

CITY OF LYNDEN



Mayor
Scott Korthuis

Council Members
Gary Bode
Ron De Valois
Gerald Kuiken
Nick H. Laninga
Brent Lenssen
Kyle Strengholt
Mark Wohlrab

Online (Microsoft Teams) City Council Meeting
City Hall - 300 Fourth Street
June 21, 2021

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Approval of Minutes

- [1.](#) Draft Council Minutes- Regular Meeting

Items from the Audience

Scheduled

Unscheduled (20 Minutes)

Audience members may address the Council on any issue other than those scheduled for a public hearing or those on which the public hearing has been closed. Prior to commenting please state your name, address, and topic. Please keep comments under 4 minutes.

Consent Agenda

- [2.](#) Approval of Payroll and Claims

Public Hearing

- [3.](#) Ordinance 1626- Public Hearing- Extending the Pepin Creek Moratorium

Unfinished Business

New Business

- [4.](#) City Park License Agreement
- [5.](#) Resolution No. 1038-Volunteer Firefighter Pay

Other Business

[6.](#) Draft Parks Committee Minutes May 17, 2021

[7.](#) Calendar

Executive Session**Adjournment**

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	June 21, 2021	
Name of Agenda Item:	Draft Council Minutes- Regular Meeting	
Section of Agenda:	Approval of Minutes	
Department:	Administration	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input 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- Regular Meeting	
Summary Statement:	Draft Council Minutes- Regular Meeting	
Recommended Action:	For Council review.	

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



June 7, 2021

1. CALL TO ORDER

Mayor Korthuis called to order the June 7, 2021, regular session of the Lynden City Council at 7:00 p.m., held through an online web-based meeting platform (Microsoft Teams).

ROLL CALL - None

Members present: Mayor Scott Korthuis and Councilors, Gary Bode, Ron De Valois, Jerry Kuiken, Brent Lenssen, Nick Laninga, and Kyle Strengholt. Councilor Mark Wohlrab joined the meeting at 7:13 p.m.

Members absent: None

Staff present: Fire Chief Mark Billmire, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, Police Chief Steve Taylor, Public Works Director Steve Banham, City Clerk Pam Brown, and City Administrator Mike Martin.

OATH OF OFFICE- None

APPROVAL OF MINUTES

Councilor Kuiken moved and Councilor Bode seconded to approve the May 17, 2021, regular council minutes as presented. Motion approved on a 6-0 vote.

ITEMS FROM THE AUDIENCE

Scheduled- None

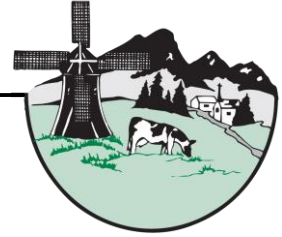
Unscheduled - None

2. CONSENT AGENDA

Payroll information for the month of May 2021 will be included in the June 21, 2021 council packet.

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



Approval of Claims – June 8, 2021

Manual Warrants No.	<u>22141</u>	through	<u>22144</u>		\$20,718.57
EFT Payment Pre-Pays					\$889,492.02
				Sub Total Pre-Pays	\$910,210.59
Voucher Warrants No.	<u>22145.</u>	through	<u>22182</u>		\$83,055.13
EFT Payments					<u>\$0.000</u>
				Sub Total	\$83,055.13
				Total Accts. Payable	\$993,265.72

Forge Fitness Lease- Amendment #1

At their November 16th regular meeting the City Council authorized the signing of an agreement with Brian and Jeannie Davidson, owners of Forge Fitness, for a five-year lease of the former YMCA building at 100 Drayton Street. The original lease agreement included an initial \$150,000 reimbursement to the Davidsons for building improvements along with an annual cap of \$25,000 on other repair reimbursements. During the initial interior improvements, the condition of the exterior siding was identified as an additional major building repair that is critical for the viability of the building. After discussion, the Public Works Committee at their April 7th meeting, recommended staff pursue working with the Davidsons to complete these exterior repairs. This attached amendment will increase the annual reimbursement amount from \$25,000 to \$250,000 keeping the requirement that the Davidsons must first receive approval from the City before proceeding with any repairs.

Mural Building Airspace Encroachment Easement Agreement

The Mural Building at 606 Front Street has been remodeled and requires a second emergency access, per building code. The only feasible option is to exit to the west into the City's 7th Street parking lot. The owner is proposing to construct a concrete walkway to Front Street for safe emergency egress. The first two parking spaces will be shortened to meet "compact" standards which will allow a five-foot walkway, meeting ADA standards. As consideration for this larger easement from the city the owner will make an electric vehicle charging station available to the public. The Public Works Committee reviewed this amendment at their May 5, 2021, meeting and concurred to recommend approval.

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CITY COUNCIL MINUTES OF REGULAR MEETING



Professional Service Agreement with SCJ Alliance

Parks staff requested proposals for the development of a Benson Park Master Plan from five agencies. Two of those agencies responded. After review of the two submitted proposals the Park Committee selected SCJ Alliance as their preferred choice. The Parks Committee now forwards their recommendation to the full council for consideration and approval.

