

CITY OF LYNDEN



Mayor
Scott Korthuis

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

Regular City Council Meeting
Annex - 205 Fourth Street
December 05, 2022

Call to Order

Pledge of Allegiance

Roll Call

Oath of Office

Summary Reports and Presentations

Approval of Minutes

1. Draft Council Minutes- November 21, 2022

Citizen Comment

Consent Agenda

2. Approval of Payroll and Claims
3. Appoint Mayor Korthuis to the 2023 Board of the Whatcom Council of Governments and appoint Councilor Gary Bode to act as Alternate.
4. Appoint Mayor Korthuis to the 2023 Whatcom Transportation Authority (WTA) Board of Directors
5. Set Public Hearing-Ordinance No. 1655-Comprehensive Plan Amendment (CPA) 22-02 JD Borgen
6. Set Public Hearing-Ordinance No.1656-City-led Comprehensive Plan Amendment 22-01
7. Set Public Hearing-Ordinance No.1657- Amendment to LMC 17, 18, and 19
8. Resolution 1059 – Agreement with Washington State Community Economic Revitalization Board (CERB) – West Main Street and Berthusen Road Project

Public Hearing

9. Final Public Hearing on the Year 2023 Budget
10. Ordinance No.1661– Substitute Interim Zoning Ordinance regarding Community Residential Facilities

Unfinished Business

[11.](#) Ordinance No.1662– Adoption of the Year 2023 Budget

New Business

[12.](#) Select Mayor Pro Tem for 2023

Other Business

[13.](#) Draft Community Development Committee Minutes-November 16, 2022

[14.](#) Calendar

Executive Session**Adjournment**

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EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
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.	

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CITY COUNCIL MINUTES OF REGULAR MEETING



November 21, 2022

1. CALL TO ORDER

Mayor Korthuis called to order the November 21, 2022 regular session of the Lynden city council at 7:00 p.m.at the city’s council chambers.

PLEDGE OF ALLEGIENCE

ROLL CALL

Members present: Councilors Gary Bode, Ron De Valois, Gerald Kuiken, Brent Lenssen, Nick Laninga, and Mark Wohlrab

Members absent: Councilor Strengholt absent with notice.

Staff present: Fire Chief Mark Billmire, HR Director Kari Heeringa, Parks Director Brent DeRuyter, Planning Director Heidi Gudde, Police Chief Steve Taylor, City Administrator John Williams, City Clerk Pam Brown, and City Attorney Bob Carmichael.

OATH OF OFFICE – Assistant Fire Chief, Kristie Watson was sworn in by Mayor Korthuis and welcomed by Council and Staff.

SUMMARY REPORTS AND PRESENTATIONS – None

APPROVAL OF MINUTES

Councilor De Valois moved, and Councilor Bode seconded to approve the November 21, 2022, regular meeting minutes. Motion approved on 6-0 vote.

CITIZEN COMMENT

Cynthia Ripke-Kutsagoitz, Guide Meridian, Lynden

- **Concerned about the abandonment of a car in the Food Pavilion parking lot and how the issue was resolved.**
- **Mentioned a petition to acknowledge God and restating prayers in school.**

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- Cynthia voiced concern with the events scheduled in Whatcom County Library system held in Lynden.
- She stated her disappointment in the council member attendance at local recognition events i.e., Veterans Day and 911 memorials.

2. CONSENT AGENDA

Payroll Liability to July 3 through July 16, 2022 - CORRECTED

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	\$455,870.12
Check Liability	\$1,045.15
Total Non-L&I Liabilities	\$456,915.27
Quarterly Liabilities	\$13,415.99

Total EFT & Other Liabilities	\$470,331.26
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Payroll Liability to July 17, 2022 through July 30, 2022 - CORRECTED

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	\$272,303.79
Check Liability	\$221,593.17
Total Non-L&I Liabilities	\$493,896.96
Quarterly Liabilities	\$13,517.07

Total EFT & Other Liabilities	\$507,414.03
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Corrected copies of July 3-July 16, 2022 and July 17-July 30, 2022 have been placed in the August 1, 2022 Council file.

Payroll Liability to October 23 through November 5, 2022

EFT & Other Liabilities

Non-L&I Liabilities

Monthly EFT	\$392,265.04
Check Liability	\$0.00
Total Non-L&I Liabilities	\$392,265.04
Quarterly Liabilities	\$13,394.85

Total EFT & Other Liabilities	\$405,569.89
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CITY COUNCIL MINUTES OF REGULAR MEETING

Approval of Claims – November 23, 2022

Manual Warrants No.	=	through	=		
EFT Payment Pre-Pays					
				Sub Total Pre-Pays	\$0.00
Voucher Warrants No.	<u>26045</u>	through	<u>26151</u>		\$1,913,038.31
EFT Payments					<u>\$449,790.25</u>
				Sub Total	\$2,362,828.56
				Total Accts. Payable	\$2,362,828.56

Lynden Municipal Airport Advisory Board Term Renewals

The terms for Don Korthuis, Corwin McCaig, and Bryant Paulsen, who serve on the Airport Advisory Board, expire December 31, 2022. Each of these board members have agreed to serve another three-year term. According to Lynden Municipal Code Chapter 2.54.010, the board members shall be appointed by the Mayor with the approval of City Council, each to serve a three-year term.

The Airport Board members operate in an advisory capacity to the Lynden City Council to make recommendations concerning the adoption of rules, regulations or policies for the management, operation and use of the airport, and the highways, roads, streets, and territories adjacent to the airport. The Mayor and Public Works Committee reviewed the Airport Board term renewals at their November 9th meeting and concurred to forward the request to City Council for approval.

State Advocacy Contract with Gordon Thomas Honeywell (2023)

Briahna Murray, Vice-President of Gordon Thomas Honeywell Governmental Affairs, has been Lynden’s State advocate advocated since 2015. That advocacy has resulted in more than \$9.0 million worth of capital earmarks for important City projects.

This contract is virtually identical to its predecessors and continues the relationship with Ms. Murray and her firm. Key terms of this agreement include Scope: The full Scope of Work is delineated in Attachment A on page 4 of the consulting agreement. It includes a range of duties required to advance the City’s 2023 Legislative Agenda. Cost: \$3,500 monthly for a total of \$42,000 in 2023. The rate is included in the proposed 2023 budget.

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CITY COUNCIL MINUTES OF REGULAR MEETING



Set Date for Public Hearing – 2023 Preliminary Budget

Set Date for Public Hearing – Ordinance No. 1661-Substitute Interim Zoning Ordinance regarding Community Residential Facilities

Resolution No. 1056- Real Estate Property Tax Levy Increase 2023

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.

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 (6.46%) the City is allowed by statute RCW 84.55.005 to increase the Levy 1% or bank this capacity for future use. 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.

Resolution No. 1056 reflects the City Council's requirement to not "bank" any real property taxes in 2023 and approve the legally allowed 1% increase in the 2023 real property taxes.

Monthly Service Agreement with Security Solutions

The Parks department proposed and reviewed the ability to lock park bathrooms in an attempt to utilize employee hours to their fullest potential during the work week and to offer opportunities to close different sites at different times based on facility use. Security Solutions has offered a proposal for monthly internet and cellular use to monitor the system saving more than \$40 a month since we already have a contract with them through the Fire Department. Parks Committee reviewed the updated proposal and recommended forwarding it to full council for approval.

Motion made by Councilor Bode seconded by Councilor Kuiken to approve the consent agenda as presented. Motion approved 6-0.

Mayor Korthuis thanked Don Korthuis, Corwin McCaig, and Bryant Paulsen for serving on the Airport Board.

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3. PUBLIC HEARING

Public Hearing for 2023 Preliminary Budget

Per State law this is the second of the two required hearings for public commentary on the 2023 Preliminary Budget as presented to the City Council by Mayor Korthuis at the October 17th City Council meeting.

Mayor Korthuis opened the hearing at 7:11 PM.

There were no comments.

Mayor Korthuis closed the hearing at 7:11 PM.

Public Hearing only. No action taken.

Public Hearing for Ordinance No. 1659- Real Estate Property Tax (2023)

As published, 7:00PM on November 21, 2022 is the time and date set for the Public Hearing on the 2023 Property Tax Levy as presented to the City Council by Mayor Korthuis at the October 17th City Council meeting. Upon completion of the public hearing with no items outstanding the 2023 Property Tax Levy will be presented to the City Council for adoption.

Mayor Korthuis opened the hearing at 7:12 PM.

There were no comments.

Mayor Korthuis closed the hearing at 7:12 PM.

Public Hearing only. No action taken.

Public Hearing for Proposed Nooksack Valley Disposal Rate Increase

Nooksack Valley Disposal (NVD) is requesting a rate increase, effective January 1, 2023, 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 9th meeting and concurred to recommend approval to City Council. The public has been invited to comment on the proposed rate increases. If approved these new rates would become part of the existing Franchise Agreement and take effect January 1, 2023.

Mayor Korthuis opened the hearing at 7:14 PM.

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Calvin Den Hartog, Lynden, WA, clarified why it has become necessary for Nooksack Valley Disposal to raise rates in 2023.

Mayor Korthuis closed the hearing at 7:17 PM.

Councilor Bode moved, and Councilor De Valois seconded that City Council, approve, and authorize the Mayor's signature on the Franchise Agreement Rate Adjustment Addendum. Motion approved on 6-0 vote.

Public Hearing for Ordinance No. 1660- Whatcom Buildable Lands Report

Whatcom County, for the first time, joins 6 other counties in the state who are required to produce a Buildable Lands Report. A report that examines achieved build-out densities and property availability on a county level. The planning period in focus for this first report is 2016 – 2036 with specific look at achieved build-out data from 2016 – 2020.

In this analysis the report strives to account for the constraints of critical areas and market factors and focuses on three goals: 1. Determine whether the city is achieving urban densities within UGAs by comparing growth assumptions to actual growth. 2. Determine whether there is sufficient land that is suitable for development in the future. 3. Identifying reasonable measure, if necessary, to reduce differences between comprehensive plan growth assumptions and actual development patterns.

The Planning Department has been working with Whatcom County and their consultant, Community Attributes, to develop a methodology and the report itself for the County. Whatcom County recently presented the report to their Planning Commission where it was recommended the following finding be added: "Staff and the Planning Commission recognize that the Buildable Lands Report does not address the issue of housing affordability. Additional work that revisits the estimates of supply and demand that are feasible, realistic, and consistent with current regulatory requirements and infrastructure are needed and will be reviewed in the 2025 comprehensive plan updates." The City may choose to adopt a similar finding at the time of adoption following the November 21st public hearing.

Mayor Korthuis opened the hearing at 7:18 PM.

There were no comments.

Mayor Korthuis closed the hearing at 7:18 PM.

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Public Hearing only. Council decision will be sought after Whatcom County’s decision on the document. Lynden City Council will make a final decision on this item once Whatcom County Council has decided on the document.

4. UNFINISHED BUSINESS - None

5. NEW BUSINESS

Ordinance No. 1659- Real Estate Property Tax for 2023

The City of Lynden is required by State regulations to adopt the proposed 2023 property tax levy. The mil rate has been calculated on preliminary information received to date from the Whatcom County Assessor's Office. When comparing preliminary 2021 levy assessment rates to 2022 levy assessment rates, the decrease is estimated at 0.21 cents per mil to a mil rate of 1.21239.

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 2023 for consideration. The Finance Committee discussed the ordinance and approved for review by the full Council.

Councilor Laninga moved, and Councilor Kuiken seconded to adopt Ordinance No. 1659 and authorize the Mayor’s signature. Approved on 6-0 vote.

Resolution No. 1058- Interlocal Agreement Regarding Countywide Planning Policies

The Growth Management Act (GMA) requires the adoption countywide planning policies in cooperation with Whatcom County and its cities (RCW 36.70A.040(4) and RCW 36.70A.210). Countywide planning policies establish a framework for developing city and county comprehensive plans and ensuring these plans are consistent. The Council originally adopted countywide planning policies in 1993 and these have been periodically amended.

As the City/County Planner Group drafted the Buildable Lands Report (also on the agenda) it became necessary to amend the countywide planning policies with an interim interlocal agreement. This was signed by the County and Whatcom cities and became effective on July 14, 2020.

The City/County Planner Group is now proposing a long-term Interlocal Agreement establishing procedures for amending countywide planning policies, to replace the Interim

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Interlocal Agreement. Main differences between the approved Interim Interlocal Agreement and the proposed long-term Interlocal Agreement are summarized in the attached provided in the council packet. Staff is requesting that Council review the revisions and approve if they see fit.

Councilor Lenssen moved, and Councilor Wohlrab seconded to approve Resolution No. 1058- Interlocal Agreement between the City of Lynden, the Whatcom County cities and Whatcom County concerning procedures for amending the countywide planning policies and to authorize the Mayor’s signature on the resolution and agreement documents. Approved on 6-0 vote.

Interlocal Agreement – Whatcom Conservation District

Staff is recommending an Interlocal Agreement with the Whatcom Conservation District (WCD) for a Stormwater and Water Conservation Community Education and Outreach Program in 2023 like past years. Their work scope includes activities that satisfies 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. This year’s scope of work includes supporting the construction of stormwater improvements at the Northwest Washington Fair under a Department of Ecology grant obtained by the City.

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 the efforts Whatcom County’s Portage Bay Shellfish District.

The term of this agreement is January 1, 2023 through December 31, 2023. The Public Works Committee reviewed this agreement at their meeting on November 9, 2022 and concurred to recommend approval by City Council.

Councilor Bode moved, and Councilor De Valois seconded to approve the Interlocal Agreement with the Whatcom Conservation District and authorize the Mayor’s signature on the agreement. Approved on 6-0 vote.

6. OTHER BUSINESS

Councilor Lenssen reporting for the Community Development Committee:

- **Continued discussion about proposed transitional housing ordinance that attempted to regulate sober and recovery housing in the city of Lynden because of the conflict with the federal fair housing act.**

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Councilor Laninga reporting for the Finance Committee:

- **Linde Schreifels is retiring her position with the finance department. She has worked for the city for 36 years. Christy Fowler has been hired for that position.**
- **Fire and Police overtime decreased a bit.**
- **Sales tax revenue remains healthy and is growing.**
- **CERB loan for roundabout at Berthusen and Main Street.**
- **Most funds are doing well and coming in over projected budget.**

Councilor De Valois reporting for the Parks Committee:

- **Security Solutions agreement approved.**
- **SHKS check-in for Benson Barn updates.**
- **Dickinson Park roof and gutters repaired.**
- **Discussion regarding newest park between Glenning and Edson Street.**
- **Discussion on a name for the newest park.**
- **Trial paintings on the park trails to convey speed limits.**

Councilor Bode reporting for the Public Works Committee:

- **Main Street bridge work continues. It is a bit behind schedule due to rebar supply shortages. Scheduled to open closer to Christmas.**
- **Discussion on flashing crosswalk sign requests cost vs pedestrian traffic.**
- **East Front Street emergency repair contract**
- **Ribbon cutting for Darigold Outfall (COW water).**
- **DOE now allows credit for Lynden's foreign water.**

Councilor De Valois recognized City Attorney Carmichael for his offices' work on that project. Bob Carmichael then recognized Attorney Simi Jain for her contribution to the project.

Mayor Korthuis reported that the Fairgrounds bid came in and came in under the estimate. He also acknowledged the DOT work projected for 2024 which will benefit Lynden.

7. EXECUTIVE SESSION

Council did not have an executive session.

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8. ADJOURNMENT

The November 21, 2022, regular session of the Lynden City Council adjourned at 7:40 p.m.

Pamela D. Brown
City Clerk

Scott Korthuis
Mayor

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EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
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	

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EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Appoint Mayor Korthuis to the 2023 Board of the Whatcom Council of Governments and appoint Councilor Gary Bode to act as Alternate.	
Section of Agenda:	Consent	
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: _____
		Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:	N/A	
Summary Statement:	Mayor Korthuis acted as the city's representative to the 2022 Board of the WCOG and Councilor Bode acted as the alternate. Both the Mayor and Councilor Bode are willing to continue in this capacity for 2023.	
Recommended Action:	Re-appoint Mayor Scott Korthuis to the 2023 Board of the Whatcom Council of Governments and Councilor Gary Bode to act as alternate.	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Appoint Mayor Korthuis to the 2023 Whatcom Transportation Authority (WTA) Board of Directors.	
Section of Agenda:	Consent	
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:	N/A	
Summary Statement:	Each year council appoints someone to represent the city's interests on the Whatcom Transportation Authority (WTA) Board of Directors. Mayor Korthuis is currently the WTA representative.	
Recommended Action:	Re-appoint Mayor Scott Korthuis to serve as Lynden's representative on the WTA Board of Directors.	

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EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Set the Public Hearing for Ord 1655 - Comprehensive Plan Amendment (CPA) 22-02 JD Bargaen	
Section of Agenda:	Consent	
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:		
Planning Commission Resolution, CPA Staff Report, CPA Application		
Summary Statement:		
<p>The proposal for Comprehensive Plan Amendment 22-02 is brought forward by Lesa Starkenburg-Kroontje representing JD Bargaen Industries, LLC.</p> <p>On September 22, 2022, the Planning Commission held a public hearing to consider the application. Subsequent to the hearing, the amendment was sent to the Department of Commerce for review. That comment period has expired without remark.</p> <p>The application details the desire to shift a portion of a vacant parcel of property, adjacent to the affiliated Lynden Door manufacturing campus, into the industrial land use category from a commercial land use category. This shift would be consistent with the parcels to the north and east. A corresponding rezone application is moving through the approval process with this Comprehensive Plan Amendment. If approved the Amendment and the Rezone applications would eliminate the split zoning currently on the subject parcel and create a cohesive Industrial District (ID) zoning throughout. The application details why the ID zoning is the best fit for the future expansion of the Lynden Door operations. Staff and the Planning Commission have recommended approval of this map amendment.</p> <p>Tonight, Council is asked to set the public hearing for consideration of Comprehensive Plan Amendment 22-02</p>		
Recommended Action:		
Motion to set the public hearing for December 19, 2022 to consider Ord 1655, a Comprehensive Plan Amendment shifting the subject parcel from a commercial to an industrial land use.		

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #22-04

A resolution of recommendation for approval of Comprehensive Plan Amendment #22-02 and Rezone #22-01, Lynden Door / JD Bargaen Industries LLC to the Lynden City Council.

WHEREAS, Lesa Starkenburg-Kroontje on behalf of JD Bargaen Industries, LLC, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called the "City," for a Comprehensive Plan Amendment and Rezone requesting to change the zoning designation from Regional Commercial Services (CSR) and Industrial Business Zone (IBZ) to Industrial District (ID) at 2122 Front Street, Lynden, Washington; and

WHEREAS, the Proponents have provided the City with an affidavit of posting for the notice of application and public hearing in three locations near the subject property, and the receipts for the certified mailing of said notice to all property owners within three hundred feet of the subject property; and

WHEREAS, the application was determined to be complete on August 23, 2022, and the notice of application was published in the Lynden Tribune on September 7, 2022; and

WHEREAS, the subject parcel totals approximately 22.79 acres and has property zoned Industrial (ID) to the north and east, commercial (CSR) to the south and the Urban Growth Area (UGA) to the west; and

WHEREAS, the Lynden Planning Commission held a public hearing on September 22, 2022, to accept public testimony on the proposed Comprehensive Plan Amendment and Rezone, and that meeting was duly recorded; and

WHEREAS, the City's Technical Review Committee has reviewed the request for the Comprehensive Plan Amendment and Rezone and has provided findings, conditions, and recommendations to the Planning Commission in a report dated September 12, 2022.

WHEREAS, to grant this request, the Planning Commission must find that the application satisfies the criteria listed within Section **17.09.040 (C)** of the Lynden Municipal Code.

1. The development is consistent with the comprehensive plan and meets the applicable requirements and intent of this code.
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.
3. The development adequately mitigates impacts identified under Titles 16 - 19.
4. The development is beneficial to the public health, safety and welfare and is in the public interest

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.

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.

WHEREAS, rezones shall be reviewed in light of the City's Comprehensive planning goals. To grant this request, the Planning Commission and City Council must find that the application satisfies the criteria listed within **Section 17.09.050** of the Lynden Municipal Code.

- a. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; and
- b. The proposed rezone is consistent with the City's comprehensive plan and applicable sub-area plan(s); and
- c. The project proposal is consistent with the City's development codes and regulations for the zoning proposed for the project.
- d. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and
- e. The proposed rezone will promote the health, safety, and general welfare of the community; and

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 6-0, to the City Council Comprehensive Plan Amendment #22-02 and Rezone #22-01, Lynden Door / JD Bargaen Industries LLC, subject to the Technical Review Committee Report dated September 12, 2022.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their meeting held the 22nd day of September 2022.



 Tim Faber, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director



September 12, 2022

CITY OF LYNDEN TECHNICAL REVIEW COMMITTEE

STAFF REPORT

Re: The application of JD Bargaen Industries, LLC for a Comprehensive Plan Amendment and Rezone of two Lynden parcels.

CPA #22-02, RZ #22-01 Lynden Door Rezone and Comprehensive Plan Amendment

I. APPLICATION SUMMARY AND RECOMMENDATIONS

Proposal: A Comprehensive Plan Amendment to change the Comprehensive Plan designation of two parcels owned by JD Bargaen Industries, LLC from Commercial (CSR) and Industrial (IBZ) to Industrial (ID).

Recommendation: Staff recommends approval of the CPA and Rezone.

II. PRELIMINARY INFORMATION

Applicant: JD Bargaen Industries, LLC

Property Owner: JD Bargaen Industries, LLC.

Property Location: 2122 Front Street, Lynden

Parcel Number: 400224-332215

Legal Description: LOT 1, BEDLINGTON-BARGEN LOT LINE ADJUSTMENT, RECORDED UNDER AUDITOR'S FILE NUMBER 2018-0300567, RECORDS OF WHATCOM COUNTY WASHINGTON. ALL SITUATE IN WHATCOM COUNTY, WASHINGTON.

<u>Notice Information:</u>	Application Submitted:	June 29, 2022
	Notice of Application:	September 7, 2022
	Notice of SEPA determination:	August 31, 2022
	Notice of Hearing:	September 7, 2022
	Comment Period Ending:	September 21, 2022

JD Barga Comprehensive Plan Amendment and Rezone – TRC Report

SEPA Review: Lynden SEPA #22-10. Determination of Non-Significance (DNS) issued August 26, 2022

Authorizing Codes, Policies, and Plans:

- RCW 35A.63.073 Comprehensive Plan – Amendments and Modifications
- RCW 36.70A Growth Management
 - RCW 36.70A.130 Comprehensive Plans
- LMC Chapter 2.08.140 Plan adoption – Amendment authorized
- LMC Chapter 19 Zoning
 - LMC 19.03 Comprehensive Plan
 - LMC 19.09 Maps and District Boundaries
- LMC Chapter 17.09.030 – Legislative Decisions
 - LMC 17.19 – Site Specific Rezones

III. PROJECT DESCRIPTION

A Comprehensive Plan Amendment to change the Comprehensive Plan designation of two parcels owned by JD Barga Industries, LLC from Commercial (CSR) and Industrial (IBZ) to Industrial (ID).

IV. PUBLIC NOTICE AND COMMENT

Notice of Application: Formal legal notice for this application was published in the Lynden Tribune on September 7, 2022

Notice of SEPA determination: Formal notice of the SEPA Determination (MDNS) was published in the Lynden Tribune on August 31, 2022 and mailed to neighbors within 300 ft of the property. The comment period for the SEPA determination expired on September 14, 2022.

Public Comment Received: None to date.

V. ANALYSIS AND CONSISTENCY WITH REGULATIONS

The **first step** in evaluating this application is to determine whether or not the Comprehensive Plan should be amended. The application materials included in the package provide a number of questions relating to consistency with the Growth

JD Barga Comprehensive Plan Amendment and Rezone – TRC Report

Management Act, the City’s Comprehensive Plan and the change within the community that could necessitate such a change in the City’s plan.

The subject property currently has an undesirable split land use designation. That is the northern portion adjacent to the existing Lynden Door campus has an industrial designation and the southern portion has a commercial designation. The request to shift the entire property into an industrial land use would eliminate the split land use designation which tends to be difficult to regulate. Zoning designations preferably follow parcel lines. Given the scale of industrial development in this area, subdivision to create a lot line at the existing zoning line is likely unnecessary.

The commercial market has changed significantly since the land use and zoning designation was assigned to the subject property in 1994 with annexation Ordinance 943. The existing commercial designation was likely put into place along Front Street because commercial uses desire visibility from roadways to facilitate retail development. However, the demand for commercial / retail spaces has dropped significantly and the City’s existing supply of commercial spaces has been adequate. Meanwhile, the call for large scale industrial properties has increased with millions of dollars of investment anticipated in this area of the City in the next five years.

Compatibility of the proposed industrial use within the West Lynden Sub-Area is high. Staff review does not anticipate a conflict with existing uses. Furthermore, the development of properties along this portion of Front Street will support and facilitate roadway and utility improvements – some of which have already begun with funding support from the Whatcom County Economic Development Investment Program.

The City Council has previously supported a similar application in this area. In 2018 the adjacent parcel, immediately east of the subject property, was successfully shifted from a commercial land use to an industrial land use with Comprehensive Plan Amendment 18-01.

The **second step** in the process will be to evaluate the rezone request.

COMPREHENSIVE PLAN AMENDMENT – FIRST STEP

A. This question in the Comprehensive Plan Amendment application asks the proponent to describe how the proposal is consistent with the Growth Management Act and the City’s Comprehensive Plan.

The applicant has provided the following response: *The plan amendment is consistent with the Lynden Comprehensive Plan. The West Lynden Sub-Area is primarily zoned for a combination of industrial and commercial land uses. The property included in this*

JD Bargaen Comprehensive Plan Amendment and Rezone – TRC Report

application is adjacent to both commercial and industrial uses. Through their planning process the City predicted which lands could develop in which manner but the exact lines were not set to achieve specific goals. This property was purchased by an industrial user and therefore, the requested amendment to the Comprehensive Plan will result in additional infilling within the City limits of Lynden which is consistent with the Growth Management Act and Lynden's Comprehensive Plan. As a result of the current ownership of the parcel, infill will occur more quickly if the property is designated industrial versus commercial and therefore, may facilitate infrastructure development in this area for the City sooner rather than later.

The proposed amendment meets the following specific goals and policies:

1.1. Establish standards for infill development that ensure compatibility with the character of existing neighborhoods.

1.3. Provide buffers, including landscaping, between commercial, industrial, or higher density land uses and existing residential neighborhoods.

5B. The City of Lynden is promoting economic development by zoning land suitable for commercial and industrial development west of the Guide Meridian.

5C. The City will encourage employment opportunities for the increasing population, unemployed and disadvantaged persons, and replace those jobs lost due to the changing needs of the agricultural industry.

5D. The City of Lynden will ensure that the location and character of land uses optimize the potentials for economic benefit, as well as protecting the City's open space and natural resources.

5G. The City will work to maintain a positive business climate that is consistent, responsive to the needs of the business community, and affordable to business owners.

2.4.1 Commercial and Industrial Use

The City's current actual land use acreages show commercial and industrial uses occupying 335.9 and 61.6 acres, respectively. The City actively pursues opportunity to increase the commercial and industrial zoned land being utilized for economic development.

B. This question involves a change in circumstances within the community since the adoption of the comprehensive plan that would justify the proposed request.

The applicant has provided the following response: *The site has been purchased by the Applicant. The site is located adjacent to Applicant's existing property, which is used for industrial purposes. The site is contiguous to the parcel re-designed by the City under a*

previous request in 2018. The site is tucked behind existing industrial development. Therefore, industrial development is more appropriate for this site.

In addition, commercial use has been slow to develop in Lynden and the COVID pandemic and increase in online shopping will continue to have an impact on commercial growth.

C. This question relates to assumptions that were made during the past comprehensive planning cycle.

The applicant has provided the following response: *Same as Section B above.*

D. Does the proposed amendment promote a more desirable land use pattern as stated in the goals and policies of the comprehensive plan.

The applicant has provided the following response: *Yes, the proposal will create a land use pattern very similar to what exists currently except that it will be consistent to the ownership of the site and the Applicant's adjacent land use.*

In addition, West Front Street is a logical boundary for the industrial designation. Also, West Front Street does not have commercial visibility compared to other nearby tracts. In addition, the adjacent Tromp Road is a rural standard road that is not ideal for commercial traffic.

E. This question within the application materials asks about the impacts to current uses in the area and measures to ensure compatibility within the area.

The applicant has provided the following response: *Changing this site to an industrial designation is compatible with the current uses surrounding the site. The property to the east has already been rezoned and re-designated to industrial use. Now the subject site has been purchased by an industrial user and the use and designation should be consistent with the land to the east. The site is screened by the many buildings consisting of the Lynden Door campus to the north. The only real visibility is from the west. However, the area to the northwest is zoned Industrial Business Zone and the area directly to the west is outside of Lynden City limits.*

F. How will the public interest be served by this amendment?

The applicant has provided the following response: *The proposal will result in economic development, employment opportunities for the increasing population, and will maintain a positive business climate.*

REZONE- SECOND STEP

The rezone request of the proposed property includes two changes.

- 1. The northern half of the property would shift from the existing Industrial Business Zone (IBZ) to a heavier industrial classification of Industrial District (ID).
- 2. The southern half of the property, if shifted from Commercial Services-Regional (CSR) zoning, is proposed to be assigned an industrial zoning of Industrial District (ID).

Staff review of the application resulted in a high level of confidence that the criteria for rezone are met by this application. Changes to the commercial market and the development that has occurred within the West Lynden Sub-area constitute a significant change in circumstances since approval of the current zoning and warrants reclassification of the subject property. Industrial development here is consistent with the goals of the City’s Comprehensive Plan, can be done consistent with development standards, and supports community welfare by enabling the growth of job-producing industry as well as facilitating the expansion of the community’s utility and transportation network through road improvements.

Notably, the City Council has previously supported a similar application in this area. In 2018 the adjacent parcel, immediately east of the subject property, was successfully shifted from a commercial land use to an industrial land use and rezoned to Industrial District (ID) with Comprehensive Plan Amendment 18-01 and Rezone Application 18-01.

Criteria for Approval: Applicant has responded to this comment with written justifications for the proposed rezone. Care should be taken to consider potential impacts to the surrounding properties and the City as a whole and mitigate as needed.

Applicants Narrative: The property was purchased by the Applicant with its current zoning designation in place. The site is located adjacent to Applicant's existing property, which is used for industrial purposes. The site is tucked behind existing industrial development. Therefore, industrial development is more appropriate for this site.

Changing this site to an industrial designation is compatible with the current uses surrounding the site. The property to the east has already been rezoned and re-designated to industrial use. Now the subject site has been purchased by an industrial user and the use and designation should be consistent with the land to the east. The site is screened by the many buildings consisting of the Lynden Door campus to the north. The only real visibility is from the west. However, the area to the north west is zoned

JD Bargaen Comprehensive Plan Amendment and Rezone – TRC Report

Industrial Business Zone and the area directly to the west is outside of Lynden City limits.

In addition, West Front Street is a logical boundary for the industrial designation. Also, West Front Street does not have commercial visibility compared to other nearby tracts. In addition, the adjacent Tromp Road is a rural standard road that is not ideal for commercial traffic.

Additional industrial property in this area is warranted given the build out of the industrial facility. Commercial use has been slow to develop in Lynden and the COVID pandemic and increase in online shopping will continue to have an impact on commercial growth. Commercial property continues to be readily available in the West Lynden area.

The plan amendment is consistent with the Lynden Comprehensive Plan. The West Lynden Sub-Area is primarily zoned for a combination of industrial and commercial land uses. The property included in this application is adjacent to both commercial and industrial uses. Through their planning process, the City predicted which lands could develop in which manner but the exact lines were not set to achieve specific goals. This property was purchased by an industrial user and therefore, the requested amendment to the Comprehensive Plan will result in additional infilling within the City limits of Lynden which is consistent with the Growth Management Act and Lynden's Comprehensive Plan. As a result of the current ownership of the parcel, infill will occur more quickly if the property is designated industrial versus commercial and therefore, may facilitate infrastructure development in this area for the City sooner rather than later

To grant this request, the Planning Commission and City Council **must** find that the application satisfies each of the criteria listed within Section 17.09.050 of the Lynden Municipal Code:

- a. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; and
- b. The proposed site-specific rezone is consistent with the City’s comprehensive plan and applicable sub-area plan(s); and
- c. The project proposal is consistent with the City’s development codes and regulations for the zoning proposed for the project.
- d. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and

JD Barga Comprehensive Plan Amendment and Rezone – TRC Report

e. The proposed site-specific rezone will promote the health, safety, and general welfare of the community.

VI. TECHNICAL REVIEW COMMITTEE COMMENTS

Planning Department Comments

- 1. *Transportation:* Be advised, future development will be required to provide access to existing public rights of way in a method which does not unduly burden the existing surrounding properties. Participation in the mitigation of transportation impacts will be required at the time of development.
- 2. *Proposed Uses:* Be advised, future industrial uses are subject to the provision of LMC 19.25 which include, but are not limited to, permitted uses, setbacks, and height limits.
- 3. *Industrial Performance Standards:* Be advised, industrial uses are subject to performance standards as outlined in LMC 19.25.040 and 19.25.050.

Public Works Department Comments

- 4. *Public Improvements:* Be advised, that at the time of future development, all public improvements must be constructed as required in the Lynden Municipal Code.
- 5. *Development Standards:* Be advised, that at the time of future development, all plans must be designed and constructed in compliance with the Department of Ecology’s Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards.
- 6. *Stormwater Management:* Be advised, at the time of future development, a stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. An erosion control plan must be included in the drainage plan and construction plans as necessary.

Fire and Life Safety Comments

JD Bergen Comprehensive Plan Amendment and Rezone – TRC Report

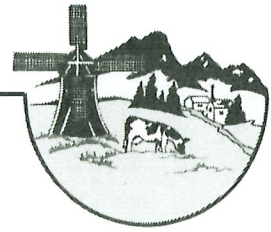
- 7. *Fire Standards:* Be advised, future development will require full compliance with the Fire Code.

Parks and Recreation Comments – The Parks Department has no comments on this application.

VII. RECOMMENDATION

Based on the above findings, staff recommends approval of the Comprehensive Plan Amendment and Rezone without associated conditions of approval.

CITY OF LYNDEN



COMPREHENSIVE PLAN AMENDMENT APPLICATION

<i>City of Lynden use only:</i>	
CPA # <u>M-02</u>	Staff Initials: _____

I. Applicant Information

Name: JD Bargaen Industries, L.L.C.

Address: c/o Lesa Starkenburg-Kroontje, P.O. Box 231, Lynden, WA 98264

Telephone Number: (360) 354-7822 E-mail Address: starkenburgkroontje@msn.com

II. Check the appropriate boxes

- Comprehensive Plan Map Amendment
- Comprehensive Text Amendment

III. Summarize the changes you are proposing

This proposal will create an industrial designation for the subject property.

IV. For Map Amendments

A. Tax Parcel Number(s): 400224 332215 0000

Site Address: 0 Front Street, Lynden, WA 98264

Total Acreage: 22.79 acres

Property Owner(s): JD Bargaen Industries, L.L.C.

Mailing Address: P.O. Box 528

City, State & Zip Code: Lynden, WA 98264

Telephone Number: (360) 354-5676

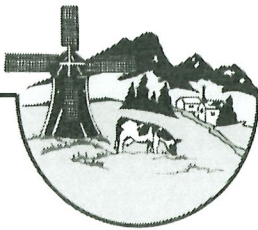
Please attach additional sheets if more than one parcel is involved.

B. Existing Comprehensive Plan Designation:
 Commercial & Industrial

C. Existing Zoning Designation:
 Regional Commercial Services & Industrial Business Zone

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



D. Proposed Comprehensive Plan Designation:
Industrial

E. Proposed Zoning Designation:
Industrial District

F. The present use of the property is:
The property is vacant.

G. The intended future use of the property is:
The site will be used as part of a manufacturing facility.

H. Surrounding land uses are:
The surrounding property is used for agriculture, vacant land and a manufacturing facility. There are a couple nearby residential units.

V. For Text Amendments

Identify the section(s) of the Comprehensive Plan that you are proposing to amend, and provide the proposed wording (attach additional sheets as needed):

Not Applicable.

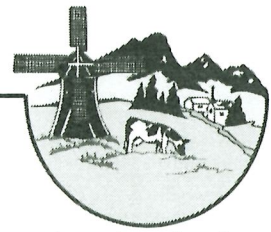
VI. For All Amendments

A. Describe how the proposed amendment to the plan is supported by or consistent with the existing goals and policies of the comprehensive plan and the State Growth Management Act?

See Attached.

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



- B. Have circumstances changed sufficiently since the adoption of the comprehensive plan to justify the proposed change? If so, the circumstances that have changed should be described in sufficient detail so that a finding of changed circumstances can be made and a decision as to appropriateness of the proposed plan amendment can be reached.

See Attached.

- C. Have the underlying assumptions found in the comprehensive plan upon which the land use designation, density or other provisions are based changed, or is new information available which was not considered at the time the plan was adopted? If so, the changed assumptions or new information should be described in sufficient detail to enable the Planning Commission and City Council to find that the land use designation or other sections of the plan should be changed. Examples of the underlying assumptions include expected population growth, utility or roadway capacities, available land supply, or demand for land with the existing or proposed land use designation.

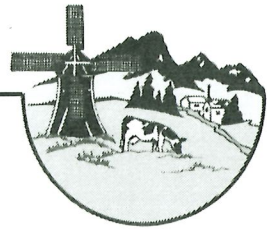
See Attached.

- D. Does the proposed amendment promote a more desirable land use pattern for the community as stated in the goals and policies in the comprehensive plan? Are there environmental constraints (such as wetlands, steep slopes, significant stands of trees, etc.) present on the site to such a degree that development of the site is economically or physically unfeasible under the existing land use designation? If so, a description of the qualities of the proposed plan amendment that would make the land use pattern more desirable and/or would result in less environmental impact should be provided in sufficient detail to enable the Planning Commission and City Council to find that the proposed amendment is in the community's long term best interest.

See Attached.

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



E. What impacts would the proposed amendment to the plan have on the current use of other properties in the vicinity? What measures should be taken to ensure compatibility with the uses of other property in the area?

See Attached.

F. How will the public interest be served by this amendment?

See Attached.

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.

Applicant's Signature: _____ **Date:** 6/28/22

Property Owner's Signature: _____ **Date:** _____

Attachment
to
Comprehensive Plan Amendment Application

VI. For All Amendments:

A. Describe how the proposed amendment to the plan is supported by or consistent with the existing goals and policies of the comprehensive plan and the State Growth Management Act?

The plan amendment is consistent with the Lynden Comprehensive Plan. The West Lynden Sub-Area is primarily zoned for a combination of industrial and commercial land uses. The property included in this application is adjacent to both commercial and industrial uses. Through their planning process the City predicted which lands could develop in which manner but the exact lines were not set to achieve specific goals. This property was purchased by an industrial user and therefore, the requested amendment to the Comprehensive Plan will result in additional infilling within the City limits of Lynden which is consistent with the Growth Management Act and Lynden’s Comprehensive Plan. As a result of the current ownership of the parcel, infill will occur more quickly if the property is designated industrial versus commercial and therefore, may facilitate infrastructure development in this area for the City sooner rather than later.

The proposed amendment meets the following specific goals and policies:

1.1. Establish standards for infill development that ensure compatibility with the character of existing neighborhoods.

1.3. Provide buffers, including landscaping, between commercial, industrial, or higher density land uses and existing residential neighborhoods.

5B. The City of Lynden is promoting economic development by zoning land suitable for commercial and industrial development west of the Guide Meridian.

5C. The City will encourage employment opportunities for the increasing population, unemployed and disadvantaged persons, and replace those jobs lost due to the changing needs of the agricultural industry.

5D. The City of Lynden will ensure that the location and character of land uses optimize the potentials for economic benefit, as well as protecting the City’s open space and natural resources.

5G. The City will work to maintain a positive business climate that is consistent, responsive to the needs of the business community, and affordable to business owners.

2.4.1 Commercial and Industrial Use

The City's current actual land use acreages show commercial and industrial uses occupying 335.9 and 61.6 acres, respectively. The City actively pursues opportunity to increase the commercial and industrial zoned land being utilized for economic development.

B. Have circumstances changed sufficiently since the adoption of the comprehensive plan to justify the proposed change? If so, the circumstances that have changed should be described in sufficient detail so that a finding of changed circumstances can be made and a decision as to appropriateness of the proposed plan amendment can be reached.

The site has been purchased by the Applicant. The site is located adjacent to Applicant's existing property, which is used for industrial purposes. The site is contiguous to the parcel re-designed by the City under a previous request in 2018. The site is tucked behind existing industrial development. Therefore, industrial development is more appropriate for this site.

In addition, commercial use has been slow to develop in Lynden and the COVID pandemic and increase in online shopping will continue to have an impact on commercial growth.

C. Have the underlying assumptions found in the comprehensive plan upon which the land use designation, density or other provisions are based changed, or is new information available which was not considered at the time the plan was adopted? If so, the changed assumptions or new information should be described in sufficient detail to enable the Planning Commission and City Council to find that the land use designation or other sections of the plan should be changed. Examples of the underlying assumptions include expected population growth, utility or roadway capacities, available land supply, or demand for land with the existing or proposed land use designation.

See answer to Section B above.

D. Does the proposed amendment promote a more desirable land use pattern for the community as stated in the goals and policies in the comprehensive plan? Are there environmental constraints (such as wetlands, steep slopes, significant stands of trees, etc.) present on the site to such a degree that development of the site is economically or physically unfeasible under the existing land use designation? If so, a description of the qualities of the proposed plan amendment that would make the land use pattern more desirable and/or would result in less environmental impact should be provided in sufficient detail to enable the Planning Commission and City Council to find that the proposed amendment is in the community's long term best interest.

Yes, the proposal will create a land use pattern very similar to what exists currently except that it will be consistent to the ownership of the site and the Applicant's adjacent land use.

In addition, West Front Street is a logical boundary for the industrial designation. Also, West Front Street does not have commercial visibility compared to other nearby tracts. In addition, the adjacent Tromp Road is a rural standard road that is not ideal for commercial traffic.

E. What impacts would the proposed amendment to the plan have on the current use of other properties in the vicinity? What measures should be taken to ensure compatibility with the uses of other property in the area?

Changing this site to an industrial designation is compatible with the current uses surrounding the site. The property to the east has already been rezoned and re-designated to industrial use. Now the subject site has been purchased by an industrial user and the use and designation should be consistent with the land to the east. The site is screened by the many buildings consisting of the Lynden Door campus to the north. The only real visibility is from the west. However, the area to the northwest is zoned Industrial Business Zone and the area directly to the west is outside of Lynden City limits.

F. How will the public interest be served by this amendment?

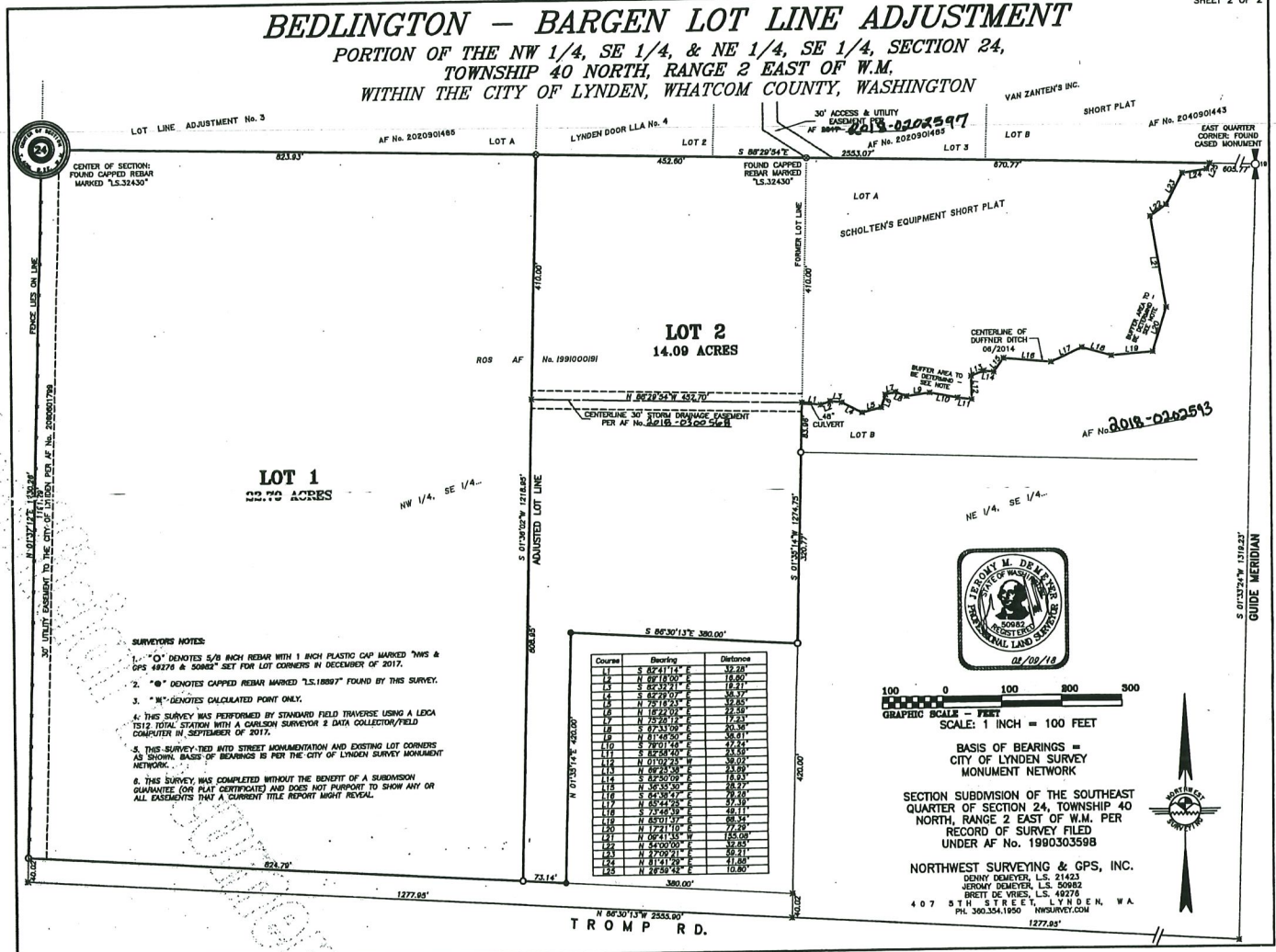
The proposal will result in economic development, employment opportunities for the increasing population, and will maintain a positive business climate.

2018-0300567

BEDLINGTON - BARGEN LOT LINE ADJUSTMENT

PORTION OF THE NW 1/4, SE 1/4, & NE 1/4, SE 1/4, SECTION 24,
TOWNSHIP 40 NORTH, RANGE 2 EAST OF W.M.
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

SHEET 2 OF 2

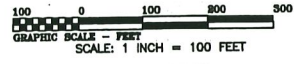


LOT 1
32.70 ACRES

LOT 2
14.09 ACRES

- SURVEYORS NOTES:**
1. "O" DENOTES 5/8 INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "NWS & GPS 48276 & 50828" SET FOR LOT CORNERS IN DECEMBER OF 2017.
 2. "●" DENOTES CAPPED REBAR MARKED "LS.18889" FOUND BY THIS SURVEY.
 3. "M" DENOTES CALCULATED POINT ONLY.
 4. THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A LEICA TS12 TOTAL STATION WITH A CARLSON SURVEYOR 2 DATA COLLECTOR/YIELD COMPUTER IN SEPTEMBER OF 2017.
 5. THIS SURVEY IDENTIFIED STREET MONUMENTATION AND EXISTING LOT CORNERS AS SHOWN. BASIS OF BEARINGS IS PER THE CITY OF LYNDEN SURVEY MONUMENT NETWORK.
 6. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A SUBMISSION GUARANTEE (OR PLAT CERTIFICATE) AND DOES NOT PURPORT TO SHOW ANY OR ALL EASEMENTS THAT A CURRENT TITLE REPORT MIGHT REVEAL.

Course	Bearing	Distance
L1	S 89°41'14" E	32.28'
L2	N 09°18'59" E	18.60'
L3	S 82°22'07" E	35.33'
L4	N 72°18'25" E	27.55'
L5	N 18°22'09" E	27.55'
L6	N 02°28'19" E	17.55'
L7	N 89°18'05" E	35.33'
L8	N 02°28'19" E	35.11'
L9	N 89°01'14" E	27.24'
L10	N 02°28'19" E	35.11'
L11	S 03°00'24" W	32.00'
L12	N 01°30'45" W	32.00'
L13	N 89°25'26" E	28.80'
L14	N 89°25'26" E	18.60'
L15	N 32°35'30" E	35.33'
L16	S 89°41'14" E	27.28'
L17	S 89°41'14" E	27.28'
L18	S 73°48'39" E	28.14'
L19	N 02°28'19" E	27.55'
L20	N 72°18'25" E	27.55'
L21	N 02°28'19" E	27.55'
L22	N 89°41'14" E	27.28'
L23	N 73°09'21" E	28.11'
L24	N 81°41'59" E	21.68'
L25	N 28°58'54" E	10.80'



SCALE: 1 INCH = 100 FEET

**BASIS OF BEARINGS =
CITY OF LYNDEN SURVEY
MONUMENT NETWORK**

**SECTION SUBMISSION OF THE SOUTHEAST
QUARTER OF SECTION 24, TOWNSHIP 40
NORTH, RANGE 2 EAST OF W.M. PER
RECORD OF SURVEY FILED
UNDER AF No. 1990303598**

NORTHWEST SURVEYING & GPS, INC.
DENNY DEMEYER, L.S. 21422
JEREMY DEMEYER, L.S. 50662
BRETT DE VRIES, L.S. 48276
407 5TH STREET, LYNDEN, WA
PK. 300.554.1950
NWSURVEY.COM



TOWNSHIP
40

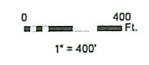
RANGE
02

SECTION
24

MAP NO.
01

KEY MAP:

14	13	18
23	24	19
26	25	30



- Tax Parcels
- Plats
- Lots
- Section Lines
- Qtr. Section Lines
- City Limits
- Annexations
- Railroads
- Pipelines
- Waterlines
- Waterbodies*

Whatcom County Assessor's Office

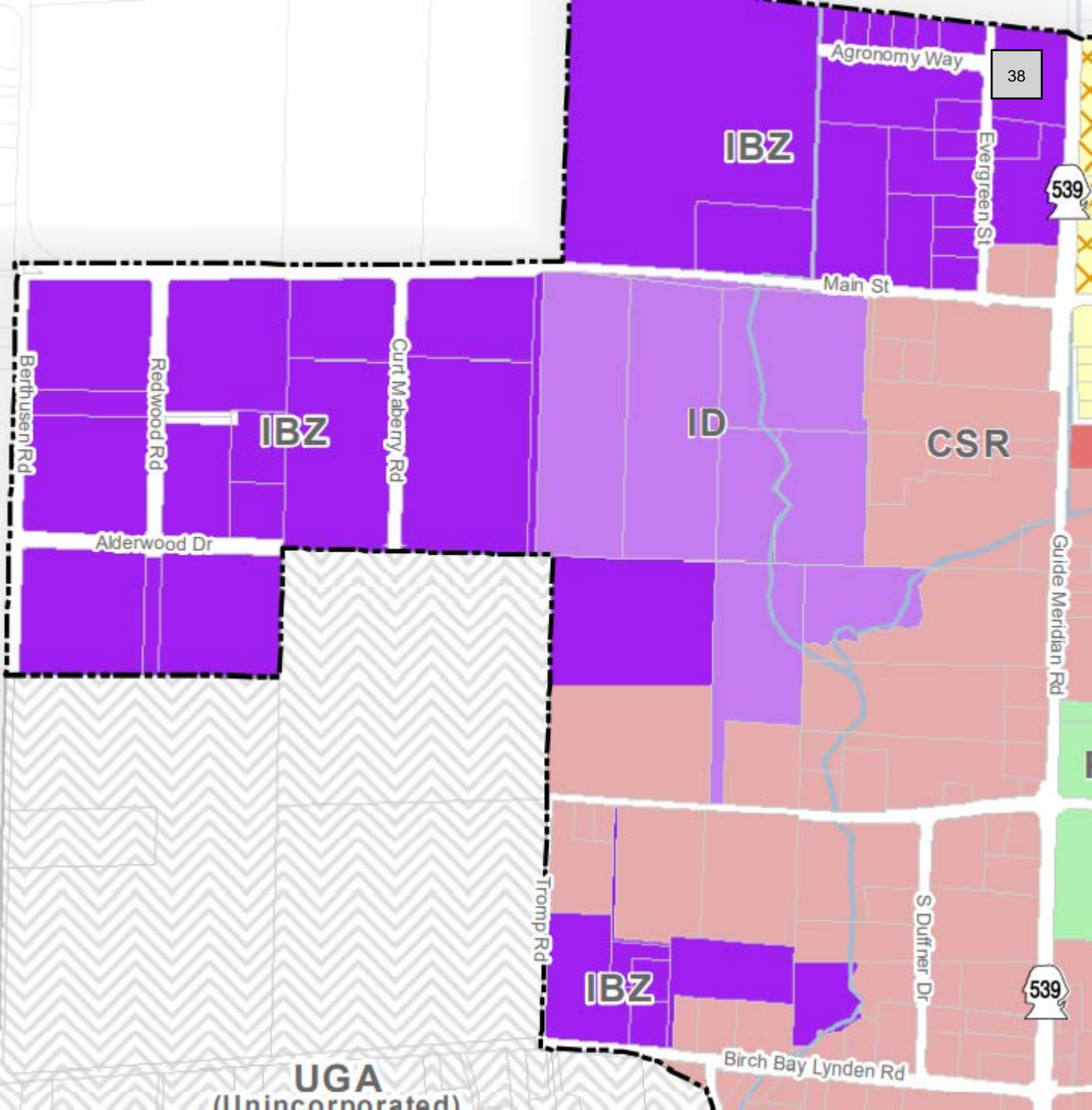
Apr. 01, 2022

This map is for assistance in property location and not guaranteed for accurate measurements.

Geographic Tax Parcel Numbers (GID) are a 10-digit number derived from a combination of the Township, Range and Section, plus the XY coordinates of the theoretical center of the parcel, plus four trailing zeroes. The trailing zeroes are used where an auxiliary tax parcel exists at the same location as the primary parcel, such as a condo unit or a mobile home.

*Waterbodies provided for reference only; has not been verified by Assessor

For information on reading maps visit our website whatcomcounty.us/17748assessor



38

IBZ

Agronomy Way

Evergreen St

539

Main St

IBZ

ID

CSR

Berthusen Rd

Redwood Rd

Curt Maberry Rd

Alderwood Dr

Guide Meridian Rd

Tromp Rd

IBZ

S Duffner Dr

539

Birch Bay Lynden Rd

UGA
(Unincorporated)

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Set the Public Hearing for Ord 1656 – City-led Comprehensive Plan Amendment (CPA) 22-01	
Section of Agenda:	Consent	
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:		
Planning Commission Resolution, CPA Staff Report, CPA Application and Materials		
Summary Statement:		
<p>The proposal for CPA 22-02 represents an initiative brought forward by the Planning Department. It captures a number of updates to the Comprehensive Plan which are described in the proposal narrative and briefly summarized below.</p> <p>Zoning Map Updates: 1. Recognizing a new overlay category of “Mixed-Use”. 2. Revising six parcels in the East Lynden Sub-area from a Commercial designation to a Residential designation. 3. Shifting the zoning of three North Lynden Sub-area parcels from Commercial to Residential designations. 4. Shifting 7 parcels in the West Lynden Sub-area from commercial designation to an industrial designation.</p> <p>Future Land Use Map Updates: Revision to the Future Land Use within the City’s Urban Growth Area located south of the Birch Bay Lynden Road. This would affect the zoning options for these parcels when, and if, they come into the City via annexation.</p> <p>Sub-Area Map and Text Amendment: In support of the new Mixed-Use provisions, this is a proposal to alter the boundaries of some sub-areas located on the western end of the City and to create a new sub-area called “West Lynden Gateway”.</p> <p>On September 22, 2022, the Planning Commission held a public hearing to consider these amendments. The Commission recommended approval of the amendment but asked that the Council consider revising the proposal to the future land use map so that all of the privately owned property south of the Birch Bay Lynden Road be brought into the City with a low-density residential designation and that no industrial zoning would be assigned in this area.</p> <p>Staff continues to recommend the proposal as presented with approximately 40 acres of industrial land use near the intersection of Berthusen and Birch Bay Lynden Roads based on property owner feedback and existing industry in this area. The Council will be asked to make a final determination on this point.</p>		
Recommended Action:		
Motion to set the public hearing for December 19, 2022 to consider Ord 1656, a city-led Comprehensive Plan Amendment.		

CITY OF LYNDEN



COMPREHENSIVE PLAN AMENDMENT APPLICATION

<i>City of Lynden use only:</i>	
CPA # <u>22-01</u>	Staff Initials: <u>dt</u>

I. Applicant Information

Name: Dave Timmer, City Planner, City of Lynden Planning Department
 Address: 300 4th St, Lynden WA 98264
 Telephone Number: 360-354-5532 E-mail Address: timmerd@lyndenwa.org

II. Check the appropriate boxes

Comprehensive Plan Map Amendment
 Comprehensive Text Amendment

III. Summarize the changes you are proposing

The City is proposing amendments to the Comprehensive Plan that are seeking to foster the appropriate development of mixed-use areas (Residential/Commercial) within the City. The amendment will change the current mixed use allowance (LMC 19.23.020) to a mixed use overlay that can be activated within commercial zones under established criteria. Subsequent to this mixed-use overlay amendment are updates to other portions of the LMC (Off-street parking, multifamily open space requirements), and associated zoning changes to commercial properties that would not meet the criteria for the overlay.

IV. For Map Amendments

A. Tax Parcel Number(s): See attached table and map which describes the parcels involved in this Map Amendment
 Site Address: _____
 Total Acreage: _____
 Property Owner(s): _____
 Mailing Address: _____
 City, State & Zip Code: _____
 Telephone Number: _____

Please attach additional sheets if more than one parcel is involved.

B. Existing Comprehensive Plan Designation:
 The current Comp Plan designation on these parcels is Commercial

C. Existing Zoning Designation:
 CSL - Local Commercial Services, CSR - Regional Commercial Services

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



D. Proposed Comprehensive Plan Designation:

Residential and Industrial

E. Proposed Zoning Designation:

Multifamily Residential, specifically RM3 and RM4 for those parcels in North and East Lynden. Industrial (IBZ) and Residential (RM2) for those parcels in West Lynden.

F. The present use of the property is:

The current use of the subject parcels is multifamily residential, single family residential, Industrial and vacant.

G. The intended future use of the property is:

Residential, and Industrial

H. Surrounding land uses are:

Residential, Commercial, Agricultural (including unincorporated County)

V. For Text Amendments

Identify the section(s) of the Comprehensive Plan that you are proposing to amend, and provide the proposed wording (attach additional sheets as needed):

See attached Text Update to section 2.5.5 City of Lynden Subareas, of the Comprehensive Plan.

VI. For All Amendments

A. Describe how the proposed amendment to the plan is supported by or consistent with the existing goals and policies of the comprehensive plan and the State Growth Management Act?

See Proposal Narrative attached

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



- B. Have circumstances changed sufficiently since the adoption of the comprehensive plan to justify the proposed change? If so, the circumstances that have changed should be described in sufficient detail so that a finding of changed circumstances can be made and a decision as to appropriateness of the proposed plan amendment can be reached.

See Proposal Narrative attached

- C. Have the underlying assumptions found in the comprehensive plan upon which the land use designation, density or other provisions are based changed, or is new information available which was not considered at the time the plan was adopted? If so, the changed assumptions or new information should be described in sufficient detail to enable the Planning Commission and City Council to find that the land use designation or other sections of the plan should be changed. Examples of the underlying assumptions include expected population growth, utility or roadway capacities, available land supply, or demand for land with the existing or proposed land use designation.

See Proposal Narrative attached

- D. Does the proposed amendment promote a more desirable land use pattern for the community as stated in the goals and policies in the comprehensive plan? Are there environmental constraints (such as wetlands, steep slopes, significant stands of trees, etc.) present on the site to such a degree that development of the site is economically or physically unfeasible under the existing land use designation? If so, a description of the qualities of the proposed plan amendment that would make the land use pattern more desirable and/or would result in less environmental impact should be provided in sufficient detail to enable the Planning Commission and City Council to find that the proposed amendment is in the community's long term best interest.

See Proposal Narrative attached

CITY OF LYNDEN

COMPREHENSIVE PLAN AMENDMENT APPLICATION CONTINUED



E. What impacts would the proposed amendment to the plan have on the current use of other properties in the vicinity? What measures should be taken to ensure compatibility with the uses of other property in the area?

See Proposal Narrative attached

F. How will the public interest be served by this amendment?

See Proposal Narrative attached

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.

Applicant's Signature: Dave Timmer Digitally signed by Dave Timmer
Date: 2022.07.01 09:48:30 -07'00' **Date:** 6/30/2022

Property Owner's Signature: _____ **Date:** 6/30/2022

CITY OF LYNDEN



CRITICAL AREAS CHECKLIST

Section: _____ Township: _____ Range: _____ Parcel Number: _____

Site Address: _____

Proposed Uses: _____

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.

Applicant's Signature

Date

CITY OF LYNDEN

PLANNING DEPARTMENT
(360) 354 - 5532



2022 Comprehensive Plan Amendment, Proposal Narrative

Mixed Use Development Updates

Proposed by: *City of Lynden Planning Department*

Introduction:

The City is proposing several updates to the Lynden Municipal Code that are seeking to foster the appropriate development of mixed-use areas (Residential/Commercial) within the City. These updates will change the current mixed-use allowance (60:40 GFA ratio as determined in LMC 19.23.020) to a mixed-use overlay that can be activated within commercial zones under established criteria. These updates to the City's development code also necessitate amendments to the City's Comprehensive Plan, specifically the Comp Plan maps - the Zoning Map, the Future Land Use Map, and the City's Subarea Map. A related text amendment will update language to reflect changes to the City's subareas.

Background:

In December 2021, City Council passed Ordinance No. 1642 which established a moratorium on residential development within the City's CSL zone. This moratorium was a reaction to somewhat unsuccessful results being witnessed on mixed use development projects undertaken in the City's CSL zone. Achieved mixed use development has been focused on maximizing residential units, which it has done, but has struggled to develop effective commercial space. With the moratorium, Council tasked staff to consider a new model for mixed use development that still supports residential use but, effectively, promotes more cooperative commercial uses for that residential development.

Since Ordinance 1642 was adopted, staff has worked with relevant interest groups, property owners, and policy makers to propose a new mixed-use overlay (LMC 19.23.110 Mixed Use Overlay) to the existing Chapter 19 of the Lynden Municipal Code. Discussion regarding the new overlay resulted in supplementary updates to other LMC sections, a change to Lynden's defined subareas, zoning changes for certain commercial zoned properties, changes to the City's Future Land Use map, and related code housekeeping updates.

Proposed Code Updates:

The full list of proposed code updates is listed below:

- LMC 18.22 Manufactured Home Park Subdivision Standards: Updates to "Siting Criteria" to allow increased density, and landscaping requirements.
- LMC 19.11 Districts Established: Housekeeping updates and the reduction of RM4 maximum density.
- LMC 19.17 Multifamily Zones: Housekeeping updates and added requirements for open space / residential amenities for developments of 8 or more units.

- LMC 19.19 Manufactured Home Zone: Increased density allowances, prohibit site-built homes within MH park.
- LMC 19.22 Design Standards: Housekeeping updates. Note the proposed deletion of the minimum pitch requirement.
- LMC 19.23 Commercial Zoning: Removed the existing mixed-use allowances (60:40 and North Lynden Subarea), strengthen site design requirements, and added the Mixed Use Center Overlay (19.23.110), small-scale downtown Mixed Use, and the related zoning language to support that overlay.
- LMC 19.29 Planned Residential Development: Housekeeping updates
- LMC 19.45 Design Review: Housekeeping updates and removed the city-wide Dutch themed architecture to HBD only (or to recognize historic architecture of downtown).
- LMC 19.51 Off-street Parking: Significant rewrite for clarifying items. Increased requirements for large MF projects, standard parking size of 9 x 19.
- LMC 19.63 Fence Permits: Housekeeping updates

The proposed redlined updates to the LMC chapters are separately attached in this application.

The new Mixed-Use Overlay being proposed (LMC 19.23.110) and supporting updates resulting from the corresponding discussion, have necessitated related amendments to the Comprehensive Plan – the Zoning Map, Future Land Use Map, Subarea Map, and a corresponding text update to the subarea descriptions.

2022 Comprehensive Plan Map Updates:

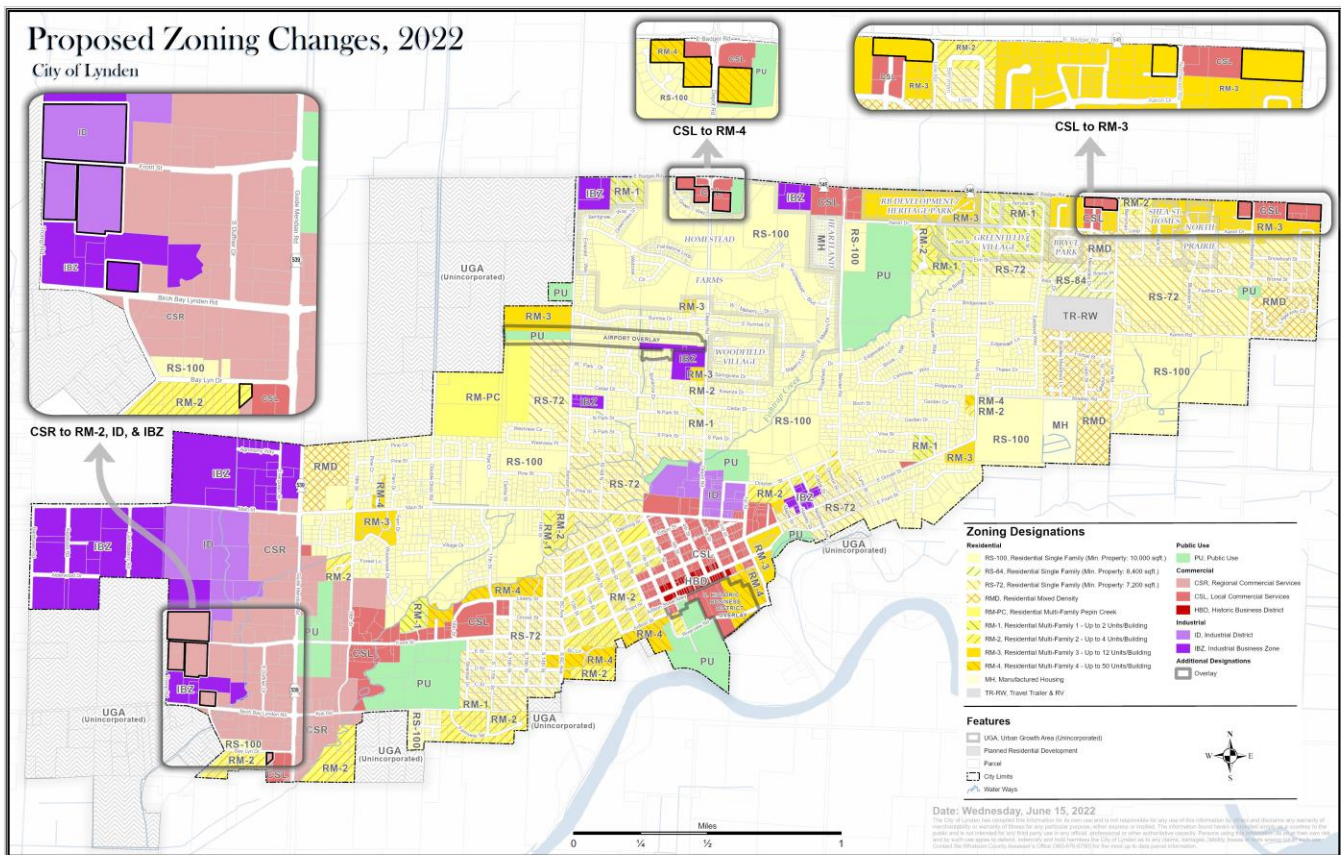
Zoning Map: The Mixed-Use Overlay focuses residential development within commercial zones on those parcels that meet established criteria: more than 1 acre and close (within ¼ mile) to designated commercial centers. The discussion surrounding these criteria brought up rezone questions for commercial zoned parcels across the city that will not meet the criteria for a mixed-use project. The commercial zoned parcels which are proposed to be rezoned to residential land uses (specifically RM3) are minimally commercially viable and, therefore, should be rezoned to appropriate new designations (either multifamily or industrial).

East Lynden Subarea: Six (6) East Lynden Subarea parcels that front Badger Road are proposed to amend their land use designation from Commercial to Residential – specifically rezoned from CSL to RM-3. These parcels are not eligible for the Mixed-Use Overlay due to size or distance from an established Commercial Center. The location on the edge of town with limited access from Badger Road, make them largely non-viable for successful commercial enterprise.

North Lynden Subarea: Four (4) North Lynden Subarea parcels, 3 which are currently built out with multifamily buildings, the 4th which is going through the permit process for 46 new units, are proposed to be rezoned from CSL to RM4. These were permitted in the CSL under a 2015 Ordinance 1477 that allowed multifamily development on these CSL parcels around the intersection of Depot Rd and Badger, with limited commercial protection right at the corner. Subsequently, they have been built out at high density (RM4 standards). It makes sense to align their built-out use with the zoning category in which they fit – RM4.

West Lynden Subarea: Seven (7) commercial West Lynden parcels which are currently zoned CSR are proposed to be changed to Industrial and Residential classifications. Six of those parcels are near W Front and Tromp Rd and are surrounded by industrial type uses. These are proposed to be reclassified as Industrial, specifically zoned to IBZ. One parcel south of Bay Lyn Road is currently zoned CSR and is proposed to be reclassified as Residential to align with its current residential use, and specifically rezoned to RM2 to align with the neighboring RM2 parcels to the west. These parcels are not eligible for the Mixed-Use Overlay due to size or location. *Take note, Lynden Door, Inc is concurrently proposing a land use change and rezone to their property north of W Front St.

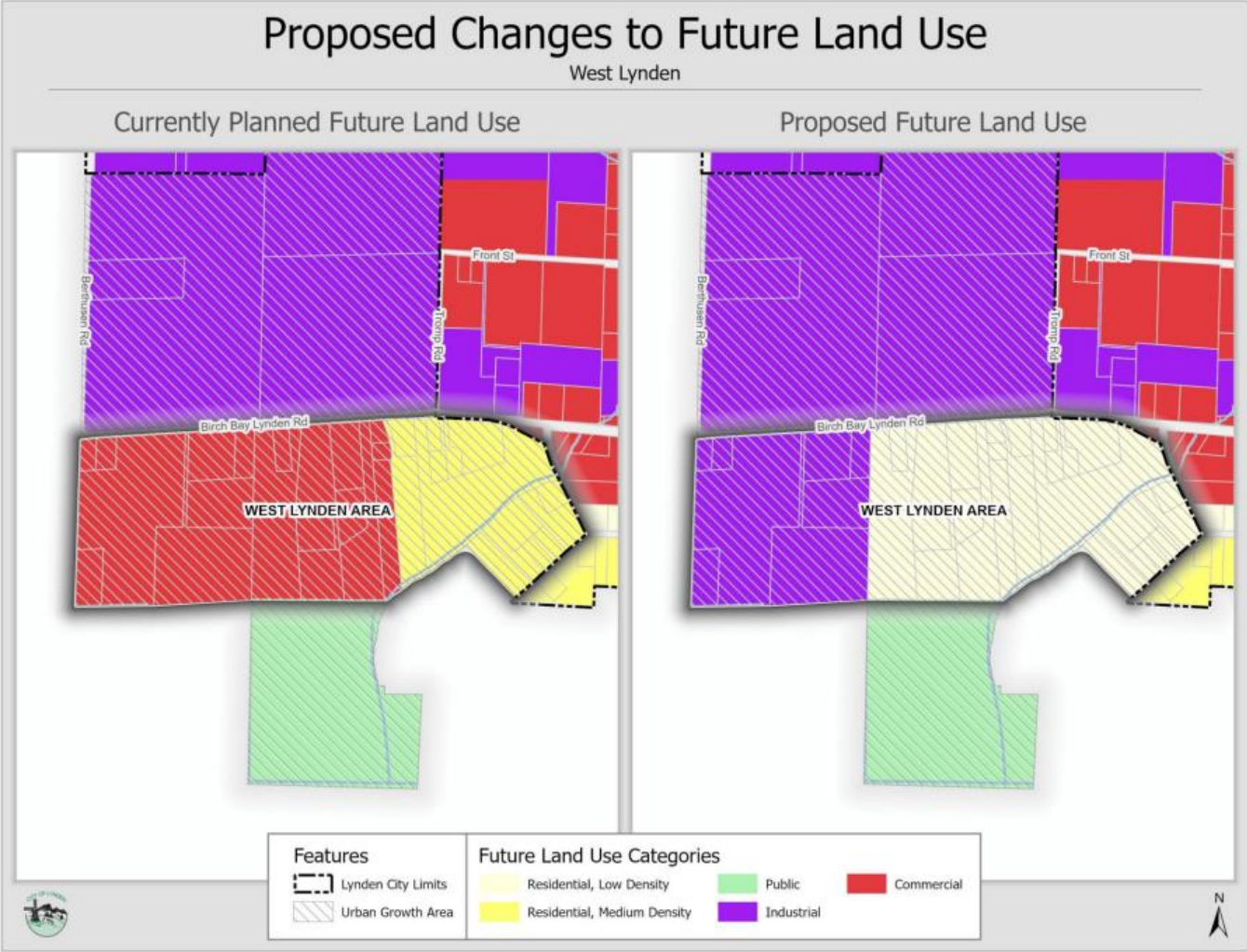
See the attached Proposed Zoning Changes, 2022 map and Table 1 showing the affected parcels.



Future Land Use Map: Residents in the unincorporated UGA west of the City Limits have recently requested the initiation of annexation. This request, as well as persistent interest in viable industrial land, along with the move to accommodate higher density residential near established commercial centers, began a closer look at what some of those future annexation parcels would be zoned when they come into the city. The City’s Future Land Use map indicates commercial and

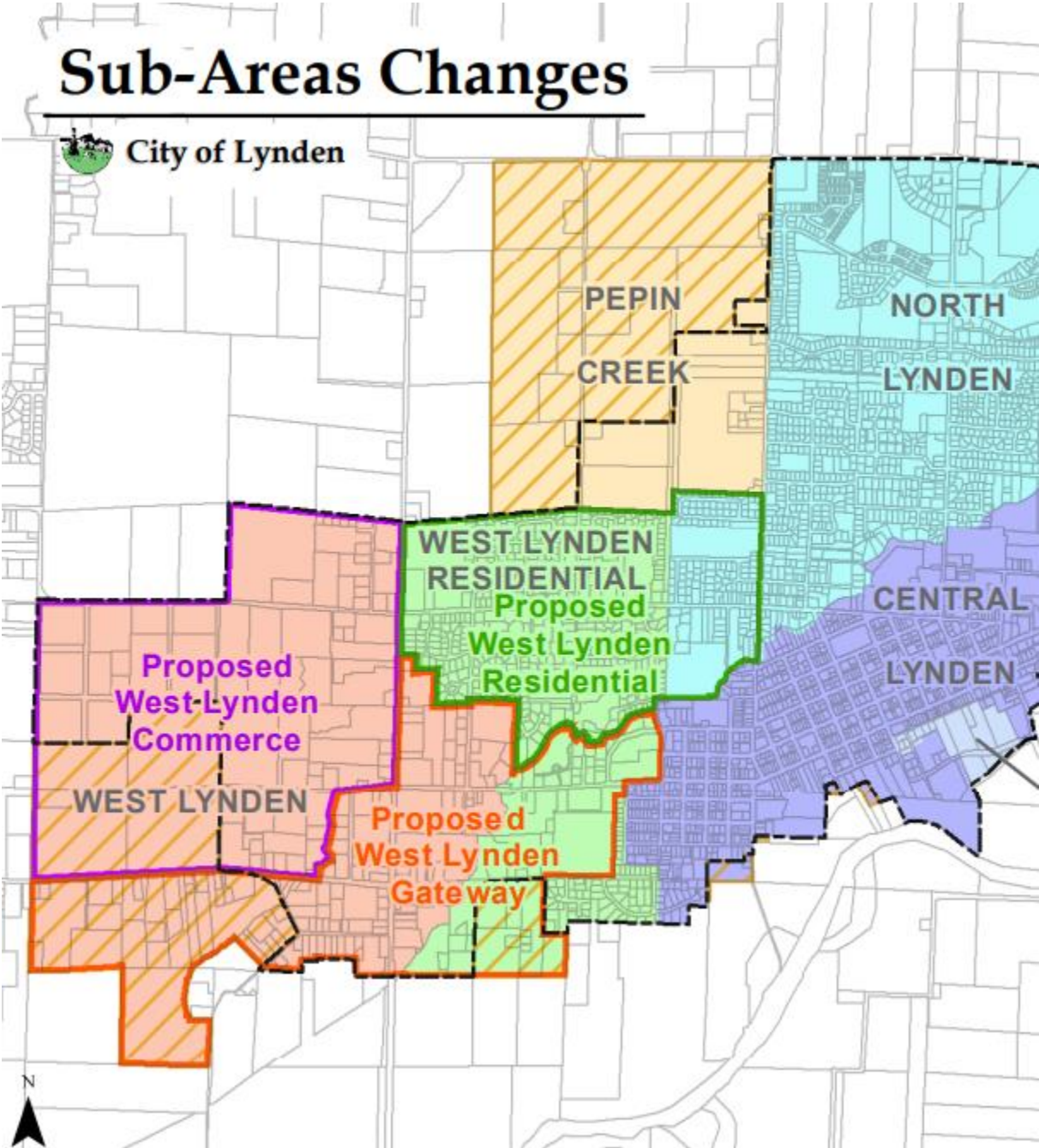
multifamily zoning for parcels south of Birch Bay Lynden Road. Those properties will be difficult to redevelop and the demand for commercial property is lacking. As such, the City is proposing redesignation of the eastern parcels to Low Density Residential and Industrial for the western parcels. North of the Birch Bay Lynden Road will remain Industrial, as is designated on the current Future Land Use Map.

See Future Land Use map changes below for their location and the proposed change.



Lynden Subareas: Map and Text Amendment: The City is proposing changes to the City’s subarea boundaries in west Lynden – these include altering the boundaries of the West Lynden Residential subarea, adding a new subarea (West Lynden Gateway), and changing the West Lynden subarea to a newly designated West Lynden Commerce subarea. The West Lynden Commerce Subarea will be ineligible for the Mixed-Use Overlay. The text amendment reflects these changes and updates the subarea descriptions in Chapter 2.5.5 of the Lynden Comprehensive Plan.

See the attached Revision to West Lynden Subareas map for and the attached text amendment proposal.



CPA Application Narrative Questions (Section VI of application):

A. Describe how the proposed amendment to the plan is supported by or consistent with the existing goals and policies of the comprehensive plan and the State Growth Management Act?

The GMA establishes 13 goals that set the standard for City Comprehensive Plans and the subsequent accommodations for projected growth. Lynden, like most western Washington cities, has seen significant growth over the past couple decades. The proposed Mixed-Use overlay, and the corresponding Comp Plan Amendments, are a managed effort to accommodate more residential (multifamily) development in areas of the city with already established commercial centers. As the proposed LMC 19.23.110(A) states, the purpose of the Mixed-Use Overlay is to accommodate mixed use projects that are efficient, compact, and compatible with surrounding uses.

The corresponding Comprehensive Plan Amendments (Land Use and Zoning Changes, Subarea Changes, and shifting Future Land Use designations) work to support the viability of the proposed Mixed-Use Overlay.

B. Have circumstances changed sufficiently since the adoption of the comprehensive plan to justify the proposed change? If so, the circumstances that have changed should be described in sufficient detail so that a finding of changed circumstances can be made and a decision as to appropriateness of the proposed plan amendment can be reached.

Yes, much has changed since the adoption of the 2016 Comp Plan. Housing costs continue to rise, demand for families renting multifamily space (larger units for longer period of time) has increased, commercial/retail space tends to be in less demand, industrial property is in demand, much of the city’s outlying multifamily zones (ie. RM3 zones in East Lynden) have been built out, and the city (except in the HBD) has seen several unsuccessful mixed use building projects (using the traditional CSL 60:40 ratio). These projects have produced a relatively segregated, or vacant, commercial product that provides little service or amenity to the surrounding residential uses.

The proposed Mixed-Use Overlay takes a focused approach on accommodating mixed use projects in areas of the city where active commercial/retail uses already exist, permitting commercial uses intended to serve the surrounding residential use, and providing standards that improve quality of life (pedestrian amenities, attractive streetscapes, open space, and neighborhood commercial).

The corresponding Comprehensive Plan Amendments (Land Use and Zoning Changes, Subarea Changes, and shifting Future Land Use designations) work to support the viability of the proposed Mixed-Use Overlay.

- C. Have the underlying assumptions found in the comprehensive plan upon which the land use designation, density or other provisions are based changed, or is new information available which was not considered at the time the plan was adopted? If so, the changed assumptions or new information should be described in sufficient detail to enable the Planning Commission and City Council to find that the land use designation or other sections of the plan should be changed. Examples of the underlying assumptions include expected population growth, utility or roadway capacities, available land supply, or demand for land with the existing or proposed land use designation.*

No, the underlying assumptions upon which the Comprehensive Plan was adopted have not changed. The Mixed-Use Overlay is a characteristic adaptation, by a growing City, to encourage and facilitate smart, well-planned growth. The changes to the City's current mixed-use allowance are proposed as a reaction to the way that mixed use projects in Commercial zones have been built. This overlay and the subsequent amendments to the Comp Plan seek to foster a more viable, efficient, mixed use development projects that support existing commercial centers, and provide a compatible mix of multifamily housing, neighborhood commercial uses, and semi-public open spaces. It will provide prospects for increasing residential opportunities, as part of a well-planned mixed-use development, in areas of the city which are currently not available.

- D. Does the proposed amendment promote a more desirable land use pattern for the community as stated in the goals and policies in the comprehensive plan? Are there environmental constraints (such as wetlands, steep slopes, significant stands of trees, etc.) present on the site to such a degree that development of the site is economically or physically unfeasible under the existing land use designation? If so, a description of the qualities of the proposed plan amendment that would make the land use pattern more desirable and/or would result in less environmental impact should be provided in sufficient detail to enable the Planning Commission and City Council to find that the proposed amendment is in the community's long term best interest.*

Yes, the Mixed-Use Overlay proposal is a City action to provide a better mixed-use product as has been seen within the City. As such, it seeks to promote a more desirable land use pattern. The overlay is broad in targeted areas across the City, that can be activated by the landowner if they choose and can meet the underlying criteria for activation. Environmental constraints will be regulated as normal.

The corresponding Comprehensive Plan Amendments (Land Use and Zoning Changes, Subarea Changes, and shifting Future Land Use designations) work to support the viability of the proposed Mixed-Use Overlay.

- E. What impacts would the proposed amendment to the plan have on the current use of other properties in the vicinity? What measures should be taken to ensure compatibility with the uses of other property in the area?*

The Mixed-Use Overlay and the corresponding Comp Plan Amendments are specifically an attempt to foster a mix of compatible residential and neighborhood commercial uses in areas of the City that already have established commercial use. This development, if done correctly, will support those existing commercial uses.

The developments will be subject to Design Review, landscape buffering, and other regulations that the city already employs to ensure the ongoing compatibility of uses with surrounding properties.

F. How will the public interest be served by this amendment?

Zoning Changes: The proposed zoning changes seek to change unviable commercial properties, which due to scale and/or distance from an established commercial center will not be eligible for the Mixed-Use Overlay, to multifamily residential uses. These zone changes (CSL to RM3) are in the East Lynden Subarea. The North Lynden Subarea properties are already built out as high density residential. This zone change will align that use with the proper zone (CSL to RM4). The west Lynden zone changes (CSR to IND) seek to provide more industrial space in West Lynden, in the vicinity of existing industrial zones and productive Industrial uses. They are also parcels that would not be eligible for the Mixed Use overlay – as they are located in the new West Lynden Commerce Subarea.

Subarea Revisions: The Subarea Revision realign the boundaries of West Lynden subareas and create a new Gateway Subarea. This provides incentive to define and delineate the appropriate future development of this area. The West Lynden Commerce Subarea, also a new subarea, focuses on the industrial and larger-scale commercial opportunities in west Lynden. These subarea changes serve the public good by further defining and focusing on what is appropriate for those areas. It also creates an opportunity to highlight the benefits and positives of doing business there.

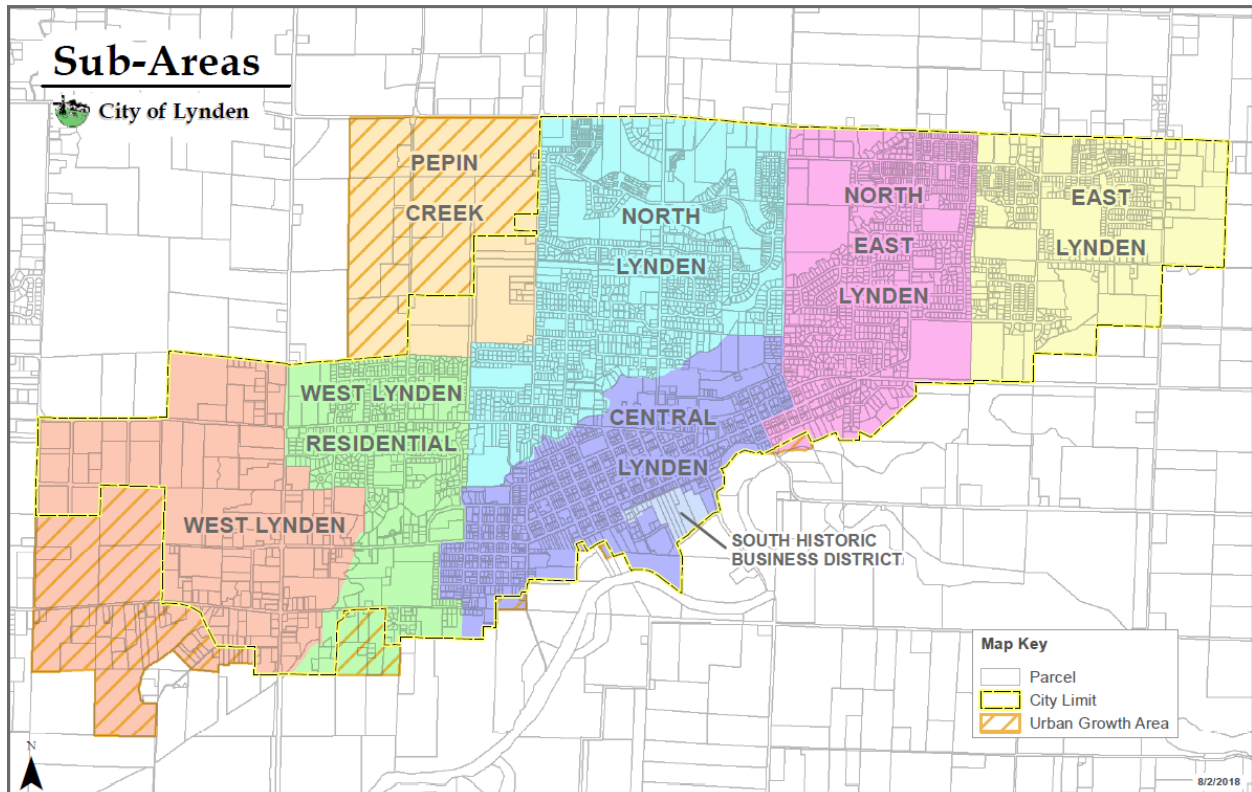
Future Land Use Map: These changes are prompted by an interest in the West Lynden unincorporated UGA area, to seek annexation. On further examination, and as the interested parties seek to secure signatures for annexation, several existing properties are not interested in being annexed as the future land use map designates. The current future land use map does not align well with an ongoing interest in industrial lands. And there is decreased demand for CSR zoned properties in the City. The changes proposed to the Future Land Use map increase Industrial Zoned properties and align the section south of Birch Bay Lynden Road, which are currently mostly larger single-family parcels to align with a lower density residential zone.

(Proposed text amendment per Comprehensive Plan Amendment Application #22-01)

2.5.5 City of Lynden Sub-Areas (2022 CPA Text Amendment)

The City of Lynden currently has eight different sub-areas as shown in Figure 2.5.5 below. Each possesses a unique character and serves a unique function in the City’s vision. As such, each sub-area may benefit from specific goals and requirements associated with growth and development. Implementing these goals and requirements may warrant unique sub-area ordinances.

Figure 2.5.5. Sub-Areas of the City of Lynden *(Pre-2022 CPA approval; Final Subarea Map will be updated as 2022 CPA is approved)*



East Lynden Sub-Area

The East Lynden Sub-Area, approximately 473 acres in size, encompasses the City’s eastern urban growth area. It is bounded on the north by the East Badger Road and extends from a line a quarter mile east of Vinup Road to a quarter mile east of Northwood Road. The southern boundary follows a combination of property lines, section lines and the floodplain to include the most developable land within the area.

In 1999, an annexation petition was filed to incorporate approximately half of this sub-area into the City of Lynden. The petition was postponed for over a year after receiving Planning Commission recommendation due to issues pertaining to the City’s water supply and the review of the impacts of this area on existing City services. It was brought into the City in February 2001.

Since 2004 the East Lynden Sub-Area has seen significant residential growth. As of the 2016 Comprehensive Plan update, this has included 366 single family units and 36 multi-family units (Figure 1.3.2). Additional residential construction has continued throughout 2017 with the approval of more than 120 additional single-family lots and several multi-family buildings.

Although approximately 48 acres of the East Lynden Sub-Area have historically held a commercial land use designation, the sub-area includes minimal commercial presence. Commercial entities include the Northwood Market and Badger Storage (east of Northwood Rd). Mixed use development has been constructed along Mercedes Drive which utilizes self-storage as the commercial entity on the first floor with residential use dominating the remainder of the building. A number of landowners with commercial designations have requested a shift to residential use given the seemingly low viability of commercial entities within this sub-area.

In 2017, the Planning Department was directed by the City Council to review and revise the East Lynden sub-area to consider a shift in land use from commercial to residential.

The resulting land use map amendment, approved by the City Council in December 2017, resulted in a shift of 12 commercial properties (26.87 acres) to residential land use with corresponding zoning designations ranging from RM-3 to RS-72. The removal of commercial land in this subarea should result in the City seeking to preserve existing commercial nodes at the main intersections to Badger Road including Bender Road and the Northwood Road and, to a lesser degree, on the west side of Line Road.

It is essential that the sub-area, in serving a growing residential base, include a significant effort to make trail connections and build upon the current existing public space. Pursuant to Policy 1B of Goal LU-5 of Chapter 2 The Land Use Element, and as a condition of CPA #17-01 which changed land use designations on 12 commercial zoned properties in the East Lynden Sub-area to residential zones, the City will require future development in East Lynden to facilitate better pedestrian movement. The requirement will obligate residential developers throughout the sub-area to provide trail connections and sidewalks. Specifically, a multimodal trail will be required along Badger Road (WA-546) in the East Lynden Sub-area and the East Lynden Loop Trail. These requirements are indicated in the 2020 update to the City’s Park and Trail Master Plan which outlines specific trail and multimodal routes that make build on the City’s trail network across the city.

Pepin Creek Sub-Area

The Pepin Creek Sub-Area (PCSA) is an approximately 460-acre sub-area including the northwestern Lynden city limits and urban growth area (UGA). Approximately 24 percent of the sub-area, or 110 acres, is within city limits and the remaining 76 percent or 350 acres are in the UGA.

155 acres of what is now the Pepin Creek Sub-area was added to Lynden’s UGA as part of the Whatcom County Comprehensive Plan Update and the City’s Comprehensive Plan Update adopted in 2016. Lynden is projected to grow by about 6,403 new residents between 2013 and 2036. Although there is capacity for some of this growth in other parts of the city, the Pepin Creek Sub-area has been identified as a primary area for future residential development over the next 20 years.

The addition of the 155 acres into the City’s UGA, the concurrent Pepin Creek Relocation Project and the expectation that this area will receive a majority of the City’s population growth prompted the city to develop the Pepin Creek Sub-Area Plan. This plan lays out future land use and zoning, traffic circulation

patterns, as well as design standards for neighborhood development while taking into account the need for flood mitigation and the potential re-channelization of Pepin Creek. Refer to the Pepin Creek Subarea Plan for more detailed information.

North Lynden Sub-Area

The North Lynden sub-area is approximately 675 acres in size. The southern portion of this sub-area was incorporated into the City in the 1960s or before. Annexations in 1991 brought the lands north of Sunrise Drive into the City limits and began the development of Homestead Northwest. The northern boundary of the North Lynden Sub-area is the heavily traveled State Route 546 (East Badger Road). The western boundary for the North Lynden Sub-area is Benson Road. Fishtrap Creek and Main Street are the southern boundaries. The Sub-area relative to the rest of Lynden is located north of downtown.

Land use in the North Lynden Sub-area is characterized by established residential developments as well as long standing commercial and industrial use. Some of Lynden’s earliest residential development projects (Cedar and Kwanza Drive), and the Planned Residential Development projects of Homestead Farms and Woodfield Village and Heartland are in the North Lynden Subarea. The headquarters of Lynden Transport, Incorporated is located here. As is Flora, Inc., VanderPol Building Components, Inc., Martin’s Feed, Inc., Kulshan Veterinary Services and Daritech, Inc. Additionally, the Lynden Municipal Airport, and Homestead Farms Golf Club are in the North Lynden Subarea.

The City’s 2022 Comprehensive Plan Amendment made changes to the City’s subarea boundaries particularly in west Lynden. The changes include the creation of a new subarea, the West Gateway Subarea. The corresponding new subarea boundaries resulted in shifting approximately 90 acres of the North Lynden Subarea (the portion that was west of Benson Road) into the West Lynden Residential Subarea.

West Lynden Commerce Subarea

The West Lynden Commerce Sub-Area, approximately 530 acres in size, includes the commercially and industrially zoned land within the city west of the Guide Meridian and north of Birch Bay Lynden Road. The significant transportation corridors in this subarea, the Guide Meridian (SR539) and Birch Bay Lynden Road, accommodate shipping traffic and provide economic opportunity for both commercial and industrial land uses. As such, Industrial use is prevalent. Lynden Door, Inc, Preferred Freezer, Oxbo International Corp., Westside Lumber and Nooksack Valley Disposal are located here.

Much of the unincorporated UGA and significant portions of industrial and commercial zoned land in this subarea are agricultural (pasture, field crops, and berries). When annexation eventually occurs, the unincorporated areas of the UGA in this subarea are designated for industrial uses. Properties in this subarea are not eligible for the Mixed Use Overlay.

West Lynden Residential Subarea

The West Lynden Residential Subarea directly borders the West Lynden Commerce Subarea. It is dominated by residential subdivisions that were generally built in the late 20th century. These subdivisions contain some of the notable multifamily developments (Oakwood, Woodcreek, Forest Circle) that were built out in the 1980s and 90s.

This subarea also contains the Bogaard Hay Company, the Ridnour Athletic Complex, two elementary schools (Isom and Fisher), and Dickinson Park. The City expects to continue extension of the Jim Kaemingk Jr trail into this subarea as it makes its way westward along the Fishtrap Creek corridor.

West Gateway Subarea

The defining features of this subarea are the primary entrances to the city from the west, on Birch Bay Lynden Road, and from the south, on the Guide Meridian (SR 539). Residents and travelers entering Lynden from these locations, leave the distinct agricultural landscapes (the vast berry fields west of town and pasture and field crops in the Nooksack River floodplain to the south) and enter the “city” along these busy commercial corridors.

The primary landuse in this subarea is commercial, with a mix of large-scale farm implement dealers, grocery stores, and “chain” restaurants. This subarea contains 3 (Safeway, Food Pavilion, Fairway Center) of the 6 established “Commercial Centers” on which the Mixed Use Overlay is centered.

As mentioned above, the Fairway Center, along Front St is located in this subarea. This “strip” mall houses several retail, dining, and commercial establishments, as well as a large church campus (North County Christ the King). South of Front St is the Northwest Washington Fairgrounds which, besides hosting the NW Washington Fair each summer, also hosts a variety of entertainment events throughout the year.

The unincorporated portion of the UGA, west of Flynn Road and south of the Birch Bay Lynden Road, contains agricultural uses (pasture and berries), the City’s West Lynden Regional Storm Pond, multiple large parcel single family lots, and 2 industrial businesses (Whatcom Manufacturing, and the Skagit Farmers Supply store).

Central Lynden

The Central Lynden Subarea is characterized by downtown Lynden, the Historic Business District, and the City’s oldest residential construction that radiates from downtown. This subarea, in many ways, gives Lynden its unique charm and identity. Front Street, with its the remarkable tree lined right-of-way leads into the downtown commercial core which has a diversity of retail and professional offices, dining establishments, a hotel, the Pioneer Museum, and the Jansen Art Center. The residential neighborhoods to the west, northwest and east of downtown are characterized by the traditional street grid with varying lot sizes and a diversity of architecture. The commercial / residential area to the north of downtown has a mix of single family and multifamily structures throughout with small scale commercial buildings that generally house professional offices and small non-retail businesses.

This subarea also contains the historic industrial area which was located here because of Lynden’s once heavily trafficked rail spur that shipped lumber and agricultural products out of Lynden. The 100+ year old Darigold plant is located here, as well as the Versacold facility, a lumberyard and agricultural warehouses. The Lynden Christian Schools campus (including an elementary, middle and high school) are found in this subarea, as is the former Lynden Middle School property.

The Central Lynden subarea also contains much of the City’s public facilities. City Hall, the Lynden Public Library, the Fire Station, the Community Center, the YMCA, the Lynden Water Plant and the Wastewater Treatment Plant are located here. Furthermore, the City Park, Centennial Park, Patterson Park, and portions of the Jim Kaemingk trail are found in this subarea.

South Historic Business District

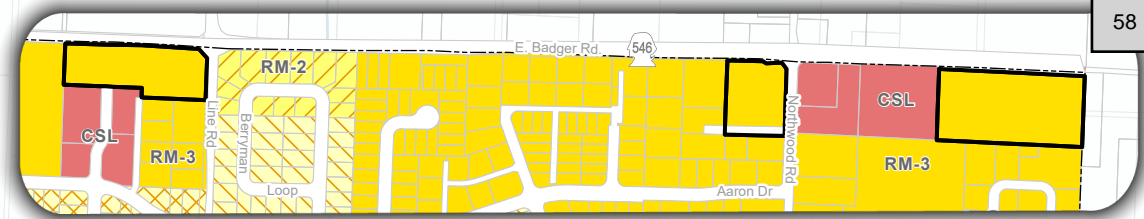
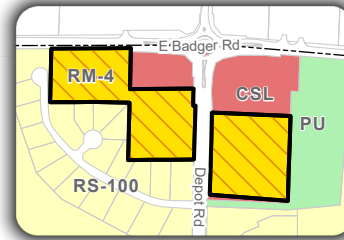
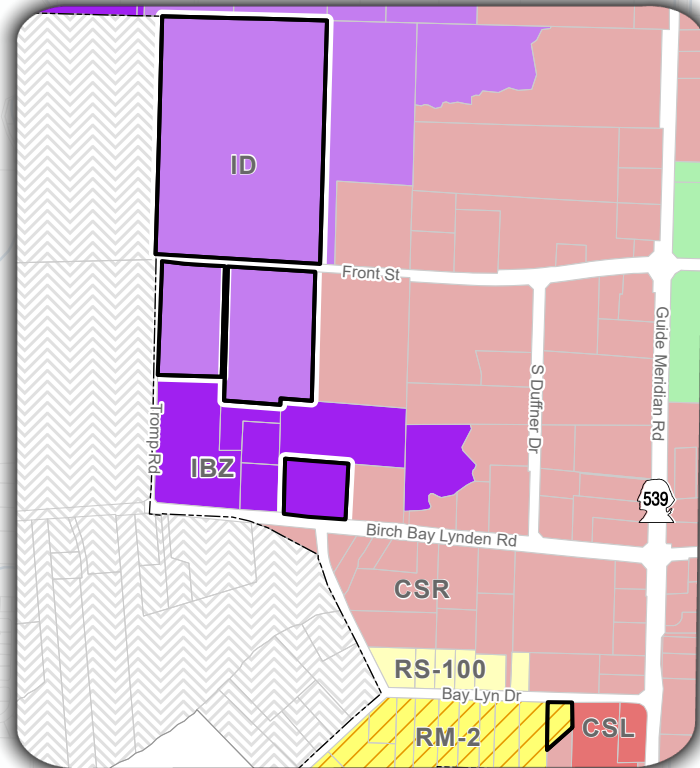
The South Historic Business District is a distinct subarea located south of the downtown commercial core. In 2007 the city adopted the South HBD subarea plan that specifically focused on planning the future of this subarea. The award-winning document lays out plans for transportation, public use and private land use, as well as concepts for pedestrian focused building layout and design. This area has significant development potential as it will be an extension of Lynden’s commercial downtown with mixed residential space. Development here will likely be stimulated by the 2019 completion of Riverview Road which will provide easy access to this area from Front Street as well as Hannegan Road.

Northeast Lynden

The Northeast Lynden Subarea is predominately residential, containing some of Lynden’s oldest subdivisions (Garden Drive, Edgewater Lane). In the north are two Planned Residential Developments, Heritage Park and Greenfield Village. Heritage Park houses the Christian Health Care Center and the Lynden Manor, both are significant assisted living facilities that provide housing and health care for Lynden’s senior residents. Limited commercial land use is found in the Northeast Lynden Subarea, except for Bender Plaza on the corner of Badger and Bender Roads. Bender Plaza contains a gas station, restaurants, and professional offices.. Finally, this subarea contains the Lynden High School campus and Bernice Vossbeck Elementary school, Bender Fields Park, which provides recreational opportunities for thousands of residents every year, and portions of the Jim Kaemingk Trail run through this subarea.

Proposed Zoning Changes, 2022

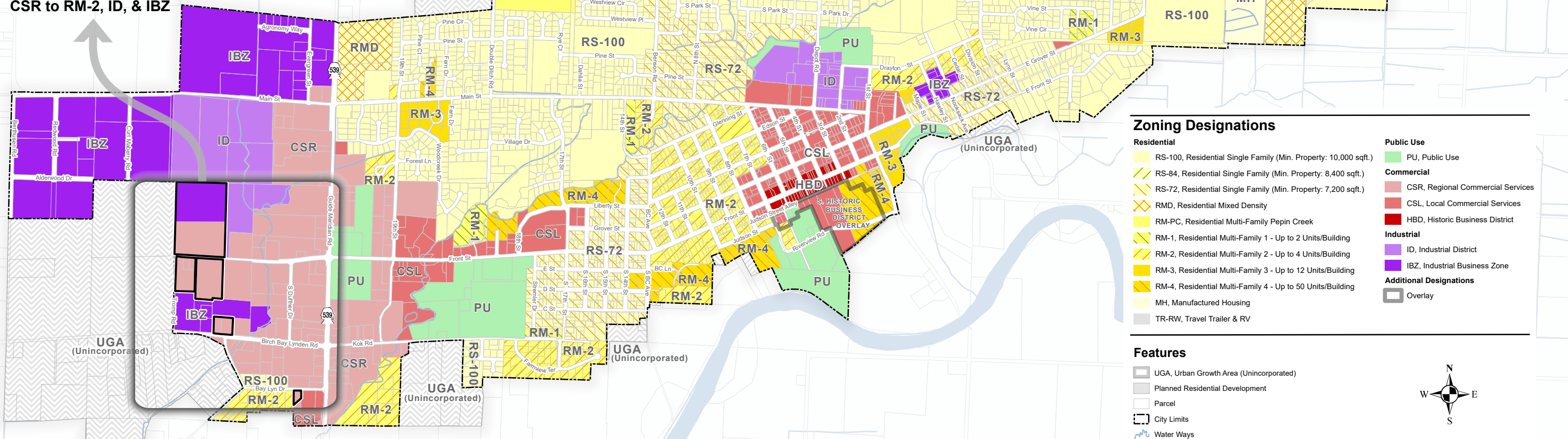
City of Lynden



CSR to RM-2, ID, & IBZ

CSL to RM-4

CSL to RM-3



Zoning Designations

- | | |
|---|-----------------------------------|
| Residential | Public Use |
| RS-100, Residential Single Family (Min. Property: 10,000 sqft.) | PU, Public Use |
| RS-84, Residential Single Family (Min. Property: 8,400 sqft.) | Commercial |
| RS-72, Residential Single Family (Min. Property: 7,200 sqft.) | CSR, Regional Commercial Services |
| RMD, Residential Mixed Density | CSL, Local Commercial Services |
| RM-PC, Residential Multi-Family Pepin Creek | HBD, Historic Business District |
| RM-1, Residential Multi-Family 1 - Up to 2 Units/Building | Industrial |
| RM-2, Residential Multi-Family 2 - Up to 4 Units/Building | ID, Industrial District |
| RM-3, Residential Multi-Family 3 - Up to 12 Units/Building | IBZ, Industrial Business Zone |
| RM-4, Residential Multi-Family 4 - Up to 50 Units/Building | Additional Designations |
| MH, Manufactured Housing | Overlay |
| TR-RW, Travel Trailer & RV | |

Features

- UGA, Urban Growth Area (Unincorporated)
- Planned Residential Development
- Parcel
- City Limits
- Water Ways



Date: Tuesday, July 19, 2022

The City of Lynden has compiled this information for its own use and is not responsible for any use of this information by others and disclaims any warranty of merchantability or warranty of fitness for any particular purpose, either express or implied. The information found herein is provided simply as a courtesy to the public and is not intended for any third party use in any official, professional or other authoritative capacity. Persons using this information do so at their own risk and by such use agree to defend, indemnify and hold harmless the City of Lynden as to any claims, damages, liability, losses or suits arising out of such use. Contact the Whatcom County Assessor's Office (360-676-6790) for the most up to date parcel information.



Table 1: 2022 Zone Change Proposal – Parcel Information

<u>Property Address</u>	<u>Property Owner</u>	<u>Owner Address</u>	<u>Parcel ID</u>	<u>Size (acres)</u>	<u>Land Use</u>	<u>Current Zoning</u>	<u>Proposed Change</u>
<u>East Lynden Subarea (CSL to RM3)</u>							
1257 E Badger Rd	David J Climer	Same	4003164765180000	0.87	Residential	CSL	RM-3
1271 E Badger Rd	Lance and Bobbi Nieuwma	Same	4003164945180000	0.64	Mixed Use	CSL	RM-3
8885 Line Road	O&S Farms	PO Box 1015, Lynden WA 98264	4003165125160000	1.63	Residential - underutilized	CSL	RM-3
1483 E Badger Road	Douglas Andress	Same	4003152485080000	2.13	Residential - underutilized	CSL	RM-3
1546 E Badger Road	TMI Holdings LLC, Halo Holdings LLC	PO Box 467, Lynden WA	4003153505080000	2.86	Residential - underutilized	CSL	RM-3
1583 E Badger Road	Badger North, LLC	5052 Samish Way Bellingham, WA 98229	4003154185490000	2.24	Residential - underutilized	CSL	RM-3
<u>North Lynden Subarea (CSL to RM4)</u>							
665 E Badger Road	TMI Holdings LLC	PO Box 467, Lynden WA	4003172145100000	1.98	Residential – 46 units	CSL	RM-4
8883 Depot Road	T&S Investments Trust, LLC	485 E Wiser Lake Road, Lynden WA	4003172505270000	1.12	Residential – 24 units	CSL	RM-4
8881 Depot Road	T&S Investments Trust, LLC	485 E Wiser Lake Road, Lynden WA	4003172505180000	1.01	Residential – 20 units	CSL	RM-4
8876 Depot Road	Depot Villas, LLC	1195 Linda Vista Dr Ste H, San Marcos, CA 92078	4003173055110000	2.0	Residential – 40 units	CSL	RM-4

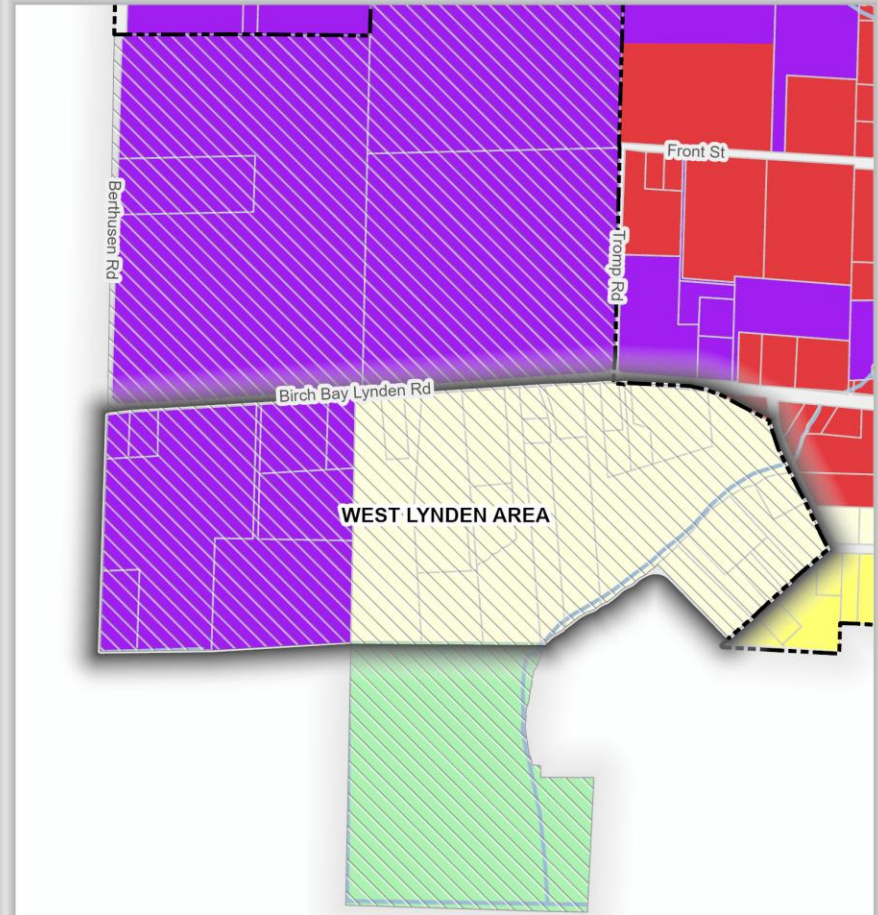
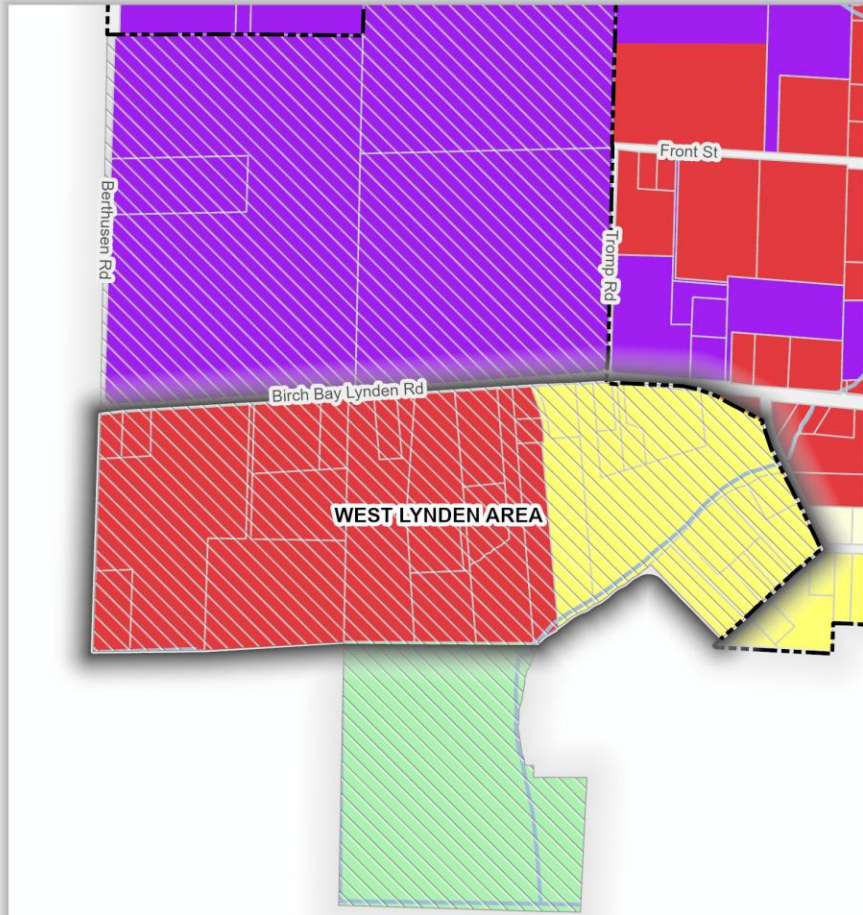
CPA #22-01 Land Use Designation and Zoning Map Changes							
<u>Property Address</u>	<u>Property Owner</u>	<u>Owner Address</u>	<u>Parcel ID</u>	<u>Size (acres)</u>	<u>Land Use</u>	<u>Current Zoning</u>	<u>Proposed Change</u>
West Lynden Subarea (CSR to ID, IBZ, RM2)							
135 Bay Lyn Drive	Darrell & Laurie Hagerty	Same	4002254894550000	0.29	Single Family	CSR	RM-2
230 Birch Bay Lynden Rd	Berk & Mary Likkel Revocable Trust	948 19 th St, Lynden, WA	4002243900190000	1.22	Industrial	CSR	IBZ
240 Birch Bay Lynden Rd	Ratz Holdings, LLC	5955 Guide Meridian, Bellingham WA 98226	4002243730190000	0.81	Industrial	CSR	IBZ
2149 Front St	Dirk Investments, LLC	19720 NE 148 th St, Woodinville, WA 98077	4002243580950000	6.68	Vacant	CSR	ID
2197 Front St	Boneyard LLC	19720 NE 148 th St, Woodinville, WA 98077	4002243190880000	3.17	Vacant	CSR	ID
2185 Front St	Boneyard LLC	19720 NE 148 th St, Woodinville, WA 98077	4002243211290000	0.46	Single Family	CSR	ID
2181 Front St	Baldovinos 2G, LLC	3028 St Paul St, Bellingham, WA 98226	4002243311290000	0.46	Single Family	CSR	ID

Proposed Changes to Future Land Use

West Lynden

Currently Planned Future Land Use

Proposed Future Land Use



Features - Lynden City Limits (dashed line) - Urban Growth Area (hatched pattern)	Future Land Use Categories - Residential, Low Density (light yellow) - Residential, Medium Density (yellow) - Public (green) - Industrial (purple) - Commercial (red)
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CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #22-05

A resolution of recommendation for approval of Comprehensive Plan Amendment #22-01 and Rezone #22-02, for the City of Lynden Mixed Use Development Updates, Future Land Use Map, Zoning Map, Sub-Area Map and Text Amendment to the Lynden City Council.

WHEREAS, on December 20, 2021, in recognition of the need to address the City's mixed-use code provisions to better serve the good of the community and the original intent of the code, the City Council passed Ordinance 1642 which established a moratorium on residential development within the City's Commercial Services -Local (CSL) zone and temporarily halted the development of mixed-use projects; and

WHEREAS, for the purposes of this resolution, mixed-use is generally considered a blend of residential and commercial uses in a shared building or on a shared property; and

WHEREAS, the City of Lynden's Planning Department has since advanced an initiative to update the city's ordinance associated with mixed-use provisions with the intent of locating mixed-use developments, which often feature high density housing options, in areas near public transportation and existing commercial development; and

WHEREAS, locating mixed-use developments in these locations serves to support existing business and create more viable opportunities for new commercial uses within the mixed-use developments; and

WHEREAS, staff has worked with relevant interest groups, property owners, and policy makers to propose a new mixed-use overlay (LMC 19.23.110 Mixed Use Overlay) to the existing Chapter 19 of the Lynden Municipal Code; and

WHEREAS, the update describes development standards associated with a Mixed Use Overlay, identifies existing commercial centers as Qualifying Commercial Centers, and lists the criteria which are required for properties seeking to utilize these updated mixed-use provisions; and

WHEREAS, consistent with the goals of the initiative, and in recognition of changing market conditions, the initiative also includes a proposal to change the zoning designation of multiple commercial properties within the City of Lynden to industrial or residential designations, it modifies the boundaries shown in the City's Subarea Map, and revises the Future Land Use Map; and

WHEREAS, the changes proposed to the Future Land Use Map decreases future commercial land use properties and medium density residential properties south of Birch Bay Lynden Road and increases future industrial land use properties and low-density residential properties in that area. The proposed low density residential areas seek to align that designation with the current large lot single family uses; and

WHEREAS, the Subarea Map revisions realign the boundaries of the West Lynden subareas and creates a new West Lynden Gateway Subarea, and a new West Lynden Commerce Subarea. This provides incentive to define and delineate the appropriate future development of this area. A related Text Amendment to Section 2.5.5 of the Comprehensive Plan will update this section to reflect the Subarea Map changes; and

WHEREAS, the Zoning Map revisions reflect the changes associated with the Rezone Application to change the zoning designation of certain commercial properties to residential and industrial zoning designations. The proposed zoning changes seek to change unviable commercial properties, which due to scale and/or distance from an established commercial center will not be eligible for the Mixed-Use Overlay; and

WHEREAS, the initiative application package was determined to be complete on June 30, 2022, and the notice of application was published in the Lynden Tribune on September 7, 2022; and

WHEREAS, the Lynden Planning Commission held a public hearing on September 22, 2022, to accept public testimony on the proposed Comprehensive Plan Amendments and Rezones, and that meeting was duly recorded.

WHEREAS, rezones shall be reviewed in light of the City's Comprehensive planning goals. To grant this request, the Planning Commission and City Council must find that the application satisfied the criteria listed within **Section 17.09.050** of the Lynden Municipal Code.

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 6-1, to the City Council of CPA #22-01 and RZ #22-02, for the City of Lynden, regarding Mixed Use Development Updates, Land Use Map, Future Land Use Map, Zoning Map, Subarea Map and Text Amendment as proposed and further recommended:

- 1. That the 40 acres south of Birch Bay Lynden Road shown on the proposed future land use map as industrial land use be changed to residential, low-density land use.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their meeting held the 22nd day of September 2022.



 Tim Faber, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director

CITY OF LYNDEN

PLANNING DEPARTMENT
360-354-5532



PLANNING COMMISSION MEETING MINUTES 7:00 PM September 22, 2022 City Hall Annex

1. CALL TO ORDER

2. ROLL CALL

Present: Tim Faber, Blair Scott, Jim Kaemingk, Khush Brar, Bryan Korthuis, Darren Johnson, and Hollie Lyons.

Absent:

Staff Present: Gudde, Planning Director, Timmer, City Planner and Samec, City Planner

3. APPROVAL OF MINUTES

A. **September 8, 2022, Scott / Kaemingk 2nd 5-0**

4. DECLARATION OF CONFLICT

Korthuis asked to recuse himself from the Lynden Door CPA / Rezone. Korthuis stated that the company he works for does significant business for Lynden Door and JD Bargaen. None of the other Commissioners reported any ex-parte contact or conflict of interest.

5. PUBLIC HEARINGS

A. **CPA #22-02 and RZ #22-01, JD Bargaen / Lynden Door, 2122 Front Street**

Gudde addressed the Commission and stated that the application is for a Comprehensive Plan Amendment to change the Comprehensive Plan designation of two parcels owned by JD Bargaen Industries, LLC from Commercial (CSR) and Industrial (IBZ) to Industrial (ID).

The subject property currently has a split land use designation. The northern portion adjacent to the existing Lynden Door campus has an industrial designation and the southern portion has a commercial designation. The request to shift the entire property into an industrial land use would eliminate the split land use designation which tends to be difficult to regulate.

The commercial market has changed significantly since the land use and zoning designation was assigned to the subject property in 1994 with annexation Ordinance 943. The existing commercial designation was likely put into place along Front Street because commercial uses desire visibility from roadways to facilitate retail development. However, the demand for commercial / retail spaces has dropped significantly and the City's existing supply of commercial spaces has been adequate. Meanwhile, the call for large scale industrial properties has increased with millions of dollars of investment anticipated in this area of the City in the next five years.

Compatibility of the proposed industrial use within the West Lynden Sub-Area is high. Staff review does not anticipate a conflict with existing uses.

The City Council previously supported a similar application in this area. In 2018 the adjacent parcel, immediately east, was successfully shifted from a commercial land use to an industrial land use with Comprehensive Plan Amendment 18- 01. The applicant's response to the criteria is located in the packet.

Lesa Starkenburg PO Box 231, Lynden

Starkenburg addressed the Commission. The proposed plan amendment is consistent with the Lynden Comprehensive Plan. The West Lynden Sub-Area is primarily zoned for a combination of industrial and commercial land uses.

Changing this site to an industrial designation is compatible with the current uses surrounding the site. The property to the east has already been rezoned and re-designated to industrial use. As a result of the current ownership of the parcel, infill will occur more quickly if the property is designated industrial versus commercial and may facilitate infrastructure development in this area for the City sooner rather than later.

The site is located adjacent to the Applicant's existing property, which is used for industrial purposes. The site is contiguous to the parcel re-designed by the City under a previous request in 2018. The site is tucked behind existing industrial development. Therefore, industrial development is more appropriate for this site. In addition, commercial use has been slow to develop in Lynden and the COVID pandemic and increase in online shopping will continue to have an impact on commercial growth.

The proposal will create a land use pattern very similar to what exists currently except that it will be consistent to the ownership of the site and the Applicant's adjacent land use. In addition, West Front Street is a logical boundary for the industrial designation. Also, West Front Street does not have commercial visibility compared to other nearby tracts. In addition, the adjacent Tromp Road is a rural standard road that is not ideal for commercial traffic.

The proposal will result in economic development, employment opportunities for the increasing population, and will maintain a positive business climate. Starkenburg asked for the Commission to please recommend approval to the City Council.

Questions or Comments from the Commissioners- none

Speaking in opposition

Letter from Glen Tromp dated September 12, 2022. Letter is in the PC meeting packet.

Scott motioned to close the public hearing. Seconded by Kaemingk and the motion passed, 6-0.

Lyons asked why the zoning change now, do they have plans for development? Gudde replied, not at this time, however, the zoning change is a better fit for the area.

Criteria for Approval:

Applicant has responded to the following questions and statements with written justifications for the proposed CPA and Rezone. Care should be taken to consider potential impacts to the surrounding properties and the City as a whole and mitigate as needed. See meeting packet for detailed responses.

To grant this request, the Planning Commission must find that the application satisfies the criteria listed within Section **17.09.040 (C)** of the Lynden Municipal Code. The Commission agreed that the application meets the required criteria.

To grant this request, the Planning Commission and City Council must also find that the application satisfies each of the criteria listed within Section **17.19.050** of the Lynden Municipal Code. The Commission agreed that the application meets the required criteria

No further comments from the Commission. The Commission agreed that the request is reasonable.

Scott motioned to recommend approval to the Lynden City Council of the Lynden Door Rezone #22-01 and Comprehensive Plan Amendment #22-02 subject to the Technical Review Committee Report dated September 12, 2022. Seconded by Johnson, and the motion passed 6-0, with Korhuis abstaining.

B. CPA #22-01 and RZ #22-02, City of Lynden Mixed Use Development Updates, Land Use Map, Future Land Use Map, Zoning Map, and text Amendment

Gudde addressed the Commission and stated that the application is for a Comprehensive Plan Amendment and Rezone. The City is proposing several updates to the Lynden Municipal Code that are seeking to foster the appropriate development of mixed-use areas (Residential/Commercial) within the City.

The proposed updates will change the current mixed-use allowance (60:40 GFA ratio as determined in LMC 19.23.020) to a mixed-use overlay that can be activated within commercial zones under established criteria. These updates to the City’s development code also necessitate amendments to the City's Comprehensive Plan, specifically the Comp Plan maps - the Zoning Map, the Future Land Use Map, and the City's Subarea Map. A related text amendment will update language to reflect changes to the City’s subareas.

In December 2021, City Council passed Ordinance No. 1642 which established a moratorium on residential development within the City’s CSL zone. This moratorium was a

reaction to somewhat unsuccessful results being witnessed on mixed use development projects undertaken in the City’s CSL zone. Achieved mixed use development has been focused on maximizing residential units, which it has done, but has struggled to develop effective commercial space. With the moratorium, Council asked staff to consider a new model for mixed use development that still supports residential use but, effectively, promotes more cooperative commercial uses for that residential development.

Since Ordinance 1642 was adopted, staff has worked with relevant interest groups, property owners, and policy makers to propose a new mixed-use overlay (LMC 19.23.110 Mixed Use Overlay) to the existing Chapter 19 of the Lynden Municipal Code. Discussion regarding the new overlay resulted in supplementary updates to other LMC sections, a change to Lynden’s defined subareas, zoning changes for certain commercial zoned properties, changes to the City’s Future Land Use map, and related code housekeeping updates.

A complete list of the proposal is located within the Commissioners packet.

Questions or Comments from the Commissioners

- When will the properties in the UGA come into the City? Gudde, it is usually up to the property owners and not City lead. In order to move forward with an annexation request, you need the signatures of at least 60% of the assessed property value of the proposed area.

Questions or Comments from the public.

West Lynden Future Zoning

- Garth Kooy, 331 Birch Bay Lynden Road
Regarding West Lynden Future Zoning Map, the residential area is being squeezed. Birch Bay Lynden Road should be a line in the sand for the zoning border. Keep the land south as residential, with the exception of the grandfathered in existing commercial uses. It’s a great place for residential development.

Think of the families that live in the area with small residential properties. Open space taxation needs to continue.

In support of removing the current commercial and the proposed industrial designation south of Birch Bay Lynden Road to residential, it is a better use.

- Steve Schuyleman, 371 Birch Bay Lynden Road
I favor of moving from red to white on the existing futures land use map. Low density residential. Schuyleman stated that they have the biggest farm in that area, how would coming into the city affect that? Gudde stated, as those uses come into the city you can continue to use your property as you use it today. Once you develop you will be required to comply.

• Joe King, 849 Flynn Road

Asked for explanation of the low vs. medium density residential. In favor of keeping the zoning as medium density.

The current petition that Council has authorized in my area has not yet come back. Is there a time frame? Gudde stated that she is not aware of a time frame.

Brief discussion regarding annexing the floodplain.

Scott asked King what his zoning preference was. King stated that there needs a place for people to live. He prefers the property to be zoned residential medium density.

Scott motioned to close the public hearing. Seconded by Korthuis and the motion passed, 7-0.

Commissioner discussion:

Johnson likes the idea of keeping residential south of Birch Bay Lynden Road with no industrial zoning. Existing businesses could remain, however, there could be no new development of commercial. There are several existing homes just beyond that zoning line in the county.

What about a mix of single family and multi-family?

Kaemingk, residential medium density makes more sense over industrial.

Kush, can we have both medium and low density in that area. Gudde replied, yes. Kush stated that we are pushing the limits in the northeast portion of town, this is a good area for development and a good idea.

Lyons in favor of residential instead of industrial.

Korthuis, if this is changed, it can always be brought back to the PC for a rezone if a property owner was interested.

Looking at the map and seeing a lot of industrial come into the area. Korthuis is hesitant to zone residential for the long run if we are building so much industrial. Can see a potential for residential, but if so, it should be a higher density. When weighing both ideas, Korthuis likes it better as proposed. Industrial fits the overall general area. The big picture goal is better off to set zoning as Industrial for the future.

Johnson, Kaemingk, Scott, Faber, Lyons and Brar would like to see residential in place of industrial in the West Lynden Future Map proposal. Korthuis prefers Industrial.

East and North Lynden Zoning

Discussion regarding the zoning proposed for the east and north Lynden areas.

Letter submitted dated September 21, 2022, from Mike Kooy (sent to PC): regarding Skyview SP No 2 Lot 4. City proposal is to rezone to RM-3 and his group would like RM-4.

Faber asked the commission if there is any discussion on changing the zoning to RM-4? The Commission agreed, no, keep it as RM-3, it is the best fit. Not supportive of the City's highest density category in that area.

Brief discussion regarding WSDOT access permits on E Badger Road. Could WSDOT reduce the unit count? No, however, they would require access improvements.

Staff is supportive of what has been brought forward this evening. RM-3 not RM-4.

Criteria for Approval:

Applicant has responded to the following questions and statements with written justifications for the proposed CPA and Rezone. Care should be taken to consider potential impacts to the surrounding properties and the City as a whole and mitigate as needed. See meeting packet for detailed responses.

To grant this request, the Planning Commission must find that the application satisfies the criteria listed within Section **17.09.040 (C)** of the Lynden Municipal Code. The Commission agreed that the application meets the required criteria.

To grant this request, the Planning Commission and City Council must also find that the application satisfies each of the criteria listed within Section **17.19.050** of the Lynden Municipal Code. The Commission agreed that the application meets the required criteria.

No further comments from the Commission.

Kaemingk motioned to recommend approval to the Lynden City Council of CPA #22-01 and RZ #22-02, for the City of Lynden, regarding Mixed Use Development Updates, Land Use Map, Future Land Use Map, Zoning Map, Sub-Area Map and Text Amendment as proposed and further subject to the following condition:

- 1. That the 40 acres south of Birch Bay Lynden Road shown on the proposed future land use map as industrial land use be changed to residential, low-density land use.**

Seconded by Scott, and the motion passed, 6-1, with Korthuis in opposition.

C. LMC Code Amendments: Mixed Use Overlay, Parking Code, and Associated Housekeeping Updates – LMC 17, 18, and 19

Gudde addressed the Commission and stated this is the public hearing for the workshop that was held with the Planning Commission on September 8, 2022. This agenda item includes several LMC Code amendments relating to the Mixed-Use Overlay, Parking Code, and Associated Housekeeping Updates – LMC 17, 18, and 19. The proposed redlined updates to the LMC chapters are separately attached in the application packet.

Proposed Code Updates: The full list of proposed code updates is listed below.

LMC 17.01.030 Definitions: The addition of Storage – “Mini” and Storage – “Large Scale”. *PC support.*

LMC 18.22 Manufactured Home Park Subdivision Standards: Updates to “Siting Criteria” to allow increased density, and landscaping requirements. *Kush asked about keeping the perimeter buffer at 30-feet. 30-feet is greater than other areas in the city. The PC supported the proposed 20 feet.*

LMC 19.11 Districts Established: Housekeeping updates and the reduction of RM4 maximum density. *PC support.*

LMC 19.17 Multifamily Zones: Housekeeping updates and added requirements for open space / residential amenities for developments of 8 or more units. *Brief discussion regarding 19.17.100 and why the change to the DRB review vs approval. Faber, DRB provides review for compliance not approval. PC Support*

LMC 19.19 Manufactured Home Zone: Increased density allowances, prohibit site-built homes within MH park. *No Comments*

LMC 19.20.040 – ADU permitting and Enforcement- *PC Support.*

LMC 19.22 Design Standards: Housekeeping updates. Also included in the update is the proposed deletion of the minimum roof pitch requirement. Acceptance of this change was not unanimous; however, the PC did agree to the addition to 19.45.035 that allows a design criteria waiver that could allow a different roof pitch once reviewed by the DRB. *PC Supports.*

LMC 19.23 Commercial Zoning: Removed the existing mixed-use allowances (60:40 and North Lynden Subarea), strengthen site design requirements, and added the Mixed Use Center Overlay (19.23.110), small-scale downtown Mixed Use, and the related zoning language to support that overlay.

Gudde stated that the Finance / Council Committee would like to recommend that body piercing and tattoo studios be its own line item and not included in with personal services. That the use only be allowed in the CSR zone. PC Support.

Discussed the revised language outlined in 19.23.090 (F)(2)(B) regarding CMU Blocks. PC Support.

Discussion regarding the removal of the Dutch/Northern European design outlined within 19.23.090 for Mixed-Use Center Overlay and for retail stores great than fifty thousand square feet.

Gudde replied, the Dutch them is still required within the HBD. Over the years it has become watered down outside of the downtown core. Arguments indicate that modern / contemporary Dutch varies and changes with time. Faber stated that the Dutch Theme has not been used in the outskirts of downtown for years. Supports the requirement only in the HBD.

Brar wanted to be certain that Lynden was not losing its identity. The HBD should still require the Dutch standard.

Scott stated that the HBD looks more Dutch today than it did 20 years ago, and the outskirts were not Dutch.

Korthuis stated that the Dutch should be a requirement for the HBD, not necessarily for the rest of the town.

Faber asked the Commission if the requirement should be changed as proposed or remain. The Commission agreed that it should be changed as proposed.

19.23.110 (C) – Small scale Mixed-Use within the Central Lynden Sub-Area. Brief discussion regarding the design review standards for new multi-family construction, and clarification on existing commercial uses that would be permitted to transition into residential use according to the standards. Commission is good as proposed.

19.23.110 – Mixed Use Overlay Development Standards

- Discussion regarding max Height- 52 / 60 feet at 4 floors? Should 5 stories be allowed with a CUP?*
- Open space requirements? Create spaces large enough for people to use. Also look to walkability of parks etc.*
- Required Commercial Area. CS use within Mixed Use Overlay requires ground floor to be at least 60%. Parking on ground floor does not count as commercial.*
- Flex Space - Flex space must equal 20% of the net lot area.*

- Design Review Board – Discussion regarding DRB approval requirements including the Dutch themed architecture requirements for the HBD only, and/or to recognize, restore, pay tribute to the historic structure and architecture of the building.

The Commission was satisfied with 10% open space, 20% flex space and keeping at 4 floors max. The PC was also supportive of the amendment to the Design Review Board requirements and theme.

- LMC 19.29 Planned Residential Development: Housekeeping updates. *Commission had no concerns.*

- LMC 19.45 Design Review:

- Housekeeping updates.
- Clarification of a process that already exists regarding determining review.

The Commission reviewed David Vos’ letter regarding concerns with Staff authority specifically relating to the DRB. The Commission discussed the importance of staff, in the interest of process efficiency, having the ability to make judgement calls on “minor” proposals. Ultimately the Planning Commission concluded that they would support the proposed language as written without any revisions.

- LMC 19.51 Off-street Parking: Significant rewrite completed to clarify section of code.

- Increased requirements for large MF projects,
- Decreased standard parking size from 9 x 21 to 9 x 19.
- Discussion regarding a parking requirement of 1.5 stalls for a studio unit.

Commission had no concerns.

- 19.51.160 Parking exception will extend as follows: from Judson Street Alley to Grover Street between 2nd Street and 8th Street. *Commission Support.*

- LMC 19.63 Fence Permits: Housekeeping updates. *Commission Support.*

No comment from the public.

Scott motioned to close the public hearing. Motion passed, 7-0.

No further comments from the Commission.

Korthuis motioned to recommend approval to the Lynden City Council of the

proposed LMC Code Amendments and Updates to Titles 17, 18, and 19, including; the Mixed-Use Overlay, Parking Code, and Associated Housekeeping Updates subject to the following conditions:

- **19.22.030 (C) (4) - That the Residential Design Criteria requirement for a 4:12 roof pitch remain with the option to seek a waiver with the Design Review Board.**
- **19.51.040 - That the parking requirements for studio apartments be added to reflect 1.5 parking stalls per unit.**
- **19.23.020 - That body piercing and tattoo studio uses remain as outlined in the current code – permitted only within the CSR zone.**

Seconded by Johnson and the motion passed 7-0.

6. ADJOURNMENT

Motion to adjourn by Scott / Second by Kaemingk. Meeting adjourned at 10:20 pm.

CITY OF LYNDEN



EXECUTIVE SUMMARY

Meeting Date:	December 5, 2022	
Name of Agenda Item:	Set the Public Hearing for Ord 1657 – Amendment to LMC 17, 18, and 19	
Section of Agenda:	Consent	
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:		
Planning Commission Resolution, CPA Staff Report, CPA Application and Materials		
Summary Statement:		
<p>Ord 1657 represents a response to the City’s moratorium on residential construction within CSL zoning categories, otherwise known as mixed-use development, which as enacted on December 20, 2021 with Ord 1642. Over the course of the last year, Planning staff have worked with stakeholders, the Community Development Committee and the Planning Commission to develop mixed-use provisions which consider scale and location of mixed-use developments to better serve the good of the community and the original intent of the mixed-use code. This initiative also captures updates to the city’s parking code as well as various housekeeping updates throughout Chapters 16, 17, and 18.</p> <p>On September 22, 2022, the Planning Commission held a public hearing to consider these amendments. The Commission recommended approval of the amendment with three suggested revisions:</p> <ol style="list-style-type: none"> 1. That the Residential Design Criteria requirement for a minimum 4:12 pitched roof remain with the option to seek a waiver with the Design Review Board rather than be deleted as residential standard as proposed. LMC 19.22.030(C)(4). 2. That a parking requirement for studio apartments be added at a rate of 1.5 parking stalls per unit rather than 2 stalls as currently proposed. LMC 19.51.040. 3. That body piercing and tattoo studio uses remain as outlined in the current code – permitted only within the CSR zone. LMC 19.23.020. 		
Recommended Action:		
Motion to set the public hearing for December 19, 2022 to consider Ord 1657 an amendment to Chapters 17, 18, and 19.		

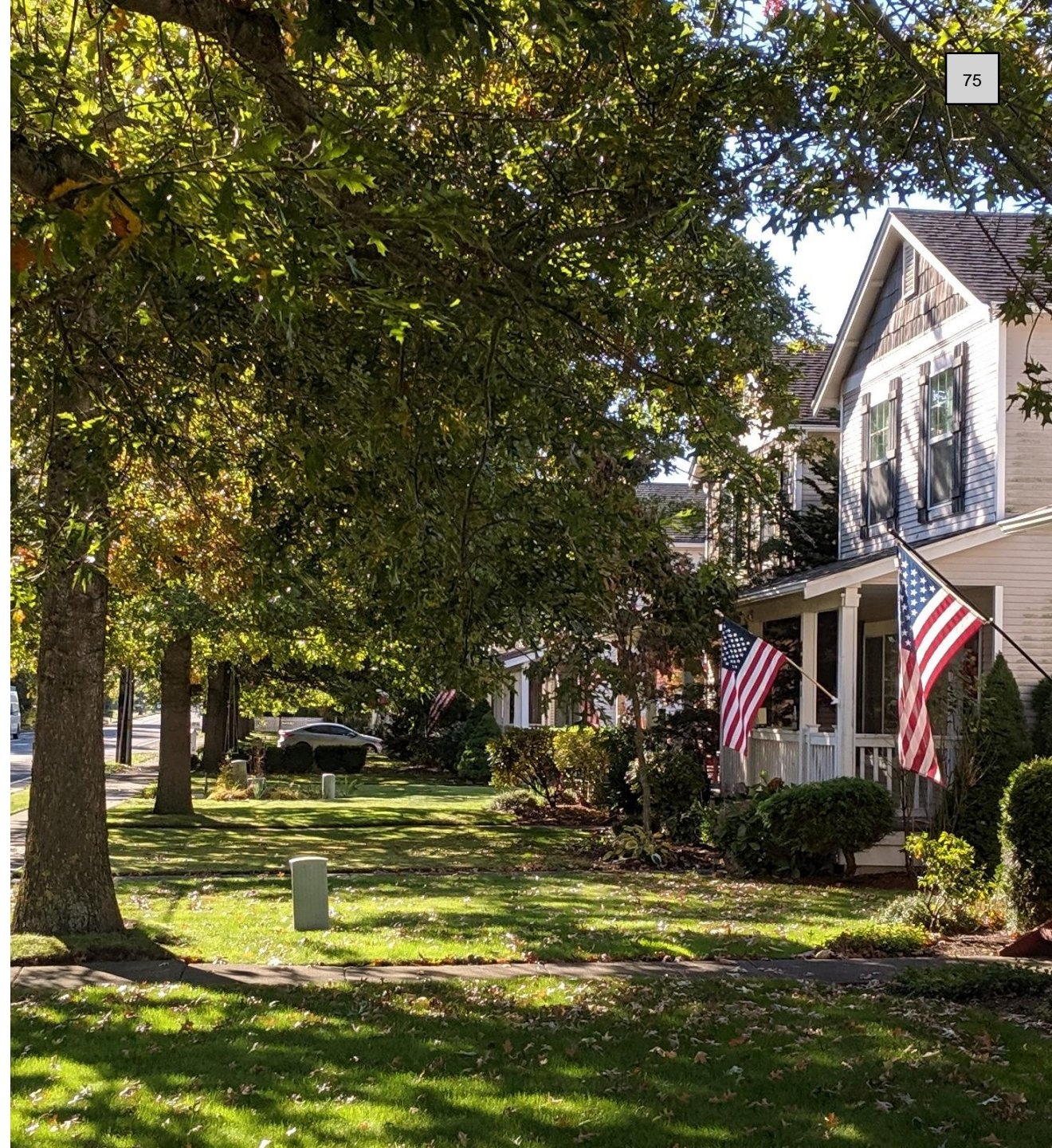
City of Lynden Residential Growth and the Evaluation of Housing Goals

Comprehensive Plan Sec. 3.7

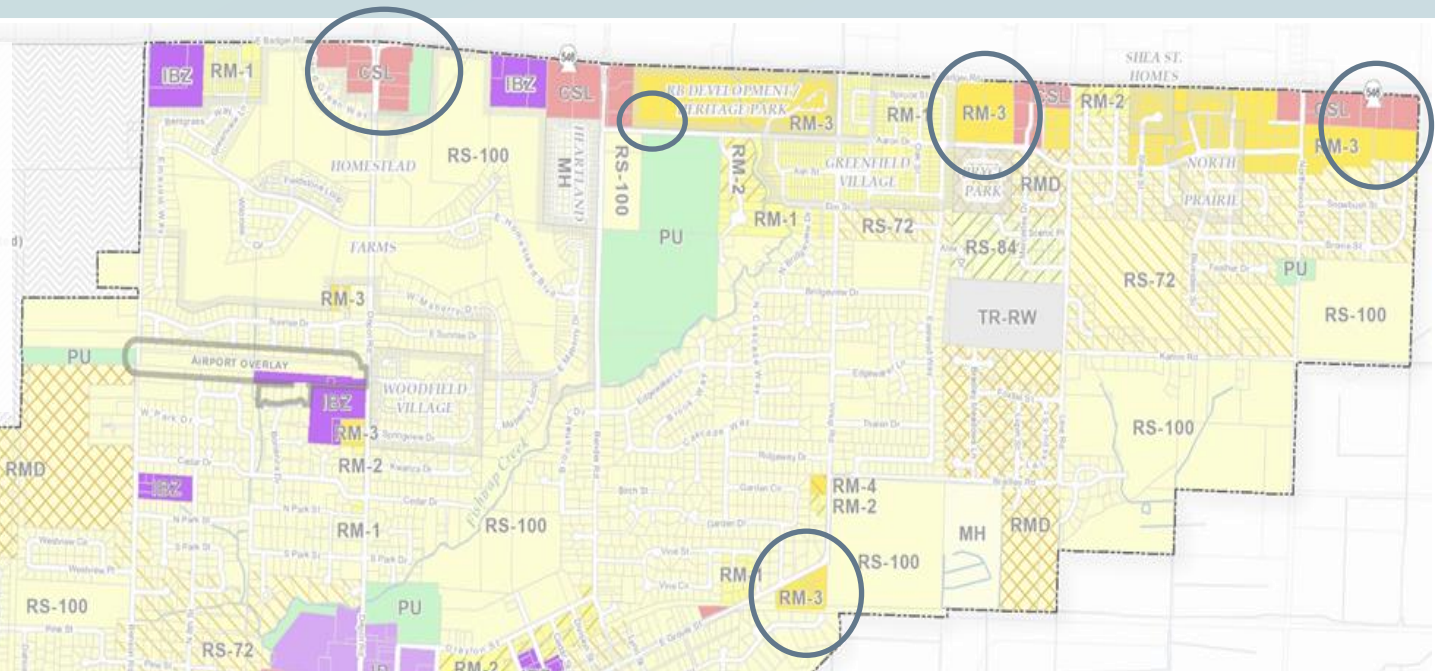
- Housing Goal H-2 **Policy:**

*“Zoning should be applied to ensure that future residential development over the planning period is composed of approximately **60% single-family** units and **40% multi-family** units”*

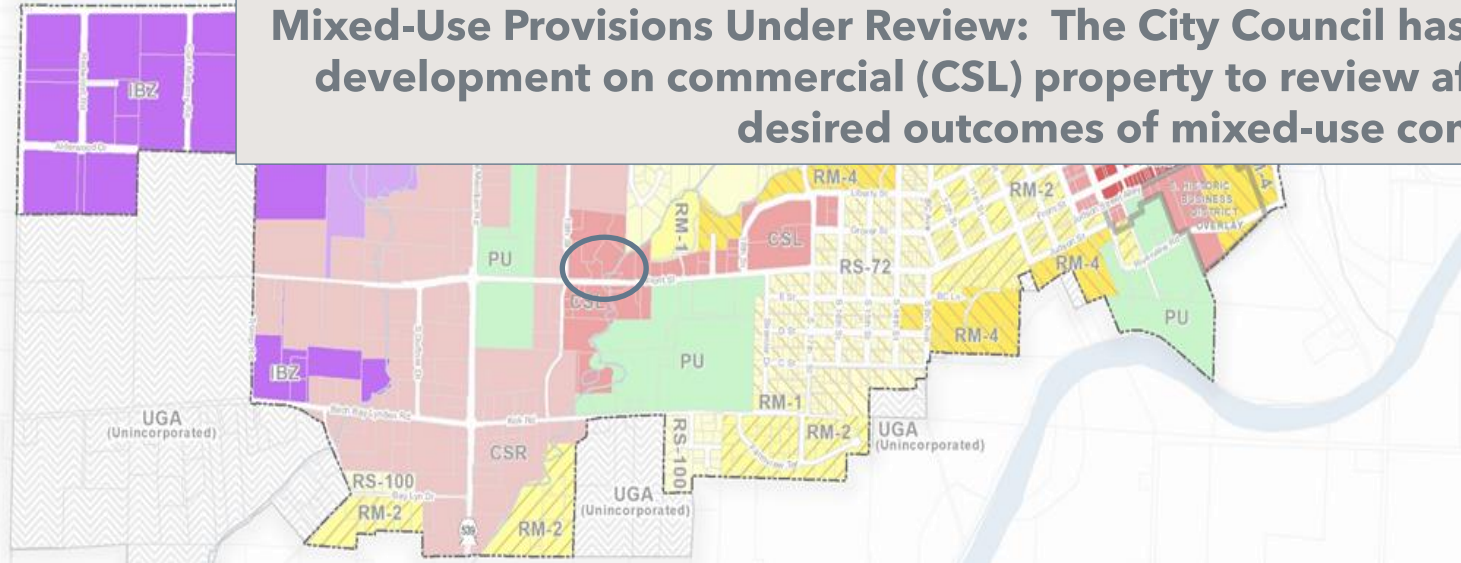
More on this later . . .



Build-out of Existing Zoning Categories



Mixed-Use Provisions Under Review: The City Council has put a moratorium on residential development on commercial (CSL) property to review affects to housing goals and the desired outcomes of mixed-use construction.



Specific Designations

Residential	Public Use
RS-100, Residential Single Family (Min. Property: 10,000 sqft.)	PU, Public Use
RS-84, Residential Single Family (Min. Property: 8,400 sqft.)	Commercial
RS-72, Residential Single Family (Min. Property: 7,200 sqft.)	CSR, Regional Commercial Services
RMD, Residential Mixed Density	CSL, Local Commercial Services
RM-1, Residential Multi-Family 1 - Up to 2 Units/Building	HBD, Historic Business District
RM-2, Residential Multi-Family 2 - Up to 4 Units/Building	Industrial
RM-3, Residential Multi-Family 3 - Up to 12 Units/Building	ID, Industrial District
RM-4, Residential Multi-Family 4 - Up to 50 Units/Building	IBZ, Industrial Business Zone
MH, Manufactured Housing	Additional Designations
	TR-RW, Travel Trailer & RV
	Overlay

Mixed-Use Function & Feasibility

Market Changes: A shift in working and shopping habits to virtual experience has created a **reduced demand for commercial spaces**.

Increasing housing costs mean that **smaller living spaces**, and rentals are in demand.

We can also speculate **families may delay home purchasing due to costs and remain in multi-family developments for longer periods of time**. Resulting in a wide demographic living in multi-family / rental developments.



Conclusions on Function & Feasibility

Demand for restaurant and retail space is relatively low.

Demand for multi-family housing units is high.

Housing units should be suited to a wide demographic including kids and seniors.

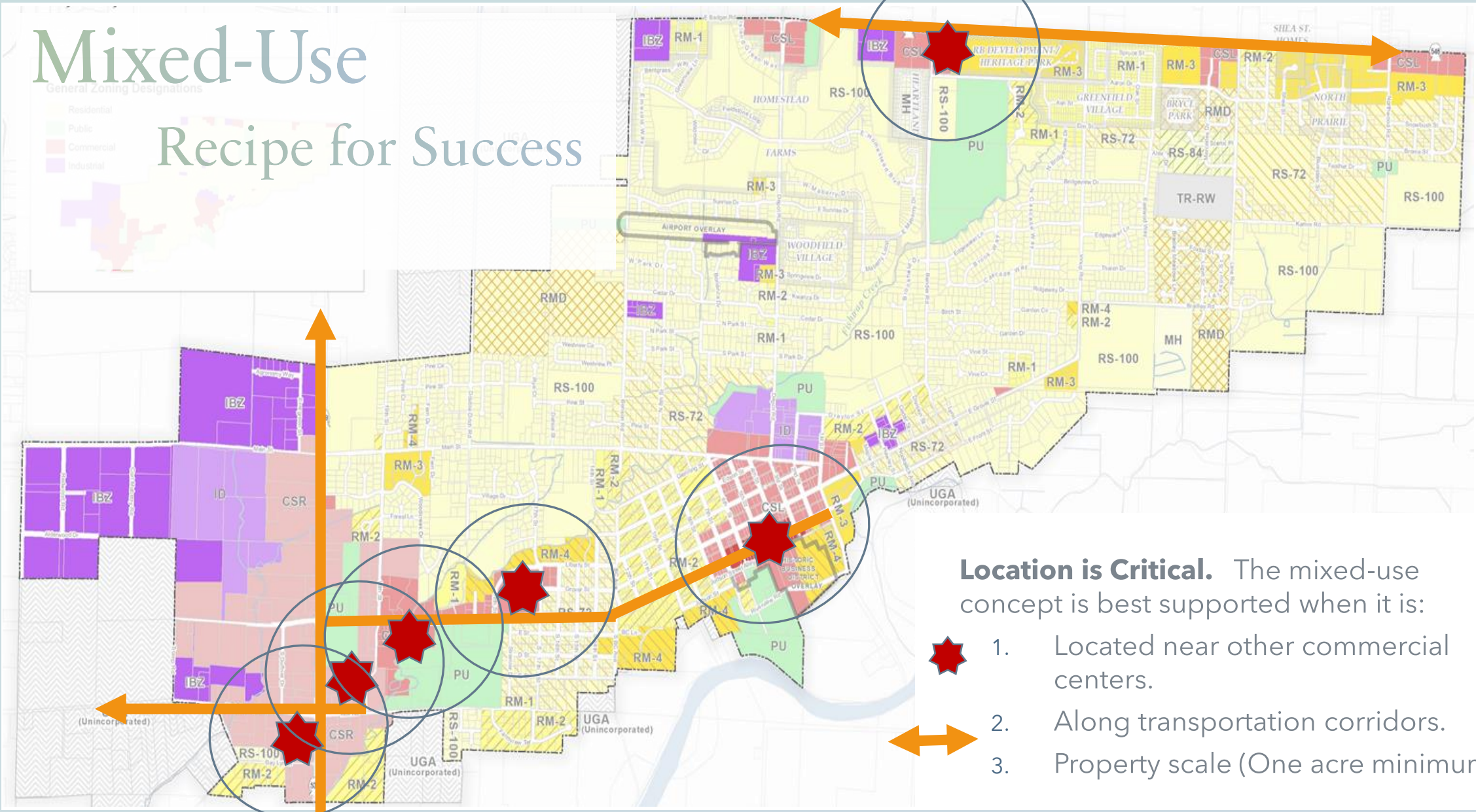
What elements equal successful
mixed-use development?

Mixed-Use

General Zoning Designations

Recipe for Success

- Residential
- Public
- Commercial
- Industrial



Location is Critical. The mixed-use concept is best supported when it is:

- ★ 1. Located near other commercial centers.
- ★ 2. Along transportation corridors.
- ★ 3. Property scale (One acre minimum)



Pedestrian amenities in dedicated spaces.

Pedestrian amenities within the details.



Mixed-Use Pedestrian Amenities

Mixed-Use Zoning Overlay

Assigned to commercial properties that are:

- (1.) Located along transportation corridors and
- (2.) Within walking distance (1/4 mile) of existing commercial centers.
- (3.) Property of appropriate scale to accommodate housing and amenities (1 acre).

Establish design standards and amenities which aim to create a true mixed-use product.



Overlay Proposal Goals

Mixed-use projects to provide:

1. Quality of Life. Amenities that improve the quality of life for residents living in a mixed-use neighborhood.

Recreational opportunities, outdoor play spaces, patios and plazas, pedestrian connections to trails, parks and nearby retail.

Overlay Proposal Goals

Mixed-use developments to provide:

2. Retail Opportunity:

Temporary or permanent commercial activity that is geared toward the residents that live nearby. These are limited to **neighborhood uses** rather than regionally scaled businesses.



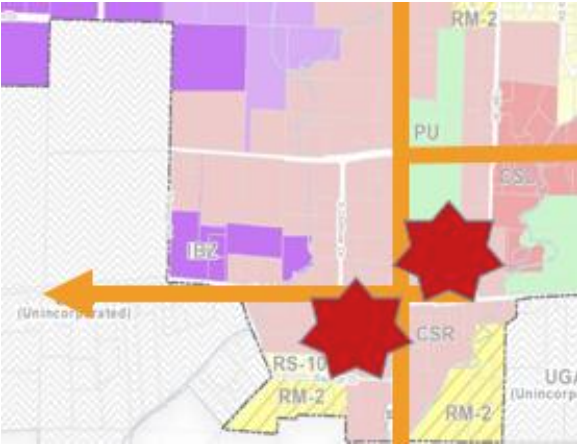
Neighborhood Uses: *A category of uses which provide goods and services to local residents. This would include barbershops, salons, daycares, pet services, retail sale of household goods and food, restaurants and cafes, and professional offices and financial institutions. Uses or sale of good geared toward a regional consumer base would not be permitted such as storage, building supplies, auto sales or fueling stations.*

Overlay Proposal

Mixed-use developments to provide:

3. Community Improvements:

- *Permit* in only selective locations.
- *Limit* commercial activity to Neighborhood Uses that are appropriate to mixed-use projects.
- *Create* an attractive streetscapes, spaces that are open to the public.
- *Integrate* mixed-use development with existing single-family neighborhoods to facilitate connections. Require family-friendly connections to the City's trails, and parks



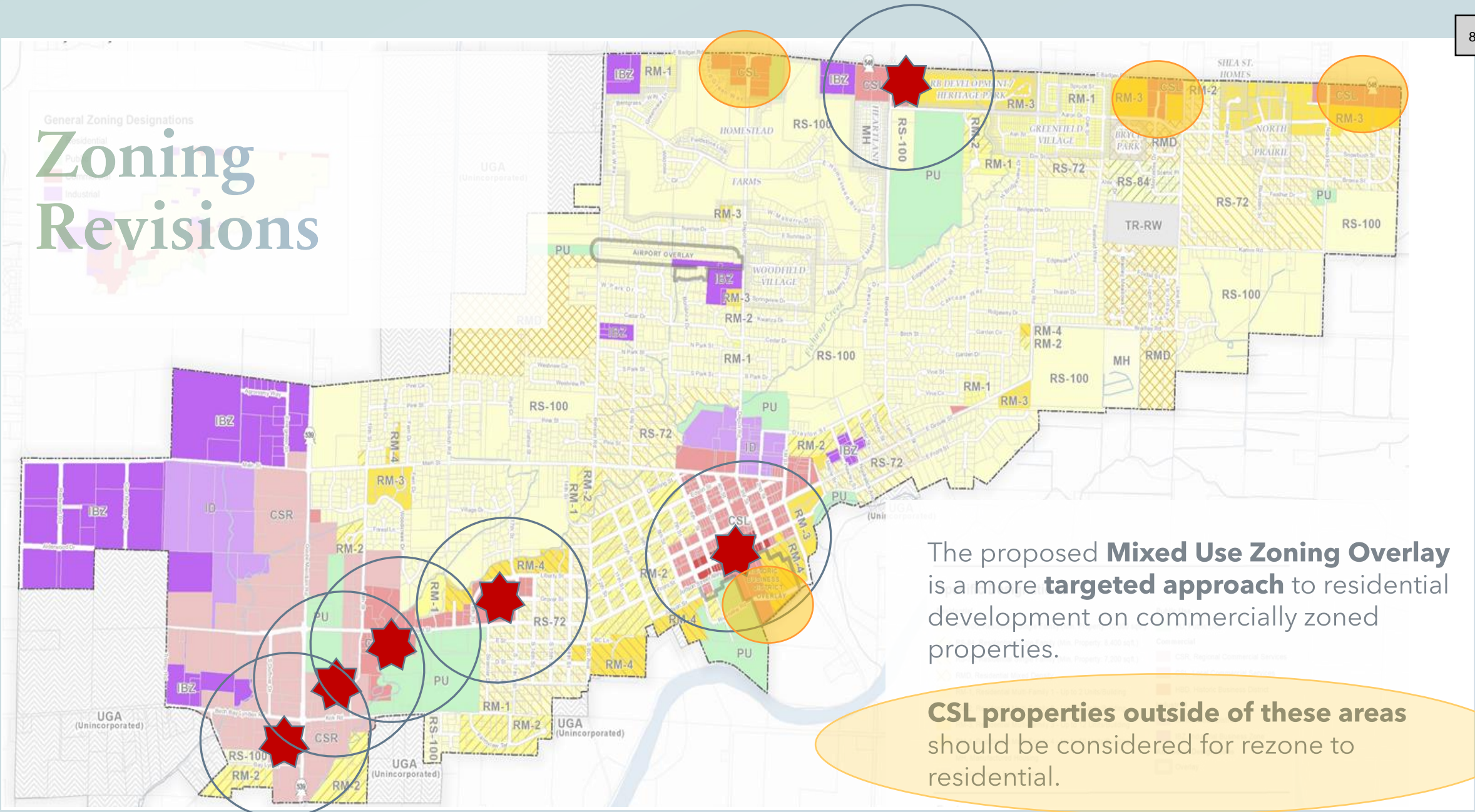


Mixed-Use Parking

Concerns related to parking of senior (age-restricted) and multi-family developments can be addressed with the following actions:

- Remove the parking reduction requirement for multi-family developments with greater than 25 units
- Multi-family units with more than 2 bedrooms will require 1 space / bedroom
- Remove the “senior” parking incentive - update will be 2 per unit regardless of age restrictions
- Remove parking reduction options for Low Impact Development (LID)
- Required handicap parking spots no longer count toward the total development requirement
- Rework the shared parking standards for clarification.
- Consider availability of on-street parking to require more, or less parking.
- Reduce standard parking stall size to 9 x 19, potentially remove compact stall standard.
- Clarify downtown exceptions - include the area between Judson Alley and Grover St.

General Zoning Designations Zoning Revisions



The proposed **Mixed Use Zoning Overlay** is a more **targeted approach** to residential development on commercially zoned properties.

CSL properties outside of these areas should be considered for rezone to residential.



Evaluate Housing Goals

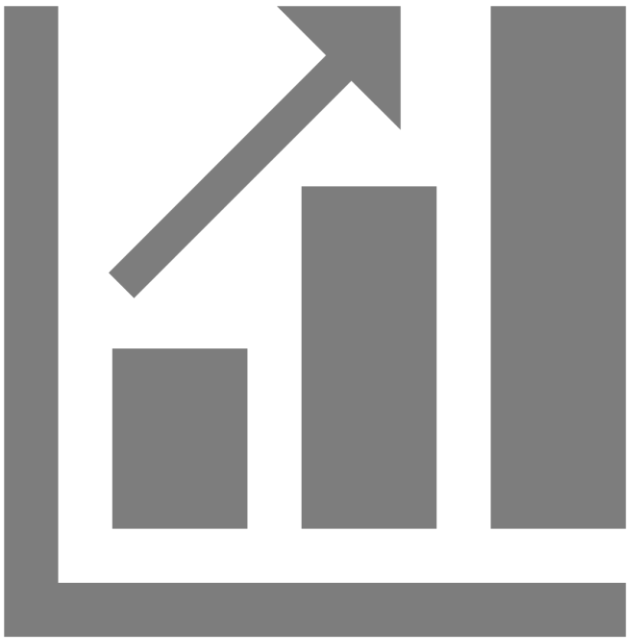
Comprehensive Plan Sec. 3.7

- Housing **Goal H-2:**

“Provide a mix of single-family and multi-family homes that achieves the density necessary to **accommodate population growth** over the 20-year planning period”

Evaluate

- What quantity of housing is needed to accommodate population growth?
 - Review growth rates shown in the 2020 Census numbers

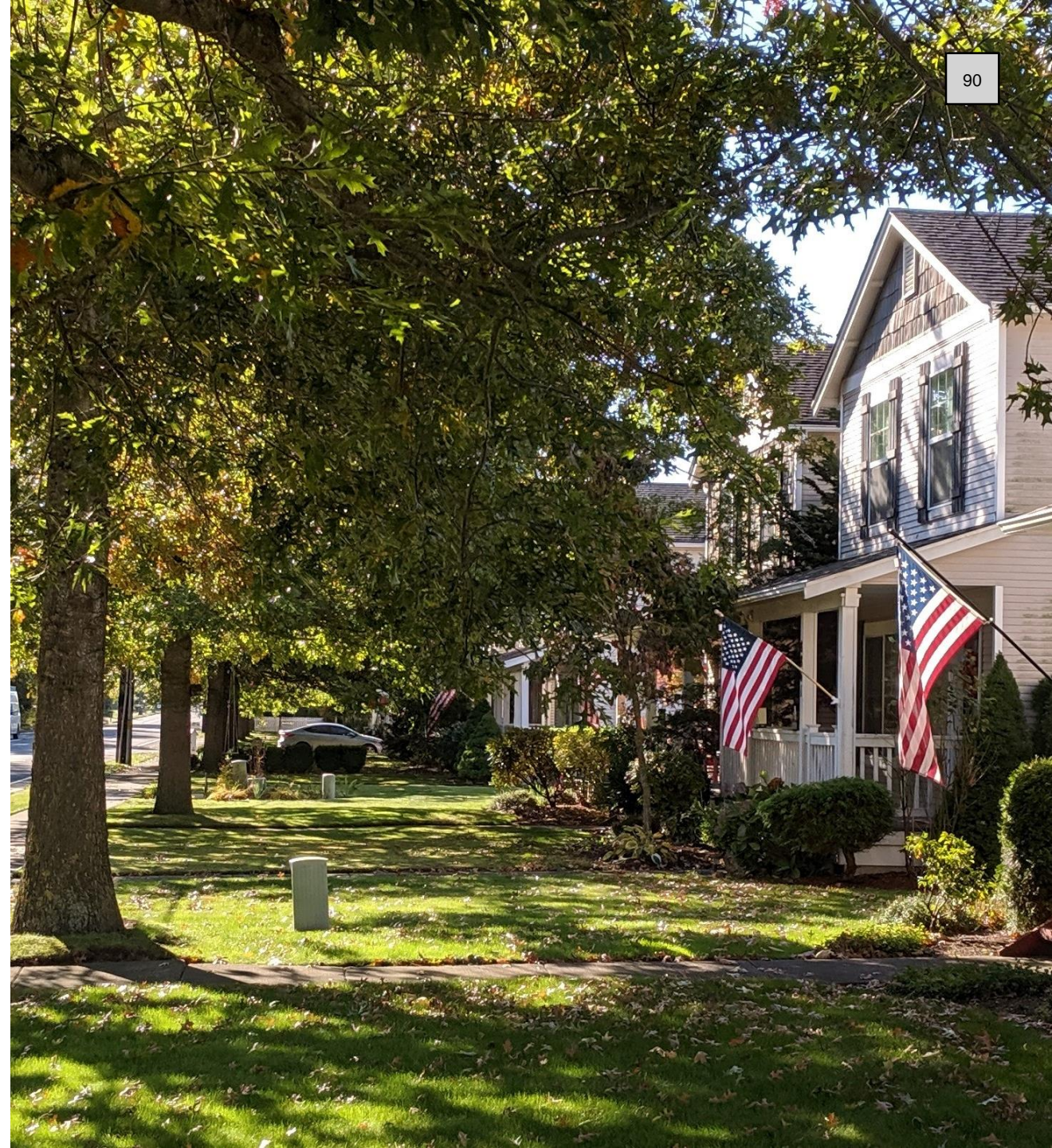


Evaluate Housing Goals

Comprehensive Plan Sec. 3.7

- Housing Goal H-2 **Policy:**

*“Zoning should be applied to ensure that future residential development over the planning period is composed of approximately **60% single-family** units and **40% multi-family** units”*

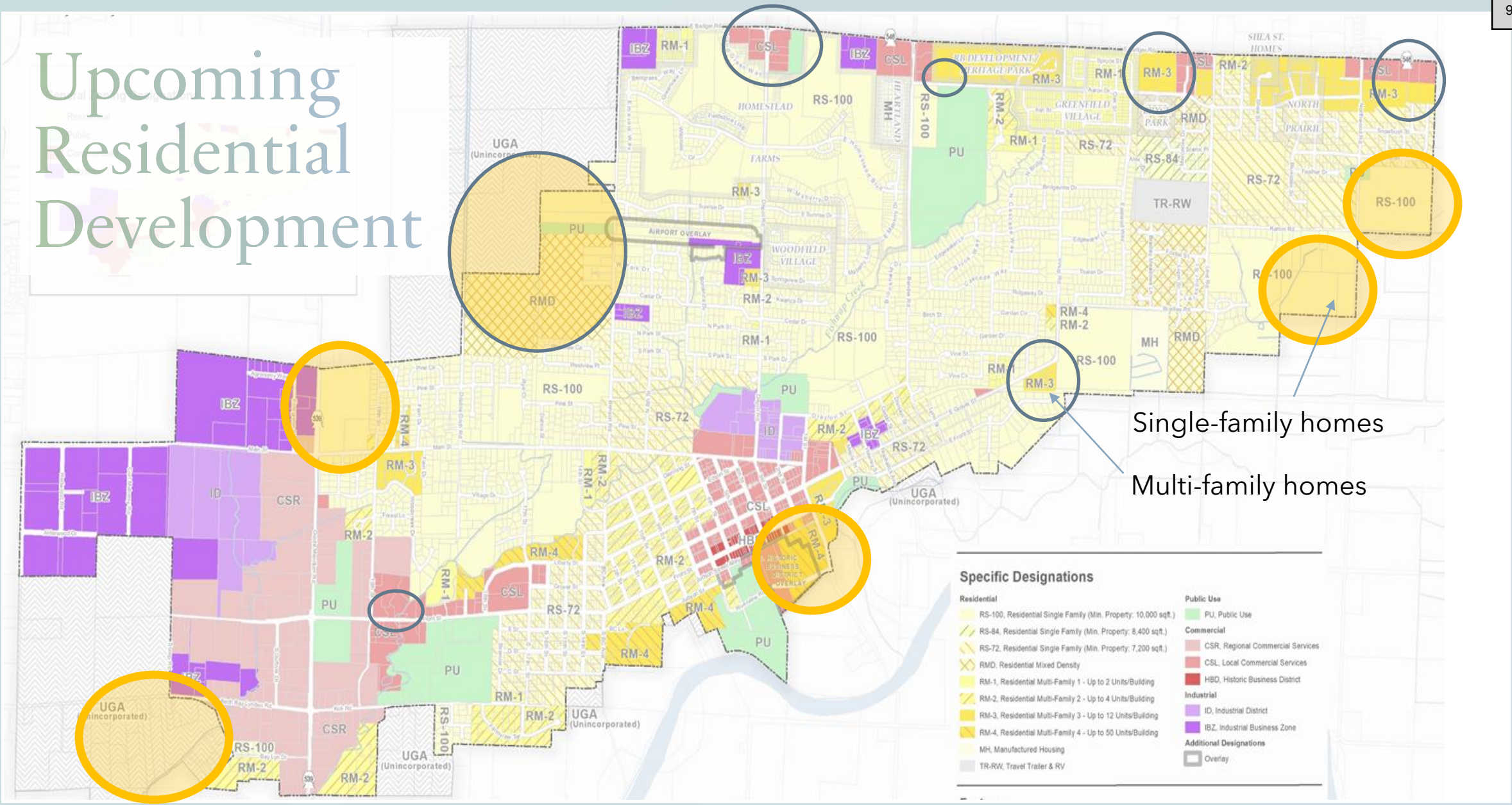


Evaluate

What ratio of single-family to multi-family housing is currently being constructed? It varies widely from year to year.

- In **2011**: 88% Single Family to 12% Multi-family units
 - 85 Single-family units constructed
 - 12 Multi-family units constructed
- In **2021**: 32% Single Family to 68% Multi-family units
 - 44 Single-family units constructed
 - 93 Multi-family units constructed (duplex, townhome, apartments)
- Review housing type break-down in the 2020 Census numbers and relevant work with the Buildable Lands Project

Upcoming Residential Development



Single-family homes

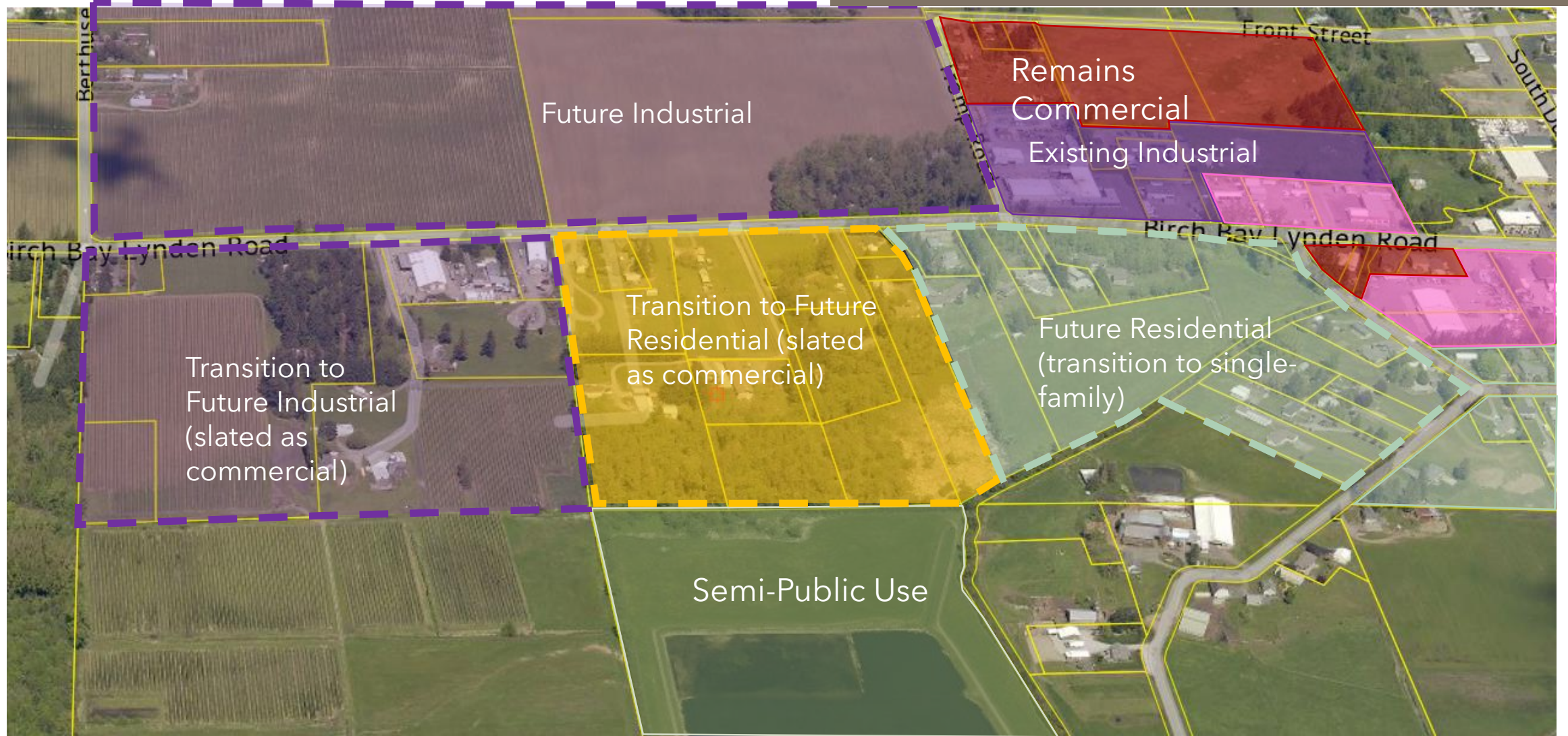
Multi-family homes

Specific Designations

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RM-4, Residential Multi-Family 4 - Up to 50 Units/Building	IBZ, Industrial Business Zone
MH, Manufactured Housing	Additional Designations
	TR-RW, Travel Trailer & RV
	Overlay

Potential Annexation

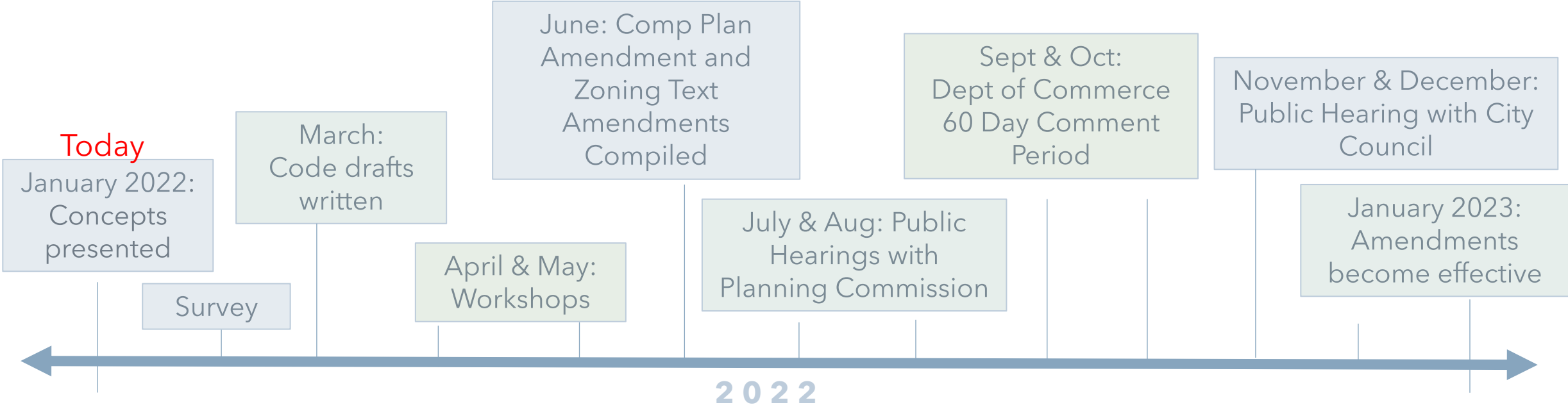
Birch Bay Lynden Road - Area to be Annexed



Next Steps and Timeline

Mixed Use Zoning Overlay

1. Shape the overlay purpose and requirements.
2. Amend City documents as needed to assign overlay and development standards:
 - Comprehensive Plan
 - Municipal Code
3. Identify appropriate locations for an overlay and locations appropriate for residential rather than commercial zoning.



ORIGINAL

CITY OF LYNDEN
PLANNING COMMISSION RESOLUTION #22-06

**A resolution of recommendation for approval of LMC Code Amendments:
Mixed Use Overlay, Parking Code, and Associated Housekeeping Updates – LMC
17, 18, and 19**

WHEREAS, on December 20, 2021, in recognition of the need to address the City's mixed-use code provisions to better serve the good of the community and the original intent of the code, the City Council passed Ordinance 1642 which established a moratorium on residential development within the City's Commercial Services-Local (CSL) zone and temporarily halted the development of mixed-use projects; and

WHEREAS, for the purposes of this resolution, mixed-use is considered a blend of residential and commercial uses in a shared building or on a shared property; and

WHEREAS, since Ordinance 1642 was adopted, staff has advanced an initiative and worked with relevant interest groups, property owners, and policy makers on a new mixed-use proposal; and

WHEREAS, the revision seeks to locate mixed-use developments, which often feature high density housing options, in areas near public transportation and existing commercial development; and

WHEREAS, locating mixed-use developments in these locations serves to support existing business and create more viable opportunities for new commercial uses within the mixed-use developments; and

WHEREAS, the initiative now proposes a new mixed-use overlay, LMC 19.23.110 Mixed Use Overlay, to the existing Chapter 19 of the Lynden Municipal Code and a corresponding Comprehensive Plan Amendment 22-01, and Rezone 22-02; and

WHEREAS, discussion regarding the new overlay resulted in supplementary updates to other sections of the Lynden Municipal Code including the Parking Code in LMC 19.51 and general housekeeping updates throughout LMC 19; and

WHEREAS, the following workshops have been held to review the proposed code amendments: Planning Commission workshop on March 24, 2022, Special Joint Community Development Committee and Planning Commission Workshop on May 18, 2022, and a Planning Commission workshop on September 8, 2022; and

WHEREAS, the following sections of the Lynden Municipal Code (LMC) have been updated to reflect the proposed changes. Full scope is attached as Exhibit A.

- LMC 18.22 Manufactured Home Park Subdivision Standards: Updates to "Siting Criteria" to allow increased density, and landscaping requirements.
- LMC 19.11 Districts Established: Housekeeping updates and the reduction of RM4 maximum density.

- LMC 19.17 Multifamily Zones: Housekeeping updates and added requirements for open space / residential amenities for developments of 8 or more units.
- LMC 19.19 Manufactured Home Zone: Increased density allowances, prohibit site-built homes within MH park.
- LMC 19.22 Design Standards: Housekeeping updates. Note the proposed deletion of the minimum pitch requirement.
- LMC 19.23 Commercial Zoning: Removed the existing mixed-use allowances (60:40 and North Lynden Subarea), strengthen site design requirements, and added the Mixed-Use Center Overlay (19.23.110), small-scale downtown Mixed Use, and the related zoning language to support that overlay.
- LMC 19.29 Planned Residential Development: Housekeeping updates
- LMC 19.45 Design Review: Housekeeping updates and removed the city-wide Dutch themed architecture to HBD only (or to recognize historic architecture of downtown).
- LMC 19.51 Off-street Parking: Significant rewrite for clarifying items. Increased requirements for large MF projects, standard parking size of 9 x 19.
- LMC 19.63 Fence Permits: Housekeeping updates

WHEREAS, the Lynden Planning Commission held a public hearing on September 22, 2022, to accept public testimony on the proposed LMC Code Amendments, and that meeting was duly recorded;

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 7-0, to the City Council of the proposed LMC Code Amendments and Updates to Titles 17, 18, and 19, including; the Mixed-Use Overlay, Parking Code, and Associated Housekeeping Updates subject to the following conditions:

- 19.22.030 (C) (4) - That the Residential Design Criteria requirement for a 4:12 roof pitch remain with the option to seek a waiver with the Design Review Board.
- 19.51.040 - That the parking requirements for studio apartments be added to reflect 1.5 parking stalls per unit.
- 19.23.020 - That body piercing and tattoo studio uses remain as outlined in the current code – permitted only within the CSR zone.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, at their meeting held the 22nd day of September 2022.



 Tim Faber, Chairperson,
 Lynden Planning Commission



 Heidi Gudde, AICP
 Planning Director

The Following Sections have been included in a proposed Code Amendment Related to the **Mixed-Use Centers**

- LMC 19.11 Districts Established
- LMC 19.17 Multi-Family Building Zones
- LMC 19.23 Commercial Zoning

19.11.020 Zones designated—Essential use, maximum coverage, and density.

There are established the classifications of the essential land uses for all residential, business and industrial zones to be known by the zone symbols shown as follows:

Zone Symbol	Essential Use	Maximum Percent Coverage	Maximum Percent Impervious Coverage	Maximum Development Density
A-1	Agricultural	0.10		1 D.U./20 Acres
RS-100	Single Family Dwellings	0.35	0.60	4 D.U./Acre
RS-84	Single Family Dwellings	0.35	0.60	4.5 D.U./Acre
RS-72	Single Family Dwellings	0.35	0.60	5.0 D.U./Acre
RMD	Residential Mixed Density	0.35	0.80	8.0 D.U./Acre
MH	Mobile and Modular Home	0.40	0.80	8.0 D.U./Acre
TR	Travel/Recreational Vehicle	0.65		
RM-1	Single Family and two Family Dwellings/bldg.	0.35	0.70	8.0 D.U./Acre
RM-2	Up to 4 Dwellings/bldg.	0.40	0.70	12 D.U./Acre
RM-3	Multiple Dwellings	0.40	0.75	16 D.U./Acre
RM-4	Multiple Dwellings	0.45	0.75	24-20 D.U./Acre
RM-PC	Detached Single Family Dwellings	0.35	See Open Space Requirements	12 D.U./Acre
	Attached Single Family Attached	0.50		
	Multi-family Dwellings	0.40		
SO	Senior Housing Overlay in the Pepin Creek Subarea	0.40—0.50	See Open Space Requirements	30 D.U./Acre
HBD	Historic Business District	0.80		

Commented [HG1]: Delete as this overlay was not adopted within the Pepin Creek Sub-Area

CN <u>Overlay</u>	Commercial Neighborhood Overlay in the Pepin Creek Subarea	N/A		
CSL	Local Commercial Services	N/A		
CSR	Regional Commercial Services	N/A		
<u>MU Overlay</u>	<u>Mixed-Use Centers Overlay</u>		<u>See Open Space Requirements</u>	<u>28 D.U. Acre</u>
ID	Industrial District	N/A		
IBZ	Industrial Business Zone	N/A		
PU	Public Use	N/A		

D.U. = Dwelling Unit

(Ord. 1000 § A(part), 1995).

(Ord. No. 1390, § D, 2-22-2011; Ord. No. 1547, § 4, 12-4-2017; Ord. No. 1574, § C, 3-4-2019)

Chapter 19.17 RM MULTIFAMILY BUILDING ZONES¹

19.17.010 Purpose and zones established.

The goal is to allow flexibility in site and design standards while promoting infill projects compatible with existing multi-family developments.

~~Six~~ Five multi-family zones are established:

RM-1, Residential Multi-Family 1 zone; (up to 2 units/building)

RM-2, Residential Multi-Family 2 zone; (up to 4 units/building)

RM-3, Residential Multi-Family 3 zone; (up to 12 units/building)

RM-4, Residential Multi-Family 4 zone; (up to ~~50~~ 30 units/building)

RM-PC, Residential Multi-Family Pepin Creek zone; (up to 4 units/building and sometimes up to 8 units/building)

~~SO, Senior Overlay zone; (up to 30 units/acre)~~

¹Editor's note(s)—Ord. No. 1581, § A, adopted June 3, 2019, repealed Ch. 19.17., §§ 19.17.010—19.17.110, and enacted a new Ch. 19.15 as set out herein. The former Ch. 19.17 pertained to similar subject matter. Please refer to the Code Comparative Table for full derivation.

- A. Use of Low Impact Development Techniques. When an application for multi-family development seeks to add additional residential density to a parcel or parcels as infill development, the pertinent approving body, the planning director, planning commission, or city council, is authorized to approve future land divisions even though they may not meet the lot size requirements of multi-family zones presented in this Title under the following conditions:
1. Site planning incorporates LID components that minimize impervious surfaces and achieves a more restrictive percent maximum coverage than would the larger lot size;
 2. Site planning and design documents are completed by a licensed civil engineer in the State of Washington;
 3. The proposed development integrates with the character of the neighborhood;
 4. The requested waiver must be specified and justified in writing to the technical review committee and the approving body;
 5. Written documentation of the decision on the waiver is recorded by the director in city records.

(Ord. No. 1581, § B, 6-3-2019)

19.17.020 Primary permitted uses.

The primary land uses permitted in the multi-family zones are residential buildings as shown in the table below:

	ZONE				
	RM-1	RM-2	RM-3	RM-4	RM-PC
Single Family Dwelling Unit	P	P	P	P	<u>P</u>
Duplex Units	P	P	P	P	<u>P</u>
Three or Four units per building	N	P	P	P	<u>P</u>
More than four units per building	N	N	P	P	<u>P(1)</u>
New manufactured homes as defined in Section 17.01.030 of the Lynden Municipal Code	P	P	P	P	<u>P</u>
Mobile homes as defined in Section 17.01.030 LMC	N	N	N	N	<u>N</u>

P = Permitted Use; N = Not Allowed

(1) Buildings with more than four units are permitted within the RM-PC zone in certain situations. Refer to LMC 19.18.030-for details.

(Ord. No. 1581, § B, 6-3-2019)

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19.17.030 Accessory permitted uses.

Accessory permitted uses in the Multi - Family Zones are as follows:

- A. Private Garages.
- B. Carports.
- C. Tool shed, satellite dish, outdoor patios and outdoor fireplaces.
- D. Private swimming pools, as provided in the International Building Code adopted pursuant to Chapter 15.02 of the Lynden Municipal Code and subject to LMC 19.37.090.
- E. Accessory dwelling unit (ADU), per LMC 19.20.,
- F. Recreation areas for occupants.
- G. Mixed uses may be allowed in RM 4 if the use is for the benefit of the occupants only. Such uses include food service or dining room, nursing services, and laundry facilities.

(Ord. No. 1581, § B, 6-3-2019)

19.17.040 Secondary permitted uses.

Secondary permitted uses in the multi family zones are as follows:

- A. Hobby shops, relating to the hobbies of the occupants of the home and not operated for production and sales purposes.
- B. Greenhouses operated by the occupants, provided the products will not be offered for retail sale on the premises.
- C. Home occupations. See Chapter 19.57.
- D. Gardening and fruit growing not for commercial sale.
- E. General farming, which does not include the commercial feeding of livestock, if the zoning lot is five acres or more in size and meets the requirements outlined in Section 19.39 of this code.
- F. Family day care centers for up to eight individuals, not including the residents of the dwelling unit.
- G. Parks and playgrounds.
- H. Adult family homes and residential care facilities, up to ~~six~~eight adults, when approved by the Washington State Department of Social and Health Services (DSHS).

(Ord. No. 1581, § B, 6-3-2019)

19.17.050 Conditional property uses.

The following property uses may be permitted in multi-family zones by conditional use permit when recommended by the planning commission and approved by the city council.

- A. Public buildings and utility sub-stations.
- B. Club facilities that are directly related to home development such as community swimming pools, privately owned athletic facilities and other similar improvements directly related to residential areas.
- C. Day care facilities for more than eight people with the maximum number of individuals to be determined as part of the conditional use permit process.
- D. Nursing home and assisted living facilities as defined in RCW 74.39A.009.
- E. Bed and breakfast establishments and short term rentals (See Section 19.49.030).
- F. House of worship, provided that the lot coverage does not exceed thirty-five percent, the front yard is landscaped and all other parking and landscaping requirements are met.
- G. Schools.
- H. Community service facilities operated by a registered non-profit organization providing services to the community such as food banks, outpatient counseling services, and church related or outreach ministries. This use is subject to the following conditions in addition to the conditional use criteria established under Section 19.49.020.
 - 1. The use is limited to the RM-4 zones.
 - 2. This use specifically excludes retail sales and any facilities offering in-patient treatment, inpatient counseling, or inpatient rehabilitation.
 - 3. The maximum lot coverage for the proposed facility shall not exceed thirty percent.
 - 4. All parking and landscaping requirements shall be met.

(Ord. No. 1581, § B, 6-3-2019)

19.17.060 Height, area, setback and bulk requirements.

A. The following table provides regulations for height, area, setback and bulk requirements:

Zone	Min. Lot Size	Lot Coverage	Open Space Required	Height	Minimum Yard Setbacks in Feet
					Side Yard

	(sq. ft.)							
				Feet	<u>Front</u> <u>Building</u> <u>Front or</u> <u>Side</u> <u>Elevation</u> <u>oriented</u> <u>toward</u> <u>Primary</u> <u>Street</u> <u>Frontage</u>	<u>Any</u> <u>Rear</u> <u>Elevation</u>	<u>Building</u> <u>Side</u> <u>Elevations</u> <u>not</u> <u>oriented</u> <u>toward</u> <u>Primary</u> <u>Street</u> <u>Frontage</u>	<u>Total of</u> <u>Building</u> <u>Side</u> <u>Elevations</u> <u>not</u> <u>oriented</u> <u>toward</u> <u>Primary</u> <u>Street</u> <u>Frontage</u>
RM-1	7,200	35%	7.5%	32	20	30	7	22
RM-2	7,200	40%	7.5%	32	20	30	7	22
RM-3	7,200	40%	7.5%	32	20	30	12	27
RM-4	1 Acre	45%	7.5%	32	20	30	15	32

B. The following table provides regulation regarding the maximum density allowable in each zone:

Zone	Square Feet Required for First Unit	Square Feet Required for Additional Units	Maximum Units/Bldg.
RM-1	6,000	2,000	2
RM-2	6,000	2,000	4
RM-3	6,000	2,500	12
RM-4	6,000	1,650 for units 2—24 1,400 for each additional unit	50 30

C. For the purposes of this chapter open space is as defined in Section 19.29.080(3) of the Lynden Municipal Code.

D. Lot coverage may be increased by one percent for each ten percent of the required off-street parking that is located beneath portions of the multiple-family dwelling units which are intended to be occupied by residents or used as hallways or meeting rooms.

(Ord. No. 1581, § B, 6-3-2019)

19.17.070 Required Residential Amenities

- A. Multi-family residential developments that include 8 or more units must provide shared on-site residential amenities.
- B. Shared community areas must include amenities that provide outdoor recreational / leisure spaces such as playgrounds, picnic or patio areas, sports courts, off-leash dog areas, or similar. Private spaces such as rear yard patios and balconies shall not be counted toward this requirement.
- C. These community open spaces will be reviewed and approved through Design Review Board approval process. The Board will review for the following criteria:
 - 1. Size of the area must be 60 square feet per unit;
 - 2. The calculated area does not include private patios or balconies which are oriented toward specific residential units;
 - 3. The area is safe in that it is visible, protected from vehicular traffic, and illuminated as needed for its intended use;
 - 4. The area is easily accessible via pedestrian walkways to all residents living within the development;
 - 5. The area is equipped with amenities such as permanent site furniture, shade structures, pavilions, and / or playground equipment so as to serve its purpose of providing recreational or leisure opportunities;
 - 6. The area is attractively landscaped;
 - 7. Any proposed structures are consistent with the architecture of the primary structure(s).

19.17.100 Design review board

All multi-family developments with attached units will be subject to approval review by the design review board per LMC 19.45.030.

(Ord. No. 1581, § B, 6-3-2019)

Chapter 19.23 COMMERCIAL ZONING

19.23.010 Zones defined.

The following commercial zones are hereby established and defined:

1. Historic business district (HBD): The historic business district is the zone where the city's economic activity originated. This zone is intended to be an active mix of professional offices and residences, personal services and small retail establishments serving the employees and residents of the area. Emphasis on the city's cultural history is anchored by the Pioneer Museum on 3rd Street and the ~~Windmill Hotel~~ Dutch Village Mall on 7th Street. Storefronts and streetscapes shall encourage pedestrian activity.
2. Local commercial services (CSL): The purpose of the CSL zone is to provide a location for local scale retail development (stores less than sixty-five thousand square feet), medical, professional and financial services. Development within this zone should focus on pedestrian connectivity to the surrounding area. ~~and mixed-use Residential development is also permitted strongly encouraged~~ in CSL areas that qualify for the Mixed-Use Centers Overlay and, on a limited scale, in the Central Lynden Sub-Area. This zone, together with the historic business district, provides the primary location for civic and social activities within the community.
3. Regional commercial services (CSR): The purpose of the CSR zone is to support the development of large format retail and regional commercial development. In addition, this zone may support commercial establishments which require a retail contact with the public together with professional offices, storage and warehousing, or light manufacturing. This zone is located where larger parcels and arterial streets are available to support the traffic and land needs for these types of uses. This zone provides the primary location for businesses serving both the local and regional trade area. Residential development is permitted in CSR areas that qualify for the Mixed-Use Centers Overlay.
4. Mixed-Use Centers (MUC) Overlay: The purpose of the MUC Overlay is to identify specific areas of the City within walking distance of existing commercial centers, where a mix of multi-family residential and compatible commercial use is appropriate. The overlay fosters a development pattern with direct, convenient pedestrian, bicycle, and vehicular access between residences and businesses. It promotes a compact growth pattern that is scaled and designed to be compatible with surrounding land uses and strives to provide sensitive transitions between different land uses.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.020 Permitted uses.

The following table shows the uses permitted in each of the zoning areas. Any use that is not listed below is not a permitted use unless it is determined to be comparable to a permitted use by the planning director based on the applicant's statement of use. The applicant shall bear the burden of proof to show how the use is comparable to a listed use.

In the table below, uses are notated as follows: P = Permitted Use; PA = Permitted as an accessory use; N = Not permitted; C = Permitted as a conditional use.

Land Use	HBD	CSL	CSR	<u>MUC Overlay (1)</u>
Adult entertainment uses	N	C(4)	N	<u>N</u>
Agricultural product and/or equipment parts sales	N	C	P	<u>N</u>
Animal auction barn	N	N	N	<u>N</u>
Animal hospitals, veterinary clinics and kennels and veterinary laboratories	N	C	C	<u>N</u>
Auction facilities for other equipment or goods (not animals or livestock)	N	P	P	<u>N</u>
Automotive support services such as auto repair, auto body painting and repair, window repair and replacement	N	C	P	<u>N</u>
Banks and financial institutions <u>with drive-thrus</u>	P	P	P	<u>N</u>
<u>Banks and financial institutions without drive-thrus</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Barber shops, beauty salons</u>	<u>P</u>	<u>P</u>	<u>P</u>	
Bed and breakfast, <u>short term rentals</u>	P	P	N	<u>N</u>
<u>Body piercing and tattoo studios</u>	<u>N</u>	<u>N</u>	<u>P</u>	
Business Parks where at least 20% of the total GFA of the park is related to onsite retail, showroom, or office use.	N	N	P(98)	<u>N</u>
Business schools	P	P	P	<u>P</u>
Car wash	N	P	P	<u>N</u>
<u>Carpet sales</u>	<u>P</u>	<u>P</u>	<u>P</u>	
Clubs and lodges	P	P	N	<u>P</u>

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Commented [HG3]: Moved to Personal Services

Commented [HG4]: Added Flooring to Home furnishing

Commercial recreation - indoor (includes bowling alleys, skating rinks)	P	P	P	<u>P</u>
Commercial sporting events	C(7)	N	C(7)	<u>N</u>
Construction material sales <u>with outdoor yards</u>	N	C	P	<u>N</u>
Contractors and construction services <u>with equipment, fleet, or materials storage, or warehouse or shop space.</u>	N	C	P	<u>N</u>
Convention center, including banquet facilities and/or meeting halls	C	P	P	<u>N</u>
Day care facilities	P	P	PA	<u>P</u>
<u>Day spas</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Eating / drinking establishments without drive-thrus including restaurants, cafes, bars, taverns, tasting rooms and microbreweries</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Eating / drinking establishments with drive-thrus including restaurants, cafes, and coffee shops</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>P(6)</u>
Farm implement and machinery sales and service or large machinery rentals (over 500 lb.)	N	C	P	<u>N</u>
Fitness facilities	P	P	P	<u>P</u>
<u>Food trucks</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Fueling stations (may include convenience store)	N	P(2)	P(2)	<u>N</u>
Government agency offices or government facilities where at least 20% of the GFA is office-use related.	C	P	P	<u>N</u>
Grocery store, <u>food market</u>	P	P	P	<u>P</u>
Home furnishings stores, <u>flooring, lighting, -window showrooms</u>	P	P	P	<u>P</u>
Home improvement and hardware stores <u>with no outdoor yards</u>	P	P	P	<u>N</u>
Hospitals	N	N	N	<u>N</u>

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Hotels, motels — includes indoor restaurants, gift shops and other businesses associated with a hotel or motel	P	P	P	<u>N</u>
House of Worship	N	P	P	<u>N</u>
Laundry and dry cleaning facilities	P	P	P	<u>P</u>
Landscape plants and landscape materials for retail sales	N	P	P	<u>N</u>
Liquefied petroleum storage station for more than 1,000 gallons, subject to International Fire Code standards	N	N	P	<u>N</u>
Liquor sales	P	P	P	<u>P</u>
Manufacture, fabrication, assembly, woodworking and metal working shops, where at least 20% of the GFA is related to on-site retail or office space. All uses subject to the performance standards of Chapter 19.25 of LMC	N	C(109)	P	<u>N</u>
Manufactured home parks	N	N	N	<u>N</u>
Marijuana related businesses including retail sales, production, processing, medical marijuana collective gardens, and medical marijuana cooperative	N	N	N	<u>N</u>
Martial arts or dance schools	<u>P</u>	<u>P</u>	<u>P</u>	
Medical and dental clinics (see Surgical Centers below)	<u>P</u>	<u>P</u>	<u>P</u>	
Medical services overlay	N	N	P	<u>N</u>
Mini-storage facilities	<u>P(6)</u>	<u>P</u>	<u>P</u>	
Motor vehicle and recreational vehicle sales and service	N	C	P	<u>N</u>
Multi-family residences	P(5)	P(5)-(8)	NP(5)	<u>P(5)</u>
Non-retail communications services	P	P	P	<u>N</u>
Non-profit offices that include warehousing	C	C	P	<u>N</u>
<u>Offices – business and professional</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Commented [HG6]: Added to Studios

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<u>Offices – medical, dental, and physical therapy (see also Surgical centers)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
On-site hazardous waste treatment (no treatment allowed in HBD) and storage as an accessory use to any activity generating hazardous waste and lawfully allowed in the zone, provided that such facilities meet the state siting criteria adopted pursuant to the requirements of Chapter 70.105.210 RCW.	<u>NPA</u>	PA	PA	<u>N</u>
<u>Personal services such as barber, salon, day spa, body piercing, tattoo studios</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Pet supply store and grooming (no boarding)	P	P	P	<u>P</u>
Pharmacy <u>with drive-thru</u>	<u>PN</u>	P	P	<u>N</u>
<u>Photography studio</u>	<u>P</u>	<u>P</u>	<u>P</u>	
<u>Postal / shipping services</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P (no drive-thrus)</u>
Printing and duplicating shops	P	P	P	<u>P</u>
<u>Professional and business offices</u>	<u>P</u>	<u>P</u>	<u>P</u>	
Public use facilities	P	P	P	<u>P</u>
Research and development facilities	N	P	P	<u>N</u>
<u>Restaurant — with drive thru</u>	<u>N</u>	<u>P</u>	<u>P</u>	
<u>Restaurants and cafés</u>	<u>P</u>	<u>P</u>	<u>P</u>	
Retail (general retail) not otherwise defined	P	P	P	<u>P</u>
Retail appliance and electronic equipment sales, including parts sales and repair	P	P	P	<u>N</u>
Retail feed and seed stores	N	P	P	<u>N</u>
Retail heating, plumbing and electrical equipment sales, including parts sales and repair	N	P	P	<u>N</u>
<u>Retail shopping center or mall</u>	<u>P</u>	<u>P</u>	<u>P</u>	

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Commented [HG9]: Moved to Offices – professional and business

Commented [HG10]: Moved to Eating / Drinking Establishments

Commented [HG11]: Moved to Eating / Drinking Establishments

Retail stores greater than 65,000 square feet	N	N	P(1)	<u>N</u>
Sign design, fabrication, and installation companies	N	C	P	<u>N</u>
Single-family residences existing prior to 1992	N	P	N	<u>N</u>
Skilled nursing and assisted living facilities	N	P	N	<u>N</u>
<u>Storage facilities – Mini-storage</u>	<u>N</u>	<u>P</u>	<u>P</u>	<u>P(10)</u>
<u>Storage facilities – Large scale</u>	<u>N</u>	<u>N</u>	<u>P</u>	<u>N</u>
<u>Studios for art, photography, dance, martial arts, or fitness classes.</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Surgical centers	N	C	P	<u>N</u>
Theaters and movie theaters	P	P	P	<u>P</u>
Truck and trailer sales and service	N	C	P	<u>N</u>
Undertaking establishments	N	P	NP	<u>N</u>
Utility facilities	C	C	P	<u>N</u>
Video arcades	P(3)	P(3)	P(3)	<u>P(3)</u>
Warehousing, including open to the public	NP(6)	N	C	<u>N</u>
Wholesaling, including open to the public	N	N	C	<u>N</u>
<u>Temporary Uses: All temporary uses which occupy more than 200 sf must secure a Special Event Permit</u>	<u>HBD</u>	<u>CSL</u>	<u>CSR</u>	<u>MUC Overlay</u>
<u>Farmers markets or seasonal sales (produce or flower stands, landscape plants, pumpkins, Christmas trees)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Outdoor art and craft shows</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Outdoor sale of new or second-hand items (flea markets, antiques, swap meets, yard or garage sales)</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

- (1) See Sections 19.23.080 and 19.23.090 for special conditions for large retail uses and all uses within the Mixed-Use Centers Overlay.
- (2) See Section 19.23.100, Special Conditions for Automobile Service Stations.
- (3) Any arcade with ten or more machines shall have an adult supervisor on the premises during all hours of operation and shall not be located within three hundred feet of a school, church or residence.
- (4) These uses may not be located within three hundred from Front Street, or two hundred feet from a residentially zoned area, or within two hundred feet from the fairgrounds, or five hundred feet from a church or school.
- (5) This use is permitted only as described in LMC 19.23.110, part of a mixed use development, where at least sixty percent of the ground floor area is a permitted commercial use. This is calculated based on the ground floor area of all the buildings on the site where there are multiple buildings proposed.
- (6) ~~The use is permitted under the following conditions. These conditions may be varied through the receipt of a conditional use permit.~~
 - ~~a. The use must take place in an existing building. The building may be modified for warehousing or mini-storage purposes, but construction of a new facility will require a conditional use permit. New construction must meet all Dutch/European design requirements for the CSL zone.~~
 - ~~b. Primary access to these facilities may not be from Front Street or Grover Street, nor may a new facility front on either of these streets, and existing pedestrian access to Front Street, Grover Street, Riverview Road or 7th Street may not be closed.~~
 - ~~c. Off-street loading and truck parking facilities must be available at the site and may not abut Front Street or Grover Street without a landscape buffer as required in Section 19.61.090.A. All off-street parking requirements must be met on site.~~
 - ~~d. The site must meet the requirements of the engineering design and development standards and the Uniform Building Code and Uniform Fire Code.~~

Eating and drinking establishments on properties utilizing the provision of Mixed-Use Overlay Centers must restrict drive-thrus to one lane per establishment and orient drive-thrus in such a way as to not interfere with pedestrian connectivity within the site. Drive-thru areas must be heavily landscaped. Drive-thrus may split into two lanes as long as the entrance and exit of the drive-thru narrow to a single lane.
- (7) Commercial sporting events are permitted in the CSR zone and conditionally permitted in the HBD zone and Mixed-Use Centers Overlay under the following conditions:
 - a. The promoter/proprietor of the event must provide proof of insurance in an amount and form approved by the finance director.

- b. Off-street parking is provided and monitored to ensure emergency access at all times;
- c. Police and fire departments are notified at least thirty days in advance of the event to ensure adequate personnel coverage. Costs of scheduling additional personnel may be billed to the applicant.
- d. No alcohol may be sold, distributed or consumed on site.
- e. Mixed martial arts, boxing, wrestling or other "fight-type" events must meet the requirements of RCW 67.08.

(8) ~~Multi-family development is permitted within the CSL zone under the following conditions:~~

- ~~a. This use is permitted only within the North Lynden Sub-Area;~~
- ~~b. No residential development will be permitted at the intersections of arterial streets and/or state highways in the area determined by measuring two hundred feet along both front and side property lines and diagonally connecting the ends of the two lines.~~
- ~~c. Minimum density: Eight units per acre.~~
- ~~d. Maximum density: Twenty four units per acre.~~
- ~~e. Off-street parking: As required by Chapter 19.51 LMC.~~
- ~~f. Height: As per Section 19.23.050.~~
- ~~g. Setbacks: As per Section 19.17.060.A.~~
- ~~h. Minimum lot size: Based on number of units and calculated under Section 19.17.060.B.~~
- ~~i. Lot coverage and open space: As per Section 19.17.060.A.~~

(9) Business parks are required to formalize a development agreement with the city council after receiving a recommendation from the planning commission which:

- a. Specifies a list of permitted, conditional, and prohibited uses with the business park.
- b. Outlines a parking and loading standards which anticipates the uses permitted.
- c. Creates standards for and screening of outdoor storage and refuse areas.
- d. Addresses unique signage requirements.
- e. Indicates how the building siting and architecture addresses the street frontages at a pedestrian scale.

(109) Manufacture, fabrication, assembly, woodworking and metal working shops locating within a CSL zoning category must acquire a conditional use permit if the subject property is located within three hundred feet of a residentially zoned property.

(10) Storage facilities within a development utilizing Mixed-Use provisions may provide storage as an amenity to the on-site residents or as a commercial entity for off-site customers but it cannot be counted toward the minimum commercial space requirement as it does not support the goals of the Mixed-Use Overlay. Additionally, flex space must not be used as or converted to storage facilities of any type. If storage facilities are included within a Mixed-Use Overlay development it shall not occupy the primary street frontage of the development.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1477, § A, 2-17-2015; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.030 Accessory permitted uses.

Accessory uses permitted ~~in the HBD and CS zones~~ shall include such functions as repair and service relating to the essential uses, and are as follows:

- A. Operation of motors and other equipment relating to the function of the essential use;
- B. Food preparation and other material or service preparation relating to the primary use, but not conducted;
- C. Business and advertising signs, providing such signs conform to the sign regulations of this chapter.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.040 Secondary permitted uses.

The permitted secondary uses ~~in the HBD and CS zones~~, when permitted outright or after receiving a conditional use permit, are as follows:

- A. The servicing of new passenger cars, trucks, recreation vehicles and farm implementing machinery as a condition to the operation of a sales function only;
- B. The storage of delivery trucks relating to the use of the retail and commercial property;
- C. The storage of materials or commodities to be used and/or sold in the conduct of the retail business functions.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.050 Commercial Development Standards ~~Setbacks, access and queuing requirements.~~

- A. **Setbacks.** Setbacks are established to ensure adequate circulation and access for emergency services. All setbacks are measured from the property line to the foundation. The setback requirements ~~for the HBD and CS zones~~ shall be as follows:

	HBD	CSL	CSR	<u>MUC</u>
Rear setback	20 ft. (1)	10 ft.	25 ft.	<u>Per LMC 19.23.110</u>
Front setback (2)	0 ft.	10 ft.	20 ft.	
Side setback (3)	0/10 ft.	0/10 ft.	0/10 ft.	
Maximum building height	48 ft.	48 ft.	48 ft.	

- (1) May be located closer if parking is available underground with access to Judson Alley.
- (2) When adjacent to Badger Road, front setback shall be one hundred feet from Highway Center line. When adjacent to the Guide Meridian Highway the front setback shall be one hundred feet from the center of the highway on the east side and one hundred and ten feet from the center of the highway on the west side. Once the required right-of-way for planned improvements has been acquired through dedication or WSDOT indicates it is not to be needed, setbacks shall be consistent with the setback requirements listed above.
- (3) Where construction types and the International Building Code allow, the side yard setback in any commercial zone may be zero; provided, however, that the setback between a building and a right-of-way will not be less than ten feet.

- B. **Highway Frontage:** All development located on state highways must comply with the access requirements of the Washington State Department of Transportation in addition to the City of Lynden Manual for Engineering Design and Development Standards.
- C. **Drive-Thrus:** All businesses with a drive-thru window must have a minimum queue length of sixty feet. This is a cumulative total but does not include the vehicle at the drive-thru window. Businesses generating more than twenty-five p.m. peak hour trips must include queuing in the required traffic analysis checklist.
- D. ~~All setbacks are measured from the property line to the foundation.~~**Accessory Structures:** Structures are considered accessory when they are incidental or clearly subordinate to the primary use. Structures may be considered accessory when they do not house the primary functions of the use of the property or are scaled so that the area of the structure equals only 20% or less of the gross floor area of the primary structure. Commercial properties are permitted accessory structures according to these standards:
- 1. Building permits are required for all structures greater than 120 square feet;

- 2. Building permits are required for all structures intended to remain on the property for more than 72 hours;
- 3. Design Review Board approval is required for commercial accessory structures which have a floor area greater than twenty percent (20%) of the primary commercial structure and are visible from street rights-of-way;
- 4. Front and rear setbacks may be reduced by half for accessory structures with a gross floor area of 120 square feet or less.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018; Ord. No. 1574, § C, 3-4-2019)

19.23.060 Design review approval required.

Design review is a tool to direct development in the City of Lynden to be of high quality, well designed and to produce projects that reflect the values and character of the Lynden community. Development plans reviewed administratively or by the Design Review Board must maintain compliance with design guidelines adopted by the Lynden City Council. These guidelines address site design, building design and features, streetscapes, trash and mechanical areas, and signage.

- A. New commercial structures which are visible from street right-of-way are subject to review and approval by the Design Review Board according to the City of Lynden Design Review Guidelines except that some accessory structures are exempt from Design Review Board approval per LMC 19.23.050(D).
- B. Commercial exterior remodels will be evaluated by the Planning Director to determine if review and approval of the Design Review Board is required. Board review will be prioritized for existing structures and sites which have historically never received approval. All commercial remodels are required to address aspects of site design such as lighting, landscape, street trees and the screening of mechanical equipment and trash disposal areas.

A.C. The Historic Business District (HBD) of the City of Lynden has a number of historic buildings which are more than 50 years old and play a role in the history of the City. Additionally, ~~an distinct~~ aesthetic character based on the Dutch and European background of the founders of the community was also established in this area. To preserve this character and the community's unique identity, all new construction within the HBD shall reflect a historic Dutch and European aesthetic. ~~and Alternately,~~ exterior commercial remodels within all commercial zoning districts the HBD shall may be designed to restore or pay tribute to the structure's historic architecture. ~~be~~ Designs are subject to review and approval by the design review board.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.070 Projections into public right-of-way.

Decorative additions to the fronts of buildings currently existing within the historic business district and CSL zone are allowed to extend into the public right-of-way as described here, a maximum of four inches with the following limitations:

- A. ~~Additions-Projections~~ may be made on the side of the building facing the street only, no overhang may occur in the alleys.
- B. Materials used for decorative additions to buildings must be non-combustible, except for limited wood trim which may be approved by the building official, subject to building codes.
- C. Signs, marquees, canopies, or awnings with less than 15 feet clearance above a sidewalk shall not extend into or occupy more than two-thirds the width of the sidewalk measured from the building. may be allowed at a minimum height clearance of eight feet is required. as permitted under the International Building Code.
- D. Projections into public right-of-way that have more than 15 feet of clearance above the sidewalk are subject to the provisions of the International Building code and the approval of the Building Official.

Commented [HG12]: Add section re upper story balconies per the IBC

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.080 Special development conditions for all stores greater than twenty-five thousand square feet GFA.

- A. Reuse of vacant stores: If the facility is vacated, the owner or operator shall submit a plan to the planning department for the continued maintenance of the site which addresses how the owner or operator will avoid any nuisance violations and the removal or proposed reuse of the facility. This plan must be submitted within twelve months of the vacancy; provided however, the time limit may be extended by the city council upon showing of good cause.
- B. Restrictive covenant required: Lease agreements containing provisions which limit, preclude or restrict the marketing, leasing or renting of retail building space greater than twenty-five thousand square feet to future lessees or future lessees operating a certain business, tend to prolong vacancy, are found to be detrimental to the public health, safety and welfare of the city, and shall not be permitted. The owner of any property for which a permit is granted authorizing an individual building or lease space greater than twenty-five thousand square feet for retail store purposes shall execute a restrictive covenant against the property for the benefit of the city. Said restrictive covenant shall:
 - 1. Preclude entry into any agreement which contains a provision preventing, restricting or limiting the marketing, leasing, or renting of the building or property to future lessees, including future lessees which may be competitors of any tenant or owner of the building.

- 2. Require continuous occupancy of the leased premises and operation of a retail business on the leased premises during the term of any lease or rental agreement
- 3. This restrictive covenant is required regardless of the time remaining on any marketing, lease or rental agreement and regardless of whether such future marketing, lease or rental agreement is a competing business with that of the owner, operator or landlord or of any past or prospective lessee. This restrictive covenant shall be approved by the city attorney and must be recorded at the time of permit approval.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.090 Special development conditions ~~development utilizing the provisions of the Mixed-Use Center Overlay~~ and for retail stores greater than fifty thousand square feet GFA.

Provisions described within this section do not apply to Small Scale Mixed-use Projects described in LMC 19.23.110(B).

Commented [HG13]: Does not apply to small scale mixed-use

- A. The costs of all studies and investigations reasonably necessary to grant approval of a building permit shall be borne by the applicant. If it becomes necessary for the city to hire outside professionals to review reports or studies, the cost of hiring the consultant(s) shall be borne by the applicant.
- B. All buildings are encouraged to achieve LEED certification. ~~A copy of the LEED checklist should be submitted at the time of permit application to demonstrate how the project will encourage energy efficiency and environmental responsiveness.~~
- C. Parking:
 - 1. Minimum parking area ~~4.5 stalls per one thousand square feet GFA~~ per LMC 19.51.
 - 2. Maximum parking area 6.0 stalls per one thousand square feet GFA.
 - 3. Development proposed under the provisions of the Mixed-Use Centers Overlay may be eligible for shared parking per LMC 19.23.110 or LMC 19.51.
- D. Reuse of vacant stores: If the facility is vacated, the owner or operator shall submit a plan to the ~~P~~lanning ~~D~~epartment for the continued maintenance of the site which addresses how the owner or operator will avoid any nuisance violations and the removal or proposed reuse of the facility. Said plan must be submitted within twelve months of the vacancy; provided however, the time limit may be extended by the ~~C~~ity ~~C~~ouncil upon showing of good cause. The plan shall include the following details:
 - 1. The owner or operator's proposed marketing efforts for obtaining an occupant for its facility.
 - 2. An executed maintenance contract for the site including landscaping, parking lot cleaning and site lighting.
 - 3. The requirements under this Section 19.23.090.D will be subject to enforcement under the provisions of Chapter 17.13 of the Lynden Municipal Code.

- E. Restrictive covenant required: Lease agreements containing provisions which limit, preclude or restrict the marketing, leasing or renting of retail stores greater than fifty thousand square feet to future lessees or future lessees operating a certain business, tend to prolong vacancy, are found to be detrimental to the public health, safety and welfare of the city, and shall not be permitted. The owner of any property for which a permit is granted authorizing an individual building or lease space greater than fifty thousand square feet for retail store purposes shall execute a restrictive covenant against the property for the benefit of the city as a condition of permit issuance. This restrictive covenant shall:
 1. Preclude entry into any agreement which contains a provision preventing, restricting or limiting the marketing, leasing, or renting of the building or property to future lessees, including future lessees which may be competitors of any tenant or owner of the building.
 2. Require continuous occupancy of the leased premises and operation of a retail business on the leased premises during the term of any lease or rental agreement.
 3. In addition to other remedies, be enforceable by the remedy of specific performance and injunctive relief; and provide for award of reasonable costs and attorney's fees to the prevailing party in the event of enforcement of the restrictive covenant.
 4. The restrictive covenant referred to in this section shall be approved by the city attorney and must be recorded with the Whatcom County Auditor at the time of permit approval.
- F. Design guidelines: All large format retail buildings and developments utilizing the provisions of the Mixed-Use Centers Overlay must meet the following site and building design guidelines-standards as part of compliance with the city's design review requirements.

Section I -Aesthetic Character

Intent: Buildings should offer attractive and inviting pedestrian scale features, spaces and amenities that reflect the character of the community.

1. Facades and Exterior Walls

Intent: Facades must be articulated to reduce ~~the massive~~ scale and avoid the potential of uniform, impersonal appearances of large, retail or residential buildings. Facades must ~~and~~ provide visual interest that ~~will be~~ is consistent with the community's identity, character, and scale.

- A. Facades greater than one hundred feet in length, measured horizontally, shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the façade. The cumulative length ~~of~~ the recess or projection must be a minimum of twenty percent of the length of the façade, but should not be more than sixty percent of the façade length.

B. Ground floor facades that face public streets shall have arcades, entry areas, awnings or other such features along no less than sixty percent of their horizontal length. Display windows are encouraged as a design feature at entrances (see Section II.C.3).

C. The use of porticos and other features to reduce the height of the front of the building to a pedestrian scale is ~~encouraged~~required.

2. Detail Features

Intent: Buildings should have architectural features and patterns that provide visual interest, ~~accommodate at~~ the scale of pedestrians at the ground level, ~~provide architectural transitions as a stepped approach to reaching the full height of the building, reduce massive aesthetic effects,~~ and recognize local character. The elements in the following standards should be integral parts of the building's ~~architecture fabric~~, and not superficially applied trim or graphics, or paint. Additional guidelines may be found in the City of Lynden Design Review Guidelines.

A. Building facades must include a repeating pattern that shall include no less than three of the elements listed below. At least one of these elements shall repeat horizontally. All elements shall repeat at intervals of no more than thirty feet, either horizontally or vertically. Elements include: color change, texture change, material module change, and expression of architectural or structural bay through a change in plan no less than twelve inches in width, such as an offset, reveal, or projecting rib.

B. Building materials may not include ~~flat unfinished~~ CMU blocks ~~in a standard concrete grey~~. This does not prohibit the use of ground face, scored, or split face architectural CMU blocks.

C. The use of a combination of architectural elements ~~is required. common to a traditional Dutch or Northern European style is required.~~ These elements may include but are not limited to the following:

- i. Roof line with a steep pitch and gables or a façade replicating that appearance.
- ii. Decorative gable ends, stepped with ornamental detail.
- iii. Narrow and vertical emphasis on fenestration. Windows are often highlighted in a contrasting color and are multi-paned.
- iv. Quoins, corbels and corbelling.
- v. Cornice detail.
- vi. Use of brick masonry materials.
- vii. Use of color to highlight ornamentation.

3. Roofs

Intent: Variations in roof lines should be used to add interest and to reduce the ~~massive~~ scale of the buildings.

- A. Rooflines should be varied with a change in height every one-hundred linear feet in building length. Parapets, mansard roofs, gable roofs, hip roofs or dormers shall be used to conceal flat roofs and roof top equipment from public view.
- B. The average height of parapets or other roof treatments shall not exceed fifteen percent of the height of the supporting wall and such parapets may not exceed one-third of the height of the supporting wall at any time. Parapets shall feature three dimensional cornice treatments. Parapets and facades of varying heights and widths to approximate the appearance of several smaller buildings or storefronts are encouraged.

4. Materials and colors

Intent: Exterior building materials and colors comprise a significant part of the visual impact of a building and should be reflective of the community's character, and surrounding neighborhood.

- A. Predominant exterior building materials shall be high quality materials that are easily maintainable, and graffiti resistant. Material suggestions include without limitation; brick, wood or fiber cement siding, and tinted and textured concrete masonry units. ~~It is strongly recommended that a combination of colors and materials are used to meet the Dutch/Northern European design emphasis.~~
- B. The use of metallic colors, black or fluorescent colors as a building's primary color is prohibited.
- C. Predominant exterior materials shall not include the following items, unless they are manufactured to meet the other design criteria: smooth faced concrete blocks, smooth faced tilt-up concrete panels, and pre-fabricated steel panels.

5. Entryways

Intent: Entryway design elements and variations should give orientation and character to a building as well as enhance the pedestrian scale.

- A. Each building on a site shall have clearly defined, highly visible entrances featuring no less than three of the following design elements:
 - i. Arcades, plazas or porticos.
 - ii. Raised parapets over the door.
 - iii. Arches.
 - iv. Display windows.
 - v. Outdoor patios.
 - vi. Peaked roof forms.
 - vii. Recesses or projections.

B. Where additional stores will be located in the principal building, each store shall have at least one exterior customer entrance that conforms to the above requirements.

C. Entry ways and their adjoining sidewalk, may not exit directly onto a travel lane or parking aisle. Pedestrian traffic ~~must~~ should be directed to pedestrian walkways (refer to II. C. 1.).

6. Back and Side Facades

Intent: All facades of a building which are visible from adjoining properties and/or public streets ~~must~~ should be attractive and include elements from the preceding sections.

A. The side and rear of a building visible from any public street or adjoining property must incorporate at least one design element from Sections A and B above.

Section II - Site Design

1. Entrances

Intent: Multiple building entrances reduce walking distances from cars, facilitate pedestrian and bicycle access and provide convenience. Entrances and parking lots should be configured to be functional and inviting with walkways conveniently tied to logical destinations. It is desirable for large retail buildings to feature multiple entrances.

A. All entrances shall be architecturally prominent and clearly visible from the abutting public street. ~~The city encourages builders to~~ Large format retail stores ~~must~~ locate public entrances on all sides that include public parking located on at least two sides of the building ~~unless the Design Review Board determines it is unsafe or infeasible to do so.~~

2. Parking Lot Orientation

Intent: Parking lots should not overpower the visual impact of any site. They should provide safe, convenient and efficient access for vehicles and pedestrians. Bus stops, ~~and~~ drop-off/pick-up locations, ~~and loading areas must~~ should be considered as integral parts of the ~~site~~ configuration.

A. Large parking lots should be visibly and functionally segmented into several smaller lots with the use of landscaping, and pedestrian walkways.

B. At least one pedestrian walkway shall be provided within the parking lot from each abutting street to the pedestrian walkway abutting the building.

C. Parking lot landscaping shall meet or exceed the requirements of Section 19.61.100 of the Lynden Municipal Code.

D. ~~Retail stores of 50,000 sf or more that provide customers with shopping carts must also provide outdoor c~~ Cart corrals. ~~Corrals should~~ must be located throughout the parking areas in convenient and sufficient numbers and ~~should~~ must be easily accessible.

E. All lighting in the parking lot shall be directed downward to minimize glare on neighboring properties.

F. Inclusion of bicycle parking is ~~strongly encouraged~~ required for every Mixed-Use Center and retail store greater than 50,000 sf.

3. Pedestrian Flows

Intent: Pedestrian accessibility ~~opens auto-oriented developments to the neighborhood~~ provides multi-modal access to nearby neighborhoods, reducing traffic impacts and enabling the development to project a friendlier more inviting image.

A. Pedestrian walkways ~~should~~ must be anchored by special design features such as towers, arcades, porticos, pedestrian light fixtures, bollards, planter walls and other architectural elements that define circulation ways and outdoor spaces.

AB. Continuous internal pedestrian walkways, no less than eight feet in width, shall be provided from the public sidewalk or right-of-way to the customer and residential entrances of all buildings on the site. Pedestrian walkways that traverse the parking lot may be five feet in width. Walkways shall connect pedestrian activity such as, but not limited to transit stops, street crossings, buildings and store entry points, and central features and community spaces. Walkways shall feature adjoining landscaped areas that include trees, shrubs, benches, flower beds, ground covers, or other such materials for no less than fifty percent of their length.

BC. All internal pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks, or scored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways. Pedestrian walkways must also be protected from the driving lanes by curb stops, bollards, or other features that restrict vehicular access, while continuing to provide access for shopping carts.

CD. No parking stall shall be located further than one hundred thirty feet from an internal pedestrian walkway.

DE. Sidewalks.

1. Sidewalks, no less than eight feet in width, shall be provided along the full length of ~~commercial~~ the buildings along any façade featuring a customer entrance and along any façade abutting public parking areas.

2. Sidewalks, no less than seven feet in width, shall be provided along the full length of residential building developed utilizing the provisions of the Mixed-Use Centers overlay.

1-3. ~~All~~ Such sidewalks along building facades shall be located at least six feet from the façade of the building to provide planting beds for foundation landscaping, except where features such as arcades or entryways are part of the façade.

~~EF~~. Internal pedestrian walkways provided in conformance with the section above, shall provide weather protection features such as awnings or arcades within thirty feet of all customer entrances. The extent of the covered area should be proportionate to the height of the building (i.e. the taller the building, the wider the covered pedestrian area).

~~FG~~. In no instance shall outdoor displays of merchandise or shopping cart storage impede the pedestrian movement at the entrance of the store.

4. Outdoor Storage, Trash Collection and Loading Areas

Intent: Loading areas and outdoor storage areas exert visual and noise impact on surrounding neighborhoods. These areas, when visible from adjoining properties and/or public streets, ~~should~~must be screened, recessed, or enclosed. While screens and recesses can effectively mitigate these impacts, the selection of inappropriate, or difficult to maintain screening materials can exacerbate the problem.

- A. Areas for permanent outdoor storage, trash collection or compaction, loading, or other such uses shall be screened from the public ~~and/or~~ private rights-of-way.
- B. No areas for outdoor storage, trash collection or compaction, loading or other such uses that exceed 800 square feet shall be located within twenty feet of any public street or sidewalk or internal pedestrian walkway that is used by the general public.
- C. Loading docks, truck parking, outdoor storage, HVAC equipment, trash dumpsters and compactors, and other service functions shall be incorporated into the overall design of the building and the site so that the visual and acoustic impacts of the functions are fully contained and out of view from adjacent properties and public streets. Public access to these areas should be restricted.
- D. Use of portable, metal storage containers or truck trailers as a permanent storage solution is not permitted. Temporary use, less than three months per calendar year, of these storage methods is permitted.
- E. Non-enclosed areas for the sale of seasonal inventory shall be clearly defined and may not infringe on any required parking or pedestrian walkway. Materials, colors and design of any screening walls and/or fences shall conform to those used as predominant materials and colors on the building.

5. Signage

Intent: Signage should enhance the character of the building and should help the public find their way to where they need to go. Signage should be attractive, well-lit and consistent with the design of the building and surrounding neighborhood.

- A. Building signage should be proportionate to the size of the wall.
- B. Exposed neon tubing is not permitted.

C. Sign design, review, and installation must be consistent with standards of LMC 19.33.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.100 Special conditions for automobile service stations.

The purpose of this section is to promote the health, safety and general welfare in the city by establishing standards for the site design and the operation of ~~gasoline-vehicular~~ service stations. The need for such standards is created by the high volume of traffic and the frequency with which vehicles enter and leave the sites. By establishing these standards, it is intended that the smooth flow of traffic will be facilitated and greater safety will be provided for the residents of Lynden, automobile passengers, and pedestrians.

- A. Code compliance: All ~~gasoline~~-service stations shall be in conformance and compliance with all federal, state and local statutes, laws and ordinances.
- B. Traffic study: A traffic impact analysis will be required for any new fueling station and the expansion of existing fueling stations.
- C. Development standards: Development standards and criteria of the zoning district/subzone shall apply unless otherwise noted in this section.
 - 1. Minimum lot size shall be fourteen thousand four hundred square feet.
 - 2. Ingress and egress must conform to the requirements of the City of Lynden Engineering Design and Development Manual.
 - 3. On-site lighting shall be located, directed, and/or shielded in a manner which reduces light glare or spill onto adjacent properties or rights-of-way.
 - 4. Separate public restrooms shall be provided for male and female and shall be barrier-free in conformance with WAC 51-20.
 - 5. A dumpster enclosure containing a dumpster shall be located strategically on the site in sufficient size and/or number to reduce off-site litter.
 - 6. Trash receptacles shall be located strategically and in sufficient number to reduce off-site litter.
 - 7. All portions of a ~~gasoline~~-service station site not utilized for landscaping or for other open space shall be paved. All perimeters shall be landscaped.
 - 8. No gasoline service station shall be located less than three hundred feet from any park, playground, church, school or public place of assemble. No service station shall be located closer than six hundred feet from the nearest property line of another service station unless the station is an accessory to a planned development or shopping center.
- D. Operational standards:

1. No operation, service, or activity shall be permitted which would constitute a legal nuisance.
2. A formal litter control program, as approved by the city, shall be implemented.
3. Accessory truck, trailer and vehicle rental or sales shall be permitted where allowed by zoning.
4. A policy manual for the management of hazardous material incidents is to be submitted to the city for review and approval prior to occupancy of the facility.

(Ord. No. 1357, § A, 6-1-2009; Ord. No. 1547, § 10, 12-4-2017; Ord. No. 1553, § 2, 3-19-2018)

19.23.110 Mixed-Use and Mixed-Use Centers Overlay

A. Purpose

The primary purposes of mixed-use projects the Mixed-Use Centers Overlay is to:

1. Provide for a compatible mix of multifamily housing, neighborhood commercial businesses, and semi-public open spaces
2. Foster a development pattern offering direct, convenient pedestrian, bicycle, and vehicular access between residences and businesses;
3. Promote a compact growth pattern to efficiently use developable land, and to enable the cost-effective extension of utilities, services, and streets; frequent transit service; and to help sustain neighborhood businesses;
4. Foster the development of mixed-use areas that are arranged, scaled, and designed to be compatible with surrounding land uses and which provide sensitive transitions between different land uses;
5. Ensure that buildings and other development components are arranged, and designed, and oriented to facilitate pedestrian access.

B. Establishment, Scope, and Criteria for Approval of a Mixed-Use Overlay Assignment

Mixed Use Overlay is established in Chapter 2 of the City of Lynden Comprehensive Plan. Locations of the Overlay are identified within the City of Lynden Comprehensive Plan land use element according to the criteria described below.

The Mixed-Use Overlay is assigned to key locations within the City of Lynden which are within one quarter of a mile of existing commercial centers.

Properties are eligible to utilize the provisions within the Mixed-Use Overlay when the following criteria are met:

1. Sub-Area: Properties located within the West Lynden Commerce Subarea are not eligible for mixed-use overlay provisions.

Commented [DT14]: See Draft Chapt 2 Land Use Element - text amendment to include descriptions of the new MU Overlay (Table 2.3) and Figure 2.3a that shows the 6 established Commercial Centers.

Commented [HG15]: See proposed revision to sub-area title and boundaries. The W. Lynden Commerce Subarea would be reserved for non-residential uses.

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- 2. Zoning: The property zoned Commercial Services – Local (CSL) or Commercial Services - Regional (CSR)
- 3. Scale: The property or contiguous group of subject properties applying to construct a project using the provisions of the Mixed-Use Overlay at least one acre in size.
- 4. Location: The subject property(s) is within walking distance of a Qualifying Commercial Center.
 - a. Walking distance is one quarter mile or less as measured from the edge of the subject property to the geometric center of the qualifying commercial center following a walkable path.
 - b. Qualifying Commercial Centers are identified in the Land Use Element of the City’s Comprehensive Plan. These centers have at least 17,000 square feet of gross floor area dedicated to general retail uses and at least 6 tenants which provide goods or services to the general public.
 - c. New commercial centers can be added to the City’s list of qualifying commercial centers through an amendment to the Land Use Element of the City’s Comprehensive Plan.

C. Small Scale Mixed-Use within the Central Lynden Sub-area: Commercial Services – Local (CSL) Zone

- 1. Applicability. The Central Lynden Sub-Area includes commercially zoned properties that have traditionally included a wide variety of uses. The Sub-area, as a whole, represents a mixed-use district. To continue to facilitate this mixed-use identity, properties located in the Central Lynden Sub-Area that are zoned CSL but are not within the Historic Business District (HBD) and do not qualify for Mixed-Use Centers provisions due to the scale of the property are permitted to establish new residential uses in the following situations:
 - i. Mixed Use within a Single Building. Residential units are permitted in the CSL zone, in the Central Lynden Sub-area, on the upper floors of a building which features commercial space on the first floor but overall building height is limited to thirty-two (32) feet.
 - ii. Conversion of and Existing House.
 - i. A second residential attached unit is permitted within or by adding onto structures that were constructed as single family homes prior to 1992. All renovations and additions are subject to building permit approval. Additional unit may also require utility upgrades.
 - ii. If the net lot area is 8,000 sq ft or greater, up to three attached units are permitted through the renovation

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of an existing structure subject to the standards and design criteria listed in this sub-section.

iii. New Construction.

i. New duplex structures are permitted on CSL zoned properties within the Central Lynden Sub-area subject to the design criteria listed in this sub-section.

ii. If the net lot area is 8,000 sq ft or greater, up to three attached units are permitted as new construction subject to the standards and design criteria listed in this sub-section.

2. Design Standards for Small Scale Mixed-Use within the Central Lynden Sub-area: Commercial Services – Local (CSL) Zone

<u>Max Units per Building</u>	<u>Max Lot Coverage</u>	<u>Max Height of a Building that includes Residential Units</u>	<u>Front and Rear Setback</u>	<u>Rear Setback</u>	<u>Side Setback</u>
	<u>60%75%</u>	<u>32 feet</u>	<u>1520 feet</u>	<u>20 feet</u>	<u>77 feet</u>

a. Design Review: New multifamily residential construction with the Central Lynden Sub-Area CSL zone requires Design Review Board approval when exterior changes are proposed. In addition to the City’s Design Guidelines the following criteria must be met:

- i. New construction must match the scale of the surrounding structures. Applicants must supply images of adjacent structures when submitting an application to the Design Review Board.
- ii. Although multiple units are accommodated, the architectural styles of new construction must mimic that of a single-family home if the adjoining properties were constructed as single-family homes.
- iii. Garage access, if proposed, must be from the alley if alley access is available so as to limit garage doors along street frontages.
- iv. Front entry must be shared between units or distributed to different facades of the building so as to appear as a single-family home.

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b. Residential Parking Standards within the CSL zones of the Central Lynden Sub-area: Two (2) parking spaces are required for the first residential unit, one space per every additional units.

D. Separation of Uses/Transition Buffers.

To ensure that different land uses are adequately separated, landscape buffers shall be instituted as detailed in LMC 19.61.090. Additionally, setbacks immediately adjacent to residentially zoned properties increase in association with greater building heights as described within this subsection.

E. Mixed-Use ~~Centers~~ Overlay Development Standards

1. A project developing within a Mixed-Use Overlay, that is not meet the description of Small Scale Mixed-Use as described in LMC 19.23.110(C), is subject to the following development standards:

	<u>Flex Space: Semi-public Open Space or Neighborhood Commercial Requirement</u>	<u>Residential Recreational Open Space</u>	<u>Multi-Family Housing and Parking</u>	<u>Max building stories</u>	<u>Max Residential Bldg Height</u>	<u>Max Commercial Bldg Height</u>
	<u>20% of net lot area as flex space or 60% of cumulative first floor area as commercial use. See LMC 19.23.110(H).</u>	<u>10% of net lot area</u>	<u>70% of lot area</u>	<u>4 floors</u>	<u>52 feet (60 feet with a CUP)</u>	<u>48 feet</u>

2. The maximum height of residential building may be increased to up to 60 feet through the successful approval of a Conditional Use Permit. Additional height proposals must demonstrate how the extra height is appropriate to the scale of the site and how it is mitigated to be cohesive with other buildings on the site and the surrounding land uses. A stepped-back façade or additional architectural articulation may be required.

3. Setbacks: If an adjacent property has a residential zoning, the setbacks along that property line must be a minimum of 20 feet or half of the proposed mixed-use overlay building height, whichever is greater.

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Setbacks from adjacent properties with commercial, industrial, or public use zoning must be a minimum of 15 feet.

Setbacks from street frontage must be consistent with the front setbacks of the underlying CSL or CSR zoning.

- 4. Building articulation and façade treatment. Refer to LMC 19.23.090 for specific design requirements affecting building articulation and façade treatments.

F. Shared Parking Opportunities in Mixed-Use Commercial Centers

A mix of non-residential and residential uses provide an opportunity to share parking resources as peak demand times for these uses vary.

- 1. Parking for residential uses must be provided consistent with LMC 19.51 or as established through a Planned Residential Development contract.
- 2. Parking for non-residential uses may be reduced by 25% when developed in conjunction with the Mixed-Use Center provisions on a shared site.
- 3. Mobile or seasonal commercial uses such as food trucks or fruit stands that are set up within semi-public flex spaces are not required to provide parking in association with their use.
- 4. Parking counts may be further reduced from the allowance described in this section only if a parking study demonstrates feasibility. In order for a parking study to be considered, the following standards apply:
 - i. The parking study must be prepared by a professional engineer using industry accepted practices and methodologies.
 - ii. The study shall use acceptable data sources and the data shall be comparable with the uses and intensities proposed for the proposed development activity.
 - iii. If the director determines that the independent parking study more accurately captures the parking need, he or she may adjust the parking requirement in accordance with said study.
 - iv. If the director determines, in his or her sole discretion, that the independent fee calculation study is not accurate, reliable, or sufficient, the director may reject the said study and requirement parking capacity consistent with that outlined in LMC 19.51.
 - v. The director may require the applicant to submit additional or different documentation for consideration at any time. If the director decides that third-party engineers are needed to review the calculation and related documentation, the applicant shall pay for the reasonable cost of a review by such engineers.

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vi. Determinations made by the Planning Director pursuant to this section may be appealed to the Hearing Examiner subject to the procedures set forth in LMC 17.11.

G. Residential Open Space Requirements

Shared open space is required when residential components are introduced to a commercial property through the Mixed-Use Centers Overlay. The open space must include functional amenities that provide outdoor recreational / leisure spaces such as playgrounds, picnic or patio areas, sports courts, off-leash dog areas, or similar. These community open spaces will be reviewed and approved through Design Review Board (DRB) approval process. The DRB will review for the following criteria:

1. Minimum size of the open space is ten percent (10%) of the net lot area. Net lot area, in this case, is calculated by removing the area dedicated to public right-of-way, critical areas and protected critical area buffers from the gross lot area.
2. The minimum open space calculation cannot indoor common areas such as party rooms. Shared, outdoor patios or balconies may be included in the open space calculation but private patios or balconies that are specific to a residential unit may not be included.
3. Inclusion of critical areas in the open space requirement only equal to the space dedicated to a recreational trail or other accessible amenity that has been established via the appropriate permitting process. - Proposed improvements for active use within a critical area and/or its buffer are subject to critical area review (LMC 16.16.150).
4. The recreational portions of the open space must be readily accessible and visible to residents. This can include trails, playground, dog park, courts, or similar functional space that is proportionally scaled to the number of residents who will be using the amenity.
5. Open spaces may be gated or otherwise restricted so that only residents can access.
6. Lighting and landscape must be utilized to create safe and attractive spaces.

H. Required Commercial Area or Flex Space

A priority of the Mixed-Use Centers Overlay is to facilitate pedestrian-oriented development and street-level activity. This serves to benefit residents within the development, nearby businesses, and the greater Lynden community.

Commercial properties which utilize the provisions of the Mixed-Use Centers Overlay must include neighborhood-oriented commercial uses or reserve space on site called Flex Space.

1. Required interior commercial component.

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- a. If an interior commercial space will be used to fulfill the commercial component, it must equal sixty percent (60%) of the gross ground floor(s) of the building(s) constructed.
- b. The minimum area dedicated to the commercial component shall not include mechanical rooms, riser rooms, or storage facilities. Refer to LMC 19.23.020 for permitted Mixed-Use Overlay commercial uses and special requirements regarding storage facilities.
- 2. Flex space. If interior commercial uses are not established prior to, or simultaneously with residential components of the Mixed-Use Centers Overlay the project must reserve a portion of the property as Flex Space as described in this section.
 - a. Flex space must equal twenty percent (20%) of the net lot area. Net lot area, in this case, is calculated by removing the area dedicated to public right-of-way, critical areas and protected critical area buffers from the gross lot area.
 - b. A public access easement must be recorded which addresses policing and posting of permitted hours of access.
 - c. A pedestrian oriented plaza or irrigated lawn areas that are visible and easily accessible to the public as well as onsite residents.
 - d. Outdoor seating.
 - i. At least one sitting space for each two hundred fifty (250) square feet of flex space shall be included in the plaza or lawn areas.
 - ii. Seating shall be a minimum of sixteen inches (16") in height and thirty inches (30") in width. Ledge benches shall have a minimum depth of thirty inches (30").
 - iii. Half of the seating must be located in areas that would experience seasonal shade.
 - e. Trash receptacles must be provided in pedestrian areas. These are to be maintained by the property management / owner / association
 - f. Trees and landscape. Trees in proportion to on-site plaza and sidewalk space at a minimum of one tree per eight hundred (800) square feet, at least two (2") caliper when planted.
 - g. Accommodations for outdoor vending and food trucks must be included. This includes water and electrical hook-up locations.
 - h. Stormwater facilities or critical area buffers that prevent pedestrian access may be included under the following provisions:
 - i. Inaccessible areas shall encompass no more than forty percent (40%) of the required semi-public area.
 - ii. Inaccessible areas must act as amenities to the accessible portion of the required area by being visually appealing, providing landscape variety

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or natural habitat in a way that enhances the pedestrian experience within the remainder of the semi-public area.

iii. Additionally, privately-owned public spaces shall include at least three (3) of the six (6) following elements:

- a. Covered seating options;
- b. Water features or public art;
- c. Outdoor dining areas; and
- d. Decorative pedestrian lighting;
- e. Children’s play structures. This may include interactive sculpture, or traditional playground equipment;
- f. Other amenities not listed above that provide a public benefit.

i. **Flex Space Conversion.** The portion of the property designated as flex space semi-public open space may be converted into commercial use. When this occurs, shared parking provisions described in LMC 19.23.110(F) may be utilized. Pedestrian connections must be maintained from the residential structures to any commercial use. Design must be consistent with LMC 19.23.090 and is the development is subject to Design Review.

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Chapter 19.51 OFF-STREET PARKING

see edits to 19.51 in separate document

The following sections have been included in the proposed code amendment related to the Mixed-Use update as additions to the Definitions section of the code:

LMC 17.01.030 Definitions

Chapter 17.01.030 Definitions

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

“Mini-storage” see “Storage”

“Storage, mini-“ also known as self-storage means a facility containing separate storage spaces of varying sizes that are leased or rented on an individual basis for the storage of household goods where storage, retrieval and transport are the responsibilities of the renter or lessee.

“Storage, large scale” means a facility designed to accommodate the storage needs of business and industry or for the indoor storage of recreational vehicles or other equipment. Spaces may be leased, rented, or sold as condominiums. A majority of storage spaces in these facilities are generally greater than 200 square feet and may include plumbing to accommodate restrooms or other finished spaces for accessory office use.

The following sections have been included in the proposed code amendment related to the Housekeeping update:

LMC 18.22.050 Siting Criteria

Chapter 18.22 MOBILE / MANUFACTURED HOME PARK AND SUBDIVISION STANDARDS

18.22.010 - Purpose.

The purpose of this chapter is to establish the standards and criteria by which mobile/manufactured home subdivisions and parks may be sited and developed within the city. These standards are necessary to ensure the uniform, coordinated development of the community and to assure the general health, welfare and safety of the occupants of the mobile/manufactured homes that are located within a subdivision or park developed under these standards.

18.22.020 - Definitions. (See LMC 17.01.030)

18.22.030 - Requirements for a completed application.

An application must submit the information as stated in 18.16.010 LMC for preliminary plats.

18.22.040 - Type of approval required.

- A. All mobile home parks shall be processed in the same manner as a binding site plan.
- B. All mobile/manufactured home subdivisions shall be processed in the same manner as subdivisions in this title.

18.22.050 - Siting criteria.

The following minimum criteria apply to the siting of mobile/manufactured home parks and subdivisions.

- A. Minimum site development area: ~~Five-Two (2)~~ (2) acres
- B. Maximum site development area: Twenty (20) acres
- C. Minimum perimeter buffer: ~~Thirty-Twenty (20)~~ (20) feet of Type V landscape buffer adjacent to residentially zoned properties. Six foot privacy fence or wall adjacent to properties zoned for commercial or industrial use, or public-use. Use of chain link fence is not permitted in this application.
- D. Minimum unit site area: ~~Four thousand two hundred~~ Three thousand six hundred (3,600) square feet.

Title 18 - SUBDIVISIONS

Chapter 18.22 MOBILE/MANUFACTURED HOME PARK AND SUBDIVISION STANDARDS

- E. Minimum common open space area: Ten percent (10%) of gross site area. Common open space consists of either an active or passive recreational area accessible and useable to all tenants within the park. Common open space is exclusive of the required perimeter buffers.
- F. Maximum density: ~~Six~~Eight (8) units per acre.
- G. Unit type:
 - 1. Recreational vehicles which meet fire and safety regulation; hook up to utilities in a way that meets code; are appropriately skirted; and contain at least one toilet and at least one shower or that these amenities are provided to the residents of the MH community (RCW 35A.21.312(3)),
 - 2. Single, double or triple wide configuration.
 - 3. Modular homes.

Title 19 - ZONING

The Following Sections have been included in a Proposed Code Amendment related to **Housekeeping and General Updates**

- LMC 19.19 MH Manufactured Home Zone
- LMC 19.20 Accessory Dwelling Units
- LMC 19.22 Residential Design Standards
- LMC 19.29 Planned Residential Development Overlay
- LMC 19.45 Design Review Board
- LMC 19.63 Fence Permits and Requirements

Chapter 19.19 MH MANUFACTURED HOME ZONE

19.19.010 Established.

There is established the MH—Manufactured Home Zone and the standards and regulations by which certain land uses may be permitted therein.

(Ord. No. 1581, § B, 6-3-2019)

19.19.030 Primary permitted uses.

- A. The primary uses permitted in the MH—Manufactured Home Zone is manufactured homes, and manufactured home parks, as provided in this chapter, subject to the minimum standards and conditions set forth in this chapter and within Chapter 18.22.
- B. Site built, detached single family dwelling units are also considered a permitted use within the MH zone ~~if originally constructed prior to January 1, 2023. , provided that the total number of site built houses does not exceed twenty percent of the total units within the manufactured home park or development.~~
- C. Mobile homes as defined in Section 17.01.030 LMC are prohibited.

(Ord. No. 1581, § B, 6-3-2019)

19.19.040 Accessory permitted uses.

The accessory uses permitted in the MH zone are as follows:

- A. Private garages.

Commented [HG1]: Prohibit new site-built homes in MH zones to ensure that the intent of MH zones is maintained.

-
- B. Carports.
 - C. Tool shed, satellite dish, outdoor patios and outdoor fireplaces.
 - D. A maintenance building containing equipment and tools for owners of manufactured homes that are necessary for the repair and preservation of a manufactured home.

(Ord. No. 1581, § B, 6-3-2019)

19.19.050 Secondary permitted uses.

The secondary uses permitted in the MH manufactured home zone are as follows:

- A. Community laundry facilities used by the residents of the park or development.
- B. Community buildings for the residents of the park or development. These buildings may contain offices, recreational facilities and meeting halls.
- C. Private swimming pools, as provided in Chapter 15.16 in the International Building Code adopted pursuant to Chapter 15.02 of the Lynden Municipal Code and subject to LMC 19.37.090.

(Ord. No. 1581, § B, 6-3-2019)

19.19.060 Maximum density.

The maximum density of a manufactured home park or development in the MH Zone shall not exceed six-eight (8) units per ~~gross~~-acre.

(Ord. No. 1581, § B, 6-3-2019)

19.19.070 Minimum width of individual space.

No manufactured home space in the MH Zone shall be less than forty-five (45) feet in width.

(Ord. No. 1581, § B, 6-3-2019)

19.19.080 Manufactured home construction requirements.

- A. Manufactured homes must meet or exceed all Federal and/or State requirements.
- B. Manufactured homes placed within the city of Lynden must meet the definition of a manufactured home as defined in Section 17.01.030 of the Lynden Municipal Code.

(Ord. No. 1581, § B, 6-3-2019)

19.19.090 Height, area, setback and bulk requirements.

The following provides regulations for height, area, setbacks & bulk requirements:

Minimum Lot Size (sq. ft.)	Lot Coverage	Height		Yard Setbacks in Feet			
		Feet	Story	Front	Rear	Side Yard	
						Minimum	Total
4,200 3,600	40%	25	2	20 15	20 15	7	15 7

(Ord. No. 1581, § B, 6-3-2019)

19.19.100 Manufactured home park—Individual space boundary requirements.

The boundaries of each manufactured home space in a manufactured home park shall be clearly defined and marked by a fence, planting or other suitable means approved by the planning director, or by clearly visible, permanent markers at each corner of the space. For the purposes of this code, this boundary will be considered a property line.

(Ord. No. 1581, § B, 6-3-2019)

19.19.110 Manufactured home park—Automobile parking requirements.

There shall be provided at least two (2) automobile parking spaces for each manufactured home space, plus one (1) additional automobile parking space for every five (5) manufactured home spaces or any portion thereof for guests, visitors, service vehicles and additional automobiles of the tenants of the park.

(Ord. No. 1581, § B, 6-3-2019)

19.19.120 Manufactured home park—Development standards.

See Chapter 18.22 of the Lynden Municipal Code.

(Ord. No. 1581, § B, 6-3-2019)

19.19.150 Manufactured home park—Landscaping.

Privacy landscape buffers shall be required around the entire perimeter of the manufactured home park as required under Chapter 19.61 - Landscaping and Chapter 18.22- Manufactured Home Park and Subdivision Standards.

(Ord. No. 1581, § B, 6-3-2019)

Chapter 19.20 ACCESSORY DWELLING UNITS

19.20.010 Purpose.

It is the provision of this chapter to implement the goals and policies as identified under the housing element of the City of Lynden Comprehensive Plan.

- A. The City of Lynden will encourage the availability of affordable housing to all economic segments of the population, promote a variety of residential densities and housing types, and encourage the preservation of existing housing.
- B. To consider other creative methods, such as cluster housing, cottage housing, accessory housing, and transfer of development rights to increase density and promote the opportunity for ownership of single-family homes.
- C. The city will also look to provide homeowners with a means of obtaining rental income, companionship, security and services through tenants in either the accessory dwelling unit or principal unit of the single-family dwelling.
- D. To provide a place to facilitate the care of family members who are unable to live independently.

19.20.020 Accessory Dwelling Unit.

Accessory dwelling unit (ADU) is a subordinate, complete living unit which includes permanent kitchen and sanitary facilities, that is secondary to a single-family home located on the same lot as defined in LMC Section 17.01.030 and further subject to the following requirements:

- A. ADU's are permitted in all residential zones including planned residential developments provided that only one ADU is allowed per lot as an accessory use to a single-family home. ADU's are permitted in multi-family zones only on lots which are restricted, by lot area, to a single-family residence.
- B. ADU's can be attached as a separate unit within the existing home or an addition to the home, or detached as a separate structure on the lot.
- C. Only one ADU per detached single-family residence. ADU's are not permitted as part of any other housing type. Accessory Dwelling Units are exempt from the density limitations of the underlying zone.
- D. An attached ADU is limited to a maximum of one thousand square feet and two bedrooms. A detached ADU is limited to a maximum of eight hundred square feet and one bedroom.
- E. A detached ADU, or ADU addition, must be of the same construction type as the primary structure. The exterior finish, material, trim, and roof pitch for the ADU must be similar in type and size of the primary structure.

- F. Only one entrance for the entire primary structure and ADU combined shall be visible from the primary street. A detached ADU shall not be forward to the primary unit in relation to the front yard.
- G. One parking space per ADU bedroom, in addition to those required for the single-family residence, will be required for the ADU's. All parking spaces for the primary structure and the ADU must be located on site.
- H. If necessary based on building location, landscaping shall be installed to provide privacy and screening of the adjacent properties. A landscape plan must be approved by the planning director.
- I. Utilities. All utilities servicing the site may require upgrades based on the project size. Any utilities installed on site must meet the requirements of the City of Lynden Manual for Engineering Design and Development Standards.
- J. The primary residence or the ADU must be owner occupied. A perpetual covenant against the property, approved by the planning department must be signed by the owner and recorded with the Whatcom County Assessor's Office which specifies this requirement.
- K. The ADU shall not be subdivided or otherwise segregated in ownership from the principal dwelling unit.

(Ord. No. 1547, § 9, 12-4-2017)

19.20.030 Setback and height requirements.

The following text provides regulations for height and setback requirements:

- A. All setbacks are measured from the property line to the ~~furthest projection of the structure; including eaves~~ building foundation. It is the property owner's responsibility to have the property lines clearly marked for inspection.
- B. An attached ADU may be built as close as ~~five-seven (7)~~ 7 feet to the side property line provided that the living area setbacks total the minimum required within the underlying zone.
- C. A detached ADU may be built as close as ten (10) feet to the rear property line and shall follow the side setbacks in accordance with the requirements of the underlying zone.
- D. An existing non-conforming building shall not be used for an ADU unless the structure is brought into conformance with City Code.
- E. On any lot, the minimum distance between the garage door and the property line or access easement parallel to the garage door must be twenty-five (25) feet.
- F. On corner lots in all residential zones, the side yard setback adjacent to the street must reflect the minimum side yard of that zone.

- G. Only one driveway access is allowed per lot.
- H. Detached ADU's may not be located forward of the primary residential structure.
- I. To be considered a "detached" structure, the minimum distance between two structures shall be six (6) feet measured from foundation to foundation with no projections greater than eighteen (18) inches.
- J. The maximum height of any detached structure housing an ADU shall be eighteen (18) feet.
- K. The maximum lot coverage is subject to the associated zone. Thirty-five percent (35%) is all RS zones, thirty-five percent (35%) in the RMD zone, thirty-five percent (35%) in the RM-1 zone, forty percent in the RM-2 and RM-3 zones and forty-five percent (45%) in the RM-4 zone. For lot coverage requirements within a PRD check with the PRD contract.

19.20.040 Permitting and enforcement.

- A. Application. The property owner shall apply for an ADU permit with the planning department. Application must meet all requirements as listed above.
- B. Applicable Codes. The accessory dwelling unit shall comply with all construction codes set forth in the City of Lynden Engineering Design and Development Standards and the Lynden Zoning Code.
- C. A detached ADU must be reviewed ~~and approved by the design review committee prior to building permit for compliance consistent with applicable portions of LMC Section 19.16.080 19.22 Residential Design Requirements as they relate to accessory structures, with the exception of LMC Sections 19.16.080.B, H, and I which do not apply.~~
- D. Inspection. Prior to the approval of an ADU, the city ~~shall~~ may inspect the property to confirm that all applicable requirements of this code and other codes have been met.
- E. Recording Requirements. Prior to a request for final building inspection for either an attached or detached accessory dwelling unit, the property owner shall file with the Whatcom County Assessor an accessory dwelling unit covenant with all conditions and restrictions as provided by the city.
- F. The covenant is binding upon any successor in ownership of the property. Lack of compliance shall cause for the city to revoke the occupancy or accessory dwelling unit permit.
- G. Any variances to this section will be subject to Chapter 19.47 of the Lynden Municipal Code.

Title 19 - ZONING
Chapter 19.22 RESIDENTIAL DESIGN STANDARDS

Chapter 19.22 RESIDENTIAL DESIGN STANDARDS

19.22.010 Establishment, relief, and purpose.

A. Establishment and Relief. There is established therein residential design standards and regulation by which residential structures may be permitted and maintained.

- 1. Relief from the required standards must be sought through the variance process.
- 2. Variance requests which relate specifically to site design development standards described in Section 19.22.020 shall be submitted to the Hearing Examiner consistent with Chapter 19.47 LMC.

Commented [HG2]: Updated with Ord 1615 as shown

- 3. ~~Variance-Waiver~~ requests which relate specifically to the residential design criteria described in Section 19.22.030 through 19.22.050 shall be submitted to the Design Review Board consistent with LMC 19.45.035.

Commented [HG3]: Corrected with Ord 1615 as shown

B. Purpose.

- 1. The essential purpose of the residential design standards to ensure that new developments meet and maintain a number of objectives that strive to promote orderly community growth and protect and enhance property values for the community as a whole.
 - a. To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.
 - b. To create high-quality communities that have variation of architectural style and durable materials.
 - c. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.
 - d. To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.
- 2. Residential design standards also seek to encourage low impact design (LID) techniques such as rain gardens, xeriscape, or pervious pavement to minimize adverse impacts on the natural environment.

(Ord. No. 1582, § A, 6-3-2019)

19.22.020 Site design—Setbacks, yards, building orientation, and pedestrian connections.

Objective - To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.

- A. Lot coverage.
 - 1. Lot coverage is limited by zoning category.
 - 2. Lot coverage may be increased by one percent (1%) for each ten percent (10%) of the required off-street parking that is located beneath portions of the multiple-family dwelling units which are intended to be occupied by residents or used as hallways or meeting rooms.
- B. Building Orientation.
 - 1. On corner lots, the primary pedestrian entrance to the building shall be from the designated front yard. However, the primary pedestrian entrance and address may be oriented to the designated side yard if both side yard setbacks are fifteen (15) feet from property line to living area.
 - 2. The side yard used for a driveway shall not be less than ten (10) feet in width.
 - 3. All dwellings shall be oriented on the lot, so that the primary pedestrian entrance is obvious from the street or access easement which serves as its primary point of access.
- C. Setbacks. Minimum setbacks are outlined in each zoning category.
 - 1. All setbacks are measured from the property line to the foundation.
 - 2. Eaves and cantilevered architectural features such as bay windows may encroach into the setback a maximum of two (2) feet.
 - 3. Structural permits with setbacks submitted prior to April 1, 2019 are considered conforming and not subject to LMC 19.35.030.
 - 4. Additional fire protection may be required for structures located within ten (10) feet of each other.
 - 5. It is the property owner's responsibility to have the property lines clearly marked for inspection.
 - 6. On corner lots in the RS-72 zone, one of the corners may be considered as a side yard, provided that the yard considered as a side yard shall not be less than ten (10) feet.
 - 7. On corner lots in all other residential zones, the side yard setback adjacent to the street must be a minimum of fifteen (15) feet.
- D. Garage Setbacks from Property Lines.

1. On any lot, the minimum distance between the garage door and the property line or access easement parallel to the garage door must be twenty-five (25) feet.
2. In ~~RS-84 and RS-100~~ all residential zones an attached garage may be built as close as the minimum zoning allowance to the side property line provided the living area setbacks total the requirement for that zoning category, seven feet to the side property line provided the living area side setbacks total twenty-two feet from the building foundation to the property line.
- ~~3. In RS-72 and RMD zones an attached garage may be built as close as seven feet to the side property line provided the living area side setbacks total seventeen feet from the building foundation to the property line.~~

E. Pedestrian Connection.

1. Sidewalk connections must be provided in all residential zones.
2. In all RM zones, primary sidewalks must be a minimum of five (5) feet clear width without encroachment of vehicle overhang.
3. In RM zones sites must include pedestrian walkways which provide connection to common green spaces and public sidewalks. Cross walks provided as needed in parking areas and along streets.

(Ord. No. 1582, § A, 6-3-2019)

19.22.030 Residential architecture and attached garages.

Objective - To create high-quality communities that have variation of architectural style and durable materials. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.

A. Residential Structure.

1. All dwellings must be placed on a permanent foundation and the space between the foundation and the bottom of the home must be enclosed by concrete or approved concrete products.
2. Eaves and gable ends must be a minimum of twelve (12) inches. This is not applicable to re-roofing or additions to existing structures.

B. Building Height.

1. Building height is regulated by zoning category.
2. On lots greater than ten thousand (10,000) square feet in size, the height of a residential structure may be increased one (1) foot for every two (2) feet in increased setback distance beyond the minimum setback on both side yards and the front yard, to a maximum height increase of five (5) feet, or total height of thirty-seven (37) feet.

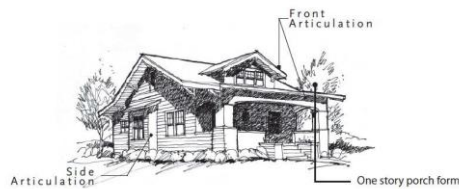
C. Roofs.

1. Roofing materials shall be wood shingle or shake, composition, asphalt laminate, clay or architectural metal.
2. Exposed fastener corrugated metal or corrugated fiberglass roofing is not permitted.
3. Using a membrane roof or built up roofing (BUR) for the primary roofing material is not permitted.
4. ~~The primary roof line must have a minimum of a 4:12 pitch. This is not applicable to re-roofing or additions to existing structures.~~

Commented [HG4]: Proposed deletion of this standard.

D. Building Elevations and Finishes.

1. Residential Elevations.
 - a. The same architectural elevation shall be separated by a minimum of two (2) other homes ~~and may not be located directly across the street from each other.~~
 - b. An articulation is an architectural element such as a one-story porch or bay window. One such element shall be used on all sides of the building that face toward a public street, shared access easement, or common green. The articulation shall be offset a minimum of twelve (12) inches. A garage setback shall not count as an articulation.



2. Garage Elevations. To promote an attractive, pedestrian-friendly streetscape, attached garages accessed from the front, with garage doors oriented toward the street ~~or a shared parking lot of a multi-family complex~~ are subject to the following standards:
 - a. At the ground level, the garage façade shall not extend forward of the ~~home's~~ living space by more than twelve (12) feet. ~~Porches are not considered living space.~~
 - b. The lineal frontage of the building elevation which can be occupied by garage doors is limited.
 1. ~~c.~~ In RS zones, no more than fifty percent (50%) of the building elevation can be garage doors.

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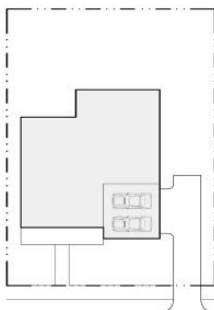
2. ~~d.~~—In RMD and RM zones, no more than sixty percent (60%) of the total first floor building elevation length can be garage doors.

~~c.~~ Attached garages or attached carports which provide a third covered or enclosed space (all adjacent to one another) must be offset a minimum of two (2) feet from the first two covered or enclosed spaces.

Commented [HG5]: Corrected location - moved from section below and applied to all residential zones.

3. Exterior Finishes.

- a. The exterior of the home must be finished with a minimum of two types of materials or variation in reveals.
- b. Exposed fastener metal siding is prohibited on residential buildings.
- c. Exposed ends of stone and masonry façades are not permitted and must be finished with trim or end caps.
- d. All garage sides that are visible from streets or shared access easements shall provide architectural details and trim consistent with the design of the home.



Side Loaded Garage

~~c.~~ In RS zones, attached garages or attached carports which provide a third covered or enclosed space must be offset a minimum of two feet from the first two covered or enclosed spaces.

Commented [HG6]: Moved to section on Garage Elevations

E. Porches, Stoops, Decks, and Patios.

1. Porches and stoops.

- a. Architecture of the primary pedestrian entrances must include cover from the elements. Eave overhang alone does not constitute cover.
- b. Steps used to access front porches or stoops must be complimentary to the primary structure through the use of coordination materials or architectural elements.
- c. Stairs with open risers are not permitted on front porches or stoops.

2. Decks and patios.

- a. Uncovered wood decks and raised concrete patios not over twenty-four (24) inches above grade at any point may be permitted within eighteen (18) feet of the rear property line and five (5) feet of the side property line.
- b. Roof structures covering decks or patios are permitted within the rear setback provided that the structure:
 - (1) Remains open on three sides and is not enclosed in any way;
 - (2) Does not come within eighteen (18) feet of the rear property line;
 - (3) Does not encroach more than two (2) feet into the side yard setbacks of the underlying zone; and,
 - (4) The addition does not exceed the permitted lot coverage.
- c. Deck or patio privacy screening or fencing which is located more than ~~six (6)~~ feet from the property line, may be up to eighty-four (84) inches in height above the lowest grade. Privacy screening of a deck or patio which is located on a property line is subject to maximum fence height of six (6) feet above grade.

(Ord. No. 1582, § A, 6-3-2019)

19.22.040 Detached garages and accessory structures.

Objective - To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.

To be considered a "detached" structure, the minimum distance between two structures shall be six (6) feet measured from foundation to foundation with no projections greater than twenty-four (24) inches. Additional fire protection may be required for structures located within ten (10) feet of each other.

A. General Requirements.

- 1. All accessory structures, whether defined in this title or not, shall conform to the requirements of the International Building Code. (Currently appears in MH bulk standards)
- 2. Architectural style of a detached garage, shop, or shed must match the style of the primary structure. However, agriculturally themed structures such the roofline of a traditional barn may be permitted. Also, this standard is not applicable to greenhouses or open-sided structures intended only to cover recreational vehicles.
- 3. All accessory structures, including carports, must utilize roofing material which is compatible with the primary structure.

-
4. Any structure intended to be established and remain for more than seventy-two (72) hours and, as outlined in LMC 15.04.010, exceeds one hundred twenty (120) square feet in area must obtain a building permit.

B. Accessory Structure Setbacks.

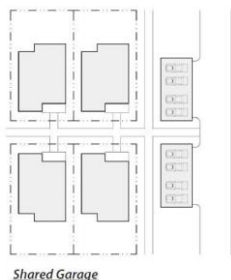
1. Detached garages may be located a maximum of twelve (12) feet forward of the first floor living space of the home but are subject to front setback required by the underlying zone. Storage sheds or other accessory structures not used as a garage are not permitted forward of the front façade of the home.
2. A detached accessory structure or garden shed located in a rear may not be built closer than six (6) feet to the side or rear property line including property lines abutting alleys with a maximum eave of twenty-four (24) inches. Structures less than one hundred and twenty (120) square feet must be setback a minimum of three (3) feet from the side and rear property line.
3. Accessory structures on corner lots shall not be permitted nearer than fifteen (15) feet to the side property line adjacent to the street.
4. Garages accessed from alleys with garage doors facing the alley must be setback a minimum of twenty-one (21) feet in all RM zones and setback twenty-five (25) feet in all RS zones.

C. Accessory Structure Height.

1. The maximum height for all accessory structures shall be twelve (12) feet, except for detached garages, shops, and detached accessory dwelling units (ADU) as noted below.
2. The maximum height of any detached garage that is serving as the primary garage, a secondary garage, shop with an overhead door, or detached ADU shall be eighteen (18) feet, provided however that
 - a. The setback shall be a minimum of six (6) feet from the side and rear property line,
 - b. Structures serving as secondary garages or shops are set behind the rear line of the house,
 - c. The roof pitch and siding shall be consistent with the primary structure on the lot,
 - d. There is no living space within the building except as permitted with a legal accessory dwelling unit (ADU) and larger setbacks as outlined in Chapter 19.20, and
 - e. The height of the building does not exceed the height of the primary structure.

D. Accessory Structure Area.

1. In MH zones, no detached garage shall exceed one thousand (1,000) square feet of inside floor area or exceed square footage of the primary structure.
2. In RMD and RS zones, no detached garage or accessory building footprint shall exceed one thousand (1,000) square feet or ten percent (10%) of the lot area, whichever is greater; provided however, that the floor area of the accessory building does not exceed the floor area of the primary residence or three thousand square feet, whichever is more restrictive
3. Shared attached garages and carports are permitted in RM zones ~~and within the Pepin Creek Senior Overlay~~. Shared garages shall have a maximum of four (4) parking stalls and not exceed forty-four (48) feet in width. (see graphic)



~~3.~~ 4.— Detached carports are permitted to accommodate no more than four (4) vehicles and are limited to a maximum of forty-four (48) feet in width.

(Ord. No. 1582, § A, 6-3-2019)

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19.22.050 Landscape, fences, screening, and lighting.

Objective — To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.

A. Landscape, Fences and Screening.

1. Landscape. Refer to Chapter 19.61 for full description of Residential Landscape Requirements.
2. Fences.
 - a. Fences shall not be built closer than three (3) feet to the property owner's side of the sidewalk for front yards and for street side yards on corner lots. If there is no curb and/or sidewalk, the fence shall be set back a minimum of three (3) feet from the front property line and the street side property line on corner lots. When solid privacy fencing is installed, landscape material, such as groundcover,

Title 19 - ZONING

shrubs, or hedge material must be planted and maintained within this three (3) foot setback.

b. Refer to Chapter 19.63 for full description of Residential Fence Standards.

3. Screening.

a. In RS zones, trash and recycling containers shall be stored within side or rear yards or within enclosed garages.

b. In RM zones, trash and recycling containers shall be stored within side or rear yards, or within enclosed garages, or in screened enclosures as approved by the design review board during site plan review.

c. Except for public utilities, mechanical equipment shall not be located in front yards.

d. All mechanical equipment, including roof mounted, must be screened so as not ~~to be to~~ visible from the street, shared access easement, ~~or and~~ common green spaces. Screening can be accomplished by fencing, architectural screening, or evergreen landscape material. Equipment to be screened includes, but is not limited to, heating and air conditioning units, venting associated with commercial grade cooking facilities, and any mechanical equipment associated with pools or hot tubs.

e. In RS zones, the base of exterior mechanical equipment must not exceed a height of more than eighteen (18) inches above the finished exterior grade. ~~the height of the finished floor elevation.~~

f. Recreational vehicles may only be stored on RS zoned properties consistent with LMC 19.15.030.

B. Street trees.

1. Street trees are required at the time of plat as outlined in Chapter 18. Additionally, the installation or replacement of street trees may be required to this standard when building permits are sought for additions, decks, remodeling, or the construction of accessory structures.

2. Street trees must be from the city's approved street tree list or an approved alternative.

3. Street trees located under utility lines must be species which will not conflict with overhead lines even when reaching maturity.

4. Street trees must be installed with root barrier protection as specified in the Engineering Design Standards.

5. Street trees shall be a minimum caliper of one and one half (1 ½) inch at the time of installation except that small trees used under overhead lines shall be a minimum a

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caliper of one (1) inch. Refer to the city of Lynden Engineering Design Standards for a full description of street tree requirements.

C. Lighting.

- 1. All front entry ways shall have an exterior light.
- 2. In multi-family housing projects exterior lighting must be installed with a timer or sensors so that it operates automatically regardless of occupancy.
- 3. Light that is broadcast beyond the intended area and illuminates neighboring windows or beyond the lot boundary is not permitted.

D. Addressing. To facilitate first responders in the event of an emergency, address numerals on all residential structures must be located near exterior lighting and in an area which is plainly visible when approached from the primary access point.

E. Front and Side Yard Uses.

- 1. Front yards, not part of a paved driveway or designated parking area, shall be used for ornamental purposes only.
 - a. No storage sheds, portable storage tents, temporary canopies or other similar structures may be located within the front yard; provided however that portable canopies or tent structures may be used during events or yard sales but must be removed within seventy-two hours of the sale or other event.
 - b. Parking of vehicles or utility trailers on lawn or landscape areas of a front yard or a side yard adjacent to a public right-of-way is not permitted.
- 2. Front yards may be used for low impact development (LID) infiltration best management practices (BMPs).
- 3. Front yard setbacks may not be used for the storage of boats, campers, or any recreational vehicle. Refer to 19.31.020.
- 4. To reduce the visual impact of parking areas in RM zones, including RMD, a minimum setback of three (3) feet is required between any property line and the surface of a parking lot. This setback must be lawn or landscaped area. fifty square feet of landscaped area per unit must be located between the façade of the structure and the nearest public right-of-way unless otherwise approved by the design review board. This applies to both rear, side, and front yards.

(Ord. No. 1582, § A, 6-3-2019)

Chapter 19.29 PLANNED RESIDENTIAL DEVELOPMENT OVERLAY

19.29.010 Purpose.

The primary purpose of a planned residential development (PRD) ~~or master planned residential development (MPRD)~~ is to promote creativity in site layout and design, allowing flexibility in the application of the standard zoning requirements and development standards. More specifically, it is the purpose of this chapter to:

Commented [HG7]: Little to no distinction remains in the code between a PRD and an MPRD.

- A. Permit developers to use innovative methods including low impact development (LID) techniques and approaches not available under conventional zoning methods to facilitate the construction of a variety of housing types and densities serving the housing needs of the Lynden community and meeting the goals and policies of the comprehensive plan;
- B. Provide for the economic provision of public facilities and services by allowing choices in the layout of streets, utility networks and other public improvements through superior site design and the use of clustering;
- C. Allow development of land with physical constraints while preserving the natural characteristics of the site, including topography, native vegetation, critical areas and other natural amenities of value to the community;
- D. Encourage infill within areas of the city which are characterized by existing development;
- E. Create and/or preserve open space for recreation and the aesthetic enjoyment of residents; and
- F. Provide for the management and control of stormwater under current state and local regulations.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.020 Scope.

The provisions of this chapter shall apply to all single family residential zones, the RMD (residential mixed density) zone and all residential multi-family zones, provided that the project design includes areas of density within the overall project that are consistent with the density allowances of the multi-family zones.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1443, § A, 5-6-2013; Ord. No. 1547, § 13, 12-4-2017)

19.29.030 Definitions.

A. ~~A.~~ Active Recreation: Active recreation includes "recreation, outdoor" defined in LMC 17.01.030 and trails and garden areas.

~~B. Gross Land Area: The gross land area is the land area measured in square feet excluding the area included in a floodplain or floodway identified by FEMA.~~

B. ~~C.~~ Planned Residential Development: A planned residential development, (PRD), is a tract of land which is to be developed as a coordinated unit according to a detailed plan within the scope of zones permitted by this chapter to allow greater flexibility and creativity in site design.

~~D. Master Planned Residential Development: A master plan residential development, (MPRD), is a tract of land which may be developed as a planned residential development that is guided by an approved master plan and developed as a coordinated unit to allow a greater flexibility and creativity in site design.~~

C. ~~E.~~ Major Community Facility: A major community facility includes recreational facilities for use by the approved master planned residential development and planned residential development.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.040 Minimum size.

The minimum area required for a PRD shall be one (1) acre.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.050 Allowable uses.

All uses that are permitted outright or as a conditional use within the underlying zone are permitted within a PRD ~~or MPRD~~; provided that, for development of single family residences within an RS zone, at least twenty-five percent (25%) of the dwelling units within the PRD ~~or MPRD~~ shall be detached single family units.

Commercial uses which are found to be accessory and compatible with the proposed PRD may be permitted in areas specifically designated areas of the PRD.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.060 Minimum development standards for PRD ~~or MPRD~~.

While development under a PRD ~~or MPRD~~ provides measures for flexibility and creativity in the development of new home sites, there are certain minimum standards that must be met to protect Lynden's character, aesthetic values and health and safety. Additional conditions or requirements more stringent than these minimum standards may be imposed as a condition of approval. The following are minimum standards applicable to all PRD ~~and MPRD~~ proposals; provided that, said minimum standards may be reduced ~~for an MPRD~~ subject to subsection J herein:

- A. Density: The density shall be the same as the density for the underlying zone; except where the application qualifies for a density bonus under Section 19.29.070. The area included in a floodplain or floodway identified by FEMA shall not be included in the gross land area for the calculation of density. The base density for projects that include land in two (2) or more zoning designations shall be calculated for the land area in each zone and added together for the total number of units.
- B. Height: Maximum height of structures when the underlying zoning is a single family or mixed density zone is thirty-five (35) feet. The maximum height of structures when the underlying zone is a multi-family zone is forty-five (45) feet. Building height may be extended above these limits under a master planned residential development when approved in the ~~master plan~~PRD agreement. Considerations for approval of extension of the height limit include the size of the parcel, the character and scale of the surrounding parcel(s) and neighborhood, protection of view corridors and the existence of adequate infrastructure to supply necessary services.
- C. Parking requirements: Parking must be provided consistent with LMC 19.51. Alternate parking ratios or flexible configurations may be proposed in association with a PRD. Two parking stalls are required for each residential unit. Each twelve feet x twenty five feet space, whether inside or outside the garage shall count as a parking stall. These are the minimum requirements and additional parking may be required as a condition of approval.
- D. Building setbacks: All PRD's ~~and MPRD's~~ are subject to the following minimum setbacks:
 1. Fifteen (15)-feet between the front of the house and the front property line;
 2. Twenty-five (25)-feet between garage doors and the front property line;
 - ~~3. A setback of twenty five feet around the perimeter of the development;~~
 - 3.4. There is no minimum building separation, except as provided by the International Building and Fire Codes, but such separation may be required as a condition of approval.

~~4.5-~~ Other setbacks may be required as a condition of approval.

For purposes of this section, where the "front property line" borders on a public right-of-way, said "front property line" shall be the edge of the public right-of-way or the edge of shared access easement if public right-of-way is not established.

- E. Street widths: Arterial or collector streets or streets shown within the transportation plan must be constructed to full city standards. Within a PRD ~~or MPRD~~, a reduced street section for a residential access street that is not included in the transportation plan may be permitted as follows:
 - 1. Thirty (30) feet from face of curb to face of curb, allowing two driving lanes and room for on-street parking on one side of the street.
 - 2. A minimum five (5)-foot sidewalk fronting all residences with a four- (4) foot buffer or planting strip between the curb and sidewalk.
 - 3. Rolled curbs are not allowed adjacent to pedestrian walkways.
- F. Pedestrian Connectivity: In addition to sidewalks fronting residential lots, there must be logical pedestrian connections throughout the project including trails within or adjacent to open space areas.
- G. Maximum lot coverage: There is no maximum lot coverage established by this overlay zone; provided that, a maximum lot coverage limitation may be imposed as a condition of approval based on consideration of the size of the parcel, the character of the surrounding parcel(s) and neighborhood, protection of view corridors and the existence of adequate infrastructure to supply necessary services.
- H. Unit Distribution: When a PRD ~~or MPRD~~ is used in a single family zone ~~for development of single family residences~~ a mix of housing types is permitted, however, at least twenty-five percent (25%) of the dwelling units must be detached single family units.
- I. Minimum lot size: For detached single family residences within a PRD ~~or MPRD~~, the minimum lot size shall be no less than five thousand (5,000) square feet; provided that, smaller lots or detached condominiums may be approved ~~under a MPRD~~ subject to consideration of the factors identified in subsection J herein.
- J. Where the applicant seeks to depart from the above minimum standards in the ~~M~~PRD process, the planning commission and council shall consider the following factors and the council may in its sole discretion approve departure from one or more of said minimum standards upon finding that the MPRD proposal clearly satisfies one or more of these factors:
 - 1. The modification of minimum standards protects or improves the character of the surrounding neighborhood in terms of architectural scale, view corridors, the aesthetic character or provision of services;

2. The modification of minimum development standards protects critical areas and the environmental quality of the parcel(s) to be developed;
3. The modification of minimum standards is necessary to permit reasonable development as a result of unique characteristics of the property or the proposed uses;
4. The modification of building height (subject to Section 19.29.060(2)) or building setbacks where reasonably necessary due to arrangement of buildings and open spaces as they relate to various uses within or adjacent to the planned development; provided that any such modification shall be consistent with subsection A herein;
5. The modification of minimum standards is adequately mitigated by reasonably related public improvements proposed in connection with the planned development.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1443, § B, 5-6-2013; Ord. No. 1547, § 13, 12-4-2017)

19.29.070 Density bonus.

Density bonuses shall be allowed for planned residential developments and master planned residential developments according to the following provisions:

- A. When at least ten percent (10%) of the land is set aside in common open space satisfying the requirements of Section 19.29.080, a five percent (5%) bonus to the base density is allowed.
- B. When twenty percent (20%) of the land is set aside in common open space and major community facilities, as approved by the city council (i.e. a swimming pool, or club house) are constructed on the remaining land, a ten percent (10%) bonus to the base density is allowed.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1443, § C, 5-6-2013; Ord. No. 1547, § 13, 12-4-2017)

19.29.080 Open space standards.

A PRD ~~or MPRD~~ shall set aside a minimum of seven and one-half (7.5%) percent of the gross land area or four thousand (4,000) square feet, whichever is greater, for active recreational uses. For purposes of this chapter, a "set aside" of open space shall require:

- (a) a recorded deed restriction or restrictive covenant which runs with the land and assures that said property will remain in open space in perpetuity, consistent with the

terms of this chapter, and which shall be held and maintained for such purposes for the common benefit of residents of the development by a homeowner's association; or (b) a permanent dedication of property to the City, which is accepted by the city, to hold and maintain as open space consistent with the purposes of this chapter.

- A. Location: The area proposed for open space within the PRD ~~or MPRD~~ shall be within reasonable walking distance of all dwelling units within the development. The minimum open space requirement of four thousand (4,000) square feet must be met with an open space set aside at one location which shall be suitable for active recreational uses. Where the minimum requirement is greater than four thousand (4,000) square feet, at least one contiguous area meeting the minimum size requirement must be set aside at one location for common open space. Any remaining open space set aside may be otherwise distributed according to the requirements of this section.
- B. Access: All dwelling units within the PRD must have legal access to the proposed open space. Open space set aside for active recreational open space shall have reasonable access from street frontages. Design measures should accomplish the purposes of access and security.
- C. Types of Open Space: Land dedicated for open space should be useable for any of the following:
 - 1. Greenbelts that serve as a buffer between land uses (greenbelts do not include yard areas privately owned, nor do they include required landscaping surrounding a building or parking area). Open space that preserves existing native vegetation is encouraged;
 - 2. Low impact development (LID) stormwater best management practice (BMP) facilities;
 - 3. Active recreational uses, including trails and garden areas;
 - 4. Protecting environmentally sensitive areas.
- D. Use of Open Space: Except as provided below, a minimum of thirty percent (30%) of the required open space shall be suitable for active recreational purposes. The topography, soils, hydrology and other physical characteristics shall be of such quality as to provide an area suitable for recreation. These areas may be used for low impact development (LID) facilities.
 - 1. The percentage of open space required to be suitable for active recreational uses may be increased to as high as fifty percent (50%) if it is determined that anticipated recreational needs will require a larger percentage.
 - 2. The percentage of open space required to be suitable for active recreational uses may be decreased to as low as ten (10%) percent, if it is determined that the

inclusion of the buffers or environmentally sensitive areas such as wetlands would better meet the needs of residents and/or the surrounding community.

- E. Qualification for a density bonus: The provision of improved recreational or park facilities including "recreational facilities" and "outdoor recreation" such as improved playfields, basketball and tennis courts, trails, playground facilities or picnic areas or the preservation of unique natural features such as habitats of threatened or endangered wildlife or plant species, wetlands, and environmentally sensitive areas shall qualify for a density bonus, so long as the requirements described in Section 19.29.070 are fully satisfied.
- F. Implementation: The property proposed for open space shall be shown on the PRD's master plan ~~if the applicant is following the procedure for an MPRD or site plan if the applicant is following the procedure for approval of a PRD~~ and shall be set aside for management by the homeowner's association or dedicated to the eCity for public use only if acceptable to the City. Maintenance and operation of open space set aside to the homeowner's association shall be the responsibility of the homeowner's association. A set aside of open space is not eligible for credit against the assessment of impact fees for parks or public recreation facilities unless it meets each of the following criteria: (a) the open space is dedicated and accepted by the city for public use; and (b) the proposed location of the dedicated open space is included in the city's adopted capital facilities plan for city park acquisition. The eCity, at its sole discretion may choose to accept a dedication of open space as city park property, including the maintenance and operation thereof, when the property proposed for dedication meets the following criteria as outlined in the park and trail master plan:
 - 1. Minimum park dedication of one-half acre in size. Developments that include ten acres or more would require a minimum park dedication of one acre in size.
 - 2. The proposed dedication is at least one-quarter mile away from a similar facility. If the proposed facility is greater than two acres in size, it should be located at least one-half mile from another park facility.
 - 3. There are opportunities for expansion of smaller park areas into larger park areas as adjoining parcels develop.
 - 4. The proposed dedication is geographically located in an area that is projected for substantial growth during the planning period (six years) and is consistent with the provisions of the park and trail master plan.
 - 5. The proposed dedication has safe and convenient access from the surrounding neighborhood and parking as necessary for public use.
 - 6. Drainage for the proposed site is adequate.
 - 7. Parcel size and shape is appropriate to park development. Oddly shaped "remainders" are discouraged.

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8. There are open lines of sight at the facility for security purposes.
 9. The proposed site meets the needs and desires of the community and considers the specific needs of the surrounding neighborhood.
 10. The proposed site meets state and federal accessibility requirements.
- G. Stormwater Detention Facilities: Stormwater detention facilities including low impact development (LID) facilities may be included by the City as part of the open space necessary for a density bonus, but not as part of the minimum required open space, subject to LMC Chapter 13.24 and satisfaction of the following criteria:
1. The detention facility does not provide drainage for public facilities including public streets unless all easements and drainage releases are approved.
 2. The detention facility shall be constructed so as to drain fully when precipitation is not occurring (i.e. no standing water shall be left) unless the facility is a pond designed as an aesthetic amenity.
 3. The side slope of the detention facility shall not exceed thirty-three percent, unless such slopes already exist naturally and are covered with vegetation. Where the facility has a hard surface wall or slope, the vertical drop shall not exceed twenty-four (24) inches without fencing appropriate to the site conditions to protect public safety.
 4. If detention facilities are located adjacent to or near a natural, year-round stream or wetland, these systems shall be left in a natural or near natural condition.
 5. The detention area shall be landscaped both in a manner consistent with maintaining high aesthetic standards and is able to withstand the inundation expected.
 6. Use of property set aside as open space area for both detention and recreation purposes shall not be acceptable if the detention area must be rendered unsuitable or unavailable for recreation use during dry weather.
 7. In the case of joint use of open space set aside (not dedicated to city) for detention and recreation, the homeowner's association shall be responsible for the maintenance in perpetuity of the facilities in the condition approved under the development contract.
- H. Rights and Duties: The owners of the private open space shall have the following rights which may be exercised in respect of such land, subject to restrictive covenants, development agreements or other restrictions:
1. The right to locate recreational facilities such as tennis courts, basketball courts, swimming pools, picnic tables designed to be used exclusively for the use of the residents of the development and their guests.

2. The right to locate pedestrian and bicycle paths or trails.
3. The right to take whatever lawful measures are reasonably necessary to protect and maintain such land, or property adjacent thereto, or to correct a hazardous condition posing a threat to life or limb.
4. The right to locate and operate community gardens.
5. The right to regulate access to or entry on the open space land and duty to maintain such land.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.090 Submittal requirements.

A. Submittal of a master plan application is required per the minimum development standards as noted in Section 19.29.060 above and LMC Chapter 13.24. An applicant may submit a master plan application when approval of a development concept is desired, or when the applicant wishes to submit applications for the planned residential developments in phases as noted in Section 19.29.090 below. In order to be determined complete, an application for master plan approval of a MPRD shall include the information listed below:

1. A consolidated legal description of all parcels to be included in the master plan.
2. A map, prepared by a qualified professional, showing the following:
 - a. The primary transportation and utility corridors,
 - b. The location of common open space, and
 - c. The distribution of housing types and densities.
3. A narrative description of the project. Narrative must indicate the scope of private infrastructure which would become the responsibility of the home owners association. If the application seeks to modify the minimum development standards, each modification must be identified and a detailed explanation of how the development will meet the criteria listed in Section 19.29.060.10 and other applicable criteria shall be included.
4. A completed SEPA Checklist, prepared as part of a phased environmental review under WAC 197-11-060(5).

B. To be determined complete, an application for a Planned Residential Development must include all of the information listed below. This information may be submitted for a portion of a project with the approval of a master plan. This information shall be

submitted for the entire development proposal for a project that does not use the master plan approval procedure.

1. One map showing street systems, location of utilities, preliminary plat designs and contours at five (5) foot or less intervals;
2. One map showing watercourses, natural drainage patterns, unique and sensitive natural features, forest cover, and critical areas;
3. One map showing locations and sizes of areas proposed to be set aside for common open space as required in Section 19.29.080, any public buildings, and similar public and semi-public uses;
4. One map showing each of the maps indicated in subsections A, B and C superimposed upon one another.
5. Areas designated for recreational buildings, clubhouses, country club facilities and the nature and extent of such facilities;
6. Proposed building areas or phases, housing types, densities, setbacks and height.
7. A development schedule indicating:
 - a. The approximate date when construction of the project can be expected to begin;
 - b. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin;
 - c. The anticipated rate of development;
 - d. The approximate dates when the development of each of the stages in the development will be completed;
 - e. The area and location of common open space that will be provided at each stage;
8. The existing and proposed utility systems including sanitary sewers, storm sewers, water lines, electric lines, gas lines and telephone lines.
- ~~9. —Agreements, provisions or covenants which govern the use, maintenance and continued protection of the planned unit development and any of its common open areas.~~
- ~~10.~~ The existing and proposed circulation system of arterial, collector and residential access streets including off-street parking areas, service areas, loading areas and major points of access to public rights-of-way. Notations of proposed ownership, public or private, should be included where appropriate.
- ~~11~~10. The existing and proposed pedestrian circulation system, including interrelationships with the vehicular circulation system. Any special engineering

features and traffic regulation devices needed to facilitate or ensure the safety of this circulation pattern must be shown.

- ~~12~~11. A general landscaping and tree planting plan including the proposed treatment of the perimeter of the PRD, including materials and techniques used such as screens, fences and walls.
- ~~13~~12. An economic feasibility report or market analysis and a statement substantiating how the proposed PRD will be superior and provide benefit to the public beyond what is available through conventional development.
- ~~14~~13. The names and addresses of all persons, firms, and corporations holding interest in the property, including easement rights and drainage structures.
- ~~15~~14. Information on a map which shows the development in relation to the surrounding area and its uses, both existing and proposed, including land uses, zoning classifications, densities, circulation systems, public facilities and unique and sensitive natural features of the landscape.
- ~~16~~15. A complete environmental review package including a complete SEPA Checklist, engineered traffic impact analysis, a narrative from the project's engineer describing the proposed stormwater management system, critical areas preliminary review and other studies as required during the pre-application meeting or master plan approval.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.100 Approval process.

- A. Applications for ~~a MPRD and~~ a PRD shall follow the review and approval process listed in Chapter 17.09 of the Lynden Municipal Code. The PRD ~~or MPRD~~ shall be overlaid on the underlying zoning district.
- B. An applicant may elect to undergo either a one step or a two-step approval process for a PRD.
 - 1. A one step process would include the review and consideration of not only the general project concept, including its density and overall design, but also of all specific site and development regulations associated with the proposed development. This process entails review under the requirements of LMC Chapter 17.09.
 - 2. In a two-step process, the applicant must receive two separate city approvals under LMC Chapter 17.09. The applicant would first seek approval of a master plan and general project concepts before expending the time and resources in developing the specific site and development features of the proposal. The second approval would relate to the specific site design and development requirements defined by the

approved of the master plan and would be filed with the Whatcom County Auditor's Office as noted above. Approval of a ~~M~~PRD constitutes the city's acceptance of a project design and concept. Once the master plan component of the ~~M~~PRD is approved for the site, the applicant may proceed to begin the second step: submittal of the specific components of its development outlined in Section 19.29.090.2, Section 19.29.110 and as required during approval of the master plan. These specific design components are subject to City approval under LMC Chapter 17.09.

~~a.~~—The intent in establishing a two-step process is to ensure consistency with the city's comprehensive plan, decrease the applicant's expenditure of time and resources and promulgate a cohesive community and neighborhood aesthetic based upon the city's present and future needs.

C. The final development contract, with all exhibits, must be ~~presented to the planning commission submitted to the Planning Department for review and the city council for approval~~ within ~~one year~~ six months of preliminary approval of an approved PRD utilizing the "one step" procedure in subsection ~~2-a-B~~ above or within ~~one year~~ six months following approval of the proposal in the "second step" stage of an ~~M~~PRD utilizing the "two step" approval procedure in subsection ~~2-bB~~ above.

~~D.~~ This ~~The~~ contract will include specific development requirements based on the PRD ~~or MPRD~~ approval and all special conditions and approvals applied to the property within the PRD ~~or MPRD~~. This development contract, related exhibits, and any amendment approved pursuant to Section 19.29.120.2 shall be recorded in the Whatcom County Auditor's Office. The PRD ~~or MPRD~~ shall constitute a limitation on the use and design of the site. If full build-out of the site is not achieved upon expiration of a development contract, the provisions of the underlying zoning category apply except that reconstruction of damaged or destroyed property may be done consistent with the original contract.

~~E.~~ In the event there is to be a subdivision of property, dedication of streets, parks or other public lands, the final plan and approval thereof shall be subject to all ordinances and laws regulating subdivisions including Chapter 18.18 LMC, and any additional requirements therein. In the event of a specific irreconcilable conflict between this chapter and other ordinances, the provisions of this chapter shall apply to PRD ~~and MPRD~~ proposals.

~~F.~~ Covenants, Conditions, and Restrictions (CCRs) must be submitted to the Planning Department in conjunction with the request for final plat approval to provide staff and legal counsel the opportunity to comment. A recorded copy of the CCRs must be provided to the Planning Department prior to issuance of building permits on the site.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.110 Criteria for approval.

In addition to the findings of fact required for approval within Section 17.09.040, the following criteria shall be met for approval of a PRD ~~or MPRD~~.

- A. Design Criteria: The design of the PRD ~~or MPRD~~ shall achieve two (2) or more of the following results:
 - 1. High quality architectural design, placement, relationship or orientation of the structures;
 - 2. Achieving the allowable density for the subject property;
 - 3. Providing housing types that effectively serve the affordable housing needs of the community;
 - 4. Improving circulation patterns;
 - 5. Minimizing the use of impervious surfacing materials;
 - 6. Increasing open space or recreational facilities on-site;
 - 7. Preserving, enhancing or rehabilitating the natural features of the property such as significant woodlands, or critical areas;
- B. Perimeter Design. The perimeter of a PRD ~~or MPRD~~ shall be appropriate in design, character and appearance with the existing or intended character of the development adjacent to the subject property and with the physical characteristics of the property.
- C. Streets and Sidewalks. Existing and proposed streets and sidewalks within a PRD or MPRD shall be suitable to carry the anticipated traffic within the proposed development and the vicinity. The design of the circulation system shall be consistent with the requirements of Chapter 18.14 LMC.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.120 Amendment or modification of an approved PRD ~~or MPRD~~.

- A. The final development plan may be amended administratively without notice if the application does not involve a change which would cause one or more of the following to occur:
 - 1. Violation of any provisions of this chapter;
 - 2. Varying the lot area requirements by more than ten (10%) percent;
 - 3. A reduction of more than ten (10%) percent of the area set aside for common open space and/or usable open space;

- 4. An increase in the total ground area covered by buildings by more than five (5%) percent;
- 5. The applicant seeks to change the housing type from a multi-family designation to a single family designation.

6. The modification is consistent with the final PRD development contract.

B. The final development plan may be amended through the process described in Section 19.29.100 in the following circumstances and if the amendment meets the requirements of Section 19.29.110:

- 1. Land may be added to the overall development plan if:
 - a. The land to be added is within the same underlying zoning; and
 - b. The addition is a logical extension of services and development and the infrastructure developed for the original development can be shown adequate to serve the additional land; and
 - c. The addition will meet the minimum standards for PRD ~~or MPRD~~ development set forth in Section 19.29.060.

d. The final PRD development contract has not yet expired.

- 2. Changes in the parcel development requirements such as setbacks, lot coverage or other similar changes which exceed the minor modification limits in subsection 1 above.
- 3. Any change in infrastructure development requirements must be listed within the final development contract.

C. The final development plan may not be amended in the following manners unless explicitly permitted within the final PRD development contract:

- 1. To transfer unused density from one area of the final PRD to another;
- 2. To change the housing type from single family to multi-family;
- 3. To remove land from a PRD ~~or MPRD~~.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.130 Requirement for homeowner's association and restrictive covenants.

To preserve and maintain community facilities and open space, every PRD ~~or MPRD~~ shall have a homeowner's association and agreements and enforceable covenants to fund and effectively collect funds for such an organization. Said agreements and enforceable covenants shall apply to all property within the PRD ~~or MPRD~~, shall be recorded and shall run with the

land, and shall be consistent with The Washington Uniform Common Interest Ownership Act (WUCIOA) as required per RCW 64.90.

- A. The restrictive covenants and/or homeowner's association intended to be used by the applicant in a PRD ~~or MPRD~~, which purports to restrict the use of land, the location or character of buildings or other structures thereon, set aside open space, and establish provisions for the perpetual maintenance of common grounds, must be submitted to the Planning Department in conjunction with the final development contract to provide be reviewed by the technical review committee and city attorney an opportunity to comment. The city attorney will make a written report to the planning commission which shall be subject to approval by the city council, before final approval of the PRD application and recording with the county auditor.
- B. The homeowner's association authority shall be established in restrictive covenants applicable to all property within the PRD ~~or MPRD~~. Said restrictive covenants shall provide, inter alia, for the assessment, collection and enforcement of collection of such homeowner's dues as are necessary for adequate maintenance of open space, common grounds and stormwater facilities, any private roads or utilities, and for performance of any other association obligations.
- C. At the time of final plat the developer must record on the title of each lot a notice regarding the obligations of common ownership within the PRD. A homeowner's association covenants, once reviewed and approved by the City of Lynden, shall contain the following provisions: "Changes in these documents must be approved by the City of Lynden through the Lynden City Council or if the council designates an agency or department, by that agency or department." Any changes suggested shall be reviewed by the Lynden City Attorney, who will make a written report to the Lynden City Council concerning the effect of the proposed changes. The cost of review by the Lynden City Attorney will be paid by the homeowner's association.
- D. The PRD ~~and MPRD~~ developers/property owners shall notify each buyer that it is the policy of the City of Lynden never to acquire or maintain the common grounds unless the city chooses to accept a dedicated open space under Section 19.29.080. This policy shall be clearly shown in recorded documents so that future buyers will be aware of this policy.
- E. Subsequent amendments to restrictive covenants do not supersede the requirements of the PRD final development contract and all associated develop standards. Upon expiration of a development contract the provisions of the underlying zoning category apply except that reconstruction of damaged or destroyed property may be done consistent with the original contract.

Commented [HG8]: Legal review needed.

Commented [HG9]: Add provisions to record on title.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.140 Construction start and completion limits.

If substantial construction has not commenced within twenty-four (24) months from the time of final approval of the PRD ~~or MPRD~~ contract, the permit shall lapse. The ~~planning director~~ City Council may extend this time limit by up to twelve (12) months ~~with approval of the city council~~ if the request is made in writing to the ~~planning director~~ Director prior to the expiration of said twenty-four (24) months following final approval. Any extension of time ~~shall~~ may be conditioned on the requirement to post a performance bond as required in Section 18.06.010(5), for one hundred fifty percent (150%) of the engineer's estimate for the completion of the infrastructure.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

19.29.150 Construction of improvements—Guarantee.

Commented [HG10]: Legal review recommended.

- A. All improvements which are to be made to City owned property or which are to become the property of the City must be either completed or bonded for completion in the manner provided in Sections 18.06.010(5) and 18.06.010(6) LMC. No sales of property in the PRD ~~or MPRD~~ may be made until such improvements are so bonded or completed and approved by the city. The ~~city~~ city may allow the construction of such improvements, or the bonding thereof, in phases, if the PRD ~~or MPRD~~ is to be developed in phases and if each phase can logically be utilized independently or in conjunction with previously completed phases. In case the PRD ~~or MPRD~~ is to be developed in phases, and construction of city owned improvements is to be allowed in phases, the plan submitted and approved shall state with particularity which improvements are to be made in conjunction with each phase.
- B. All improvements to be owned in common by persons purchasing property rights in the PRD ~~or MPRD~~ must be either completed or bonded for completion in the manner provided for in Section 18.06.010(5) and 18.06.010(6). No sales of property in the PRD ~~or MPRD~~ may be made until such improvements are so bonded or completed and approved by the ~~city~~ city. The ~~city~~ city may allow the construction of such improvements, or the bonding thereof, in phases, if the PRD ~~or MPRD~~ is to be developed in phases and if each phase can logically be utilized on its own or in conjunction with previously completed phases. In case the PRD ~~or MPRD~~ is to be developed in phases, and construction of improvements to be owned in common is to be allowed in phases, the plan submitted and approved shall state with particularity which improvements are to be made in conjunction with each phase.

(Ord. 1270 § B(part), 2006).

(Ord. No. 1547, § 13, 12-4-2017)

Chapter 19.45 DESIGN REVIEW BOARD

19.45.010 Intent.

The intent in conducting design review and establishing a design review board is to ensure that new development will enhance the character of the commercial and multi-family areas. Site design and architecture provide a visible linkage between the downtown and other commercial areas, must create spaces which are readily accessible to pedestrian and vehicular traffic, allow for the function of service vehicles, minimize pedestrian and vehicular conflicts, maximize personal comfort and safety, soften the built environment with landscaped areas, and ensure that new development maintains or enhances the character and aesthetic appearance of neighborhoods.

The guidelines adopted by the Design Review Board and the City Council will be considered as a tool for the implementation of the Lynden Municipal Code and the Comprehensive Plan.

(Ord. 1000 § A(part), 1995).

(Ord. No. 1547, § 14, 12-4-2017)

Design review board established.

~~A design review board is established for the purpose of reviewing: exterior design of buildings proposed for construction of multi-family dwellings, detached accessory dwelling units (ADUs), the construction, reconstruction or remodeling of commercial buildings in all commercial zones, signs as required in Chapter 19.33 of this Code, and the variance of adopted design standards. Those appointed should be capable of the following:~~

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~~A. Reading and understanding building design drawings.~~

~~B. Having an appreciation of architecture and landscape architecture.~~

~~C. Having an understanding and appreciation of the "European/Dutch" theme proposed in the Front Street area.~~

~~(Ord. 1000 § A(part), 1995).~~

~~(Ord. No. 1547, § 1, 12-4-2017; Ord. No. 1574, § C, 3-4-2019)~~

19.45.015 Design Review Board establishment and scope.

An advisory board known as the Design Review Board is established to provide recommendations on subjects as defined in Chapter 17.03.060 which typically includes: exterior design of buildings proposed for construction of multi-family dwellings, the construction, significant reconstruction, or remodeling of commercial buildings in all commercial zones, and signs as required in Chapter 19.33 of this Code. The Design Review Board makes a final determination on applications to waive adopted design standards.

The Planning Director will determine when review or re-review (in the event of an amended design) is required by the Design Review Board. The Planning Department shall prepare a staff report on the design proposal summarizing requirements and conditions of permit approval. The staff report shall include findings, conclusions, and conditions for disposition of the design application.

Qualifications. Those appointed should be capable of the following:

- A. Reading and understanding building design drawings.
- B. Having an appreciation of architecture and landscape architecture.
- C. Having an understanding and appreciation of historic architecture and the "European/Dutch" theme applicable to the Historic Business District.

(Ord. 1000 § A(part), 1995).

(Ord. No. 1547, § 1, 12-4-2017; Ord. No. 1574, § C, 3-4-2019)

Intent:

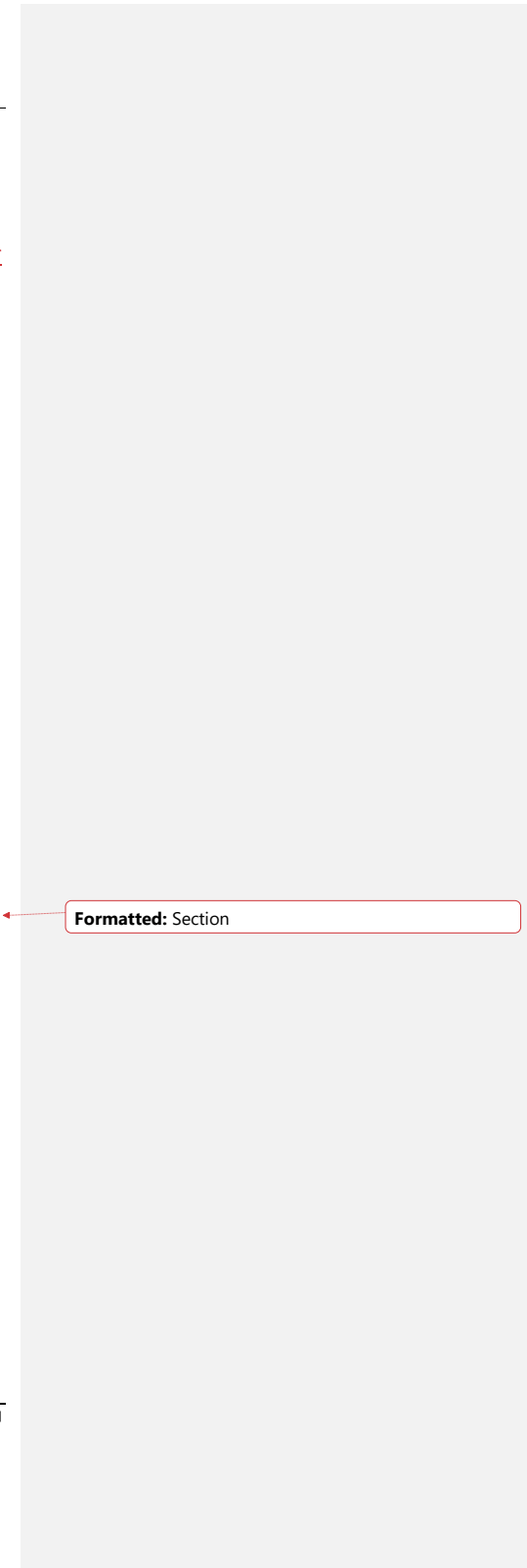
~~The intent in establishing the design review board is to enhance the character of the commercial and multi-family areas, provide a visible linkage between the downtown and other commercial areas, and ensure that new development maintains or enhances the character and aesthetic appearance of neighborhoods. The guidelines adopted by the design review board and the city council will be considered as a tool for the implementation of the comprehensive plan.~~

~~(Ord. 1000 § A(part), 1995).~~

~~(Ord. No. 1547, § 14, 12-4-2017)~~

19.45.020 Design Review Board Membership, Appointment, Term, Compensation, Vacancy, Removal.

The design review board shall consist of five (5) members, all of whom shall serve without salary. The members shall be appointed by the ~~m~~Mayor with the consent of the ~~C~~council.



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In case any vacancy should occur in the membership of the Board, for any cause, the Mayor shall fill such vacancy by making an appointment with the consent of Council. The members of the Design Review Board may be removed by the Mayor, subject to the approval of the Council, for such causes as he/she deems sufficient, which shall be set forth in a letter filed with the Council. The ~~initial~~ membership shall consist of ~~one member appointed for one year, one for two years, one for three years, and two for a~~ four (4) years appointment. Each appointment hereafter shall also be for four years.

(Ord. 1000 § A(part), 1995).

(Ord. No. 1547, § 14, 12-4-2017)

19.45.030 ~~Design Review Board Meetings and Notice Rule promulgation Records Quorum.~~

Meetings of the design review board shall be held as needed to accommodate Design Review applications within a reasonable amount of time or as the Planning Director deems necessary. at least once every six months, and at other times as the chairperson of the design review board may determine or a request for design review is made by an applicant. There shall be a fixed place of meeting or virtual application, and all regular design review board meetings shall be open to the public.

A. Notice Requirements.

1. The eCity shall publish notice of all ~~meetings-public hearings~~ at least ten (10) days in advance of the meeting date.
2. In some cases, the owner of the property for which the review is sought shall notify all adjacent property owners accordingly:
 - a. In the case of review of construction, or remodel within the historical business district, notice shall be given to all property owners along Front Street within the block where construction is proposed.
 - b. In the case of review of ~~new multi-family construction which includes a structure of more than four units, or single family~~ construction of four (4) or more attached units in one structure, notice shall be given to all property owners within three hundred (300) feet of the property on which construction is proposed.
 - c. Notification, in all cases, shall be by certified mail ~~or registered mail~~, and satisfactory evidence of such notice must be provided prior to the hearing date.

B. Proceedings. The design review board shall adopt its own rules or procedures and keep a record of its proceedings, findings and action in each case, and the vote of

each member on each question considered in the proceedings. The presence of three (3) members shall be necessary to constitute a quorum.

(Ord. 1292 § E, 2007; Ord. 1000 § A(part), 1995).

(Ord. No. 1547, § 14, 12-4-2017; Ord. No. 1574, § C, 3-4-2019)

19.45.035 Residential ~~d~~Design ~~v~~ariance ~~w~~aiver criteria.

Plans submitted to the ~~d~~Design ~~r~~Review ~~b~~Board for a ~~v~~ariance ~~w~~aiver to the residential design criteria, processed as noted in Chapter 19.47 of the Lynden Municipal Code must ~~be stamped by a licensed architect, registered in Washington State, and must~~ meet the following criteria:

- A. Granting the ~~v~~ariance ~~w~~aiver would not be inconsistent with privately recorded covenants, conditions or restrictions;
- B. The proposed structure would meet all building and fire codes as determined by the ~~b~~Building ~~e~~Official;
- C. The applicant is not varying more than two (2) of the ~~d~~esign criteria.
- D. Granting the waiver does not negatively impact the integrity of the overall design, or permanent mitigating elements will be included in the design to offset impacts created by the waiver.

(Ord. 1292 § F, 2007).

(Ord. No. 1547, § 14, 12-4-2017)

19.45.040 Decision by the ~~d~~Design ~~r~~Review ~~b~~Board.

The design review board shall review each application referred to the Board by the Planning Director to determine if the design meets the guidelines as adopted in the design review guidebook for signs, and commercial and multi-family construction. It shall develop a recommendation to:

- A. Grant approval of the proposed exterior design or sign, or
- B. Deny the proposed design, or
- C. Approve the exterior design with conditions, which shall be noted by the ~~B~~uilding ~~O~~fficial~~i~~n~~s~~pector.

Planning staff and the ~~b~~Building ~~e~~Official shall enforce the final conclusions decisions of the design review board when granting a building permit. All designs shall be subject to the International Building Code as well as all Lynden Municipal ~~e~~Codes. Equivalent substitutions

Title 19 - ZONING

and minor alterations which follow a Design Review Board recommendation may be approved by the Planning Director.

The design review board shall not ~~impose-recommend~~ conditions which are contrary to the requirements of any applicable ~~development standards or~~ building codes.

The ~~waiver~~ decision of the ~~d~~Design ~~r~~Review ~~b~~Board shall be final, unless appealed within fourteen ~~(14)~~ days to the Lynden City Council.

(Ord. 1292 § G, 2007: Ord. 1000 § A(part), 1995).

(Ord. No. 1547, § 14, 12-4-2017)

19.45.050 Administrative design review.

Administrative design review will be conducted for all commercial, sign, or multi-family projects or remodels even if they do not trigger an application to the Design Review Board such as minor exterior updates, commercial additions, or accessory structures.

- A. Authority. The Planning Director shall review the building permit for compliance with the Lynden Municipal Code and design guidelines related to site layout, architecture, lighting, screening, and landscape.
- B. Decision. The Planning Director may grant, deny, or conditionally approve a building permit based on compliance with the design guidelines.

Title 19 - ZONING

Chapter 19.51 OFF-STREET PARKING

see edits to 19.51 in separate document

Chapter 19.63 FENCE PERMITS AND REQUIREMENTS

19.63.010 Fence permit required.

No fence shall be erected in the city limits unless a permit for construction of the fence is first obtained.

(Ord. 1292 § H(part), 2007).

19.63.020 Fence permits and requirements.

The fee for obtaining a fence permit shall be set by resolution.

(Ord. 1292 § H(part), 2007).

(Ord. No. 1441, § 1, 3-18-2013)

19.63.030 Utilities location.

It shall be the responsibility of any person placing a fence in the city limits to determine the location of all underground utilities and to take measures to avoid interfering with them.

(Ord. 1292 § H(part), 2007).

19.63.040 Fence location.

Fences shall not be built closer than three (3) feet to the property owner's side of the sidewalk for front yards and for street side yards on corner lots. If there is no curb and/or sidewalk, the fence shall be set back a minimum of three (3) feet from the front property line and the street side property line on corner lots. Fences erected by owners of private property shall not be erected so that they encroach on any city-owned property, including street and alley, rights-of-way, except as provided in Section 19.63.050.

(Ord. 1292 § H(part), 2007).

19.63.050 Fences on public right-of-way—Conditions.

Private fences may be built within the public right-of-way, on the property owner's side of the sidewalk on a city street that has an overall right-of-way of more than sixty (60) feet as follows:

- A. If there is no curb and/or sidewalk, the public works department shall determine fence location, which may be on city-owned property.

- B. Within a residential zone or for residential uses within a nonresidential zone a fence may be built as close as three (3) feet to the sidewalk.
- C. Fences shall not be allowed on city property for nonresidential uses permitted within a residential zone.
- D. Fences will not be allowed on city-owned property unless the owner agrees to remove the fence at the owner's expense upon request of the city. The owner must sign an agreement which will be recorded with the Whatcom County auditor, evidencing such agreement and agreeing that if the owner does not remove the fence upon the city's request, the owner will reimburse the city for the cost of removal. The owner shall pay for the cost of recording the agreement with the Whatcom County auditor.

(Ord. 1292 § H(part), 2007).

19.63.060 Fence requirements.

Fences shall be built to the following specifications:

- A. Electric, razor, and barbed wire fences are not permitted in residential zones.
- B. All gates shall swing into the owner's property.
- C. A clear vision triangle as defined in Section 17.01.030 shall be maintained on all corner lots at the street intersection. A ten- (10) foot clear vision triangle shall be maintained at all alley, railroad, and driveway intersections with streets and all driveway/alley intersections. The driveway vision triangle shall be measured from the paved driveway sides or five (5) feet each way from the driveway center, whichever is more restrictive. Fences of three (3) feet or less in height, measured from curb height, are allowed in all vision triangles. Clear vision triangle is defined in Chapter 17.01 of this code and within the adopted engineering design and development standards.
- D. Fence heights for residential uses will be as follows:
 1. For the first thirty (30) feet from the front property line or five feet behind the front corner of the house, whichever is greater, the maximum fence height shall be forty-two (42) inches.
 2. From thirty (30) feet from the front property line, or five (5) feet behind the corner of the house as noted above, to the rear property line, the maximum height of any fence shall be seventy-two (72) inches.
 3. Side yard fences where the side yard is the rear yard for the adjacent property may be seventy-two (72) inches in height, on that side only, provided that there is a minimum setback of fifteen (15) feet from the front property line and does not extend beyond the front of the house, whichever is more restrictive. No

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vision triangle may be obstructed and the opposing side must comply with all other setback and height requirements.

Fence height is determined by measuring from the natural ground level adjacent to the fence to the top of the fence structure, including all latticework or other decorative features allowing a maximum of two inches for ground clearance. The ~~board of adjustment~~ **Design Review Board** may grant, or grant with conditions, a ~~variance-waiver~~ to this height limit for no more than eighteen (18) inches ~~of lattice-work or other decorative feature~~ upon the following conditions:

1. The neighboring property owner(s) does not object;
2. If the side or rear yard is located immediately adjacent to a city street right-of-way, but not an alley right-of-way, the fence may not be parallel to the city street or sidewalk;
3. That in accordance with the requirements of the International Building Code the applicant will submit a construction permit with complete structural detail to the building official and other applicable departments for approval. The cost for such permit is based on the cost of the fence and such permit replaces the fence permit required by this chapter;
4. The fence is in the rear or side yard;
5. The replacement of an existing fence that is nonconforming as to the maximum height, and is not located in the front yard, may be exempt from the variance process described above. However, the applicant must obtain all required construction permits.

E. Fence heights for property in a residential zone being used for nonresidential permitted uses shall be subject to the requirements of Section 19.63.080.

(Ord. 1292 § H(part), 2007).

19.63.070 Privacy fencing.

Patio and courtyard privacy fencing is allowed up to a maximum height of seventy-two (72) inches, and an overall combined length of twenty-five (25) feet. Privacy fences shall be considered part of the residential structure and shall meet all structure setbacks for front, rear and side yards; provided, however, that rear and side yard setbacks may be waived by the planning department if, in their opinion, there is no apparent conflict with adjoining property uses.

(Ord. 1292 § H(part), 2007).

19.63.080 Nonresidential zone fences.

Fences in the industrial and commercial zones and for nonresidential uses in the RS zone are allowed subject to the following conditions:

A. ~~A.~~ Maximum height for solid fencing on all non-residential properties is eighty-four (84) inches.

A.B. Wire fencing may be allowed up to eighty-four (84) inches on properties with a non-residential zoning except that a maximum height of one hundred and forty-four (144) inches ~~twelve feet high is permitted on industrially zoned properties.~~

B.C. ~~B.~~ Street, alley, railroad and vision triangle requirements of Section 19.63.060(C) shall apply, provided, however, that higher wire fencing may be allowed, if, in the opinion of the public works director, the fence will not obstruct vision in the vision triangle.

(Ord. 1292 § H(part), 2007).

The following sections have been included in the proposed code amendment related to the Parking Code Update:
LMC 19.51

Chapter 19.51
OFF STREET PARKING

Sections:

- 19.51.010 Requirements.
- 19.51.020 Ingress and Egress Provisions.
- 19.51.030 Location of Parking Spaces.
- 19.51.040 Off-street parking spaces required.
- 19.51.050 ~~Parking Lot Design and~~ Parking Standards
- 19.51.060 ~~Parking for Unspecified Uses (Reserved)~~
- 19.51.070 Reduction of Required Spaces ~~When Effective Alternatives to Automobile Access are Proposed.~~
- 19.51.080 Mixed Occupancy.
- 19.51.090 Joint Uses
- 19.51.100 Conditions for Joint Use.
- 19.51.110 Loading Space.
- 19.51.120 ~~Parking Lot Surfacing Requirements (Reserved)~~
- 19.51.130 Illumination.
- 19.51.140 Landscaping Requirements.
- 19.51.150 Handicapped Parking
- 19.51.160 Special Conditions for ~~Historic Business District~~Downtown Off-Street Parking

19.51.010 Requirements.

Every building hereafter erected, moved, reconstructed, or structurally altered shall be provided with parking areas as provided in this chapter, and such parking areas shall be made permanently available and shall be maintained for parking purposes.

No building permit shall be issued until showing provisions for the required off-street parking have been submitted and approved as conforming to the standards of this chapter. The primary users of the building shall first utilize the off-street parking in lieu of parking on the street.

~~Every lot or parcel of land used as a public or private parking area or new or used car sales area and having a capacity of three or more vehicles shall be developed and maintained in accordance with this chapter.~~

~~Where off street parking is required and provided according to this chapter, the~~

~~primary users of the building such as but not limited to, the property owner, lessors, lessees, residents, invitees, employers and employees shall first utilize the off-street parking in lieu of parking on the street.~~

19.51.020 Ingress and Egress Provisions.

Ingress and egress of a site must comply with the City’s Engineering Design and Development Standards. The ~~Director of~~ Public Works Director, in conjunction with the ~~p~~Police ~~e~~Chief and ~~f~~Fire ~~e~~Chief, shall have authority to fix the location, width and manner of approach of vehicular ingress or egress from a building or parking area to a public street and to order alteration of existing ingress and egress as may be required to control traffic in the interest of public safety and general welfare.

19.51.030 Location of Parking Spaces.

Off-street parking spaces shall be located as specified herein. Where a distance is specified, the distance shall be the walking distance measured from the nearest point of the parking facilities to the nearest point of the building which it serves.

- A. Parking for single and multiple family dwellings shall be on the same lot or building site with the building it serves unless a parking agreement is approved by the Planning Director and recorded against the applicable properties;
- ~~B. Parking for all Hotels, Motels, or Bed and Breakfasts in all zones, and RM-3 dwellings in the HBD zone, must be located within four hundred fifty feet of the building. There will be no exceptions or variances to location or number of spaces to be provided.~~
- ~~C. Parking for uses not specified above shall not be over three hundred (300) feet from the building / use that it serves;~~
- ~~D. All off-street parking spaces shall be located on land zoned in a manner which would allow the particular use the parking will serve; and~~
- ~~E. Parking shall be located at least twenty-five feet from any body of water.~~
- ~~F. Streets in residentially zoned areas shall not be utilized as parking for the property owner, lessors, lessees, residents, invitees, employers, employees, clients, or distributors of any commercial or industrial uses in adjacent commercial or industrial zones when there is off-street parking as required under section 19.51.040 below.~~
- C. The availability of on-street parking may not count toward the parking requirements listed below.

19.51.040 Off-street Parking Spaces Required.

The required number of off-street parking spaces shall be as follows. Any proposed use not listed but similar to a use listed below shall meet that requirement. If nothing similar is apparent, the Planning Director shall determine the requirement. ~~The pertinent approving~~

body may reduce these requirements if the applicant submits a request for a waiver and can incorporate one or more of the following LID techniques:

- A) Shared parking
- B.) Proximity to transit

<u>Land Use</u>	<u>Parking Requirement</u>
<u>Residential Uses</u>	
▲ <u>Single-family units and manufactured mobile-home units</u>	<u>2 per dwelling unit (1)</u>
▲ <u>Duplex, Multi-family, Townhomes</u>	<u>2 per dwelling unit up to 2 bdrms. 1 space per bdrm for units with more than 2 bdrms. plus any required handicapped stalls (1)(2)</u>
▲ <u>Assisted Living</u>	<u>1 per dwelling unit plus 1 per employee</u>
▲ <u>Accessory Dwelling Unit</u>	<u>1 per bdrm in addition to the single-family requirement</u>
▲ <u>Adult Residential Care Facilities</u>	<u>2 per home plus 1 guest stall</u>
▲ <u>Transitional or Emergency Housing</u>	<u>1 stall per bdrm</u>
▲ <u>Juvenile Group Homes</u>	<u>2 per home plus 1 guest stall</u>
<u>Commercial Uses</u>	
▲ <u>Commercial Recreation</u> <u>(bowling alley, sport courts, skating rink, public swimming pool, arcade)</u>	<ul style="list-style-type: none"> • <u>52 per bowling lane</u> • <u>2 per tennis, racquetball, pickleball court, etc</u> • <u>1 per 40 sq ft of assembly area.</u> • <u>1 per 150 sq ft GFA for skating rink, video arcade, etc</u> • <u>1 per 10 swimmers of standard pool capacity</u>
▲ <u>Commercial Schools for Adults</u>	<u>1 per 4 seats plus 1 per employee ⁽³⁾</u>

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Eating and Drinking Establishments	1 per 100 sq ft of floor area open to the public plus 1 per 300 sq ft of -area dedicated to outdoor service
Funeral Parlors, Mortuaries	1 per 4 seats or 8 ft of bench or pew or 1 per 40 sq ft of assembly room
General Business, Retail, Personal Services (not including shopping centers greater than 20,000 sq ft)	1 per every 250 sq ft of floor area open to the public
Health Care:	
Hospitals and Emergency Medical Clinics	1 per 2 beds plus 1 per employee on shift with greatest number of employees
Medical Care Facilities (Nursing homes, Institutions for the aged and/or children)	1 per 4 beds plus 1 per employee on shift with greatest number of employees
Animal Hospitals, Veterinary Clinics	1 per 500 sq ft of GFA
Hotels, Motels, Bed and Breakfast	1 per room plus the required spaces for accessory uses
Motor Vehicle Services	
Commercial Garages and Repair	1 per 200 sq ft of GFA
Service/Fueling Stations	4 spaces plus 1 space per service bay/greasing facility or fueling station
Passenger Vehicle Sales	1 per 1000 sq ft GFA plus 1 per 1500 sq ft of outdoor display area
RV, Agricultural Vehicle Sales	1 per 3000 6000 sq ft of outdoor display area plus 1 per employee.
Offices: (not including Medical and Dental health care)	1 per 350 sq ft of GFA

Commented [HG1]: We should clarify if a fueling station is a parking spot or if these parking stalls are required in addition.

Commented [HG2]: Revised to be more consistent with sites in Lynden (Pape, Scholten Equip)

Offices: (Medical and; Dental)	1 per 200 sq ft of GFA
Shopping Centers and Food Markets	1 per 200 sq ft of GFA
Studios (Dance, Art, Martial Arts, etc)	1 per 100 sq ft of studio floor area
Public and Semi-Public Assembly Places	
Assembly Places with fixed or unfixed seating in rows seats (churches, stadiums, theaters, auditoriums, etc)	1 per 4 seats or 8 ft of pew or bench space
Bus Stations, Passenger Terminals	1 per 100 sq ft of floor area open to the public
Community Centers, Convention Halls, Private Clubs/Lodges	1 per 400 sq ft of GFA
Libraries, Museums, Art Galleries	1 per 200 sq ft of floor area open to the public
Pre-school, Elementary, and Middle Schools (public and private)	1 per 12 seats in auditorium or large assembly room plus 1 space per employee, plus bus loading space (off street)
Secondary Schools (public and private)	1 space/employee plus 1 space/each 4 students or 1 space/4 seats or 8 feet of bench length in the auditorium, whichever is greater
Industrial Uses	
Manufacturing, Contractor Shops (Additional parking required for office space if included. See "Offices" above.)	1 per 1000 GFA or 1 per employee on largest shift – whichever is greater
Mini-Storage	1 per 50 storage units equally distributed plus 3 spaces for office space

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Commented [HG3]: "Mini-Storage" must be defined in LMC 17

Utility and communications establishments without regular employment	1 space
Warehousing, Large Scale Storage Units, and Wholesale (additional parking required for office space if included, see "Offices" above.)	1 per 2000 sq ft of GFA or 1 per employee – whichever is greater ②

Commented [DT4]: Replace this table with the above

Land Use	Parking Requirements
Single family units, duplex units and townhouse and mobile home units	2 per dwelling unit⊕
Multi-family dwelling units	2 per dwelling unit up to 25 units 1.5 per unit for each unit after 25⊕
Retirement Housing	1 per dwelling unit
Assisted Living	1 per dwelling unit plus 1 per employee on biggest shift⊕
Fraternity, Sorority, rooming and boarding houses	1 per person accommodated
Hospitals and Emergency Medical Clinics	1 per 2 beds plus 1 per employee on shift with the greatest number of employees⊕
Nursing home, institutions for the aged and children, welfare or correctional institutions	1 per 4 beds plus 1 per employee on shift with the greatest number of employees⊕
Retail Uses	4.5 per 1000 sq. ft. GLA
Banks and Financial Institutions	3 per 1000 sq. ft. GFA
Professional and Business Offices	3 per 1000 sq. ft. GFA — min. 5
Medical and Dental Clinics	1 per 200 sq. ft. GFA
Barber Shops, Beauty Parlors,	3 per operator
Personal Services	4.5 per 1000 sq. ft. GLA
Day Care Facilities	1 per employee plus off-street loading and unloading space equivalent to one space per 10 children
Communications Services (radio and TV stations, publishing services)	1 per 1000 sq. ft. GFA or 1 per employee, whichever is greater⊕
Laundry and Dry Cleaning Facilities	1 per 2 washing or drying machine
Theaters and Movie theaters	1 per 4 seats

Land-Use	Parking Requirements
Bowling Alleys	5 per lane
Skating Rinks	1 per 165 sq. ft. GFA
Video Arcades	1 per 150 sq. ft. GFA
Athletic Facilities, or gymnasiums	1 per 200 sq. ft. GFA
Tennis Courts, racquet clubs, handball courts and other similar commercial recreation.	One per 40 sq. ft. of gross floor area used for assembly plus two per court.
Dance Halls and Dancing Schools	1 per 75 sq. ft.
Restaurants, Cafes and Taverns	1 per 100 sq. ft. GFA - min. 5
Photography Studio	1 per 300 sq. ft. GLA
Business Schools	1 per 4 seats plus 1 per employee ☺
Printing and Duplicating Shops	1 per 600 sq. ft. GFA
Country clubs, social clubs, fraternal lodges	1 per 400 sq. ft. GFA
Funeral Parlors, mortuaries and cemeteries	1 per 4 seats or 8 ft. of bench or pew or 1 per 40 sq. ft. of assembly room used for services if no fixed seating is provided.
Warehouse, storage buildings or structures used exclusively for storage purposes except for mini storage.	1 per 2000 sq. ft. GFA or 1 per employee (whichever greater)
Mini Storage Facilities	1 per 50 storage cubicles equally distributed and proximate to storage building. In addition, one space for each fifty storage cubicles to be located at the project office.
Animal hospitals, veterinary clinics and kennels and veterinary laboratories	1 per 500 sq. ft. GFA
Hotels, Motels - includes indoor restaurants, gift shops and other businesses associated with a hotel/motel	1 per room + required spaces for restaurant/convention facilities
Bed and Breakfast	2 per owner/occupant + 1 per available room
Stadiums, churches, theaters, sports arenas, auditoriums, clubs and lodges, and all assembly places with fixed seats.	1 per 4 seats or 8 feet of pew or bench space
Commercial Garages & Automotive Repair	1 per 200 sq. ft. GFA
Auto Body Shops	1 per bay and mechanic
Service Stations	4 spaces plus 1 per bay plus queuing
Motor Vehicle Sales and Service	1 per 1000 sq. ft. GFA plus 1 per 1500 outdoor display

Commented [DT5]: Remove GFA and replace with dining space / public space

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Land Use	Parking Requirements
Motor vehicle or machinery repair without sales.	One per 200 sq. ft. of gross floor area.
Mobile Home and recreational vehicle sales.	1 per 3000 sq. ft. of outdoor display area.
Manufacturing and industrial uses of all types, except buildings used exclusively for warehouse purposes.	1 per 1000 GFA or 1 per employee based on largest shift — whichever is greater. ☺
Passenger Terminals	One per 100 sq. ft. of gross area used for passenger waiting area.
Libraries, art galleries, museums	One per 250 sq. ft. of gross floor area.
Public swimming pools	1 per 10 swimmers, based on pool capacity as defined by the Washington State Department of Health.
Schools, public and private for elementary, intermediary, middle, junior high, and high school.	1 per 12 seats in auditorium or assembly room plus 1 space for each employee, plus sufficient off-street space for safe loading of students from school buses. ☺
Colleges or commercial schools for adults.	1 per four seats in class room plus one per employee. ☺
Auto wrecking yards.	15 spaces for yards less than ten acres in size and 25 spaces for yards ten acres and larger in size.
Utility and communications establishments without regular employment.	One space.
Automobile Service Stations.	4 spaces plus one space for each greasing facility. ☺

① If an enclosed single car garage is provided per dwelling unit, a minimum of two outside parking spaces must be provided. If an enclosed garage for two or more vehicles is provided, a minimum of one outside parking space must be provided. Open carports may be counted as parking spaces to meet parking requirements, provided they shall not be enclosed. If enclosed, additional parking spaces shall be provided as required.

② Multi-family development may request a parking reduction if it can be demonstrated that there is adequate off-street parking available on public streets directly adjacent within 300 feet of residential units to the development. On-street parking will only be counted on streets with sidewalks that are improved to City standard. If demonstrated, the required parking for units greater than 2 bedroom can be reduced to 2 spaces per unit. In no case may the number of spaces reduced be more than the number of spaces available on-street. This must be approved by the Planning Director.

Commented [DT6]: Can this one be re-written to be more understandable?

~~③④ In order not to block public streets in Lynden, it is mandatory for each service station operator to provide off-street waiting facilities for customers. No on-street waiting for gasoline sales is allowed.~~

④ The Planning Director may require that uses which rely on the number of employees as part of the calculation of required parking spaces to agree at the time of parking approval, to provide additional parking stalls if there is insufficient parking for the number of employees.

Commented [DT7]: Is this condition necessary in this chapter? Seems like a Design Standard for queuing.

19.51.050 Parking Lot Design and Parking Space Standards.

~~A. The following parking standards shall apply, however the pertinent approving body can reduce these requirements if the applicant submits a request for a waiver and incorporates one or more of the following LID techniques:~~

- ~~1. Shared Parking~~
- ~~2. Proximity to Transit~~

~~B. Building sites which contain more than one hundred parking spaces shall be designed with access lanes and fire lanes to no less than twenty-five feet in width. Mini-self-storageAll storage complexes shall be designed with access lanes not less than twenty-eight (28) feet in width, within which loading areas, access and fire lanes, and any parking shall be located.~~

~~Access lanes shall be designed so as to provide continuous, unrestricted vehicular movement and shall connect to public streets. In parking lots containing less than one hundred parking spaces emergency access shall be provided subject to approval of the fire marshal. Emergency access shall be provided to within fifty feet of any multiple family building. If any of these requirements are impractical due to the peculiarities of the site and/or building, other provisions for emergency access may be approved by the fire marshal. Parking in fire lanes shall be prohibited, and indicated as being unlawful by signs and/or painting on the parking lot surface.~~

~~C. All parking stalls and aisles shall be designed according to the tables shown below unless all parking is to be done by parking attendants on duty at all times that the parking lot is in use for the storage of automobiles. When parking standards require ten or more parking spaces, up to thirty percent may be designated compact cars. Such compact car spaces shall be individually marked in the parking plan and on each constructed parking stall as for being for compact only. Parking at any angle other than those shown is permitted, providing the width of the stalls and aisles is adjusted by interpolation between the specified standards. Parking shall be so designed that automobiles shall not back-out into public streets.~~

Commented [DT8]: Put the compact space allotment back in - per PC meeting discussion 3/24/22.

~~A. Setback: The surface of a commercial or multi-family parking lot must be setback a minimum of 3 feet from any property line.~~

~~B. Access.~~

- 1. Lanes within parking lots shall be designed to provide logical vehicular movement through the site.
- 2. Dead end access lanes must provide a minimum of a 5 foot stub from the last parking stall to allow vehicles to back out of end stalls.
- C. Compact Stalls: When parking standards require ten (10) or more parking spaces, up to thirty (30) percent may be designated compact cars. Such compact car spaces shall be marked on the parking plan and each constructed parking stall be signed or surface marked as compact.
- D. Landscape, internal to the parking lot, is required per LMC 19.61.100.
- E. Surfacing
 - a. Parking lot surface must meet the requirements of Section 4.4 of the City's Engineering and Design Standards.
 - b. Before an occupancy permit is issued, All required off-street parking areas, not including vehicle or agricultural implement display areas, shall be graded. Before occupancy permit for the building use is issued, surfaced to standards for permeable pavement, asphaltic concrete, or other surfacing material sufficient to eliminate dust or mud.
 - c. All parking and display areas must provide for proper storm drainage and allow for making of stalls and installation of other traffic control devices as set forth by the City's Engineering and Design Standards.
 - d. All traffic control devices such as parking strips designating car stalls, directional arrows or signs, curbs, and other developments shall be installed and completed as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate parking stalls and directional arrows.
 - e. Pedestrian walks shall be curbed or raised six inches above the lot surface.

The parking space standards are shown in the table below.

DESIGN STANDARDS IN FEET

A	B	C	D	E	F
Parking Angle	Stall Width	Curb length	Stall Length	Aisle Width	Unit Width
0	8.5	8.0	20	10	26
▲	9.0	8.5	24	12	29
45°	8.5	17.0	18	13	47
▲	9.0	19.5	21	13	52
60°	8.5	18.0	18	15	52
▲	9.0	21.0	21	18	60
75°	8.5	17.5	18	19	54

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A	B	C	D	E	F
Parking Angle	Stall Width	Curb length	Stall Length	Aisle Width	Unit Width
	9.0	21.0	21	20	62
90°	8.5	16.0	18	22	54
	9.0	19.0	21	24	62

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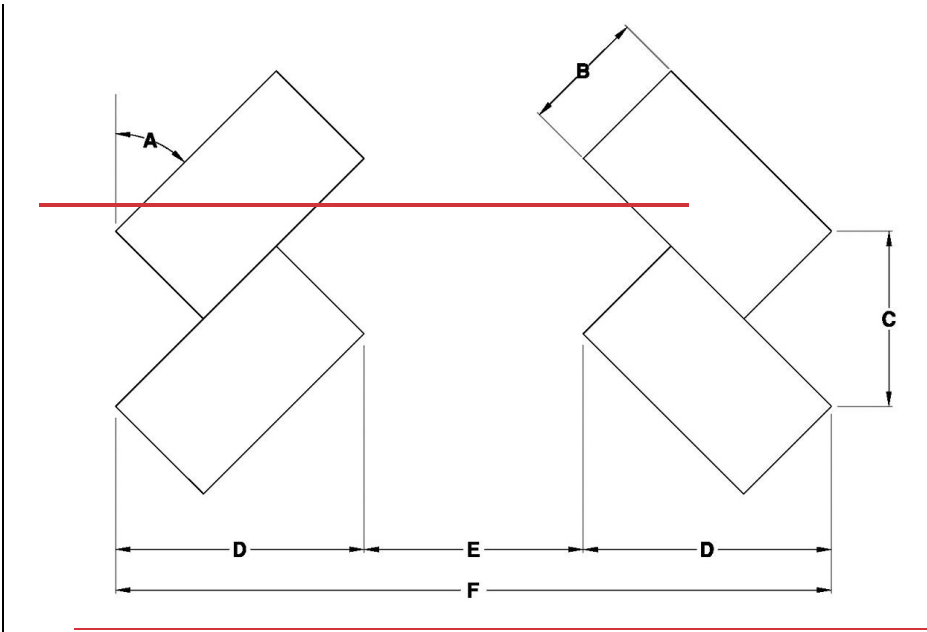
Standard stall size is 9 ft x 19 ft. When required, wheel stops shall be located 2 ft from the head of the parking stall. Compact stalls are 8.5 ft x 18 ft.

Commented [DT9]: Compact space size - 8.5 x 18

Reduced aisle width is for one-way traffic only. If two-way traffic is proposed, then the minimum aisle width is 22 feet.

The two figures are for compact cars and full size cars, shown in that order for each angular parking facility.

	<u>Parrallel</u> (A)	<u>45 degree</u> (A)	<u>60 degree</u> (A)	<u>90 degree</u> (A)
<u>Stall Width</u> (B)	<u>9 ft</u>	<u>9 ft</u>	<u>9 ft</u>	<u>9 ft</u>
<u>Stall Length</u> (D)	<u>21 ft</u>	<u>19 ft</u>	<u>19 ft</u>	<u>19 ft</u>
<u>Aisle Width for 1-way traffic</u> (E)	<u>12 ft</u>	<u>13 ft</u>	<u>15 ft</u>	<u>22 ft</u>
<u>Aisle Width for 2-way traffic</u> (E)	<u>12 ft</u>	<u>13 ft</u>	<u>18 ft</u>	<u>24 ft</u>



19.51.060 Parking for Unspecified Uses.

~~Where the parking requirements for a use are not specifically defined herein, the parking requirements for such use shall be determined by the Planning Director. Such determination shall be based upon staff investigation, parking requirements for comparable uses, and comparative data as may be available and appropriate for the establishment of minimum parking requirements.~~

Commented [DT10]: Added above the table.

19.51.070 Reduction of Required Spaces ~~When Effective Alternatives to Automobile Access are Proposed.~~

~~Upon demonstration to the Planning Director that effective alternatives to automobile access are proposed to be implemented, the director may reduce by not more than forty percent the parking requirements otherwise prescribed for the use or combination of uses, except those listed below, on the same or adjoining sites, to an extent commensurate with the permanence, effectiveness, and demonstrated reduction in off-street parking demand effectuated by such alternative programs. Alternative programs which may be considered by the director under this provision include, but are not limited to van pooling, ride matching for carpools, and provision of subscription bus service.~~

Commented [DT11]: Removes the senior housing incentive

~~A. Retirement Apartments. Approved building plans shall show two parking spaces per dwelling unit. Installation of up to fifty percent of the required spaces may be deferred by the Planning Director, and held in reserve as landscaped area. Installation of the deferred parking space and landscaping will be required at such time the building is no longer used as a retirement apartment. A performance bond or alternate surety may be required in the amount of one hundred and fifty percent of the cost of the deferred improvements to assure installation at a future date.~~

~~B. Retirement Housing. The requirement of one space per dwelling unit may be reduced to no less than one space for every three dwelling units as determined by the Planning Director. The determination shall be based on the following:~~

- ~~1. Demonstrated availability of private, convenient, regular transportation services to meet the needs of the retirement apartment occupant;~~
- ~~2. Accessibility to and frequency of public transportation;~~
- ~~3. Direct pedestrian access to health, medical and shopping facilities.~~

19.51.080 Mixed Occupancy.

A. Mixed Occupancy and Shared Parking.

- ~~1. In the case of mixed occupancies in the building or of a lot, the total requirements for off-street parking shall be the sum of the requirements for the various uses unless provisions for shared parking are utilized. ~~computed separately. Off-street parking facilities of a particular use shall not be considered as providing required parking facilities for any other use except as hereinafter specified for joint use.~~~~

19.51.090 Joint Uses

The Planning Director may, upon application of the owner or lessee of any property, authorize the joint use of parking facilities by the following uses or activities under the conditions specified herein:

- A. Up to fifty percent of the parking required for a theater, bowling alley, dance hall, bar, restaurant, roller or ice skating rink, auditoriums, churches or other similar primarily nighttime use may be supplied by the off-street parking by other uses as approved by the Planning Director.
- B. Up to fifty percent of the parking facilities required by this chapter for a use considered to be primarily a daytime use may be provided by the parking facilities of a use considered to be primarily a nighttime use or vice versa, PROVIDED that the reciprocal parking area shall be subject to the conditions set forth in set forth in Section 19.51.100, Conditions for joint use;
- C. Up to one hundred percent of the Sunday and/or nighttime parking facilities required by this chapter for a church or auditorium incidental to a public or parochial school may be supplied by parking facilities required for the school use, PROVIDED, the reciprocal parking area shall be subject to the conditions set forth in set forth in Section 19.51.100, Conditions for joint use; and
- D. For purposes of this section, the following uses are typical daytime uses: business offices, barber and beauty shops, manufacturing or wholesale buildings. The following uses are typical nighttime and/or Sunday uses: auditoriums incidental to a public or parochial school, churches, dance halls, theaters and taverns.

- 2. The amount of off-street parking required by this chapter may be reduced by an amount determined by the director when shared parking facilities for two or more uses are proposed, provided the following requirements are met:
 - a. ~~i.~~ Parking for each use is utilized at different times of the day;
 - b. ~~ii.~~ The shared parking facility is within 300 feet of the use(s) deficient in parking as measured by a pedestrian walkway between the shared parking facility and generator;
 - c. ~~iii.~~ The total number of parking spaces is not less than the minimum required spaces for any single use;
 - d. ~~iv.~~ The applicant submits a parking generation study demonstrating to the director's satisfaction that the resultant parking will be adequate for the anticipated uses; and
 - e. ~~v.~~ A shared parking agreement specifying respective rights and/or operating times is signed by all participants and the director and filed in the county auditor's office.

Commented [DT12]: 200 ft? Our existing shared section indicates 150 ft.

19.51.100 Conditions for Joint Use.

- A. ~~The building or use for which application is made for authority to utilize the existing off-street parking facilities provided by another building or use shall be located within one hundred and fifty feet of the parking facilities;~~
- B. ~~The applicant shall show that there is not substantial conflict in the principal operating hours of the buildings or uses for which the joint use of the parking facility is proposed; and~~
- C. ~~Parties concerned in the joint use of off-street facilities shall submit a proper written agreement defining the conditions of the joint use for review and approval of the Planning Department and City Attorney.~~
- D. ~~In the event of a change in ownership or use, the joint use instrument may be terminated upon mutual agreement by all parties if reviewed and approved by the Planning Director. The existing and/or new uses shall comply with all parking and landscaping requirements of the City of Lynden for said uses.~~

19.51.110 Loading Space.

~~On the same premises with every building, structure, or part thereof, erected and occupied for manufacturing, storage, warehouse, goods display, department store, wholesale store, market, hotel, hospital, mortuary, laundry, dry cleaning, or other use involving the receipt or distribution of vehicles, material or merchandise, there shall be provided and maintained on the lot adequate space for standing, loading and unloading services in order to avoid undue interference with the public uses of the streets or alleys. The space, unless otherwise adequately provided for, shall include a ten foot by twenty five foot loading space, with fourteen foot height clearance for every 20,000 sq. ft., or fraction thereof, of gross building area used or land used for above mentioned purposes.~~

~~The space shall be so situated that no part of a truck or van using the loading space will project into the public right of way.~~

~~Commercial and industrial uses that require delivery, shipping and/or the loading and unloading of goods and materials shall provide adequate on-premise loading areas which do not project into the public right-of-way.~~

- ~~A. The loading space areas shall be at least 10 ft by 25 ft with 14 ft of clearance, for every 20,000 sq ft, or fraction thereof, of gross building area.~~
- ~~B. Loading areas shall not be used to meet general parking requirements.~~
- ~~C. Loading areas shall be striped or signed as loading areas.~~

19.51.120 (Reserved) Parking Lot Surfacing Requirements.

~~A. All required off-street parking areas for commercial or industrial uses not including vehicle or agricultural implement display areas shall be graded and before occupancy permit for the building use is issued, surfaced to standards for permeable pavement, asphaltic concrete or other surfacing material sufficient to eliminate dust or mud, provide for proper~~

Commented [HG13]: Moved to Parking Lot Design

~~storm drainage and allow for making of stalls and installation of other traffic control devices as set forth by the Director of Public Works and this chapter.~~

~~B. All traffic control devices such as parking strips designating car stalls, directional arrows or signs, curbs, and other developments shall be installed and completed as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate parking stalls and directional arrows. Pedestrian walks shall be curbed or raised six inches above the lot surface. Once installed, they shall be maintained in good condition.~~

19.51.130 Illumination.

Any lights to illuminate any public parking area, any semi-public parking area, or ~~used-car or equipment~~ sales area ~~permitted by this ordinance~~ shall be arranged so as to reflect the light away from any dwelling unit and the public right-of-way. Approval shall be obtained from the State of Washington Department of Transportation and/or the Director of Public Works for any lights which flash or blink, simulating traffic signals.

19.51.140 Landscaping Requirements for Parking Areas.

Landscape plans for parking areas shall conform to applicable sections of LMC 19.25.070 and LMC 19.61 and are to be approved by the Planning Department.

19.51.150 Handicapped Parking.

Handicapped parking shall be installed in accordance with the "Regulations for Barrier-Free Facilities" as adopted by the Washington State Building Code Advisory Council or two percent (2%) of the required parking stalls, whichever is greater. Handicapped parking stalls do not count toward the total required parking stalls for multi-family residential development except the stalls associated with a unit or units which are constructed, at the time of final occupancy, as Type A – ADA compliant per Chapter 10, Section 1003 of the Accessible and Usable Buildings and Facilities portion of the International Building Code.

19.51.160 Special Conditions for off-street parking in Downtown Lynden.

The Historic Business District (HBD) and downtown Lynden is a special district that ~~has was initially~~ developed ~~over a period of time, including times~~ when there were ~~no few~~ parking requirements. To encourage remodeling and site improvements, it is recognized that special considerations are required. The following parking exceptions are made for an area described below from the Judson Street Alley to ~~the alley between Front Street and~~ Grover Street and between ~~1st2ndThird~~ Street and ~~8thSeventh~~ Street:

- A. Renovation of any building in the ~~historic business district~~HBD ~~in existence on or before July 1, 2002, for commercial or residential purposes~~, shall be exempt from meeting the parking requirements of Section 19.51.030. ~~provided, H~~however, if the renovation adds gross floor area to the building, the additional gross floor area ~~shall be considered new commercial or residential construction and~~ shall be subject to the parking requirements listed in section 19.51.160(B) and (C) below. Renovations which decrease gross floor area shall not be eligible for any parking credit or reimbursement.

- B. The parking requirement for all new commercial construction within the area north of Judson Alley, ~~south~~north of Grover Street ~~to the first east-west alley~~, west of ~~1st~~2nd~~Third~~ Street and east of ~~8~~7th Street, shall be one off-street parking stall per 500 square feet of gross floor area, or any fraction thereof.
 - 1. Instead of providing the required off-street parking, the owner may, by the discretion of City Council ~~choose be permitted~~ to pay a fee for every parking stall required by this ordinance that cannot be supplied. The fee ~~shall be set by resolution~~ may be established by the City's unified fee schedule and may be placed in a special fund by the City of Lynden for the purchase and/or development of additional off-street parking facilities, or for repair or alteration of existing city owned off-street parking.
 - 2. ~~C.~~ C. All new residential construction in the area defined in this subsection ~~(B)~~ above shall be required to provide one off-street parking space per residential unit. Off-street parking for new residential uses shall be located within three hundred (300) feet of the dwelling unit.

- D. ~~Any new building erected in the historic business district on a lot in place of a building in existence on or before July 1, 2002 on the same lot, shall be granted a credit toward satisfying the parking requirement set forth in this section. The amount of the credit shall be determined by subtracting the gross floor area of the previously existing building from the gross floor area of the new building constructed in its place on the same lot. The resulting difference in gross floor area shall be the gross floor area from which the parking requirement is determined in accordance with Sections 19.51.160(B) and (C) above; provided that, if the gross floor area difference is a negative number because the new building is smaller, the City shall not be liable for any reimbursement or additional credits. Parking credits shall not be transferable between lots.~~
Any new building in the HBD that replaces an existing building shall receive a credit for the parking requirements that were in place for the existing building. The credit shall be determined by subtracting the gross floor area of the previous existing building from the gross floor area of the new building constructed on the same lot, provided that the new building is not smaller than the old building.

CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



Meeting Date:	December 5, 2022.	
Name of Agenda Item:	Resolution 1059 – Agreement with Washington State Community Economic Revitalization Board (CERB) – West Main Street and Berthusen Road Project	
Section of Agenda:	Consent	
Department:	Public Works	
<u>Council Committee Review:</u>	<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: _____	<u>Legal Review:</u> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
Attachments:	A. Resolution No. 1059 Authorizing the Mayor to Execute a Loan Agreement with the Washington State Community Economic Revitalization Board (CERB) for the West Main Street and Berthusen Road Roundabout Project (Exhibit A: Initial Offer of Financial Aid) B. Sample CERB Loan Agreement	
Summary Statement:	<p>The City of Lynden recently applied for and was awarded a \$4.5 Million loan by the Community Economic Revitalization Board (CERB). CERB funds are available to support economic development projects which are ready to implement, and which create or retain jobs.</p> <p>Resolution No. 1052, Authorizing Submission of a CERB Loan Application, was passed at the September 19, 2022, Council meeting. Staff presented project information to the CERB Board on Thursday, November 17th which resulted in their vote to award funds. Resolution No. 1059 authorizes and directs the Mayor to enter into Final Contract agreement between CERB and the City of Lynden for a 20-year, 3% annual interest rate, loan to finance the West Main Street and Berthusen Road Roundabout Project.</p> <p>The Finance Committee reviewed this resolution at their meeting on November 21st and concurred to recommend approval by City Council.</p>	
Recommended Action:	That City Council approve Resolution No. 1059 and authorize the Mayor's signature on Resolution 1059 and on the Initial Offer of Financial Aid from CERB to be attached thereto as Exhibit A.	

RESOLUTION NO. 1059

A RESOLUTION OF THE CITY COUNCIL OF LYNDEN WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE WASHINGTON STATE COMMUNITY ECONOMIC REVITALIZATION BOARD AND THE CITY OF LYNDEN FOR AID IN FINANCING THE COSTS OF THE WEST MAIN STREET AND BERTHUSEN ROAD ROUNDABOUT PROJECT.

WHEREAS, the City Council authorized by Resolution 1052 the application to the Community Economic Revitalization Board (CERB) an application for a loan to fund improvements to Main Street and the intersection of Main Street and Berthusen Roads with a roundabout; and

WHEREAS, the Community Economic Revitalization Board (CERB) after reviewing the City's application and hearing a presentation by the Mayor on November 17, 2022, did vote to authorize CERB loan funding for the City of Lynden Main Street Arterial Street Improvements and Berthusen Roundabout Project.

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

Section 1. CERB Loan Contract Acceptance.

That the Mayor of the City of Lynden is hereby authorized and directed to execute, on behalf of the City of Lynden, a Final Contract between the Community Economic Revitalization Board and the City of Lynden and such other documents as may be required for securing aid in financing the cost of the above-described public facilities.

Section 2. CERB Loan Terms.

The City Council of the City of Lynden has accepted the offer of the loan from the Community Economic Revitalization Board in the amount of \$4,500,000.00, said loan to bear interest at the rate of 3% per annum.

Repayment of said general obligation loan shall be in consistent with the terms provided in the signed Initial Offer of Financial Aid and is attached hereto, designated as Exhibit A, and made a part hereof as though set forth herein in full.

The City of Lynden reserves the right to accelerate payments on principal and eliminate the interest on any accelerated principal payments.

This obligation shall be considered as a legal general obligation of the City of Lynden and the City of Lynden hereby pledges its full faith and credit to the payment thereof.

Section 3. CERB Repayment Fund.

The City of Lynden shall establish a separate fund to be known as the Community Economic Revitalization Board (CERB) Fund. This fund shall be established and sufficient moneys placed in this fund to meet the above-detailed repayment schedule. The sources of payment

are City Street/General Funds, Transportation Impact Fees, Transportation Benefit District (Voted Sales Tax), and Utility Funds (Stormwater, Water, and Sewer).

Section 4. Severability.

If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution. The City Council hereby declares that it would have passed this resolution 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.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE VOTE _____ IN FAVOR _____ AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF DECEMBER 2022.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK PAMELA D. BROWN

APPROVED AS TO FORM:

CITY ATTORNEY ROBERT A. CARMICHAEL

Washington State
Community Economic Revitalization Board

Initial Offer of Financial Aid

City of Lynden
Federal Tax Number: 91-6001257
Offer Date: November 17, 2022

The Community Economic Revitalization Board (CERB) is authorized by chapter 43.160 RCW to provide funds to political subdivisions to assist in financing the cost of certain public facilities. This Initial Offer of Financial aid is contingent upon the availability of CERB funds. CERB hereby offers to make funds available to the **City of Lynden**, hereafter referred to as the "Contractor," in order to aid in financing the cost of, or improvements to, public facilities consisting of **West Main and Berthusen Road Roundabout** as described in the application (hereafter collectively referred to as the "Project").

This offer consists of:

- General Obligation loan of \$4,500,000
- Interest rate: 3.0 percent (%) per annum on the outstanding principal balance
- Term: 20 years maximum

This offer is subject to completion of pre-contract conditions, as described in Attachment A.

A final contract shall be developed by CERB prior to disbursement of funds. No project costs incurred prior to this offer date will be reimbursed by CERB. In the event a final contract is not executed, no CERB funds will be disbursed.

If accepted, this Initial Offer of Financial Aid must be signed and returned to CERB by **January 3, 2023**.

ACCEPTANCE

FOR CERB

FOR THE CONTRACTOR

Michael Echanove, Chair
Community Economic Revitalization Board

Scott Korthuis, Mayor
City of Lynden

Date: _____

Date: _____

Certificate Of Completion

Envelope Id: 23EF543E9A0F486AAE3C6598B2DF2D1E	Status: Sent
Subject: Complete with DocuSign: Lynden, City of - CERB IOFA - S22-790A0-253.pdf	
Division:	
Local Government	
Program: CERB	
ContractNumber: S22-790A0-253	
DocumentType:	
Other	
Source Envelope:	
Document Pages: 1	Signatures: 0
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
EnvelopeId Stamping: Enabled	Barbara Smith
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	1011 Plum Street SE
	MS 42525
	Olympia, WA 98504-2525
	barbara.smith@commerce.wa.gov
	IP Address: 198.239.157.94

Record Tracking

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Signer Events

Signature	Timestamp
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korthuiss@lyndenwa.org	Viewed: 11/17/2022 3:52:13 PM
Security Level: Email, Account Authentication (None)	

Electronic Record and Signature Disclosure:
 Accepted: 11/17/2022 3:52:13 PM
 ID: 04624e07-e0f9-42ea-8578-a0073829120c

Michael Echanove
 Echanove@palouse.com
 Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
 Accepted: 10/12/2022 5:15:14 PM
 ID: 3948d8c0-ca0a-4dbd-afa3-3ac39cbd601e

In Person Signer Events

Signature	Timestamp
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Editor Delivery Events

Status	Timestamp
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Agent Delivery Events

Status	Timestamp
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Intermediary Delivery Events

Status	Timestamp
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Certified Delivery Events

Status	Timestamp
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Carbon Copy Events

Status	Timestamp
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Steve Banham	COPIED	Sent: 11/17/2022 2:46:16 PM
banhams@lyndenwa.org		
Public Works Director		
Security Level: Email, Account Authentication (None)		

Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	11/17/2022 2:46:16 PM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Washington State Department of Commerce (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.15 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Washington State Department of Commerce:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: docusign@commerce.wa.gov

To advise Washington State Department of Commerce of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@commerce.wa.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Washington State Department of Commerce

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Washington State Department of Commerce

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to docusign@commerce.wa.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Washington State Department of Commerce as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Washington State Department of Commerce during the course of your relationship with Washington State Department of Commerce.



Capital Agreement with

<Local gov or recipient organization name here>

through

Community Economic Revitalization Board

For

<List project title, if applicable, and/or describe the primary purpose for the funding or the inteded outcome/deliverables in approx. 25 words or less>

Start date: Date of Last Signature



Department of Commerce
Innovation is in our nature.

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DECLARATIONS

CLIENT INFORMATION

Legal Name

Loan Number

Federal Tax ID #

Statewide Vendor #

PROJECT INFORMATION

Title

Project City

Project State

Washington

Project Zip

CONTRACT TERMS and CONDITIONS

Initial Offer Date

Loan Amount

Loan Term

Deferral Period or Date

Interest Rate

Grant Amount

Local Match

Project Start Date

Project construction must begin within (6) months from date of execution

Project Completion Date

Project must reach completion within (4) years from date of execution

Special Conditions

Loan Security

General Obligation Loan or Revenue Based Loan

Washington State Community Economic Revitalization Board

1. Contractor <Insert legal name> <Insert mailing address> <Insert location>		2. Contractor Doing Business As N/A	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert e-mail>		4. CERB Representative Janéa Delk, CERB Executive Director & Tribal Liaison PO Box 42525 Olympia, WA 98504-2525	
5. Contract Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Date of Last Signature	8. End Date [] years from 1 st loan repayment date
9. Federal Funds (as applicable) N/A	10. Federal Agency N/A	CFDA Number: N/A	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI #	13. DUNS #
14. Contract Purpose The Board, defined as the Washington State Community Economic Revitalization Board, and the Contractor have entered into this Contract to undertake a project that furthers the goals and objectives of the Washington State Community Economic Revitalization Board as created in Chapter 43.160 Revised Code of Washington.			
The Board and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract including documents attached hereto and incorporated by reference: Special and General Contract Terms and Conditions; Declarations Page; ATTACHMENT A: PROJECT SCOPE OF WORK; ATTACHMENT B: BUDGET; ATTACHMENT C: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT D: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable).			
FOR CONTRACTOR _____ <insert name>, <insert title> insert jurisdiction _____ Date		FOR CERB _____ Randy Hayden, Chair Community Economic Revitalization Board _____ Date APPROVED AS TO FORM ONLY SIGNATURE ON FILE _____ Sandra Adix Assistant Attorney General September 26, 2017 _____ Date	

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a Party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, attached documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity identified on the Contract Face Sheet performing service(s) under this Contract and who is a party to the Contract, and shall include all employees and agents of the Contractor.
- E. "Declarations " and "Declared" shall refer to the project information, terms and conditions as stated on the Declarations Page of this Contract, displayed within the contract in THIS STYLE for easier identification
- F. "Initial Offer of Financial Aid" shall mean the written offer of financial assistance offered by THE BOARD and accepted by the Contractor.
- G. "Project" shall mean the project approved for funding by THE BOARD, as described in ATTACHMENT A: SCOPE OF WORK.
- H. "Project Completion Report" shall mean the report provided by THE BOARD to the Contractor to be submitted upon the completion of THE BOARD-funded project.

2. AUTHORITY

Under the authority RCW 43.160, THE BOARD has awarded the Contractor a CERB Construction loan for an approved project as described in the ATTACHMENT A: SCOPE OF WORK.

3. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for THE BOARD and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

4. CONTRACT PERIOD

The effective date of this Contract is the date of last signature. The term of this Contract runs through project completion date specified on the Declarations Page.

5. COPYRIGHT PROVISIONS

Notwithstanding the provisions of General Terms and Conditions 2.13, COPYRIGHT PROVISIONS, of this contract, the Contractor has ownership rights in all data and blueprints that the Contractor produces under this contract, subject to THE BOARD right to royalty free use of these materials.

6. DEDICATED ACCOUNT FOR LOAN REPAYMENT

As a general condition, all Contractors must establish a dedicated fund for CERB repayments. Contractors, unless guaranteed by another entity, must retain one year's repayment in the account at all times. If a deferral is granted as part of the award, the one-year's repayment shall be in the account by the end of the deferral period.

7. HISTORICAL OR CULTURAL ARTIFACTS

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless THE BOARD and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural resource monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop work and notify the local historic preservation officer and the state historic preservation officer at DAHP. If human remains are uncovered, the Contractor shall stop work and report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to ATTACHMENT A: SCOPE OF WORK.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

In the event that the Contractor finds it necessary to amend ATTACHMENT A: SCOPE OF WORK, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

8. INTEREST ON CERB FUNDS

In those cases where funds have been disbursed by THE BOARD, and the funds are not expended within thirty (30) days due to other circumstances, the Contractor shall owe the interest on all unexpended

funds past thirty (30) days. All interest accruing on such funds shall inure to the benefit of THE BOARD. Interest shall accrue at the same rate that the funds would have earned in THE BOARD Account held by the Washington State Treasurer's Office.

Interest on CERB loans is calculated as simple interest and is charged annually at the rate approved by THE BOARD, described on the Declarations page as INTEREST RATE. Interest accrual begins on the date the first CERB loan funds are drawn by the Contractor.

9. LOAN PAYMENTS

- A. Loan payments shall be made to THE BOARD in accordance with the terms described in the Declarations Page and the contract face sheet.
- B. The repayment schedule is based on the date of the first disbursement of CERB loan funds to the Contractor. Unless a deferral has been approved by THE BOARD, loan repayments shall be due annually-beginning one year after the first disbursement of loan funds. If the first CERB loan disbursement occurs between January 1 and June 30, the first loan payment will be due July 31 the following year and each July 31 thereafter until the loan is repaid in full. If the first CERB loan disbursement occurs between July 1 and December 31, the first loan payment will be due January 31 the year following the first anniversary of disbursement and each January 31 thereafter for the duration of the loan term. Loan repayments may be deferred for the time period described on the Declarations page. Interest shall accrue during the deferral period.
- C. Upon failure to pay any installment, or any portion thereof, of principal or interest, THE BOARD may at its option declare the entire remaining balance of the loan, together with interest accrued thereon, immediately due and payable. Failure to exercise its option with respect to any default shall not constitute a waiver by THE BOARD to exercise such options for any succeeding installment payment which may then be in default. The Contractor shall pay the cost and reasonable attorney's fees incurred by the State in any action undertaken to enforce its rights under this contract.

10. LOAN SECURITY

- A. Unless otherwise shown on the Contract Declarations Page, this loan shall be secured by a general obligation pledge of the taxing power of the Contractor.
- B. Except as otherwise noted in this subsection, if a revenue-based obligation is shown on the Declarations Page, the loan shall be a senior lien obligation payable from all revenues legally available to the Contractor.
- C. Subject to Board approval, the Contractor may request the loan be obligated as a junior lien revenue pledge if it can be shown that the issuance of additional parity senior lien revenue debt in the requested amount would violate one or more covenants of the outstanding debt.

Nothing in this section shall absolve the Contractor of its obligation to make loan repayments when due, and to adjust rates, fees, or surcharges, if necessary, to meet its obligations under this Contract.

11. NOTICE

All notices, demands, requests, consents, approvals, and other communication which may be or are required to be given by either party to the other under this agreement shall be in writing and shall be

deemed to have been sufficiently given for all purposes when delivered or mailed by first class postage or certified mail, postage prepaid, addressed as follows:

a. Notice to the Board:

Community Economic Revitalization Board (CERB)
1011 Plum St SE
P.O. Box 42525
Olympia, WA 98504-2525

b. Notice to Contractor:

The address used shall be that as displayed under Item 1. Contractor, found on the Contract Face Sheet, or to such other official address the Contractor shall have furnished to THE BOARD in writing.

12. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions
- General Terms and Conditions
- ATTACHMENT A – Scope of Work
- ATTACHMENT B – Budget

13. PERFORMANCE REPORTING

The Contractor shall furnish THE BOARD with:

- A.** Quarterly Project Reports, due four times annually until completion of the CERB funded public project. Beginning within six (6) months of contract execution, Quarterly Project Reports shall be due on:
 - a. January 15,
 - b. April 15,
 - c. July 15, and
 - d. October 15
- B.** Certified Project Completion Report upon completion of the CERB funded public project, and
- C.** Other reports as THE BOARD may require.

The Contractor shall also report in writing any problems, delays, or adverse conditions which will materially affect the ability to meet project objectives, time schedules, or work units by the established time period. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Board assistance needed to resolve the situation.

Upon final request for reimbursement, the Contractor shall submit a Certified Project Completion Report to THE BOARD, signed by the Contractor's responsible party, which shall include, but not be limited to, an accounting of all expenditures, a description of work accomplished, further refinement of private sector permanent employment impacts, etc. in a format to be provided by THE BOARD.

After submission of the Project Completion Report, the Contractor shall continue, for up to five years or as may be required by THE BOARD, to provide updates on the economic impact of the project. The

updates shall be in a format acceptable to THE BOARD and describe, but not be limited to:

- A. Number and types of businesses assisted by the project
- B. Private sector employment and private investment activity resulting from the project
- C. Wages and health benefits associated with the private sector employment
- D. Amount of state funds and total capital invested in the project
- E. Local fund match and local participation in the project
- F. Project Distance from Transportation Infrastructure

14. PROJECT COMPLETION

The project shall be completed within four (4) years from the date of contract execution, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

15. PROJECT PERFORMANCE

The Contractor shall commence project construction within six months after execution of the Final Contract, unless otherwise specified. Extension may be considered upon appropriate written request. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

If at any time during the term of this agreement THE BOARD determines that project construction performance is unsatisfactory, including, but not limited to: (a) defective work not remedied, or (b) a reasonable doubt that the Contract can be completed for the balance then unpaid, THE BOARD reserves the right to withhold payments until the problem is remedied or to exercise its rights of termination under General Terms and Conditions 40, 41 and 42.

16. RE-APPROPRIATION

The parties hereto understand and agree that any state funds not expended by the end of the declared BIENNIUM, including the ten percent (10%) retainage as described in SPECIAL TERMS AND CONDITIONS, Section 20: REIMBURSEMENT, will lapse on that date unless specifically re-appropriated in an enacted Capital Budget. THE BOARD will make all necessary efforts to seek re-appropriation of funds into the declared BIENNIUM. If funds are so re-appropriated, THE BOARD'S obligation under the terms of this Contract shall be contingent upon the terms of such re-appropriation.

17. CONTRACT SUSPENSION

In the event that the Washington State Legislature fails to pass and the Governor does not authorize a Capital Budget by June 30 of each biennium, the Washington State Constitution Article 8 Section 4 and RCW 43.88.130 and RCW 43.88.290 prohibit expenditures or commitments of state funds in the absence of appropriation.

In such an event, all work will be suspended effective July 1. The Contractor shall immediately suspend work and take all reasonable steps necessary to minimize the cost of performance directly attributable to such suspension until the suspension is cancelled.

THE BOARD shall notify the Contractor immediately upon the lifting of the contract suspension.

18. RECAPTURE PAYMENT AND COSTS

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, THE BOARD reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that THE BOARD is required to institute proceedings to enforce this recapture provision, THE BOARD shall be entitled to its cost thereof, including reasonable attorney's fees.

19. REDUCTION IN FUNDS

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of THE BOARD, and shall meet and renegotiate the Contract accordingly. Any changes are to be incorporated into this document as additions or amendments to Special Conditions.

20. REIMBURSEMENT

Subject to the availability of funds, warrants shall be issued to the Contractor for reimbursement of allowable expenses incurred by the Contractor while undertaking and administering approved project activities in accordance with ATTACHMENT A: SCOPE OF WORK. If funding or appropriation is not available at the time the invoice is submitted, or when this contract is executed, the issuance of warrants will be delayed or suspended until such time as funds or appropriation becomes available.

THE BOARD shall reimburse the Contractor for eligible project expenditures up to the maximum LOAN AMOUNT and/or GRANT AMOUNT values as displayed on the Declarations Page of this Contract. When requesting reimbursement for costs incurred, the Contractor shall submit a signed and completed Invoice Voucher (Form A19), referencing ATTACHMENT A: SCOPE OF WORK project activity performed, and any appropriate documentation such as bills, invoices, and receipts. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Contractor shall send these items to THE BOARD at the following address:

Community Economic Revitalization Board
1011 Plum St SE
PO Box 42525
Olympia, WA 98504-2525

If a combination loan and grant is approved by THE BOARD, loan payments will be made before grant payments. THE BOARD will not pay project costs overruns. No payments will be made except as expressly allowed under this Contract.

THE BOARD will pay the Contractor after Contractor has completed the work described in this Contract and the Contractor has sent THE BOARD properly completed invoices. Invoices shall be submitted to THE BOARD not more often than monthly.

Payment shall be considered timely if made by THE BOARD within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

THE BOARD may, at its sole discretion, terminate the contract or withhold reimbursement if the Contractor fails to satisfactorily comply with any term or condition of this contract.

THE BOARD will make no payments in advance or in anticipation of completion of work described in this Contract.

Total amounts paid under this Contract shall be the lesser of actual amounts required for the work described in this Contract or the amount of THE BOARD award.

CERB funds are disbursed on reimbursement basis-only for eligible costs within the approved project's scope of work. CERB funds will be reimbursed and the identified match funds will be paid out, in concert at the same percentages as the total project cost split, until CERB funds or matching funds are exhausted. Exceptions to this requirement may be granted by the Program Director & Tribal Liaison on a case-by-case basis. The Recipient must meet the identified match commitment over the project period. Reimbursement includes both invoices that have been paid and invoices due within 30 days of reimbursement request.

THE BOARD shall withhold ten percent (10%) of the total funding award until project completion and acceptance of the final Project Completion Report by THE BOARD.

Eligible Costs

CERB funds are intended to pay for construction-related expenses. Eligible project costs are those which are incurred on or after the date of the *Initial Offer of Financial Aid*, shown on the Declarations Page as: INITIAL OFFER DATE, and fall under one of the following categories within the approved Scope of Work (Attachment A):

- design, architectural, and engineering work;
- building permits/fees;
- archeological/historical review;
- construction labor (from external sources only)* and materials;
- demolition/site preparation;
- capitalized equipment;
- information technology infrastructure (cables and wiring);
- construction management (from external sources only);**
- initial furnishings;***
- landscaping; and
- real property when purchased specifically for the project, and associated costs.****

At least 90% of the funds awarded for the project must be used for the construction/equipment/and acquisition portion of the project.

***Construction labor** does **not** include work typically performed by employees of the applicant, unless the employee is hired solely and specifically to perform construction labor for the awarded project.

**** Construction management and observation** is on-site management and/or supervision of the work site and workers thereon. This is an eligible project cost. Construction management does **not** include work typically performed by off-site consultants or consultant organizations, grant writers, project managers, or employees of the applicant, unless the employee is hired solely and specifically to perform on-site construction management as defined above.

*** **Furnishings and equipment** are considered eligible project costs as long as the average useful life of the item purchased is 13 years or more.

**** **Costs directly associated with property acquisition** include appraisal fees, title opinions, surveying fees, real estate fees, title transfer taxes, easements of record, and legal expenses.

Ineligible costs: internal administrative activities, project management (from any source), fundraising activities, feasibility studies, computers or office equipment, rolling stock (such as vehicles), lease payments for rental of equipment or facilities, maintenance and operating, mortgages or property leases (including long-term), the moving of equipment, furniture, etc., between facilities, and salary & benefits for the employees of the applicant.

Duplication of Billed Costs

The Contractor shall not bill CERB for work under this Agreement, and CERB shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

Access to Work and Records

All property, facilities, and records developed pursuant to this Agreement shall be available for inspection upon request during regular business hours by THE BOARD or its authorized representative. All records supporting every request for payment shall be maintained in a manner which will provide an audit trail to the expenditures. Copies of records shall be furnished to THE BOARD immediately upon request. This paragraph shall be included in any and all subcontracts let by the Contractor under this agreement.

21. RESTRICTIONS ON CONVERSION OF FACILITY TO OTHER USES

The Contractor shall not convert any property or facility acquired or developed pursuant to this agreement to uses other than those for which CERB assistance was originally approved for a period of 10 years beginning from the date of contract execution, without the prior written approval of CERB. If CERB no longer exists at the time of the proposed conversion, such written approval must be obtained from the Governor's Office, or from an agency designated by the Governor's Office.

In the event that the Contractor converts any such property or facility to an unapproved use, the Contractor shall pay to CERB all funds disbursed under this contract with interest in full upon demand.

22. SUBCONTRACTING

Notwithstanding the provisions of General Terms and Conditions, Section 37: SUBCONTRACTING, of this contract, the term "subcontracting" shall not refer to subcontracting of the actual construction of the project.

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "THE BOARD" shall mean the Washington State Community Economic Revitalization Board created in Revised Code of Washington (RCW) 43.160, and who is a Party to the Contract.
- B. "Authorized Representative" shall mean the Chair and/or the designee authorized in writing to act on the Chair's behalf.
- C. "Contract" or "Agreement" means the entire written agreement between THE BOARD and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the public entity identified on the Contract Face Sheet performing service(s) under this Contract and who is a party to the Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

5. AMERICANS WITH DISABILITIES ACT (ADA)

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

6. APPROVAL

This contract shall be subject to the written approval of THE BOARD's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

7. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of THE BOARD.

8. ATTORNEYS' FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

9. AUDIT**A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

THE BOARD reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to THE BOARD requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

In the event an audit is required, if the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's records must be available for review by THE BOARD.

C. Documentation Requirements

The Contractor must send a copy of any audit report no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by THE BOARD.
- Copy of the Management Letter and Management Decision Letter, where applicable.

If the Contractor is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to The BOARD; no other report is required.

10. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A.** “Confidential Information” as used in this section includes:
1. All material provided to the Contractor by THE BOARD that is designated as “confidential” by THE BOARD;
 2. All material produced by the Contractor that is designated as “confidential” by THE BOARD; and
 3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of THE BOARD or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide THE BOARD with its policies and procedures on confidentiality. THE BOARD may require changes to such policies and procedures as they apply to this Contract whenever THE BOARD reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by THE BOARD. Upon request, the Contractor shall immediately return to THE BOARD any Confidential Information that THE BOARD reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Contractor shall notify THE BOARD within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

12. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

13. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, THE BOARD may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due

notice and examination by THE BOARD that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by THE BOARD that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, THE BOARD shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of THE BOARD provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which THE BOARD makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

14. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by THE BOARD. THE BOARD shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to THE BOARD effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to THE BOARD a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to THE BOARD.

The Contractor shall exert all reasonable effort to advise THE BOARD, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide THE BOARD with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. THE BOARD shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

15. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

16. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of THE BOARD, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

17. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

18. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

19. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, THE BOARD, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

20. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or THE BOARD. The Contractor will not hold itself out as or claim to be an officer or employee of THE BOARD or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

21. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, THE BOARD may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. THE BOARD may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by THE BOARD under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

22. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A.** Affirmative action, RCW 41.06.020 (1).
- B.** Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C.** Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- D.** Discrimination-human rights commission, Chapter 49.60 RCW.
- E.** Ethics in public service, Chapter 42.52 RCW.
- F.** Housing assistance program, Chapter 43.185 RCW
- G.** Interlocal cooperation act, Chapter 39.34 RCW.
- H.** Noise control, Chapter 70.107 RCW.
- I.** Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J.** Open public meetings act, Chapter 42.30 RCW.
- K.** Prevailing wages on public works, Chapter 39.12 RCW.
- L.** Public records act, Chapter 42.56 RCW.
- M.** Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.

- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

23. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

24. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

25. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with THE BOARD. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

27. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

28. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for THE BOARD's review upon request.

29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

30. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or THE BOARD's name is mentioned, or language used from which the connection with the state of Washington's or THE BOARD's name may reasonably be inferred or implied, without the prior written consent of THE BOARD.

31. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, THE BOARD reserves the right to recapture funds in an amount to compensate THE BOARD for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by THE BOARD. In the alternative, THE BOARD may recapture such funds from payments due under this contract.

32. RECORDS MAINTENANCE

The CONTRACTOR shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

The CONTRACTOR shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by THE BOARD, personnel duly authorized by THE BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

34. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by THE BOARD, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

35. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, THE BOARD may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

36. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

37. SUBCONTRACTING

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of THE BOARD.

If THE BOARD approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, THE BOARD in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to THE BOARD if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to THE BOARD for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that THE BOARD and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

38. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

39. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

40. TERMINATION FOR CAUSE

In the event THE BOARD determines the Contractor has failed to comply with the conditions of this contract in a timely manner, THE BOARD has the right to suspend or terminate this contract. Before suspending or terminating the contract, THE BOARD shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

THE BOARD reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by THE BOARD to terminate the contract. A termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of THE BOARD provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract THE BOARD may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, THE BOARD shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

42. TERMINATION PROCEDURES

Upon termination of this contract, THE BOARD, in addition to any other rights provided in this contract, may require the Contractor to deliver to THE BOARD any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

THE BOARD shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by THE BOARD, and the amount agreed upon by the Contractor and THE BOARD for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by THE BOARD, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of THE BOARD. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. THE BOARD may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect THE BOARD against potential loss or liability.

The rights and remedies of THE BOARD provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to THE BOARD, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and

subcontracts so terminated, in which case THE BOARD has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to THE BOARD and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to THE BOARD;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which THE BOARD has or may acquire an interest.

43. TREATMENT OF ASSETS

Title to all property furnished by THE BOARD shall remain in THE BOARD. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in THE BOARD upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in THE BOARD upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by THE BOARD in whole or in part, whichever first occurs.

- A. Any property of THE BOARD furnished to the Contractor shall, unless otherwise provided herein or approved by THE BOARD, be used only for the performance of this contract.
- B. The Contractor shall be responsible for any loss or damage to property of THE BOARD that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- C. If any THE BOARD property is lost, destroyed or damaged, the Contractor shall immediately notify THE BOARD and shall take all reasonable steps to protect the property from further damage.
- D. The Contractor shall surrender to THE BOARD all property of THE BOARD prior to settlement upon completion, termination or cancellation of this contract.
- E. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

44. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of THE BOARD.

Scope of Work

COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: «LegalName»

Contract Number: «LoanNumber»

Project Title: «ProjectTitle»

The project's scope of work is comprised of the following activities:

«ScopeOfWork»

If the above scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for the Board's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

Name

Title

Date

Budget

COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: «LegalName»

Contract Number: «LoanNumber»

Project Title: «ProjectTitle»

Total Project Cost Breakdown		
A.	Preliminary Engineering Report	\$
B.	Design/Engineering	\$
C.	Land/Right-Of-Way Acquisition	\$
D.	Other Fees (Please Provide Detail)	\$
E.	Financing Costs	\$
	1. Grant/Loan Administration	\$
F.	Contingency (____%)	\$
G.	WA State Sales Tax (WSST)	\$
H.	Construction	\$
	1. Labor	\$
	2. Materials	\$
	3. Other	\$
I.	Contracts	\$
J.	Other	\$
Total Project Cost:		\$

Signature

Name

Title

Date

**Certification of the Payment and Reporting
of Prevailing Wages**
COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: «LegalName»

Contract Number: «LoanNumber»

Project Title: «ProjectTitle»

The Contractor, by its signature below, certifies that all contractors and subcontractors performing work on the project as described in Attachment A: SCOPE OF WORK shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for the Board's review upon request.

If any state funds are used by the Contractor for the purpose of construction, applicable State Prevailing Wages must be paid.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

Name

Title

Date

Certification of the Intent to Enter the Leadership in Energy and Environmental Design (LEED) Certification Process

COMMUNITY ECONOMIC REVITALIZATION BOARD

Contractor: «LegalName»

Contract Number: «LoanNumber»

Project Title: «ProjectTitle»

The Contractor, by its signature below, certifies that it will enter into the Leadership in Energy and Environmental Design (LEED) certification process, as stipulated in RCW 39.35D, as applicable to the project described in ATTACHMENT A: SCOPE OF WORK funded by this Contract. The Contractor shall, upon receipt of LEED certification by the United States Green Building Council, provide documentation of such certification to the Board.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body or board of directors, as applicable, as of the date and year written below.

Signature

Name

Title

Date

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Final Public Hearing on the 2023 Budget	
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:		
None		
Summary Statement:		
As published, 7:00PM on December 5, 2022 is the time and date set for the Final Public Hearing on the 2023 Preliminary Budget as presented to the City Council by Mayor Korthis at the October 17th City Council meeting.		
Recommended Action:		
For the Mayor and City Council to conduct the final hearing as required to consider any public commentary on the 2023 Budget.		

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Ord 1661 – Substitute Interim Zoning Ordinance regarding Community Residential Facilities	
Section of Agenda:	Public Hearing	
Department:	Planning Department	
Council Committee Review:	<input checked="" 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 checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Ord 1661 – Substitute Interim Zoning Ord regarding Community Residential Facilities		
Summary Statement:		
<p>The City Council has recently adopted Ord 1658, an emergency interim zoning ordinance pertaining to the prohibition of the establishment of community residential facilities within 500 feet of the City’s schools and within 300 feet of other community residential facilities.</p> <p>Continued legal review has resulted in a refinement of the interim zoning regulations as reflected in the attached substitute Ordinance 1661.</p> <p>Drafting and review of the final ordinance on community residential facilities which will amend LMC Chapter 19 continues with Committee review expected in mid-November and early December. Public hearing with the Planning Commission is slated for December 15th. A sixty-day comment period with the State’s Department of Commerce will occur prior to a public hearing in early March.</p>		
Recommended Action:		
Motion to approve substitute interim zoning Ordinance 1661 regarding Community Residential Facilities and authorize the Mayor’s signature on the document.		

ORDINANCE NO. 1661

ORDINANCE OF THE CITY OF LYNDEN ESTABLISHING AN INTERIM ZONING ORDINANCE ON THE LOCATING OF COMMUNITY RESIDENTIAL FACILITIES WITHIN 500 FEET OF ALL COMMUNITY SCHOOLS AND 300 FEET OF OTHER COMMUNITY RESIDENTIAL FACILITIES

WHEREAS, the City of Lynden (“City”) notes that House Bill 1220 (“E2SHB 1220”), passed by the Washington State Legislature in May 2021, compels municipalities to support efforts to provide indoor emergency housing, indoor emergency shelters, transitional housing, and permanent supportive housing consistent with Chapters 35.21 and 35A.21 RCW; and

WHEREAS, for the purposes of this interim zoning ordinance (“Ordinance”), these four types of facilities identified in E2SHB 1220 are collectively referred to herein as “Community Residential Facilities” or “CRFs”; and

WHEREAS, E2SHB 1220 also states that reasonable occupancy, spacing, and intensity of use requirements may be imposed by ordinance to protect public health and safety as it relates to CRFs; and

WHEREAS, the Lynden City Council (“City Council”) desires to establish reasonable standards for the safe operation and appropriate siting of CRFs within the City of Lynden so as to protect public health and safety for both facility residents and the broader community; and

WHEREAS, ensuring compliance with existing City code and development standards and promoting a safe, calm, and focused atmosphere on and near the grounds of City schools are important priorities for the City; and

WHEREAS, populations served by CRFs often have higher instances of substance abuse, mental health crises, and criminal histories, which can result in disruptive behavior and emergency response activity in and around facilities which is not compatible with the atmosphere the City seeks promote around City schools; and

WHEREAS, the City’s zoning regulations have not yet been updated to address E2SHB 1220’s emphasis upon municipal support for the establishment of CRFs; and

WHEREAS, the City does not presently have in place any spacing requirement regulations governing CRFs; and

WHEREAS, a new ordinance is currently being drafted which will provide comprehensive zoning regulation of CRFs in a manner consistent with E2SHB 1220; and

WHEREAS, additional time is needed to develop comprehensive zoning regulations for CRFs—including careful consideration of regulations on the spacing of such facilities related to schools per public concerns, and each other; and

WHEREAS, if short-term action is not taken now, new CRFs may either vest or obtain nonconforming status prior to the development and adoption of the forthcoming comprehensive zoning regulations, thereby interfering with and potentially undermining the development of a meaningful comprehensive and permanent ordinance reasonably regulating occupancy, spacing, and intensity of use of CRFs in the City; and

WHEREAS, the City’s development of reasonable comprehensive zoning regulations pertaining to CRF occupancy, spacing, and intensity of use is necessary prior to establishment of new CRFs in order to protect the public health, safety, welfare, property, and peace in the City; and

WHEREAS, the City notes that a number of Washington municipalities have adopted spacing requirements between CRFs and schools, including the City of Kent and City of Federal Way (both imposing 1,000-foot spacing restrictions), the City of SeaTac (imposing a 1,750-foot spacing restriction), and the City of Orting (imposing a 1,320-foot spacing restriction); and

WHEREAS, this interim Ordinance does not prohibit building permit applications for or the locating of CRFs in any zone of the City, but rather imposes limited interim spacing requirements for CRFs pending adoption of comprehensive zoning regulations applicable to CRFs; and

WHEREAS, an interim zoning ordinance adopted pursuant to RCW 36.70A.390 and RCW 35A.63.220 is a means for local governments to rapidly adopt temporary zoning controls during the time in which permanent regulations are being developed and enacted; and

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 authorize the enactment of an interim zoning ordinance without holding a public hearing as long as a public hearing is held within at least sixty (60) days of its adoption; and

WHEREAS, at a special city council meeting on September 15, 2022, an emergency interim zoning ordinance was adopted by the City Council under Ordinance No. 1650; and

WHEREAS, the City Council held a public hearing at its regular meeting on October 17, 2022 and adopted Ordinance No. 1658, a substitute ordinance which extended Ordinance No. 1650 and made minor modifications to the findings therein; and

WHEREAS, the City Council held a public hearing at its regular meeting on December 5, 2022 to consider adopting this ordinance as a substitute ordinance modifying the findings and provisions of Ordinance No. 1658; and

WHEREAS, the City Council finds that adoption of this substitute Ordinance modifying the findings and provisions of Ordinance No. 1658 is in the best interest of the City; and

WHEREAS, the adoption of this Ordinance will provide the City with the time necessary to develop and finalize comprehensive zoning regulations applicable to CRFs while simultaneously addressing immediate public concerns as to the proximity of CRFs to community schools; and

WHEREAS, the City Council concludes that it has the authority to establish an interim zoning ordinance; 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 City Council reserves the right to adopt additional findings in the event that additional evidence is presented.

Section 2. CRF Defined. “Community Residential Facilities” or “CRFs” is a collective term for the housing categories regulated under this Ordinance, namely Emergency Housing, Indoor; Emergency Housing, Outdoor; Emergency Shelter; Transitional Housing; and Permanent Supportive Housing. All CRFs regulated under this Ordinance are forms of supportive housing intended to address the needs of persons who are or were experiencing homelessness or who are or were at risk of imminent homelessness. For the purposes of this Ordinance, facilities primarily intended to serve persons with disabilities as defined in the Fair Housing Act, 42 U.S.C. §§ 3601-3631, including without limitation homes for non-using persons recovering from a substance use disorder, are not considered CRFs and are not regulated under this Ordinance.

Section 3. Community School Defined. “Community School” as used herein shall refer to any elementary school, middle school, or high school located within the City of Lynden.

Section 4. CRF Minimum Spacing Requirements Established. No proposed Community Residential Facility shall be located within 500 feet of a Community School or within 300 feet of another approved Community Residential Facility.

Section 5. Measurement Standard. For the purposes of the spacing requirement established herein, distance shall be measured in a straight line between the closest property line of the proposed Community Residential Facility and the closest property line of the Community School or other approved Community Residential Facility.

Section 6. Reasonable Accommodations. The Fair Housing Act (“FHA”), 42 U.S.C. 3604(f)(3)(B), requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. The Planning Director is therefore authorized to make accommodations in the provisions of this Ordinance as applied to CRFs occupied or to be occupied by persons with disabilities as defined in the FHA, when the Planning Director determines that such accommodations reasonably may be necessary in order to comply with the requirements of the FHA.

Section 7. Washington Housing Policy Act. Nothing in this Ordinance shall be applied in violation of the Washington Housing Policy Act’s requirement under RCW 35A.63.240 to treat a residence occupied by individuals with disabilities no differently than a similarly situated residence occupied by a family or other unrelated individuals.

Section 8. Religious Organizations. Nothing in this Ordinance shall be applied to the extent it would infringe upon a religious organization’s ability to serve the homeless consistent with a sincere religious belief as protected under the First Amendment of the United States Constitution, Article I § 11 of the Washington State Constitution, the Religious Land Use and Institutionalized Persons Act (42 U.S.C. 2000cc et seq.), and RCW 35.21.915 (Hosting the homeless by religious organizations).

Section 9. Duration. This Ordinance shall be in effect for six (6) months from September 15, 2022 and may be renewed for one or more successive six-month periods pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 10. Conflict with Other LMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 11. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, subsection, clause, or phrase of this Ordinance.

Section 12. Effective Date. This Ordinance shall take effect five (5) days after the date of its publication. Ordinance 1658 shall remain in effect until the effective date of this substitute Ordinance.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR ON THIS ____ DAY OF DECEMBER, 2022.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

ROBERT CARMICHAEL, City Attorney

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Ordinance No. 1662 – Adoption of the 2023 Budget	
Section of Agenda:	Unfinished Business	
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:		
Ordinance No. 1662		
Summary Statement:		
<p>The Preliminary 2023 Budget was presented to the City Council by Mayor Korthuis at the October 17, 2022 City Council meeting.</p> <p>The first public hearing for the 2023 Budget was held on November 7, 2022. The final RCW required budget hearing was held earlier this evening December 5, 2022.</p> <p>Ordinance No. 1662 represents the results of the budget process.</p> <p>Passage of this ordinance will finalize and adopt the 2023 budget; and is in compliance with RCW deadlines.</p> <p>The Finance Committee has been presented with this information for their review throughout the budget process, as has Council.</p>		
Recommended Action:		
Approve Ordinance No. 1662 and authorize the Mayor’s signature adopting the 2023 Budget.		

ORDINANCE NO. 1662

AN ORDINANCE FOR THE CITY OF LYNDEN
ADOPTING THE 2023 BUDGET
FOR THE CITY OF LYNDEN, WASHINGTON

WHEREAS, the preliminary budget of the City of Lynden for the year 2023 has been heretofore filed in the office of the City Clerk of the City of Lynden; and

WHEREAS, a notice of such filing and that the City Council would, on the 5th of December, 2022 meet for the purpose of adopting the final budget, and has been duly published by law; and

WHEREAS, the City Council of the City of Lynden has considered said budget and has resolved and determined the separate items thereof,

NOW, THEREFORE, THE CITY OF LYNDEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section A. That the final budget including addendums A through J be and the same is hereby adopted and that the appropriation totals be allowed as follows:

GENERAL FUND	
CURRENT EXPENSE	\$ 20,616,242
SPECIAL REVENUE FUNDS	
BERTHUSEN PARK	\$ 240,239
HOTEL/MOTEL TAX	248,908
DRUG BUY IMPREST	15,450
PUBLIC FACILITIES PROTECTIVE INSPECTIONS	230,000
TRANSPORTATION BENEFIT DISTRICT	2,151,000
CAPITAL FACILITIES/IMPROVEMENT FUNDS	
IMPACT FEES – TRANSPORTATION	\$ 700,200
IMPACT FEES – PEPIN CREEK TRANSPORTATION	100,000
IMPACT FEES – FIRE	430,000
IMPACT FEE – PARK	1,321,000
STREETS CAPITAL CONSTRUCTION	12,892,011
CITY TRAIL	2,696,000
BENSON ROAD/PEPIN CREEK	2,609,012
RESERVE FUNDS	
GENERAL GOV. CAPITAL RESERVE	\$ 93,900
POLICE CAPITAL RESERVE	630
POLICE (STATE) SEIZURES/FORFEITURES	5,670
PARKS CAPITAL RESERVE	2,179,520
PUBLIC SAFETY CAPITAL RESERVE (1/10 th) of 1%	1,075,000
FIRE/EMS CAPITAL RESERVE	181,800

DEBT FUNDS

CITY OF LYNDEN NOTE REDEMPTION, A	\$ 1,495,638
CITY OF LYNDEN NOTE REDEMPTION, B	7,555,561
PUBLIC WORK TRUST LOAN – STREETS	128,802
LTGO BOND REDEMPTION 2017 (2005)	333,250
UTGO BOND REDEMPTION 2017 (2007)	1,066,000
WHATCOM COUNTY EDI LOAN	145,516
PUBLIC WORKS TRUST LOAN - 17TH ST	31,053
2012 LTGO BOND REDEMPTION	815,551
COMMUNITY ECONOMIC REVITALIZATION BOARD	70,022

UTILITY FUNDS

WATER	\$ 8,539,000
SEWER	14,236,100
STORMWATER	4,499,794
AIRPORT	181,780
USDA RURAL DEV. WATER REV BOND GUARANTY	419,700
WA/SE REV REFUNDING BOND, 2017B (2008-1)	132,613
WA/SE REV REFUNDING GUARANTY, 2017B (2008-1)	15,900
2017-A GUARANTY (2003 W/S REV BOND)	146,900
WATER FACILITIES CAPITAL IMPROVEMENT	1,758,000
SEWER FACILITIES CAPITAL IMPROVEMENT	4,980,000
WATER SOURCE	1,140,000

TOTAL 2023 BUDGET

Less anticipated cash on hand	\$ 25,798,676	
Anticipated receipts to be raised by taxes, service fees and bond issues	<u>69,679,086</u>	\$ 95,477,762

Section B. 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 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.

Section C. This ordinance shall take effect and be in force from and after its passage by the 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 5th DAY OF DECEMBER, 2022.

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF LYNDEN 2023 BUDGET

**ADDENDUM A
WATER RATES**

The following rates are adopted with the budget with an effective date of June 1, 2023. Rates are being raised by 7% from 2022 along with an increase in the multiplier for volume Outside City Limits.

CUSTOMER CATEGORY	MONTHLY BASE CHARGE (Per Unit)	VOLUME CHARGE <5ccf	VOLUME CHARGE 5-18 ccf	VOLUME CHARGE >18ccf
Single Family & Duplex (w/ Separate Meters)				
3/4"	\$ 34.08	\$ 1.68	\$ 2.21	\$ 3.37
1"	51.75	1.68	2.21	3.37
1.5"	101.26	1.68	2.21	3.37
2"	161.23	1.68	2.21	3.37
Low Income Senior Discount	7.86			

CUSTOMER CATEGORY	MONTHLY BASE CHARGE² (per Unit)		VOLUME CHARGE (per ccf¹)
Multi-Family, including Duplex (w/ Single, Shared Meter)			
Business/Commercial/Industrial			
3/4"	\$ 34.08		\$ 2.09
1"	56.24		2.09
1.5"	109.86		2.09
2"	174.48		2.09
3"	347.85		2.09
4"	541.39		2.09
6"	1,079.96		2.09
8"	1,726.55		2.09
Grounds (Irrigation) Meter			
3/4"	\$ 34.08		\$ 2.80
1"	56.24		2.80
1.5"	109.86		2.80
2"	174.48		2.80
3"	347.85		2.80
4"	541.39		2.80
Hydrant Meters	\$174.48 first month	\$34.08 each additional month	\$ 3.37
Outside City Limits Multipliers	1.5 x base charge		1.10 x base volume
Associations (Wholesale) (multiplier already included in rate)			
1 1/2" (Twin Ditch/Meadowbrook)	\$ 164.78		\$ 2.51
2"	261.72		2.51
4" (Berthusen)	812.09		2.51

SEE NOTES ON NEXT PAGE

NOTES:

1. The volume charge is for each hundred cubic feet (ccf) - approximately 748 gallons.
2. In addition to charges levied herein, an additional charge of 6.5% shall be assessed, which shall be paid into the Water Debt Reduction Fund to be used exclusively for debt reduction for construction debt.
3. In addition to charges levied herein, an additional 2% Utility Tax shall be assessed per City Ordinance.

CLASSIFICATION INFORMATION:

- A. Single Family shall include Mobile Homes.
- B. Business/Commercial/Industrial (Non-Permit) covers all non-residential uses, including: Offices and Retail Stores, Churches, Recreation Centers, Service/Gas Stations, Fairgrounds, Hotels/Motels, Nursing Homes, Assisted Living Facilities (without full kitchens, including oven and cooktop), Food and Beverage Establishments, Laundromats, Car Washes, Schools, and Industries which the City has determined do not require a NPDES Permit.
- C. Grounds services shall be for all non-potable uses, including irrigation.

CITY OF LYNDEN 2023 BUDGET

ADDENDUM B

Water General Facility Capital Improvement (FCI) Charges

The following rates are adopted with the budget and become effective January 1, 2023. The rate table below increases the charges by 7% to reflect increases in the cost of construction.

Residential:

	<u>FCI Charge</u>	<u>Meter Installation Fee</u>
Single Family (1 ERU)	\$ 5,560	\$371
Duplex (per unit) ¹	\$ 5,560	\$371
Detached Accessory Dwelling Unit (ADU)	\$ 4,296	\$371
Multi-family (3+ units, per unit) ²	\$ 4,296	Same as Commercial below

Commercial (Non-Residential) and Industrial:

<u>Meter Size</u>	<u>FCI Charge</u>	<u>Meter Installation Fee</u>
3/4-inch	\$5,560	\$371
1-inch	\$9280	\$519
1-1/2-inch	\$18,537	\$2,009
2-inch	\$29,705	\$2,282
3-inch	\$59,412	\$2,831
4-inch	\$92,798	time & material ³
6-inch	\$185,361	time & material ³
8-inch	\$296,577	time & material ³

Additional Information:

- A. When a service is changed from a smaller meter to a larger meter, the fee calculation shall be the difference between the two.
- B. When a service is changed from a larger meter to a smaller meter, there will be no fee credit adjustment.
- C. Water Associations identified by the Washington State Department of Health (WSDOH) as having a contaminated groundwater source and which agree to connect to the City of Lynden for wholesale water supply will not be charged a General Facilities Capital Improvement (FCI) Charge per the terms of WSDOH loans provided to the City in 2013 for the treatment facility.
- D. Water connections **outside the City Limits** will have a **1.5 multiplier** applied to the above connection charges. New connections outside the City Limits are only allowed with City Council approval.

¹ Both units must be metered unless authorized by Public Works Director

² Multifamily charges are based on 75% of Single Family ERU

³ Actual Cost. Estimate to be provide by City, upon request, prior to installation

CITY OF LYNDEN 2023 BUDGET

ADDENDUM C

SEWER RATES

The following rates are adopted with the budget with an effective date of June 1, 2023 and reflect an increase of 7% over the 2022 rates. BOD and TSS testing fees were increased at a higher rate to reflect increases in labor costs.

CONSUMER CATEGORY	MONTHLY BASE CHARGE	CHARGE PER UNIT
Single Family, Duplex, and/or a Multi-Family Dwelling Unit with a Separate Individual Meter	\$ 53.84	N/A
Multi-Family (Including Duplex) with a Connected Single Meter Serving All Units		
First dwelling unit	\$ 53.84	N/A
Each additional dwelling unit	\$ 40.00	N/A
Mobile Home additional unit and Accessory Dwelling Unit (ADU)	\$ 29.99	N/A
Business/Commercial/Industrial – NPDES ⁴ Not Required		
Basic Charge	\$ 53.84	\$ 2.96
Volume Charge: per 100 cubic feet (ccf)		
Industrial Users – NPDES ¹ Permitted		
Basic Charge	\$ 106.68	
Volume Charge: per 100 cubic feet (ccf)		\$ 2.31
BOD Charge: per pound (lb)		\$ 0.78
TSS Charge: per pound (lb)		\$ 0.78
BOD Testing Fee (per sample) ⁵	\$ 65.00 ea	
TSS Testing Fee (per sample) ²	\$ 22.00 ea	
Outside City Limits Multiplier ⁶	1.5 X	

Additional Information:

- A. Business/Commercial/Industrial (Non-NPDES Permit) covers all non-residential uses, including: Offices and Retail Stores, Churches, Recreation Centers, