated at 0.16 cents per mil to a mil rate of 1.05369.</p> <p>The final figures for the assessed valuation of the city's tax base are not yet available. Once those are provided by the County Assessor, an ordinance setting the final, exact levy will be provided in January 2024 for consideration.</p> <p>At today's Finance Committee meeting the draft ordinance was discussed and approved for review by the full Council.</p>		
Recommended Action:		
To adopt ORD-23-1679 and authorize the Mayor's signature.		

ORDINANCE NO. ORD-23-1679

AN ORDINANCE FOR THE CITY OF LYNDEN, WASHINGTON
LEVYING TAXES FOR GENERAL MUNICIPAL PURPOSES FOR
TAXES COLLECTIBLE AND PAYABLE IN 2024
IN THE CITY OF LYNDEN, WASHINGTON

The City Council of the City of Lynden does ordain as follows:

Section A. The City of Lynden hereby levies, for 2024 taxes, for the purpose of meeting the expenditures of the City of Lynden, Washington, for the year 2024, the following specific sums:

CURRENT EXPENSE FUND	\$3,304,256
BERTHUSEN PARK	\$65,000
2012 LTGO REFUNDING BOND DEBT	<u>\$540,750</u>
TOTAL	\$3,910,006

Section B. In order to raise said specific sums, there is needed a levy of \$1.05369 per thousand dollars of assessed valuation of the property in the City of Lynden as shown by the assessment roll for the year 2023.

Section C. Any ordinance or parts of ordinances in conflict herewith are hereby amended.

Section D. This ordinance amends Ordinance No. 1663 and shall take effect and be in force from and after its passage by the City Council and after its approval by the Mayor, if approved, otherwise, as provided by law and five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, _____ IN FAVOR,
_____ AGAINST AND SIGNED BY THE MAYOR THIS _____ DAY OF NOVEMBER 2023.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	November 20, 2023	
Name of Agenda Item:	Premier Packing (Project Zebra) Conditional Use Permit 23-01 for Bldg Height	
Section of Agenda:	New Business	
Department:	Community Development Department	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
Draft Res 23-1086, PC Reso 23-05, PC Minutes of 10/26/23, Final Staff Report and Recommendations, CUP Application 23-01		
Summary Statement:		
<p>In December of 2022 the City Council approved Conditional Use Permit 22-02 which related to a seafood processing facility for Premier Packing (also known as Project Zebra). The company proposed to move from its current location at the center of the city to a property on Curt Maberry Drive. There they propose to construct a seafood processing facility with associated truck access, employee parking, and utility infrastructure. The proposal also included an additional 5 feet of building height for the freezer portion of the structure resulting in a maximum height of 50-feet.</p> <p>Recently the applicant returned to the city to modify the approved Permit and request additional height on the same facility. The height would allow for greater efficiency in freezer storage could take advantage of the latest pallet stacking technology without increasing the footprint of the facility. The current application is seeking a height of 80 feet for the freezer portion of the building (a majority of the facility). This final height is similar to the maximum height granted for a portion of the nearby the Alliance / Canature facility.</p> <p>The Planning Commission and the Technical Review Committee have reviewed the request for additional height. Both groups have brought forward a recommendation to approve the request for additional height with specific conditions which are listed in TRC Report and Planning Commission Resolution 23-05.</p>		
Recommended Action:		
Motion to approve Conditional Use Permit 23-01 which authorizes Premier Packing to utilize a maximum building height of 80 feet subject to the conditions outlined in the Planning Commission Resolution 23-05. This motion also authorizes the mayor’s signature on the Findings of Fact and Conclusion of Law.		

CITY OF LYNDEN
CITY COUNCIL RESOLUTION 23-1086

**A resolution of the Council of the City of Lynden, Washington,
to approve Conditional Use Permit 23-01 regarding Premier Packing Height
Allowance**

BACKGROUND

WHEREAS, Lynden Municipal Code (LMC) 19.25.060 includes provisions for industrial users to increase the maximum height of a building through a Conditional Use Permit (CUP); and

WHEREAS, Chill Build Lynden III, LLC, owns a vacant property located at 603 Curt Maberry Road, Tax Assessors Parcel Number 4002241613100000 (the Property), and desires to construct an industrial seafood processing facility and freezer warehouse on the Property. The building is designed to exceed the maximum height standard of 45 feet as permitted outright in LMC 19.25.060; and

WHEREAS, a Conditional Use Permit addressing food production and a maximum building height standard of 50 feet was previously approved for the Property on December 19, 2022 as CUP 22-02; and

WHEREAS, after subsequent review of business needs, the property owner made application to seek a revised maximum building height standard of 80 feet for the same facility which would allow the freezer portion of the facility to increase storage capacity and take advantage of the most efficient stacking technologies.

PROCESS

WHEREAS, Freeland and Associates, Inc, the agent representing Chill Build Lynden III, LLC, submitted a Conditional Use Permit application (CUP 23-01) which was determined to be complete on September 18, 2023; and

WHEREAS, the property owner updated SEPA 22-09, a previously reviewed environmental analysis, to address the additional height proposal; and

WHEREAS, a notice of a Mitigated Determination of Non-Significance (MDNS) on the revised SEPA checklist was issued October 6, 2023; and

WHEREAS, the notice of the Conditional Use Permit application was published on October 11, 2023, which invited public comment on the proposal; and

WHEREAS, on October 26, 2023, the Lynden Planning Commission held a public hearing to accept public comment and develop a recommendation on the proposal, and

WHEREAS, the Planning Commission recommended approval of CUP 23-01 with specific conditions as documented in PC Resolution 23-05; and

WHEREAS, the City Council subsequently considered the proposal at a November 20, 2023, meeting which resulted in the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1.01 Application. JP Slagle, Freeland and Associates, Inc, (“Applicant”) filed a conditional use application which was accepted by the City as complete on September 18, 2023.

1.02 Location. The Property is located at 603 Curt Maberry Road in Lynden, Whatcom Co., Washington as described above.

1.03 Ownership. Chill Build Lynden III, LLC.

1.04 Reason for Request. The request is for a modification to Conditional Use Permit #22-02. The modification includes a redesigned facility that contains an expanded freezer space with a maximum height of 80 feet from the previously approved 50-foot limit. The additional height will create additional vertical storage capacity to support storage of frozen products.

1.06 Compliance with Project Manual for Engineering Design and Development Standards. The application can comply with the development standards and requirements set forth in the Project Manual for Engineering Design and Development Standards, as applicable.

1.06 Critical Area Review. There were no critical areas found to be on the site.

1.07 SEPA Determination. Formal notice of the SEPA Determination, a Mitigated Determination of Non-Significance (MDNS), was published in the Lynden Tribune on November 2, 2022, and mailed to neighbors within 300 ft of the property. The findings here are consistent with the determination.

1.08 CUP 23-01 will Support Industrial Growth in West Lynden Subarea. The granting of the Conditional Use Permit will support the growth of an existing city of Lynden industry and associated employment as it relocates from a smaller space in the center of the city to the West Lynden industrial area. This shift is consistent with the City of Lynden Comprehensive Plan which allocates this area of the city for industrial growth.

1.09 CUP 23-01 will Provide Additional Jobs, Modernize Existing Facility, and Improve Water Quality Discharged from the Property. The Property is located in an area that is slated for industrial use. Approval of CUP 23-01 will provide jobs and support the Western fishing industry. Additionally, the applicant is currently operating out of an outdated facility which has proved to be problematic when striving to comply with discharge standards. The new facility will include modern

filtering systems which will significantly improve the quality of the waste discharged from this facility and reduce the impact to city waterways and the burden to the city wastewater treatment facility.

1.10 Views from Public Right of Way to be Protected. CUP 23-01 is designed to take into account views from public right of way. It will include landscape buffer, street trees, shielded exterior lighting, screened mechanical equipment, and siting of the building so that the loading docks are oriented away from Main Street, the street most frequently used by the general public.

1.11 Life Safety and Building Construction Measures. CUP 23-01 will be designed to provide for life safety access in accordance with International Building and Fire Codes. Provisions for life safety have been made through site access and facility design. The internal site is designed to provide access for fire apparatus and the building construction will be held to the standards of the International Building and Fire Codes.

1.12 Noise and Odor Provisions. CUP 23-01 will be held to comply with all City standards including those related to noise and odor. Upon operation the use will be held to performance standards detailed in the Lynden Municipal code including those related to noise and odor.

1.13 Public Water. Potable Water is Available on the Property.

1.14 Open Spaces, Streets, Roads, Sidewalks and Alleys. The facility will be located on Curt Maberry Drive which is an improved right-of-way that includes sidewalks.

1.15. Findings from CUP 22-02 Incorporated Herein. All Findings and Findings of Fact from CUP 22-02 are incorporated herein by this reference to the extent not inconsistent with the above Findings of Fact. If there is a conflict between any of the above Findings of Fact and the Findings or Findings of Fact in CUP 22-02, the above Findings of Fact shall control.

CONCLUSIONS OF LAW

2.01 Appropriate Provisions Made for Open Spaces, Roads, Streets, Sidewalks, and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks, and alleys. Facility development here will also trigger the requirement to dedicate and make improvements to the right-of-way of Alderwood Drive along the project's southern property line. The project is also subject to traffic impact fees which are utilized to make improvements to the nearby roadway network.

2.02 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes. Due to the nature of the use of fish and seafood

processing, a sewer discharge study will be required prior to connection with the city’s sewer system to ensure compliance. The application will also be held to the Western Washington Stormwater Manual.

2.03 Public Interest. The application is consistent with the City’s comprehensive plan and the Growth Management Act. The project serves the public interest in that it represents a significant property improvement which benefits the Lynden tax base. The modernization of the existing facility on the Property will promote compliance with existing discharge standards, reduce impact to city waterways, and lessen the burden on the city’s wastewater treatment facility

2.04 Compliance with Criteria for Granting a Conditional Use Permit. The application as presented during the public hearing complies with the criteria listed within Section 19.57.210 of the Lynden Municipal Code with conditions that address mitigation of impacts.

2.05 Appropriate Provisions for Promoting Public Health, Safety and Welfare. Based on the foregoing, CUP 23-01 is found to promote the public health, safety, and welfare and conform to the City Comprehensive Plan.

2.06 Conclusions from CUP 22-02 Incorporated Herein. All Conclusions and Conclusions of Law from CUP 22-02 are incorporated herein by this reference to the extent not inconsistent with the above Conclusions of Law. If there is a conflict between any of the above Conclusions of Law and the Conclusions of Law or Conclusions in CUP 22-02, the above Conclusions of Law shall control.

Any of the foregoing Finding of Fact which should rather have been designated Conclusions of Law, and Conclusions of Law which should rather have been designated Findings of Fact, shall be validated as such and so conformed.

The foregoing recitals are a material part of this permit Decision.

NOW THEREFORE, BE IT RESOLVED by the Lynden City Council to approve Conditional Use Permit 23-01 concerning a maximum building height allowance of 80 feet for the Premier Packing seafood processing and freezer warehouse under the conditions set forth herein. The environmental impacts of the proposed development have been reviewed through SEPA 22-09. The final determination and associated conditions of this SEPA review are fully incorporated herein by this reference. The conditions of the food processing use, having been previously reviewed and approved through CUP 22-02, have been transferred to this application and are fully incorporated herein by this reference. In addition, said applicable conditions from CUP 22-02 are hereby expanded to address the proposed height modification as detailed here:

1. To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.
2. Sewer Discharge. Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.
3. Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.
4. The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as they relate to noise and smell.
5. So as to mitigate the scale of the proposed freezer the street trees required along the southern property line must be a species of shade tree which will mature to a height of 30 feet or greater such as similar species of trees thriving in that area (Tulip Tree). Additionally, these street trees must be a minimum 2-inch caliper at the time of installation and spaced per City of Lynden street tree requirements.
6. Compliance with all City code and all State and Federal laws and regulations.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE OF _____ IN FAVOR, _____ AGAINST, SIGNED THIS 20TH DAY OF NOVEMBER 2023.

MAYOR

Scott Korthuis, Mayor

ATTEST:

Pam Brown, City Clerk

APPROVED AS TO FORM:

Bob Carmichael, City Attorney

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #23-05

**A resolution of recommendation for the approval of
Conditional Use Permit 23-01, Premier Freezer**

WHEREAS, JP Slagle, Freeland and Associates, Inc, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called "the City." The application, assigned as CUP #23-01, represents a modification to the Premier Freezer (Project Zebra) Conditional Use Permit #22-02 which was approved by City Council on December 19, 2022, to address the use of food processing and an adjusted standard for building height. The modification includes a redesigned facility that contains an expanded freezer space with a maximum height of 80 feet from the previously approved 50-foot limit. The additional height will create additional vertical storage capacity to support storage of frozen product.

WHEREAS, the application was determined to be complete on September 18, 2023, and the notice of application was published in the Lynden Tribune on October 11, 2023; and

WHEREAS, the Proponent has provided the City with receipts for the certified mailing of all required notices to all property owners within three hundred feet of the subject property together with the affidavits of posting said notices; and

WHEREAS, the Lynden Planning Commission held a public hearing on October 26, 2023, to accept public testimony on the proposed conditional use permit modification request, and that meeting was duly recorded;

WHEREAS, the City's Technical Review Committee has reviewed the request for the conditional use permit modification and has provided comments and recommendations to the Planning Commission in a report dated October 20, 2023,

WHEREAS, the Lynden Planning Commission has reviewed the conditional use permit request and has found that the application meets the criteria for granting a conditional use permit under Chapter 19.57.210(C)(1-8) of the Lynden Municipal Code; and

WHEREAS, the proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district as seafood processing, freezing, and storing is consistent with surrounding industrial property uses such as freezer storage and pet food manufacturing; and

WHEREAS, the proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to traffic and circulation as property development will include improvements to Alderwood Street and the payment of traffic, fire, and park impact fees as well as the installation of landscape buffers adjacent to public streets; and

WHEREAS, noise, smoke, fumes, glare, or odors will not exceed the required performance standards associated with industrial uses. Site lighting will be directed downward to prevent glare and the use is anticipated to create little to no impact to adjacent industrial uses. Additionally, the city will monitor these standards annually especially as it relates to noise and smell and will require mitigation if standards are not met; and

WHEREAS, the building and site design will be consistent with other industrial development nearby and, in addition, this project will orient parking areas and truck traffic to the interior of the site with the perimeter buffered by landscaping. Screening of rooftop equipment is required, and

WHEREAS, the proposed use is supported by adequate public facilities and services and the traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service; and

WHEREAS, the proposed use must comply with the industrial performance standards of LMC 19.25.040 and 19.25.050, the site is proposed with adequate parking, industrial setbacks and lot coverage requirements are met, landscaping standards and other provisions of the Lynden Municipal Code with adequate buffering to enhance the public streetscape and to protect the adjacent properties from adverse impacts of the proposed use; and

WHEREAS, the proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance as it is proposed on vacant property which is industrially zoned; and

WHEREAS, the proposed use of seafood processing and frozen storage is consistent with the purposes and objectives of the City's Comprehensive Plan and West Lynden Sub-Area; and

WHEREAS, the Lynden Planning Commission also reviewed the conditional use permit request and has found that the application meets the similar criteria for granting a recommendation of a land use action under Chapter 17.09.040 (C) of the Lynden Municipal Code.

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 4-0, to the Lynden City Council, of Conditional Use Permit #23-01, Premier Packing, representing a modification to Conditional Use Permit #22-02, to allow a maximum building height of 80-feet from the previously approved 50-feet, subject to the Technical Review Committee Report dated October 20, 2023:

This approval is subject to all conditions outlined in the original Conditional Use Permit application #22-02:

- 1. To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.**

- 2. **Sewer Discharge.** Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.
- 3. **Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.**
- 4. **The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as they relate to noise and smell.**

Additionally, the Planning Commission recommends the approval be further subject to the following condition:

- 5. **So as to mitigate the scale of the proposed freezer the street trees required along the southern property line must be a species of shade tree which will mature to a height of 30 feet or greater such as similar species of trees thriving in that area (Tulip Tree). Additionally, these street trees must be a minimum 2-inch caliper at the time of installation and spaced per City of Lynden street tree requirements.**

PASSED by the Planning Commission of the City of Lynden, Whatcom County, by a vote of 4-0, at their regular meeting held on the 26th day of October 2023.



Tim Faber, Chair
Lynden Planning Commission



Heidi Gudde, Director
Community Development Department

CITY OF LYNDEN



TECHNICAL REVIEW COMMITTEE
Conditional Use Permit Application

October 20, 2023

CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE STAFF REPORT

Re: The application of Freeland and Associates, Inc. for a Modification to Conditional Use Permit Application #22-02.

CUP #23-01, Premier Freezer
FINDINGS, CONCLUSIONS, AND
RECOMMENDATION

I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal: The request includes a modification to conditional use permit #22-02 which was approved by City council on December 19, 2022, requesting to construct the freezer portion of the cold storage facility to a maximum of 80-feet in height from the previously approved 50-feet.

Recommendation: Staff recommends approval of the Conditional Use Permit (CUP) modification, subject to the conditions of approval described in the conclusions of this document.

II. PRELIMINARY INFORMATION

Applicant: JP Slagle, Freeland and Associates, Inc.

Property Owner: Chill Build Lynden III, LLC

Property Location: 603 Curt Maberry Road, Lynden WA

Parcel Number: 400221-416131

Legal Description: LOT 1 WEST MAIN STREET SHORT PLAT, AS RECORDED UNDER AUDITOR'S FILE NO. 2150500587, RECORDS OF WHATCOM COUNTY, WASHINGTON.

<u>Notice Information:</u>	Application Submitted:	August 31, 2023
	Notice of Application:	October 11, 2023
	Notice of SEPA determination:	October 28, 2022
	Notice of Hearing:	October 11, 2023
	Comment Period Ending:	October 25, 2023

Premier Freezer Conditional Use Permit Modification – TRC Report

SEPA Review: Lynden SEPA #22-09. Mitigated Determination of Non-Significance (MDNS) issued October 28, 2022.

Authorizing Codes, Policies, and Plans:

- LMC Chapter 16 Environmental Policy
- LMC Chapter 17 Land Development
 - LMC Chapter 17.09, Review and Approval Process
 - LMC Chapter 17.09.040, Planning Commission Review and Recommendation
- LMC Chapter 19 Zoning Code
 - LMC Chapter 19.25, Industrial Zone
 - LMC Chapter 19.25.030, Primary Permitted Uses
 - LMC Chapter 19.25.040,
 - LMC Chapter 19.25.050, Performance Standards
 - LMC Chapter 19.25.060, Required Bulk Regulations, Height Limits and Setbacks
 - LMC 19.25.070, Landscaping requirements
 - LMC Chapter 19.57.200-250, Conditional Use Permits
- International Building Code
- City of Lynden Manual for Engineering Design and Development Standards
- WAC 197-11-340(2) Determination of Non-Significance (DNS)

Premier Freezer Conditional Use Permit Modification – TRC Report

III. PROJECT DESCRIPTION

In December 2022, the City Council approved a Conditional Use Permit (CUP) to allow food processing on the 11.77-acre site within the City’s Industrial Business Zone (IBZ). Additionally, as allowed through the CUP process, the applicant secured approval for a maximum building height of 50 feet. The project originally included construction of a 249,836 square foot seafood processing facility and freezer storage with associated access, parking, and utilities. Access to the site will be provided from Curt Maberry Road to the east. Truck access, loading areas, and employee/visitor parking will be located to the south and east of the building.

Today, the applicant has come forward requesting an amendment to the Conditional Use Permit #22-02 outlined above. The modification includes a redesigned facility that contains an expanded freezer space with a maximum height of 80 feet from the previously approved 50-foot limit. The additional height will create additional vertical storage capacity to support storage of frozen product. The applicant states that the increase in building height will allow for additional cold-storage capacity without increasing stormwater roof runoff volumes to the regional stormwater facility. Additionally, recent advancements in cold storage technology include equipment and automation designed to support freezers of increase building heights. These technologies have been incorporated into the current building design.

IV. PUBLIC NOTICE AND COMMENT

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on October 11, 2023

Public Comment Received:
Comments specific to the CUP 23-01 proposing additional height: None at this time.

V. ANALYSIS AND CONSISTENCY WITH REGULATIONS

The application is reviewed in accordance with the LMC 19.57.200 – 19.57.250 and the criteria listed for land use application review in LMC 17.09.040(C) “Planning Commission Review and Recommendation; Required Findings” where it states that application shall clearly show that the proposed use is not detrimental to the surrounding area or a liability to adjacent uses. For the purpose of this review, the surrounding area, or neighborhood, means those parcels that are in close proximity to the subject parcel. A CUP will be granted

Premier Freezer Conditional Use Permit Modification – TRC Report

only if the proposed use complies with the standards and criteria listed below. Staff review of these criteria is detailed below.

- 1. LMC 19.57.210(C) “The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.”**

Staff Review

Surrounding Uses: The proposed use and height of the facility and freezer is consistent with the surrounding uses in this area. This site and the surrounding properties are zoned as Industrial Business Zone (IBZ) or will be zoned as industrial when they are annexed into the City. Additionally, not only does the zoning category match but the uses are very similar. The Lineage Freezer facility is located immediately to the east. Storage facilities, existing and planned, are located on the parcels immediately to the west. Additionally, the Canature (Alliance) freeze dry facility will be located to the northwest. This facility is currently under construction. Both the Canature and Lineage facilities secured Conditional Use Permits for additional building height. Canature is located immediately adjacent to Main Street and Berthusen Roads and was granted a maximum height of 75 feet for about 8% of the total building. The parcels immediately to the north and south are undeveloped.

Impacts: The proposed height of the Premier Packing freezer is located farther from arterial public streets of Main and Berthusen than the Canature facility which was granted a maximum height of 75 feet. The building will not cast a shadow on any residential property. The property located immediately south of the project will be zoned industrially when it is annexed into the City but is currently used agriculturally. However, because the proposed project is located to the north of this ag land, the building shadows will have little to no impact.

- 2. LMC 19.57.210(2) The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following: a. Traffic and pedestrian circulation; b. Noise, smoke, fumes, glare or odors generated by the proposed use; c. Building and site design; and d. The physical characteristics of the subject property.**

Staff Review

The proposed industrial use is subject to the performance standards listed in LMC 19.25.040 and 19.25.050 as it relates to circulations, noise, smoke, fumes, glare

Premier Freezer Conditional Use Permit Modification – TRC Report

or odors. Additionally, these aspects have been reviewed with the Conditional Use Permit which was approved in 2022. Associated conditions of approval have been put in place to address these concerns. All processing will occur indoors and the final product will be frozen. Staff has recommended that the impacts related to noise and odor be reviewed annually to assess if any mitigation is needed to comply with performance standards. The current request for additional height does not significantly alter these types of impacts to circulation, noise, smoke, fumes, glare or odors.

Consideration of the impacts potentially created by the additional height request is warranted as the building and site design and the physical characteristics of the subject property have been altered from the previous CUP approval. As the applicant describes in their responses, the proposed facility will contain fire lanes, truck access, loading areas, employee parking and walkways using pre-planned access connections. The applicant has also committed to landscaping the site to meet City of Lynden requirements and enhance the aesthetics of the facility.

- 3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services. LMC 19.57.210(3)***

Staff Review

The request for additional height to accommodate freezer space will not create significant additional impacts to public facilities and services.

The facility, as noted by the applicant, “will be supported by municipal water and sewer connection. Electricity, natural gas, and refuse service will be supplied by private providers. Fire protection infrastructure and security systems will be installed onsite to reduce impact on fire and police protections services. Impact fees will be paid to the City of Lynden to mitigate impacts to the public services.”

- 4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service. LMC 19.57.210(4)***

Staff Review

Transportation review was completed with the 2022 SEPA and Conditional Use Application when the facility was originally proposed. The current additional height request will increase the capacity of the freezer space at the facility, and this may, cumulatively, result in additional truck traffic but not such an increase as

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to cause the adjacent circulation systems to fall below an accepted level of service (LOS) as defined in the City’s Comprehensive Plan – Transportation Element.

- 5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code. LMC 19.57.210(5)**

Staff Review

Planning staff has reviewed the proposed site plan and can confirm that the plans for the proposed facility comply with parking requirements, setbacks, and lot coverage. The site layout will accommodate industrial landscaping requirements. Detailed code review will be conducted in association with building permit review and the final stormwater plan. Permits will not be issued until all provisions of the Lynden Municipal Code are met. The facility will be held to performance standards outlines in LMC 19.25 during operation.

- 6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use. LMC 19.57.210(6)**

Staff Review

The proposed facility is located within an industrial area where the topography is extremely flat. It may be visible from residential properties in the area but these homes are more than 900 feet from the proposed structure. Reasonable use of residential / agricultural properties in the vicinity will not be hindered in any way by the proposed facility even at a height of 80 feet.

- 7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance. LMC 19.57.210(7)**

Staff Review

In 2022 the proposed facility secured a Conditional Use Permit to operate on the site. It was determined that it would not destroy or substantially damage any natural, scenic or historic feature of major importance. The current proposal of additional height does not create the need to modify this determination.

- 8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan. LMC 19.57.210(8)**

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Staff Review

The proposed project is consistent with the purposes and objectives of the Comprehensive Plan and specifically the West Lynden Commerce Subarea described and depicted in Chapter 2. This subarea is slated as the City’s largest industrial area. At the start of 2023 the City Council took steps to define this area exclusively for commerce and industrial use by clarifying that residential / mixed-use overlays are not permitted in this area. The growth of this facility in this area also represents the retention and success of an existing Lynden business as Premier Packing is currently located in a much smaller industrial space at the center of the city.

Notably, other industrial areas of the City include users with over height buildings and structures with the largest being the Darigold with a drying tower that reaches a height of 110 feet.

As the applicant aptly writes “The objectives for industrial development within the West Lynden sub-area include the following ‘Economic diversity and growth are the key components in Lynden’s Comprehensive Plan’ and the plan “outlines the need and desire for family wage jobs within the community. It also expresses the benefits of a healthy economy as a method to support the services that the community values and the quality of life that is important to Lynden residents. The proposed seafood processing facility will provide economic growth and new job opportunities for the local Lynden community.”

The Planning Commission is asked to review each land use application against the criteria listed in LMC 17.09.040(C). As these criteria are applied to every application some of the criteria are not always relevant to the proposal. Staff has reviewed the application against these criteria and provided analysis to each as applicable.

- 1. The development is consistent with the comprehensive plan and meets the applicable requirement of the intent of this code.**

Staff Review

See #5 and #8 above.

- 2. The development makes adequate provisions for open space, drainageways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds.**

Staff Review

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The project will be subject to Park, Fire, and Transportation Impact Fees at the time of building permit. These fees are used by the City to mitigate impacts to services and infrastructure. This includes improvements to the nearby intersection of Main and Berthusen which is slated to occur within the next 18 months. The site is located on Curt Maberry Drive with access to Main Street. Both of these street corridors have been improved to city standard. Consistent with the City’s transportation element the south edge of the site must address the future extension of Alderwood as described in SEPA determination issued 10/28/2022.

The project will not create school impacts as student generation rates are based on residential, not industrial uses.

Water usage, waste production, and stormwater plans will be reviewed in detail prior to building permit issuance. The project will be subject to applicable connection fees and usage rates.

3. The development adequately mitigates impacts identified under Titles 16-19 (Environmental Policy, Land Development, Subdivisions, and Zoning)

Staff Review

Title 16 has been addressed through SEPA review. Land Development process including public notice and hearing is being followed per Title 17. The property is not requesting a subdivision which would trigger Title 18 review. Title 19 development standards have been reviewed to date. Detailed review of development standards will occur with building permit review (see also #5 above). Landscape buffers and street trees will be required along all public streets. Staff is recommending that all exterior lighting be shielded to be dark-sky compliant.

4. The development is beneficial to public health, safety and welfare and is in the public interest.

Staff Review

The project serves the public interest in that it represents a significant property improvement which benefits the Lynden tax base. It is located in an areas that is slated for industrial use. It will provide jobs and support the Western fishing industry. Additionally, the applicant is currently operating out of an outdated facility which has proved to be problematic when striving to comply with discharge standards. The new facility will include modern filtering systems which will significantly improve the quality of the waste discharged from this facility and reduce the impact to city waterways and the burden to the waste water facility.

Premier Freezer Conditional Use Permit Modification – TRC Report

- 5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established with the comprehensive plan, and fully complies with Chapter 17.15 of the city code.**

Staff Review

Transportation review was conducted in 2022 consistent with the SEPA determination issued 10/28/2022. The review concluded that the development does not lower the level of service of transportation facility below minimum standards established with the comprehensive plan. Additionally, the project will be subject to transportation impact fees which will assist in the improvements to nearby streets. The development does not create a significant impact to city park facilities. Park Impact Fee will be due at the time of building permit.

- 6. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development and are proportional to the impacts created by the development.**

Staff Review

The current proposal for additional building height does not result in a need for additional dedication or mitigation. The facility must dedicate and improve right-of-way along the southern frontage for Alderwood Drive. This is addressed in the SEPA determination issued 10/28/22.

VI. TECHNICAL REVIEW COMMITTEE COMMENTS

- 1. *Landscape Buffer and Screening:* Be advised, per LMC 19.25.070, landscape enhancement is required along all streets in an industrial zone. This is to include a minimum 10-foot, Type I landscape buffer which consists of “a combination of trees, shrubs and other landscaping materials, including bark and/or decorative rock, or grass. The landscaping shall be designed to improve the appearance of the development, not necessarily to obscure it.” (LMC 19.61.070). The current plan is laid out ins such a way as to accommodate this requirement. Be advised, that detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note regarding this 10’ landscape buffer requirement along the south and east lot lines.

Premier Freezer Conditional Use Permit Modification – TRC Report

2. *Landscaped Entrance:* Industrial properties must include entrance landscaping. This would be applied to the site entrance off of Curt Mayberry Drive. Detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note to identify the landscaped entrance and potential sign location(s).
3. *Street Trees:* The installation of street trees along all public street frontages will be required. Code requires that trees be planted a minimum of 30 feet on center or averaged to reach an equivalent quantity. Minimum caliper at the time of planting is 1.5 inches. Detailed planting plans will be required within the civil plan set and at the time of building permit. Prior to Planning Commission review, please revise the Conditional Use site plan to include a note this 10' street tree requirement along the south and east lot lines.
4. *Screening of Mechanical Equipment:* Be advised, consistent with the City's design standards in commercial zones, staff will be recommending, and the applicant has agreed, that all roof-mounted condenser units be screened from view so that this mechanical equipment is not visible from public streets.
5. *Site Lighting:* As previously required under CUP #22-02, the modification will be required to reduce impact to surrounding properties, on-site lighting shall be located, directed, and/or shielded in a manner which reduces light glare or spill onto adjacent properties. Standards recommend that fixtures be glare-free and shielded from the sky and adjacent properties. Staff is recommending that prior to Planning Commission review, the site plan be noted to indicate compliance.
6. *Performance Standards:* Be advised, the facility is expected to comply with performance standards detailed in LMC 19.25.040 and 19.25.050. This includes, but is not limited to, emissions of smoke, dust, and other particulate matter, and of toxic and noxious gases. All discharge must meet or exceed standards set by Northwest Clean Air Agency and all Washington State and federal standards. Emissions permits are likely to be required by the Northwest Clean Air Agency. It is up to the applicant to ensure that they meet the requirements of those permits. Adjacent agriculturally zoned properties are not subject to these same standards.
7. *Stormwater Infrastructure:* The applicant has acknowledged that a stormwater management plan including pipe sizing prepared by a professional engineer and meeting the requirements of the City's Manual for Engineering Design and Development Standards and the approved Department of Ecology Stormwater Manual is required.

Premier Freezer Conditional Use Permit Modification – TRC Report

- 8. *Stormwater Planning:* The proponent has submitted a **revised** Preliminary Stormwater Design Memo, written by Freeland and Associates and dated August 30, 2023. The memo identifies the property soils, the project details, and proposes a plan for managing stormwater as follows:

It is anticipated that stormwater management will be to convey all stormwater runoff from the site to the existing West Lynden Regional stormwater facility. Although the subject property is not currently contained within the pond’s design contributing basin, the project’s ownership has secured stormwater credits, which are currently being transferred. It is anticipated that these credits will cover most of the proposed hard surfaces proposed with this project. Additional surfaces outside of the capacity of the regional pond’s credits will be mitigated with shallow, low-impact development techniques such as permeable pavement or bioretention facilities. These will reduce the effectiveness of the proposed hard surfaces and allow the project to fit into the regional pond’ credit capacity for site. As noted previously, geotechnical evaluation of the soils is in progress.

- 9. *Permit Review:* Be advised that due to the complexity of this type of facility, and the on-site storage of hazardous materials, the City will coordinate 3rd party review of building and fire code requirements. Costs associated with the 3rd party review will be the responsibility of the applicant.
- 10. *Access:* Water supply and street access in this area are conducive to fire access however, be advised, the proposed building height may require additional clear space around the building to allow fire apparatus access and collapse zone clearance. Complete Fire review will occur at the time of building permit.
- 11. *Booster Pump:* Be advised, additional height may require the installation of booster pumps for fire suppression system.

VII. RECOMMENDATION

Issuance of this Conditional Use Permit does not release the applicant from any other local, State, or Federal statutes or regulations applicable to the proposed development.

Staff has concluded that the request for additional height at the Premier Packing facility will have minimal impacts to the surrounding properties. The Technical Review Committee recommends the approval of a maximum building height of 80

Premier Freezer Conditional Use Permit Modification – TRC Report

feet subject to the following conditions which include those outlined within the Original Conditional Use Permit application #22-02:

- 1) To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.**

- 2) Sewer Discharge. Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.**

- 3) Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.**

- 4) The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as it related to noise and smell.**



Freeland and Associates, Inc.

2500 Elm Street, Suite 1
Bellingham, Washington
(360) 650-1408

August 31, 2023

City of Lynden
Planning & Community Development
300 4th Street
Lynden, WA 98264

Attention: Heidi Gudde – Planning Director

**Subject: Conditional Use Permit Amendment
Project Zebra - 603 Curt Maberry Road
Parcel# 400224-16131-00000**

Dear Ms. Gudde:

Project Zebra includes development of a 249,836-square foot seafood processing and cold-storage facility located at 603 Curt Maberry Road, Lynden, Washington. The current project proposal is considered an amendment to the existing conditional use permit application (CUP22-02). The redesigned facility contains an expanded freezer space with a maximum building height of 80 feet. A CUP amendment and associated building code height variance is requested based on the following design elements:

Freezer Capacity

The project site is located to the west of the existing Lineage Logistics cold-storage facility. Lineage Logistics, constructed in 2015, is currently at maximum storage capacity. Approval of a building code height variance for the proposed Project Zebra facility will create additional vertical storage capacity to support Lineage. Both facilities will provide commercial cold storage space to accommodate local farmers and the community.

Freezer Technology

Recent advancements in cold storage technology include equipment and automation designed to support freezers of increased building heights. These technologies have been incorporated into the current building design.

Stormwater Capacity

An increase in building height will allow for additional cold-storage capacity without increasing stormwater roof runoff volumes to the regional stormwater facility. This will reduce potential drainage capacity issues for the business park.

Site Access

The proposed development has been reconfigured to access solely off Curt Maberry Road. The access to Alderwood Road is no longer necessary to support this project.

Sincerely,
Freeland and Associates, Inc.



Jean-Paul (J.P.) Slagle, PE



- Encl.
- Preliminary Site and Building Plans
 - Preliminary Stormwater Narrative
 - SEPA Checklist
 - Traffic Concurrency
 - Critical Areas Checklist



CITY OF LYNDEN



CONDITIONAL USE PERMIT APPLICATION

City of Lynden use only:
CUP # 23-01 **Staff Initials:** KS

Property Owner

Name: Chill Build Lynden III, LLC
 Address: 6831 E. 32nd Street, Indianapolis, IN 46226
 Telephone Number: (317) 491-2449 E-mail Address: cgooding@DEEMFIRST.com

Applicant (Agent, Land Surveyor or Engineer)

Name: J.P. Slagle, Freeland & Associates, Inc.
 Address: 2500 Elm Street, Suite 1, Bellingham, WA 98225
 Telephone Number: (360) 650-1408 E-mail Address: jpslagle@freelandengineering.com

Who is the primary contact for this project? This person will receive all official correspondence for the project. Property owner Applicant

Property Information

Project Location (street address / block range): 603 Curt Maberry Road
 Legal Description (attach if necessary): LOT 1 WEST MAIN STREET SHORT PLAT NO 2 AS REC AF 2150500587
 Assessor's Parcel Number: 400224161310000 Zoning Designation: IBZ
 Property Dimensions: 534 X 959 Parcel Square Footage: 512,106 SF
 Applicable Sub-Area: West Lynden Building/Structure Size: 249,836 GSF
 Height of Structure: 80 feet (max) Addition Size: _____

Please describe request in detail: **CUP Criteria must be attached**

The project includes development of a seafood processing and cold storage facility with associated truck dock, parking, and utility infrastructure. The proposal includes a request to build the freezer portion of the facility to 80 feet in height. This application is considered an amendment to CUP22-02.

By signing this application, I certify that all the information submitted is true and correct. I also understand that no final approval will be issued until all final review costs are paid in full.

Submitted by: J.P. Slagle, Freeland & Associates, Inc. Date: 08/30/2023
 Property owner signature: *Gary Edwards* Date: 8/30/23
 Property owner printed name: GARY EDWARDS Date: 8/30/23

CITY OF LYNDEN



CONDITIONAL USE PERMIT CRITERIA WORKSHEET

A Conditional Use Permit (CUP) will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings.

Please describe the proposed use. Relevant information may include hours of operation, parking requirements, anticipated traffic to the site, and how the site will be developed and used. Attach additional information and plans as needed.

- Proposed Use: Seafood processing and cold-storage facility
- Building Size: 249,836 square feet Building Height: 80 feet (max)
- Hours of Operation: 6 am to 2 pm, 6 days per week
- Proposed Parking: 15 dock spaces, 168 car spaces, 31 trailer spaces
- Number of Employees: 240-260 employees over two shifts
- Traffic: 240-260 employee trips, 30 to 50 trucks trips

Respond to each of the criteria below with the specifics of the proposed use in mind. (per LMC 19.49) Identify nearby streets and the uses surrounding the site.

1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.

The site is located in the Industrial Business Zone (IBZ) zoning district per Lynden Municipal Code 19.25.030. The proposed use is consistent with the specifications for Food and Pharmaceutical Processing Plants under LMC 19.25.030. The site is situated within the West Lynden Business Park, and neighboring properties are developed with similar uses.

2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:

- a. Traffic and pedestrian circulation;

The proposed facility will contain fire lanes, truck access, loading areas, employee parking, and walkways using pre-planned access connections.

- b. Noise, smoke, fumes, glare or odors generated by the proposed use;

The proposed facility will meet the state and federal building codes, and environmental standards for the control of noise, glare, and odor. Operation of the seafood facility occurs indoors.

- c. Building and site design; and

The proposed facility's exterior will be constructed with industrial standard high quality building materials (white insulated metal panels) similar to other existing structures within the business park. The proposal includes a request to build the freezer portion of facility to 80 feet in height.

- d. The physical characteristics of the subject property.

The site will be landscaped to meet City of Lynden landscaping requirements in order to make efforts to enhance the aesthetics of the vicinity.

CITY OF LYNDEN

CONDITIONAL USE PERMIT CRITERIA WORKSHEET CONTINUED



3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services.

The site will be supported by municipal water and sewer service connections. Electricity, natural gas, and refuse service will be supplied by private providers. Fire protection infrastructure and security systems will be installed onsite to reduce impacts on fire and police protection services. Impact fees will also be paid to the City of Lynden to mitigate impacts to public services.

4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service.

The proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service. The project will use existing access driveways established by the Binding Site Plan.

5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code.

The proposal includes a request to build the freezer portion of facility to 80 feet in height. The proposed parking, setbacks, and lot coverage for the proposed use will comply with the provisions of the Lynden Municipal Code and Conditional Use Permit requirements. The project will provide parking for each employee on the largest shift. The site will be landscaped to meet City of Lynden requirements and make efforts to enhance the aesthetics of the vicinity.

6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use.

A landscape buffering area will be installed to protect adjacent properties from adverse impacts of the proposed use.

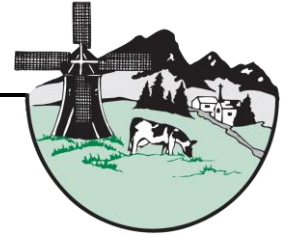
7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.

No features of major importance have been identified on or near the project site. Therefore, the proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.

8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan.

The objectives for industrial developments within the West Lynden sub-area include the following: "Economic diversity and growth are the key components in Lynden's Comprehensive Plan. The City adopted the Comprehensive Economic Development Plan in September 1998, which outlines the need and desire for family wage jobs within the community. It also expresses the benefits of a healthy economy as a method to support the services that the community values and the quality of life that is important to Lynden residents." The proposed seafood processing facility will provide economic growth and new job opportunities for the local Lynden community.

CITY OF LYNDEN



CRITICAL AREAS CHECKLIST

Section: 24 Township: T40N Range: R02E Parcel Number: 4002241613100000

Site Address: 603 Curt Maberry Road

Proposed Uses: Seafood processing and cold-storage facility

Please answer the following questions concerning Critical Area indicators *located on or within 200-feet of the project area*:

- a. Are you aware of any environmental documentation that has been prepared related to critical areas that includes the subject area? (If yes, please attach a list of document titles).
 Yes No Unknown
- b. Are there any surface waters (including year-round and seasonal streams, lakes, ponds, swamps)?
 Yes No Unknown
- c. Is there vegetation that is associated with wetlands?
 Yes No Unknown
- d. Have any wetlands been identified?
 Yes No Unknown
- e. Are there areas where the ground is consistently inundated or saturated with water?
 Yes No Unknown
- f. Are there any State or Federally listed sensitive, endangered, or threatened species and habitats?
 Yes No Unknown
- g. Are there slopes of 15% or greater?
 Yes No Unknown
- h. Is the project located within a Flood Hazard Zone?
 Yes No Unknown
- i. Do you know of any landslide hazard areas?
 Yes No Unknown

I grant permission to the field inspector to enter the building site to determine the presence or absence of critical areas.

I understand that if the information on this form is later determined to be incorrect, the project or activity may be subject to conditions or denial as necessary to meet the requirements of Chapter 16.16 of the Lynden Critical Areas Ordinance.

Jean-Paul Slagle
Applicant's Signature

08/30/2023
Date

CHILL BUILD PSL

Building Calculations

FREEZER = 174,556 GROSS SF.
 PROCESS = 51,340 GROSS SF.
 DOCK AREA = 15,840 GROSS SF.
 OFFICE AREA = 5,100 GROSS SF.
 MECH AREA = 3,000 GROSS SF. (1,500 SF. PER LEVEL)

Total Building Area = 249,836 g.s.f.

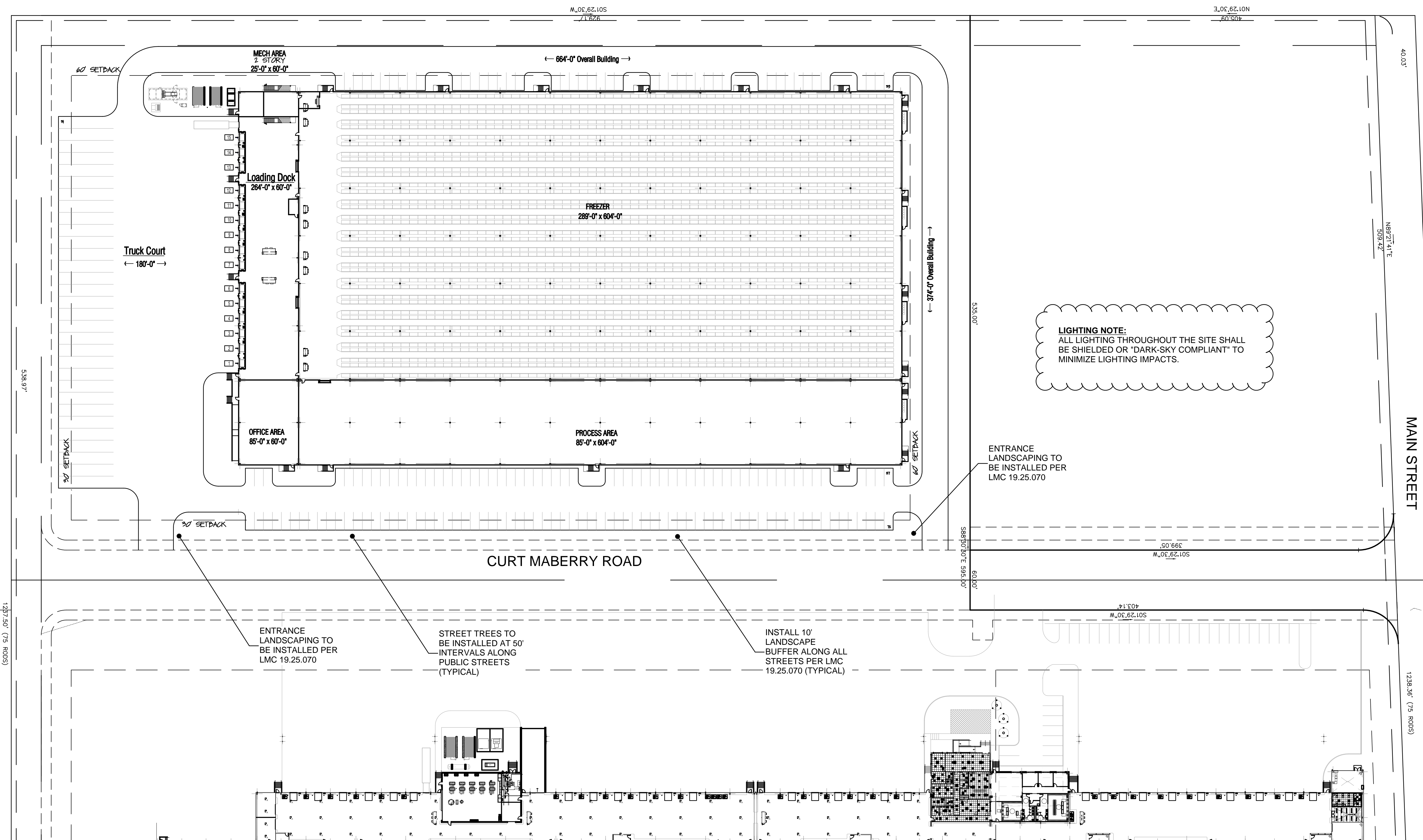
Pallet Counts (Freezer/Cooler)

130 PALLETS DN AISLE X 2 = 260 PALLETS
 260 PALLETS PER AISLE X 18 = 4,680 PALLETS
 4,680 PALLETS X 8 HIGH = 37,440 PALLETS

37,440 Total Pallets

15 Dock Spaces
168 Car Spaces
31 Trailer Spaces

Lynden, Washington Proposed Floor Plan



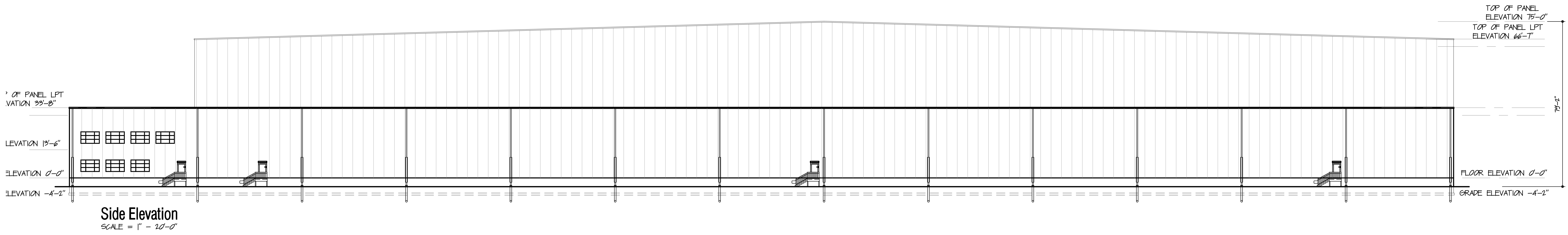
BUILDING HEIGHT IS 80'-0" FROM GRADE TO HPT OF RIDGE

CHILL BUILD PSL

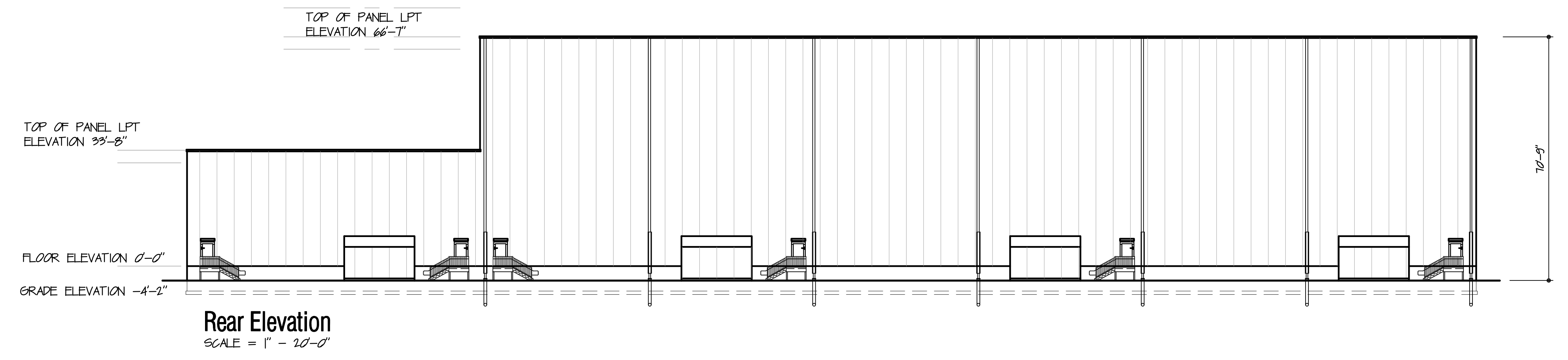
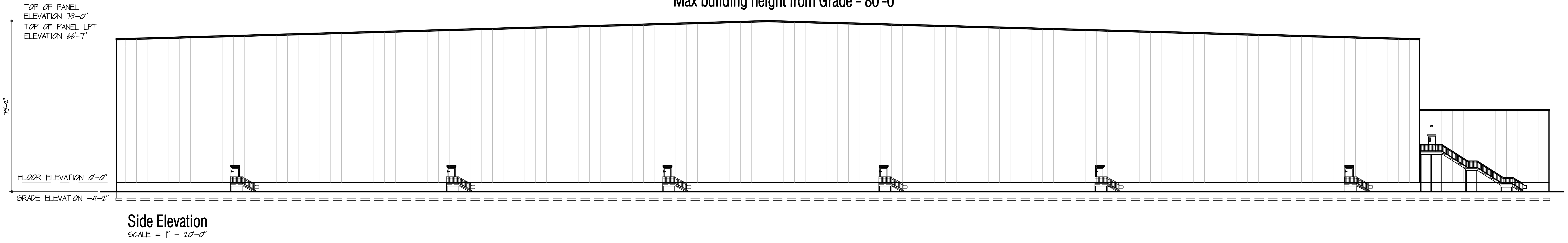
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- MECH AREA = 3,000 GROSS SF. (1,500 SF. PER LEVEL)

Total Building Area = 249,836 g.s.f.



Max building height from Grade - 80'-0"



Lynden, Washington Exterior Elevations



Freeland and Associates, Inc.

2500 Elm Street
Suite 1
Bellingham, Washington
(360) 650-1408

August 30, 2023

City of Lynden
Public Works
300 4th Street
Lynden, WA 98264

Attention: Mr. Mark Sandal

**Subject: Preliminary Stormwater Design
Project Zebra - 603 Curt Maberry Road
Lynden, Washington
F&A Project No. 21212**

Dear Mr. Sandal:

Deem, LLC plans to develop the property located at 603 Curt Maberry Road, Lynden, Washington 98264. Refer to *Figure 1 – Vicinity Map* for the project location. This letter serves as a preliminary stormwater design proposal for the project.

The subject property includes a single tax parcel (APN 400224-161310) occupying approximately 11.77-acres of land to the west of Curt Maberry Road and north of Alderwood Drive. The site is located in the West Lynden Subarea and zoned Industrial Business Zone (IBZ). Adjacent properties within the vicinity of the site are developed with industrial uses or are vacant at this time. The property directly to the east is under the same property ownership and developed as a large-scale cold-storage facility.

The existing site is an undeveloped grass field forming a rectangular shape. Topography of the site is generally flat with grades averaging between 0-2%. Access to the site is provide from Curt Maberry Road to the east. Municipal water and sewer connections and private utility services (power, natural gas, cable) are available to the site from the adjacent right-of-ways. Refer to *Figure 2 – Aerial Photograph* for the existing site conditions.

Soils on the site are mapped by the Natural Resources Conservation Service (NRCS) as Edmonds-Woodlyn loams #45, 0 to 2 percent slopes. The Edmonds-Woodlyn loams series are dually classified as hydrologic group B/D. The first letter applies to the drained and the second to the undrained condition. Hydrologic group B soils have moderate infiltration rates when thoroughly wetted and consisting chiefly of moderately fine to moderately coarse textures. Hydrologic group D High runoff potential and very slow infiltration rates when thoroughly wetted. Refer to *Figure 3 – Soils Map* for the regional soils map. Soil reports within areas surrounding this project have shown consistent high

groundwater elevations throughout the winter months and it is anticipated that this site will as well. A site-specific soils evaluation by a geotechnical professional is in progress.

The project includes construction of a 249,836-square foot seafood processing facility and freezer storage with associated access, parking, and utilities. Access to the site will be provided from Curt Maberry Road to the east. Truck access, loading areas, and employee/visitor parking will be located to the south and east of the building. Municipal water and sewer service connections, and private utilities (power, natural gas, cable) are also planned to support the facility. The developed site will be enhanced with exterior building lighting and landscaping. Preliminary Site Plans have been prepared and are attached with this letter.

Stormwater management has been considered with development of the proposed plan. It is anticipated that stormwater management will be to convey all stormwater runoff from the site to the existing West Lynden Regional stormwater facility. Although the subject property is not currently contained within the pond's design contributing basin, the project's ownership has secured stormwater credits, which are currently being transferred. It is anticipated that these credits will cover most of the proposed hard surfaces proposed with this project. Additional surfaces outside of the capacity of the regional pond's credits will be mitigated with shallow, low-impact development techniques such as permeable pavement or bioretention facilities. These will reduce the effectiveness of the proposed hard surfaces and allow the project to fit into the regional pond' credit capacity for site. As noted previously, geotechnical evaluation of the soils is in progress.

With more than 5,000 square feet of combined hard surfacing, the project will be subject to Minimum Requirements #1 through #9 as provided in the 2019 DOE Manual. Minimum Requirements #1 through #9 are addressed below. Where applicable, each of the plans identified above will be addressed in greater detail.

Minimum Requirement #1 Preparation of Stormwater Site Plans

This letter serves as a Preliminary Stormwater Site Plan (SSP). All stormwater management systems have been designed according to Department of Ecology (DOE) and City of Lynden standards.

Minimum Requirement #2 Construction Stormwater Pollution Prevention (SWPPP)

A construction SWPPP will be prepared and included with construction documents.

Minimum Requirement #3 Source Control of Pollutants

The proposed processing facility project is not expected to create any unusual sources of stormwater pollutants. Seafood processing operations will occur indoors and are not considered a stormwater pollution concern. Pollutant sources include vehicular traffic, fertilizers, and other detergents or chemicals typical to building maintenance activities. These sources will be controlled at the source to the maximum extent possible. All known, available, and reasonable source control BMPs will be applied to the design and layout of the site plans and stormwater plans. Per the DOE Manual, land use controls that emphasize prevention of water quality impacts are preferred over treatment strategies. Therefore, clearing areas will be limited to the minimum areas necessary for construction.

Minimum Requirement #4 Preservation of Natural Drainage Systems and Outfalls

Currently, the entire project site is contained within a single regional basin. cursory review of aerial topography shows that stormwater runoff from the site generally is conveyed south/southeast. Stormwater from the

developed site will be conveyed to the West Lynden Regional Pond detention facility. No significant stormwater diversions are proposed as part of this project.

Minimum Requirement #5 On-Site Stormwater Management

As a project that is expected to trigger Minimum Requirements #1 through #9, this project will be required to demonstrate compliance with the LID Performance Standard or shall use BMPs from List #2 in the 2019 DOE Manual. This project is expected to comply with List #2.

Projects choosing to utilize List #2 of the 2019 DOE Manual to meet the requirements of Minimum Requirement #5 – On-site Stormwater Management must consider the BMPS in the order listed for each type of surface. The first BMP that is considered feasible must be used on the site. No other On-site Stormwater Management BMPs are necessary for that surface. The following table identifies all of the required BMPs in List #2 and if they are feasible or infeasible.

TABLE 1 - MINIMUM REQUIREMENT #5 LIST #2				
Minimum Requirement		Feasible	Infeasible	Criteria Comments
#	Lawn & Landscaped Area			
1	Post-Construction Soil Quality and Depth - BMP T5.13	✓		This BMP will be applied to all areas outside of roofs or hard surfaces disturbed during construction.
#	Roofs			
1	Full Dispersion - BMP T5.30 Full Infiltration - BMP T5.10A		✓	Infeasible due to impervious surface coverage and lack of suitable vegetated areas to accommodate dispersion. High groundwater renders infiltration systems infeasible.
2	Bioretention – BMP T5.70	✓	✓	Soil investigation is ongoing. If applicable, this BMP will be employed to the maximum extent practicable.
3	Downspout Dispersion BMP T5.10B		✓	Infeasible due to impervious surface limits.
4	Perforated Stub-out Connection BMP T5.10C		✓	Infeasible due to impervious surface limits.
#	Other Hard Surfaces			
1	Full Dispersion BMP T5.30		✓	Infeasible due to impervious surface limits.
2	Permeable Pavement - BMP T5.15	✓	✓	Soil investigation is ongoing. If applicable, this BMP will be employed to the maximum extent practicable.
3	Bioretention – BMP T5.70	✓	✓	Soil investigation is ongoing. If applicable, this BMP will be employed to the maximum extent practicable.
4	Sheet Flow Dispersion BMP T5.12 Concentrated Flow Dispersion BMP T5.11		✓	Infeasible due to insufficient vegetated flow path length on site.

Preliminary Stormwater Management Summary

Proposed impervious surface coverage and high groundwater render the use of full-scale dispersion and infiltration systems on the project site. However, if determined applicable by the project geotechnical professional, small-scale implementation of shallow infiltration facilities, such as bioretention and permeable pavement in the low-use parking areas, will be installed to the maximum extent possible.

Larger scale stormwater management will include conveying stormwater runoff to the West Lynden Regional Stormwater Pond through purchase of stormwater credits. Credits have been purchased from another property and are currently being transferred to the subject property. BMP T5.13 will be applied to all areas outside of roof or hard surfaces disturbed during construction.

Minimum Requirement #6 Runoff Treatment

New pollution-generating hard surface (PGHS) areas are expected to exceed 5,000 square feet. Therefore, this project will exceed thresholds set forth in Section 2.5.6 in Volume I of the DOE Manual and stormwater treatment BMPs will be required.

Minimum Requirement #7 Flow Control

The proposed project will create more than 10,000 square feet of hard surfacing and will exceed flow control thresholds in Section 2.5.7 in Volume I of the DOE Manual. Stormwater flow control will be provided with conveyance to the West Lynden Regional Stormwater Pond.

Minimum Requirement #8 Wetlands Protection

No existing wetlands have been identified on site or in the immediate vicinity. Therefore, no further wetland protection measures are required.

Minimum Requirement #9 Operation and Maintenance

A separate operations and maintenance manual will be prepared for the proposed stormwater management facilities. The manual will contain a description of the facilities, what the facilities do, and how they work. The manual will also identify and describe maintenance tasks for each component of the facilities and the required frequency of each task.

As shown above, this project can comply with current stormwater management requirements in place for the City of Lynden. Please contact us with any questions or concerns regarding these observations.

Sincerely,
Freeland and Associates, Inc.



Jean-Paul (J.P.) Slagle, PE



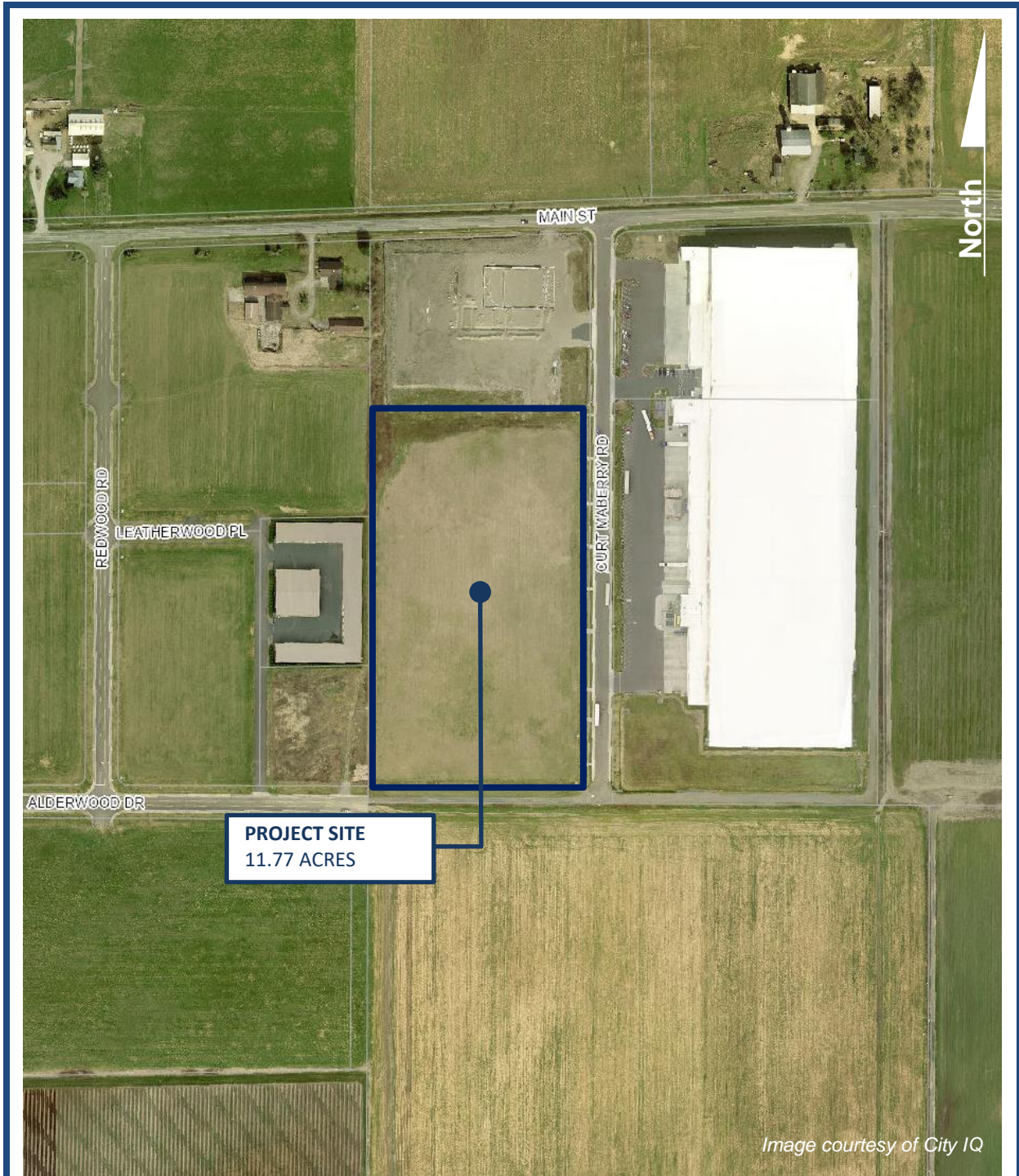
Attachments

- Fig. 1 Vicinity Map*
- Fig. 2 Aerial Photograph of Site*
- Fig. 3 Soils Map*
- Preliminary Site Plan*



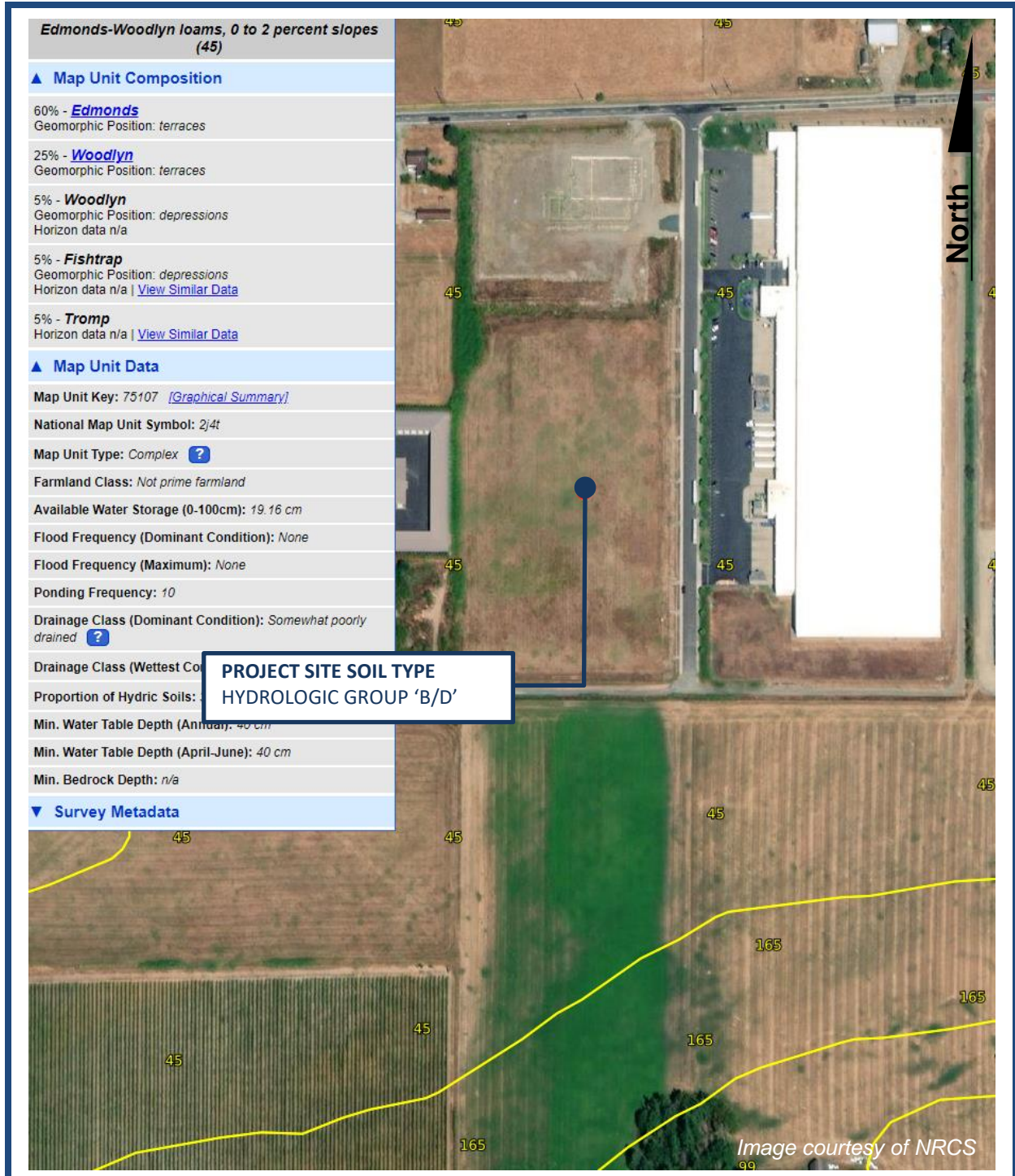
Vicinity Map

Figure 1



Aerial Photograph of Site

Figure 2



Soils Map

Figure 3

Preliminary Site Plan

CHILL BUILD PSL

Building Calculations

- FREEZER = 174,556 GROSS SF.
- PROCESS = 51,340 GROSS SF.
- DOCK AREA = 15,840 GROSS SF.
- OFFICE AREA = 5,100 GROSS SF.
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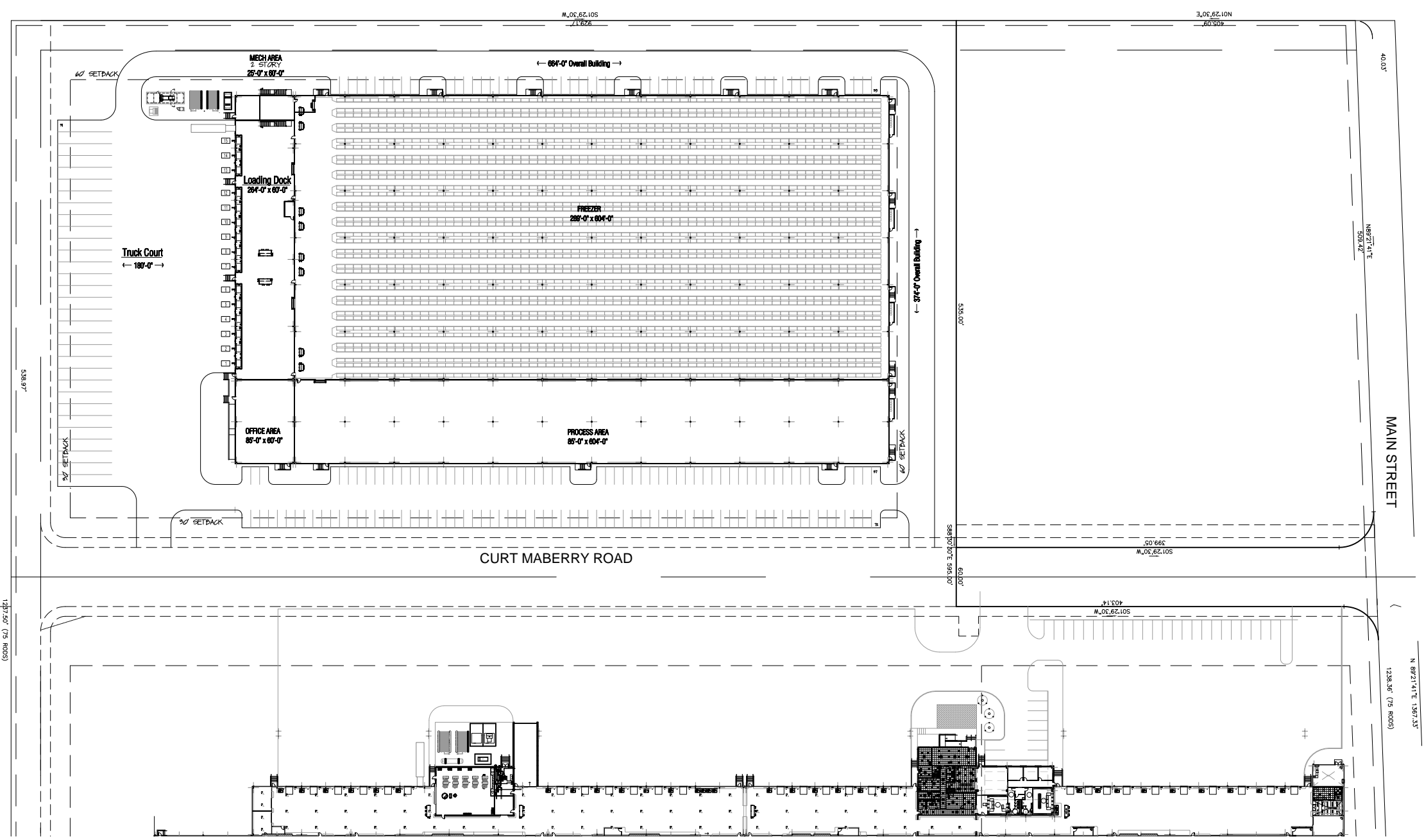
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- 4,680 PALLETS X 8 HIGH = 37,440 PALLETS

37,440 Total Pallets

- 15 Dock Spaces**
- 168 Car Spaces**
- 31 Trailer Spaces**

Lynden, Washington Proposed Floor Plan



CITY OF LYNDEN



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
Heidi Gudde, Director
360-354-5532

PLANNING COMMISSION MEETING MINUTES

7:00 PM October 26, 2023
City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Khush Brar, Tim Faber, Hollie Lyons and Blair Scott

Absent: Jim Kaemingk and Darren Johnson with notice

Staff Present: Gudde, Planning Director and Samec, Planner

3. APPROVAL OF MINUTES

A. **May 11, 2023 Scott / Faber / 2nd 4-0**

4. PUBLIC HEARING

A. **Conditional Use Permit Amendment – CUP 23-01, Premier Freezer - Height**

Gudde addressed the Commission and gave a brief overview of the request.

In November of 2022 the Planning Commission reviewed Conditional Use Permit 22-02 which related to a seafood processing facility for Premier Packing also known as Project Zebra. The company proposed to construct a 194,250 square foot facility with associated truck access, employee parking, and utility infrastructure. The proposal also included an additional 5 feet of building height for the freezer portion of the structure. This would result in a maximum height of 50-feet rather than 45 as permitted outright by code. The Planning Commission recommended approval of CUP 22-02 and the City Council went on to grant the request in December of 2022.

Recently the applicant returned to the city to modify the approved Conditional Use Permit and request additional height on the same facility. The height will allow for greater efficiency in freezer storage and takes advantage of the latest pallet stacking technology. The current application is seeking a height of 80 feet for the freezer portion of the building (a majority of the facility). This final height is similar to the height granted for a portion of the nearby Alliance / Canature facility.

Conditional Use Permits are reviewed against the criteria found in LMC 19.57.210 and the Planning Commission is asked to create findings addressing LMC 17.09.040. Staff from each department has reviewed the request for additional height and produced the attached TRC report including code analysis per the related sections.

JP Slagle, Freeland and Associates, Inc, Project Engineer

No one was present at the meeting to represent the CUP request. The application included the following cover letter.

The project includes the development of a 249,836-square foot seafood processing and cold-storage facility at 603 Curt Maberry Road, Lynden, Washington. The current project proposal is considered an amendment to the existing conditional use permit application (CUP22-02). The redesigned facility contains an expanded freezer space with a maximum building height of 80 feet from the previously approved 50-feet

A CUP amendment and associated building code height variance is requested based on the following design elements:

Freezer Capacity: The project site is located to the west of the existing Lineage Logistics cold-storage facility. Lineage Logistics, constructed in 2015, is currently at maximum storage capacity. Approval of a building code height variance for the proposed Project Zebra facility will create additional vertical storage capacity to support Lineage. Both facilities will provide commercial cold storage space to accommodate local farmers and the community.

Freezer Technology: Recent advancements in cold storage technology include equipment and automation designed to support freezers of increased building heights. These technologies have been incorporated into the current building design.

Stormwater Capacity: An increase in building height will allow for additional cold-storage capacity without increasing stormwater roof runoff volumes to the regional stormwater facility. This will reduce potential drainage capacity issues for the business park.

Site Access: The proposed development has been reconfigured to access solely off of Curt Maberry Road. The access to Alderwood Road is no longer necessary to support this project.

Scott asked for clarification, the only change in this request is for an increase to the previously approved building height of 50-feet. Gudde replied, yes, however there has also been a shift in the location of the building, but, in general the building footprint will remain the same. The proposed facility will contain fire lanes, truck access, loading areas, employee parking and walkways using pre-planned access connections. The applicant has also committed to landscaping the site to meet City of Lynden requirements and enhance the aesthetics of the facility.

Traffic impacts will remain the same.

Lyons asked if this property has already been annexed into the city? Gudde replied yes, it is located within the City limits. The Tromp property to the south is not.

Gerald Epp, owner of 3842 200th Street, Langley BC

Epp owns 18 acres in the West Lynden Business Park. At the time he purchased the property he was not made aware of the proposed development. Epp received a notice in the mail regarding this CUP hearing. Main concern is preservation of the value of their property. Epps just saw the development plans for the building and is concerned that a majority of the building will be 80 feet tall. This will be a very large building.

Epps stated that he is not speaking in total opposition, just speaking out as he is surprised. Concerned with what the impact could have to do with his property. Curious about storm water and asked where the regional facility is located? Gudde replied, the regional facility is located south of this property near the edge of the UGA. Epps knows that there has been stormwater issues in the area, however assumes that the stormwater rules and regulations will be closely followed. Gudde replied, yes, the rules must be followed. Epps property and Premiers property are located in different drainage basins. The facility associated with this property is called the Duffner Basin. Epps property is located within the Bertrand basin. The stormwater from each property will be appropriately cared for and will stay within the appropriate basin.

Epp also noted that he pays close attention to the architecture style of the surrounding buildings as well as the glare from lighting. Concerned with his business being stuck in the middle of these massive buildings.

The Commissioners had no questions.

Scott motioned to close the public hearing. Seconded by Lyons and the motion passed, 4-0.

Brar asked if the City has landscaping requirements? Gudde replied yes, in the Industrial zone, the parcel's street frontage requires a ten-foot Type 1 landscape buffer. Tree plantings shall conform to the approved selection list available from the city. 1.5-inch caliper trunk at time of planting. Industrial properties must also provide landscaping at the entrance of the property. Brar asked if there is a requirement for a certain type of tree? Gudde replied, we look at the surroundings, soil conditions, overhead utilities, ground water etc. We can look to Lineage to see what type of trees they have planted and match. We try to maintain a theme so that it can provide continuity. Brar would like to request that tall shade trees be installed along Curt Maberry Road and the future road to the south to help buffer the building height.

Faber asked what the timing was for the construction of the street to the south? As part of the SEPA requirements for this project, Alderwood Street dedication and frontage improvements are required to a ¾ street standard along the south edge of this parcel.

Brief discussion regarding the permitted height within the IBZ zone.

Scott stated that it is important to support Ag related business and the request for additional height is not causing additional stormwater concerns.

What height was Lineage approved for under their conditional use permit? Staff confirmed that it was 75-feet, however, it was never built to that height.

The Commission reviewed the required criteria as outlined in 19.57.210 (C) The Planning Commission and Council shall enter findings to support any recommendation or decision on a CUP application. Conditions may be attached to CUP approvals to mitigate any adverse impacts, protect surrounding properties and to promote the general welfare of the public. A CUP will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings.

1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district. **Agreed.**
2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:
 - a. Traffic and pedestrian circulation; **No concerns**
 - b. Noise, smoke, fumes, glare or odors generated by the proposed use; **No concerns.**
 - c. Building and site design; **No concerns.**
 - d. The physical characteristics of the subject property; **No concerns.**
3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services. **No concerns.**
4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service. **Agreed.**
5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code. **Agreed.**
6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse

impacts of the proposed use. **There will be a need for taller trees along the south property line to provide additional buffering of the building.**

- 7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance. **Agreed.**
- 8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan. **Agreed.**

The Commission also reviewed the 6 criteria listed under 17.09.040 (C).

- 1. The development is consistent with the comprehensive plan and meets the applicable requirements and intent of this code. **Yes.**
- 2. The development makes adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds. **Yes.**
- 3. The development adequately mitigates impacts identified under Titles 16 through 19. **Yes.**
- 4. The development is beneficial to the public health, safety and welfare and is in the public interest. **Yes.**
- 5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the comprehensive plan, and fully complies with Chapter 17.15 of the city code. **No issues with level of service associated with the CUP.**
- 6. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development and are proportional to the impacts created by the development. **Agreed.**

No further comments from the Commission.

Scott motioned to approve the Premier Freezer Conditional Use Permit Modification #23-01, requesting a maximum building height of 80-feet subject to the Technical Review Committee Report dated October 20, 2023, and further subject to the following conditions:

- 1. This approval is subject to all conditions outlined in the original Conditional Use Permit application #22-02.**
- 2. To minimize impacts to surrounding properties all exterior lighting must be shielded or “dark-sky compliant” lighting throughout the site to minimize lighting impacts.**

3. **Sewer Discharge.** Prior to issuance of the building permit, a sewer discharge study is required to verify impacts, treatment loads, and pipe size. Be advised, this study will require 3rd party review and the applicant assuming associated costs of this review.
4. **Roof-mounted mechanical equipment including condenser units must be screened from view so that this mechanical equipment is not visible from public streets.**
5. **The Conditional Use Permit will be evaluated annually to ensure that compliance with the performance standards as described in LMC 19.25.040 are met, especially as they relate to noise and smell.**
6. **Taller shade trees to be installed along the southern property line to mitigate the impacts to the neighboring properties. Trees to be planted with a minimum 2-inch caliper and a similar species of trees thriving in that area.**

Seconded by Brar, and the motion passed 4-0.

Brar asked questions regarding temporary non-commercial signage. Gudde explained the code.

5. ADJOURNMENT

Motion to adjourn by Scott / Second by Lyons. Meeting adjourned at 8:25 PM

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	November 20, 2023	
Name of Agenda Item:	Public Works Committee Draft Minutes November 1, 2023	
Section of Agenda:	Reports	
Department:	Public Works	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
Attachments:		
November 1, 2023 Draft Public Works Committee Minutes.		
Summary Statement:		
Draft minutes for the November 1, 2023 Public Works Committee meeting.		
Recommended Action:		
For Review		



PUBLIC WORKS COMMITTEE MINUTES

4:00 PM November 01, 2023
City Hall 2nd Floor Large Conference Room

CALL TO ORDER

- Members Present: Councilors Gary Bode and Ron DeValois
- Members Absent: Jerry Kuiken, with notice
- Staff Present: Mayor Scott Korthuis; City Administrator John Williams; Public Works Director Jon Hutchings; Programs Manager Mark Sandal; Utilities Technician Jeff Davis, and Office Manager Heather Sytsma
- Public Present: Gary Vis, David Vos

ACTION ITEMS

1. Review Minutes from October 4, 2023

Action

The minutes from October 4, 2023, were recognized and accepted by the Committee.

2. Proposed 2024 Utility Rate Increases

Hutchings presented an overview of historical rate increases, noting that there have been low to no significant increases in the few years prior to 2023. When the Water Treatment Plant was being constructed, rate increases to the water utility were started ahead of construction to develop a loan repayment fund. This also lessens the potential for larger increases post-project for loan repayment. He would like to do this with the sewer rates as well, as the City will likely pursue loans to fund the expansion of the plant.

Based on historic CPI across the past couple of years and reflecting the recent rates of inflation, Mayor Korthuis has proposed a 7% increase across all rates, with a goal of building some reserves ahead of loan payments.

Bode questioned how the rate structure will push costs of major capital upgrades toward future residents and future industrial users. He noted that the drivers for the proposed WWTP expansion are future industry and that the benefit of these investments will accrue to those future users. Hutchings noted that new connections will generally expand the pool of ratepayers and that additional capital investments are intended to be covered in part by impact fees levied on those who will directly benefit from the upgrades. Discussion ensued about how that concept will apply to Pump State #17 and the Guide Sewer Line Extension. A rate analysis/study in 2024 will sort out those details.

Action

The Committee supported the increase of 7% for all utility rates in 2024 to reflect the increase in the cost of time and materials, and to build a reserve for wastewater treatment plant loan repayments.

3. Draft 2024 Development Standards

Sandal noted that most of the updates to 2024 are updates and corrections or clarifications. Item 4.61.F – planting requirements – is one of the main updates and allows for material other than grass in planting strips. These will be native and drought tolerant.

Williams stated a demonstration area with the plants will be constructed on City hall property by the Community Development and Parks Departments.

Action

The Committee supported the proposed changes. Staff will request a Public Hearing at a November City Council meeting.

INFORMATION ITEMS

4. Whatcom Conservation District Interlocal Agreement

Davis explained that the agreement with Whatcom Conservation District (WCD) is mostly for education/outreach in support of the City’s NPDES stormwater permit requirements. Examples of education include pop-up education stations at local parks near the streams, classroom education regarding stormwater and salmon, and booths at RazzFest and the Northwest Washington Fair. He also noted that this year’s contract is a decrease of \$10,000 from the 2023 contract.

Bode asked whether the WCD works with other agencies as well. Hutchings stated they are involved with Whatcom County and other local governments. De Valois asked whether they’ve been effective. Davis said they have been very effective in bringing awareness to Lynden’s citizens.

5. Welch Ecological Services Agreement

Hutchings stated that this contract is mainly for stormwater program development and reporting for the City’s NPDES stormwater permit. Davis explained that Welch’s contract lists 12 specific tasks, and that the contract has decreased from 2023 to 2024 as more roles are being undertaken with in-house staffing. Sytsma noted that the City has a \$130,000 grant from Ecology to fund a portion of these services over the next two years.

6. Jansen Art Center Tree Planting Proposal

Sandal explained that the proponents waited too long to submit a proposal, and, in the meantime, their volunteer labor became unavailable. They have withdrawn the permit for now.

7. Projects Update

The Committee briefly reviewed current projects and received progress information.

NEW BUSINESS:

8. Nooksack Valley Request for Rate Increase

Hutchings stated that Nooksack Valley Disposal has submitted a rate increase for consideration by the Council, citing increased disposal and recycling costs. Increases vary from 2.5% for carts and dumpsters to 5.7% for the base fee. This will be presented at a future Council meeting for approval.

9. Cedar Drive Update

David Vos requested an update on the Cedar Drive Reconstruction project. Sandal stated that additional permits are needed. Vos wants to make sure impervious pavement is in the design for the shoulders in front of certain houses. Sandal stated he would schedule a neighborhood meeting soon to give an update on the project.

10. B.C. Avenue / Grover Street Accident

Bode noted there was another vehicle accident at B.C. Avenue and Grover Street, although the house at 112 B.C. Avenue was not impacted.

ADJOURNMENT: The meeting was adjourned at 5:06 pm.

NEXT MEETING: December 6, 2023

DRAFT