Interlocal Agreement and Easement- Whatcom County Flood Control District

Whatcom County will be contracting to make channel improvements to the unnamed stream that crosses under 6th Street and discharges into the Nooksack River just west of City of Lynden's Wastewater Treatment Plant. Their work will connect to an Army Corp of Engineers fish passable flood gate installation in the levee designed to provide better protection from high flows in the Nooksack River. The County repair work includes: 1) realigning and re-grading the channel, 2) combining it with an existing small drainage ditch, 3) enhancing an existing berm adjacent to the City WTP settling pond, 4) re-grading a segment of the Lynden Levee to pre-damaged conditions and 5) re-grading and placing riprap protection on the levee back slope to protect the pond and new culvert.

The work will require access via City of Lynden property and therefore requires an interlocal agreement and easement. The County is requesting a perpetual easement to the property in order to continue to maintain this new flood control area. Because the project provides material benefit to the City's two utility plants, wastewater and water, the City's adopted budget includes \$10,000 from each utility fund as matching funds.

Resolution No.1039- Establishing Sliding Fee Schedule for Lynden Friendship Diversion Services Agreement

The sliding scale fee schedule for low income/indigent persons using Friendship Diversion Services through Lynden Municipal Court is forwarded to Council for review and approval to become a part of the Friendship Diversion Services agreement.

Councilor Kuiken requested clarification/discussion of item No. 3, Forge Fitness Lease- Amendment #1. The discussion involved the following text in the council item's executive summary:

This attached amendment will increase the annual reimbursement amount from \$25,000 to \$250,000 keeping the requirement that the Davidsons must first receive approval from the City before proceeding with any repairs.

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CITY COUNCIL MINUTES OF REGULAR MEETING



After some discussion and explanation of why the item was written as such, the following motion was made.

Councilor De Valois moved and Councilor Kuiken seconded to approve the Consent Agenda. Motion approved on a 6-0 vote.

3. PUBLIC HEARING

Amending LMC Titles 16 and 19 Regarding SEPA Thresholds and Minimum Density

On March 1, 2021, the City Council adopted a Resolution of Intent (Resolution No. 1031) which outlines the path forward to lifting the moratorium on the Pepin Creek Sub-Area and implement the infrastructure associated with the Pepin Lite Plan. Next steps include the establishment of a fair allocation of costs for the infrastructure projects specific to Pepin Lite. The mechanism that showed the most merit is the use of Transportation Impact Fees (TIF) administered in the form of a SEPA mitigation fee.

It is critical that the City's code supports this fee structure and eliminates exceptions so that funds are collected at an expected rate. This code amendment has been drafted to implement the SEPA mitigation fee as outlined in the Council's Resolution of Intent.

The code amendment:

- Lowers the SEPA threshold so that short plats within the Pepin Creek Sub-Area are no longer exempt from SEPA review.
- Implements a minimum density requirement. This ensures that property is developed at an expected density and fees are collected at an expected rate so that infrastructure costs can be covered.
- Removes the text related to Senior Housing Overlay as this was not implemented and is unnecessary.
- Specifically references the Pepin Creek Sub-Area Plan as part of SEPA substantive authority in LMC 16.05.160.

The Planning Commission held a public hearing on March 25, 2021, which concluded with a recommendation for approval. The issue of minimum density was then discussed at a May 19th Community Development Committee meeting. Recognizing that some properties may be constrained by wetlands, but also noting the need to fund infrastructure through development, staff subsequently created language which clarifies how minimum and maximum densities will be calculated. This appears in the council submittal, a proposed Sec. 19.11.030. The addition strives to strike a balance between using gross and net acreage to

CITY OF LYNDEN

CITY COUNCIL MINUTES OF REGULAR MEETING



calculate densities. If the Council acts on this item staff will bring a corresponding ordinance to a subsequent meeting.

Mayor Korthuis opened the Public Hearing at 7:13 p.m.

Brad Rader, 8629 Benson Road stated opposition to the LMC amendment.

Mayor Korthuis closed the Public Hearing at 7:20 p.m.

No action taken. Item will return to the June 16th Community Development Committee for further consideration.

4. UNFINISHED BUSINESS- None

5. NEW BUSINESS-None

6. OTHER BUSINESS

Council Committee Updates

Councilor Bode reporting for the Public Works Committee stated discussion of the following:

- Sidewalk dining
- PSE work occurring on West Main and the resulting rough road conditions
- Need for tree trimming at Lynden Airport
- Plan 2021 grant applications
- Main Street directional signs
- Crosswalk request: Vinup and Edgewater
- Interlocal agreement for Lynden levee repair

Councilor Lenssen reporting for the Community Development Committee stated discussion of the following:

- Wetlands
- Requirements for licensed architects and engineers.
- West Lynden annexations

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CITY COUNCIL
MINUTES OF REGULAR MEETING



7. EXECUTIVE SESSION

Council did not hold an executive session.

8. ADJOURNMENT

The June 7, 2021, regular session of the Lynden City Council adjourned at 7:43 p.m.

Pam Brown, MMC
City Clerk

Scott Korthuis
Mayor

DRAFT

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	June 21, 2021	
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:	June 16, 2021	
Name of Agenda Item:	Public Hearing to Consider Ord 1621 - Extending the Pepin Creek Moratorium	
Section of Agenda:	Public Hearing	
Department:	Planning 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 Ord 1626, Map of the Pepin Creek Sub-Area parcel currently under moratorium.		
Summary Statement:		
<p>A financial mitigation study of the Pepin Lite infrastructure build-out showed that transportation related fees could be used for the allocation of infrastructure costs. The City Council subsequently approved a Resolution of Intent which outlined the required steps forward. To allow time for implementation, the City Council also approved Ordinance 1621 extending the moratorium on existing development through June 30, 2021 within the Pepin Creek Subarea.</p> <p>Staff has taken steps to execute this path, consulted with legal counsel and the City’s transportation consultant, the Transpo Group. It was advised that the city take the time to not only update development code as planned but also amend the Comprehensive Plan to ensure full alignment of all City planning documents in relation to the planned Pepin Lite infrastructure.</p> <p>To allow time for this Comp Plan amendment and the associated Department of Commerce comment period, staff is requesting a 3-month extension of the existing moratorium. This extension will also allow Transpo to finalize fees as transportation impact fees rather than SEPA mitigation fees.</p> <p>Staff anticipates that all Pepin related actions needed prior to lifting the moratorium can be brought forward to Council by the August 16th or September 7th meeting. As a result, City staff requests that the Council extend the moratorium by three months. The current date of expiration is June 30, 2021.</p>		
Recommended Action:		
Motion to approve Ordinance 1626 extending the existing moratorium of development on those properties previously identified within the Pepin Creek Sub-area through September 30, 2021 and authorize the Mayor’s signature on the Ordinance.		

ORDINANCE NO. 1626

INTERIM ORDINANCE EXTENDING THE MORATORIUM ON SUBDIVISION AND PLANNED RESIDENTIAL DEVELOPMENT APPLICATIONS AND CERTAIN BUILDING PERMIT APPLICATIONS FOR PROPERTY LOCATED WITHIN THE PEPIN CREEK PROJECT AREA

WHEREAS, on August 19, 2013, the City of Lynden (“City”) adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the “Pepin Creek” project (“Pepin Creek Project” or “Project”); and

WHEREAS, the Pepin Creek Project includes the relocation and combination of surface water flows from Double Ditch and Benson Ditch between Badger Road and Main Street into one “new” watercourse known as Pepin Creek; and

WHEREAS, the general vicinity of the Pepin Creek Project has experienced instances of extreme flooding in recent years, causing property damage, closing and damaging public roads and infrastructure, cutting residents off from emergency access, and damaging agricultural land; and

WHEREAS, the Pepin Creek Project is designed to implement a new drainage pattern to protect public roads and public road infrastructure, substantially reduce flooding, facilitate improved storm water control, and provide the ancillary benefit of natural fish and wildlife habitat; and

WHEREAS, the Council has adopted, on October 16, 2017, Resolution No. 975, which is a Resolution of Intent outlining the strategies and corresponding timeline to resolve Pepin Creek Project Issues; and

WHEREAS, in March of 2020 the City adopted the Pepin Creek Sub-Area Plan as a guiding document for development in the area; and

WHEREAS, the City has begun implementing the Pepin Creek Sub-Area Plan and evaluating the results of numerous detailed planning, funding, and design studies related to the Pepin Creek Project (“Pepin Creek Project Issues”); and

WHEREAS, Pepin Creek Project Issues include without limitation:

- Identifying needed transportation improvements.
- Corridor design and permitting for the Pepin Creek Project.
- Locating and increasing stormwater capacity and coordinating the associated street and utility infrastructure locations.
- Design and permitting options associated with necessary downstream bridges and bank stabilization associated with the Pepin Creek Project.
- Identifying financing and equitable allocation of system construction costs; and

WHEREAS, that area of the city believed to be affected by Pepin Creek Project Issues at this time and for purposes of this Ordinance include without limitation the area shown on Exhibit A (“Pepin Creek Project Area”), which is incorporated herein; and

WHEREAS, Ordinance No. 1509, *An Ordinance of the City of Lynden to provide Annexation to the City of Lynden* adopted on June 6, 2016 (“Ordinance No. 1509”), annexed property in the Pepin Creek Project Area into the City of Lynden; and

WHEREAS, Ordinance No. 1509 included a clause stating that the “City has identified the need for the completion of the Pepin Creek project prior to development” of the property annexed into the City; and

WHEREAS, except as set forth herein, property development within the Pepin Creek Project Area will likely disrupt the City’s ability to effectively address Pepin Creek Project Issues; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's regulatory authority and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Ordinance No. 1513, *Ordinance Establishing an Emergency Moratorium on Subdivision and Planned Residential Development Applications and Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 19, 2016; and

WHEREAS, Ordinance No. 1514, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 17, 2016; and

WHEREAS, Ordinance No. 1525, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on April 17, 2017; and

WHEREAS, Ordinance No. 1538, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 16, 2017; and

WHEREAS, Ordinance No. 1555, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on May 7, 2018; and

WHEREAS, Ordinance No. 1562, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 17, 2018; and

WHEREAS, Ordinance No. 1577, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 4, 2019; and

WHEREAS, Ordinance No. 1591, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 3, 2019; and

WHEREAS, Ordinance No. 1604, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 2, 2020; and

WHEREAS, Ordinance No. 1607, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 8, 2020; and

WHEREAS, Ordinance No. 1621, *Interim Ordinance Establishing a 3-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 1, 2021; and

WHEREAS, staff has begun a Comprehensive Plan amendment which requires a comment period from the Department of Commerce that extends beyond the existing moratorium; and

WHEREAS, the City held a public hearing on this proposed Ordinance 1626 on the 21st day of June 2021; and

WHEREAS, a continuation of the moratorium on development in the Pepin Creek Project Area is required to allow for full alignment of all of the City's standards and policies for the implementation of the Pepin Creek Project; and

WHEREAS, adoption of this ordinance extending the moratorium to assure that Pepin Creek Project Issues are resolved consistent with the Project addresses a public emergency and shall qualify as a public emergency ordinance; and

WHEREAS, the public emergency ordinance is necessary to protect the public health, safety, and welfare of the community, and public property; and

WHEREAS, this public emergency moratorium ordinance, as provided in RCW 35.A.12.130, when passed by a majority plus one of the whole membership of the council, is effective upon adoption; and

WHEREAS, the foregoing recitals are a material part of this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN DOES ORDAIN as follows:

Section 1. Findings of Fact. The City Council adopts the above “WHEREAS” recitals as findings of fact in support of this Ordinance. The Council may adopt additional findings in the event that additional evidence is presented to the City Council.

Section 2. Moratorium Established For New Subdivisions. The City shall not accept applications for any new subdivisions (including both short plats and long plats) or for any new planned residential developments for property located in whole or in part in the Pepin Creek Project Area, until September 22, 2021, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Moratorium Established For Certain Building Permit Applications. The City shall not accept building permit applications in the Pepin Creek Project Area for new structures intended for human occupancy or for additions to existing residential structures of more than fifty percent (50%) in square footage, until September 22, 2021 or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 4. Resolution of Pepin Creek Project Issues. During the term of this interim ordinance the City shall work on resolving the following issues.

- A. Corridor Design. The Pepin Creek Project Area has demonstrated stormwater capacity deficiencies. The City must complete an analysis and design of a new stormwater system with adequate capacity to fully accommodate basin flow. This would also include locating the street and utility infrastructure to function with that new system.
- B. Downstream Stabilization. The existing Double Ditch channel downstream from Main Street to the confluence with Fishtrap Creek presently has unstable banks. The City intends to identify corrective options, including necessary design, permitting, and funding, and consider construction implementation of corrective options.
- C. Financial Strategy. The City must develop a financing plan and method for equitable allocation of system construction costs and responsibilities among property owners in the Pepin Creek Project Area.

Section 5. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 6. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the _____ day of June 2021,

MAYOR

ATTEST:

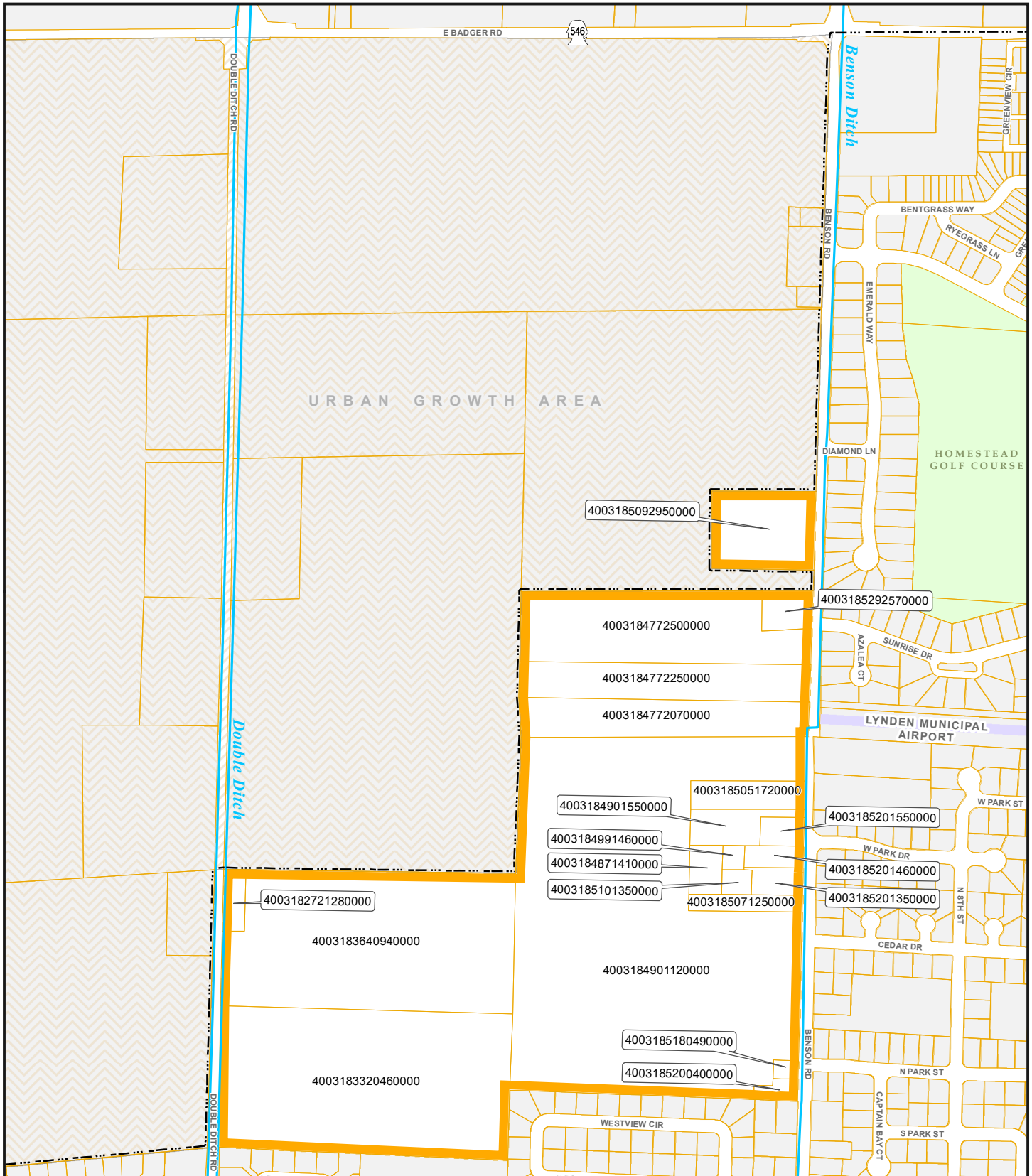
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

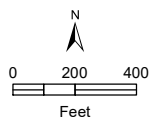
Exhibit A

Properties Located within Pepin Creek Project Area



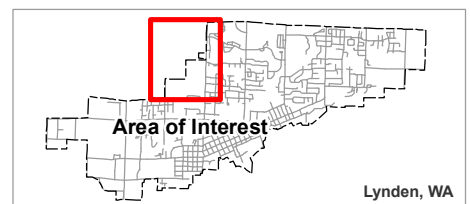
Map Key

- Properties in Pepin Creek Project Area
- Property Boundaries
- City Limit
- Urban Growth Area (Unincorporated)
- Waterway



Updated: September 19, 2016

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Lynden, WA

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	June 21, 2021	
Name of Agenda Item:	City Park License Agreement	
Section of Agenda:	New Business	
Department:	Parks	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input 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:		
City Park License Agreement		
Summary Statement:		
<p>The Lynden Christian Schools are expanding their elementary school and adding portables for the middle school resulting in a loss of playground space for their students. They have contacted the City requesting the possibility of a shared use agreement for approximately 100 feet of the eastern part of City Park to be used as additional playground space for their students. The eastern portion of the wooded section of City park is seldom used by citizens or visitors to the park. The school has agreed to build a chain link fence at their expense, clean up the agreed to area, install gates so the public can use that area when school is not in session and maintain the area for the duration of the agreement. Parks Committee reviewed the request at their meeting last month and again at their meeting on June 21, and requested the agreement be brought to City Council for final approval.</p>		
Recommended Action:		
Motion to approve the City Park License Agreement between the City of Lynden and Lynden Christian School and authorize the Mayor's signature.		

CITY OF LYNDEN

CITY PARK LICENSE AGREEMENT

THIS CITY PARK LICENSE AGREEMENT (“Agreement”) is made and entered into this 21st day of June, 2021 (“Effective Date”), by and between the City of Lynden, a non-charter code city and municipal corporation (“City”), and Lynden Christian School, a Washington nonprofit corporation, (“School”). For the purposes of this Agreement, the City and the School may be referred to individually as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the School wishes to use of a portion (“Licensed Area”) of the City park known as City Park (“Park”) for the purpose of expanding the recreational area available to its students while school is in session; and

WHEREAS, the City desires to grant to the School, its invitees, consultants, contractors and subcontractors a revocable, non-exclusive license to enter and use the Licensed Area on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GRANT OF LICENSE. Subject to the provisions, covenants, and agreements herein contained, the City hereby grants to the School a non-exclusive license (“License”) to use the Licensed Area described in **Exhibit A** without monetary compensation. A Fence shall be installed per Section 4, as described in Exhibit A. In the event the installed Fence location does not match the description in Exhibit A, the as-built Fence shall be the outer boundary of the Licensed Area. The License granted hereunder is expressly non-exclusive. No provision of this Agreement shall impair in any way City’s rights or ability to negotiate with any third-party with respect to the use by such third-party of the Licensed Area, except to the extent such use conflicts with the rights specifically granted to the School hereunder.

2. TERM. This Agreement shall have an initial term of five (5) years commencing on the Effective Date, and shall be renewed automatically for two succeeding terms of five (5) years each unless either Party gives written notice of termination to the other Party at least sixty (60) days prior to the expiration of any term. 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.

3. TERMINATION.

3.1 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.

3.2 Termination with Cause. If the School fails to comply with any 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 of termination.

4. FENCING. The School agrees to erect a permanent chain link fence (“Fence”) along the entire length of the southern and western boundaries of the Licensed Area. The Fence shall be installed by August 30,2021

4.1 Installation. The School shall install the Fence subject to the following conditions:

- a. No healthy trees may be damaged or removed.
- b. Straight lines shall be maintained where possible. If necessary, the southwest and northwest corners of the Fence may be moved up to five feet from the boundary of the Licensed Area to accommodate a straighter line through the trees.
- c. A gate shall be installed in the southern portion of the Fence to allow access from the existing trailhead.
- d. A gate shall be installed in the western portion of the Fence where the Fence intersects with the existing trail.
- e. As many gates may be installed in the eastern portion of the Fence as the School determines is necessary to meet its needs.

4.2 Removal.

4.2.1 Following Termination by School or by City with Cause. The School shall remove the Fence in the event the School elects not to renew this Agreement, the School terminates this Agreement without cause as provided in Section 3.1, or the City terminates this Agreement with cause as provided in Section 3.2.

4.2.2 Following Termination by City without Cause. The City shall remove the Fence in the event the City elects not to renew this Agreement or terminates this Agreement without cause as provided in Section 3.1. In either event, the City shall collect and deliver all fencing material to the School.

5. USE. The School may access and use the Licensed Area solely for the purposes of student recreation, maintenance, or as otherwise permitted under the terms of this Agreement. The School shall have exclusive use of the Licensed Area on days that the School is in session, including mornings and evenings outside regular school hours, and on weekends preceding any week in which the School is in session, except for the breaks and holidays identified in Section 5.1.

5.1 Breaks and Holidays. The Licensed Area shall be open to the public during any school break that exceeds four days (such as Christmas, spring break, and summer break) and on national holiday three-day weekends in which the holiday does not fall on a school day (such as Memorial Day and Labor Day).

5.2 Gates. The School shall open and close the Fence gates to isolate the Licensed Area from the Park or allow public access in accordance with the terms of this Agreement. All gates on the western side of the Fence shall be closed while school is in session and opened during the breaks and holidays identified in Section 5.1.

5.3 Prohibited Uses. The School shall not permit any unreasonable odors, smoke, dust, noise or vibrations to emanate from the Licensed Area, take any other action which would constitute a nuisance or disturb the use and enjoyment of the Park by the public, or allow the Licensed Area to be used for any unlawful purpose.

6. MAINTENANCE. The School shall, at its sole expense, maintain the Licensed Area in Usable Condition during the term of this Agreement. "Usable condition" means well-kept and free from hazards. The School shall also be responsible for pruning trees as needed to keep them healthy and removing dead trees. No existing tree in good condition shall be removed without written permission from the City. All damage or injury to the Licensed Area caused by or resulting from misuse or negligent conduct or omission of the School, shall be repaired, at the School's sole cost and expense, by the School to the City's reasonable satisfaction. Nothing in this Agreement shall be construed to prevent the City from entering the Licensed Area at any time for the purpose of inspection and carrying out emergency maintenance the City determines, at the City's sole discretion, to be necessary.

7. IMPROVEMENTS. Other than the fence described in Section 4, the School may not make any improvement to the Licensed Area without prior written approval from the City, which approval may be withheld in the City's sole discretion.

8. INSURANCE.

8.1 The School shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with its use of the Licensed Area while school is in session or any claims for injuries or damage to property arising at any time during the term of this Agreement due to the presence of the Fence.

8.2 The School's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the School to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8.3 The School shall, at minimum, obtain insurance coverage of the following types and policy limits:

General Liability	\$2,000,000	each occurrence
General Liability	\$2,000,000	annual aggregate
Worker's Compensation	Statutory benefits	

8.4 The City shall be listed as additional insured on the School’s General Liability policy. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

8.5 The School shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not limited to the additional insured endorsement, evidencing the insurance requirements of the Agreement before any use of the Licensed Area. The School shall provide the City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

8.6 If the School maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of General and Excess or Umbrella liability maintained by the School, irrespective of whether such limits maintained by the School are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the School.

12.7 Failure on the part of the School to maintain insurance as required shall constitute a material breach of this Agreement, upon which the City may, after giving five (5) business days’ notice to the City to correct the breach, immediately terminate the Agreement or, at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be reimbursed to the City on demand.

13. INDEMNIFICATION. The School agrees to release, indemnify, defend, and hold the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers harmless from any and all claims, demands, actions, and suits arising from, resulting from, or in connection with this Agreement, or the acts, errors or omissions of the School in the performance of this Agreement, except for that portion of the claim caused by the City’s sole negligence. The School shall ensure that any contractor hired to provide maintenance services in the Licensed Area under the terms of this Agreement shall agree to defend and indemnify the City, its elected officials, officers, employees, agents, representatives, insurers, attorneys, and volunteers to the same extent and on the same terms and conditions as the School as set forth in this paragraph.

14. 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 14, “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.

15. 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.

16. NOTICE. In every case where, under any of the provisions of this Agreement or in the opinion of either the City or the School 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 City Administrator if given by the School, or to the Superintendent of the School personally, if given by the City; or (2) mail the same or a copy thereof by first class, 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 Administrator
CITY OF LYNDEN
300 4th Street
Lynden, Washington 98264

and the address of the School shall be as follows:

Lynden Christian Schools
417 Lyncs Drive
Lynden, Washington 98264

17. APPLICABLE LAW AND VENUE. 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 School, 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.

18. ENTIRE AGREEMENT. This Agreement contains all of the terms and conditions agreed upon by the parties regarding the Licensed Area. 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.

19. ATTORNEY’S FEES. The Parties agree that in the event a civil action is instituted by either Party to enforce any of the terms and conditions of this Agreement or to obtain damages or other redress for any breach hereof, the prevailing Party shall be entitled to recover from the other Party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.

20. SEVERABILITY. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of the applicable law.

21. NONWAIVER OF BREACH. Failure of either Party to require performance of any provision of this Agreement shall not limit such Party’s right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

22. ASSIGNMENT. The School shall not assign or sublicense its rights or delegate its duties under this Agreement, whether by operation of law or otherwise.

23. COUNTERPARTS. This Agreement may be executed in counterparts and each shall be deemed an original, but all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date first written above.

LYNDEN CHRISTIAN SCHOOL

CITY OF LYNDEN

Paul Bootsma Superintendant Date

Mayor Scott Korthuis Date

EXHIBIT A

Licensed Area

That portion of the Park (hereby described as Whatcom County Tax Parcel Number 400320 354420 0000) located inside a fenced area described as follows:

Starting at the fence in the northeast corner of the Park, follow the fence ~115' south,

Then follow the fence ~42 feet east,

Then follow the fence ~430 feet south,

Then create a new line heading 100 feet west,

Then create a new line ~545 feet north to the northern fence between LC and the Park,

Then follow the fence 100 feet east back to the start point.

Situate in Whatcom County, Washington.

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	6/21/2021	
Name of Agenda Item:	Volunteer Firefighter Pay	
Section of Agenda:	Consent	
Department:	Fire	
Council Committee Review:	<input 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:	Resolution No. 1038 – Volunteer Firefighter Pay	
Summary Statement:	<p>In March 2021 ten Lynden Fire Department Volunteer Firefighter/EMTs petitioned Chief Billmire and the City of Lynden to reclassify the volunteer force to permanent part-time employees. This prompted a comprehensive review by Chief Billmire and HR Manager, Kim Clemons, into the compensation structure for Volunteer Firefighters/EMTs. After the review and audit of the current pay schedule, it was confirmed that payment of a volunteer based on hours worked is a clear violation of Fair Labor Standards Act (FLSA). In order to align with federal law, follow industry standards and maintain a volunteer workforce, we are recommending a stipend compensation structure which includes a nominal fee for their service to the citizens of Lynden be implemented per attached Resolution No. 1038.</p>	
Recommended Action:	Vote to implement Resolution No. 1038 as July 1 st , 2021.	

RESOLUTION NO. 1038

**A RESOLUTION OF THE LYNDEN CITY COUNCIL
RESCINDING RESOLUTION NO. 814
AND SETTING VOLUNTEER FIREFIGHTER PAY**

WHEREAS, the Lynden City Council passed Resolution No. 814, Rescinding Resolution No. 759, Setting Volunteer Firefighter Pay on February 16, 2010; and

WHEREAS, the City of Lynden, after considering the guidelines for Volunteer compensation as outlined in the Fair Labor and Standards Act (FLSA), has determined the need for the City to come into compliance with the FLSA guidelines; and

WHEREAS the City wishes to rescind Resolution No. 814 regarding volunteer firefighter pay for The City of Lynden, Whatcom County, Washington.

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

Section A: Resolution No. 814 is hereby rescinded and replaced in its entirety with this Resolution No. 1038, and shall have no further force and effect.

Section B: City of Lynden Volunteer Firefighters/Emergency Medical Technicians (EMT's) shall be paid the following stipends as compensation:

Call-back	\$12.00
Holdover	\$12.00
Training	\$12.00
1/4 Shift	\$40.00
1/2 Shift	\$80.00
3/4 Shift	\$120.00
Full Shift	\$160.00

Section C: 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 D: 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 than any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE

VOTE _____ IN FAVOR _____ AGAINST AND SIGNED BY THE MAYOR on the _____

day of June 2021.

MAYOR

Scott Korthuis

ATTEST:

Pam Brown
City Clerk

APPROVED AS TO FORM:

Robert Carmichael
City Attorney

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	June 21, 2021	
Name of Agenda Item:	Draft Parks Committee Minutes May 17, 2021	
Section of Agenda:	Other Business	
Department:	Parks	
Council Committee Review:	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" 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 type="checkbox"/> Review Not Required	
Attachments:		
ES-Draft Parks Committee Minutes May 17, 2021		
Summary Statement:		
See Next page		
Recommended Action:		
For Council Review		



PARKS COMMITTEE MINUTES
Combined with the Rec. District
 May 17, 2021

1. ROLL CALL:

Members Present: Mayor Korthuis; Councilors Ron DeValois, Nick Laninga, and Mark Wohlrab

Staff Present: City Administrator Mike Martin; Parks Director Vern Meenderinck; Parks Admin. Assistant Nancy Norris; and Brent DeRuyter Park Maintenance Supervisor

Rec. District Commissioners Present: Bob Johnson

Community Members Present: Harlan Kredit

2. ACTION ITEMS:

A. Approval of Parks Committee Minutes- April 19, 2021

DeValois motioned to approve the minutes, Wohlrab concurred and Laninga supported the motion.

Action:

The Parks Committee Minutes from April 19, 2021, were approved.

B. Motion to move Glenning Conservation easement to full council.

DeValois asked for a motion, to move the Glenning Conservation easement to full council Laninga concurred and Wohlrab supported the motion.

Action:

Parks Committee approved the motion to move the Glenning Conservation easement to full council for approval.

C. Select the company to develop the park plan for Benson Park.

Sent request to 5 companies, received 2 replies.

Parks Committee and Rec. District Commissioners reviewed each proposal received from CTL Architectures and SCJ Alliance. After much discussion Parks Committee Motioned to accept SCJ Alliance proposal to develop a Park Plan for Benson Park.

Action:

The mayor accepted the Parks Committee's motion; a contract will be drawn up with SCJ Alliance.

3. INFORMATION ITEMS:

A. Berthusen Trails

Washington Trails Assoc. completed 2 sections of trail renovation, will return in June/July or Oct/November to complete 2 more.



B. Harlan Kredit -presentation on Glenning Park.

Fundraising: Mr. Kredit shared the fundraising is going very well getting very close to reaching the need dollar amount as agreed upon. An Open House for the Community input and project accomplishment announcement.

Planning committee: A community planning committee has been created.

C. Updates on Parks projects:

Benson Park barn: Two (2) replies to the RFQ for the Benson barn. PW will be interviewing both before making a final decision. Discussion between the committee and Rec. District on path forward.

Dickinson Park: Ideas on what to do with the house at Dickinson’s Copy of new lot lines for the property.

Glenning Property: covered under earlier sections of the agenda.

Depot to 8th Trail: There has been some positive progress s between VG and the school district.

D. Request from Rick Heeringa to have a fence installed between his property and Dickinson Park.

There is a discrepancy as to where the property line is. Waiting for a property line description from Public Works.

E. Request from Lynden Christian to use part of City Park for playground use.

Will need to draw up a shared land use agreement, that includes an out clause and no cutting/removing trees. The City will maintain ownership of the property.

4. ITEMS ADDED: None

Meeting Adjourned: 5:05pm

NEXT MEETING DATE
Parks Committee: June 21
Rec. District: June 9

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	June 21, 2021	
Name of Agenda Item:	Calendar	
Section of Agenda:	Other Business	
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 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:	Outlook Calendar	
Summary Statement:	See next page.	
Recommended Action:	None	

June 21, 2021

Monday

3:00 PM - 4:00 PM

Finance Committee Meeting -- City Hall 1st Floor Large Conference Room
Finance Committee Meeting

UPDATE: beginning June 21st the location will return to the City Hall 1st Floor Large Conference room

Thank you!

4:00 PM - 5:00 PM

Parks Committee -- City Hall 1st Floor Large Conference Room

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined

June 22, 2021

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined

June 23, 2021

Wednesday

All Day

Possible Jury Trial -- Annex Council Chamber; Annex North East Conference Room; Annex South East Conference Room; Annex East Training Room

9:00 AM - 10:00 AM

Meeting: Mark/Mike -- Mike's office

June 24, 2021

Thursday

7:00 PM - 9:30 PM

Planning Commission Meeting -- TBD

June 24, 2021 Continued
Thursday

June 25, 2021
Friday

10:00 AM - 11:00 AM **Meeting: Steve/Mike -- Mike's Office**

June 28, 2021
Monday

9:00 AM - 10:00 AM **Meeting: Vern/Mike -- Mike's Office**

June 30, 2021
Wednesday

All Day **Court -- Annex Council Chamber; Annex North East Conference Room; Annex South East Conference Room; Annex East Training Room**

July 1, 2021
Thursday

2:00 PM - 4:00 PM **Technical Review Committee -- Microsoft Teams Meeting**

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,832433768#](#) United States, Tacoma

Phone Conference ID: 832 433 768#

July 1, 2021 Continued

Thursday

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4:00 PM - 5:00 PM

Public Safety Committee Meeting -- Microsoft Teams Meeting

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 253-948-9362,,954667669#](#) United States, Tacoma

Phone Conference ID: 954 667 669#

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

July 6, 2021

Tuesday

8:30 AM - 9:30 AM

Leadership Team Meeting -- To Be Determined: May be Teams Meeting

5:00 PM - 6:30 PM

Design Review Board -- To be determined

July 6, 2021 Continued

Tuesday

7:00 PM - 9:00 PM

City Council Meeting -- To Be Determined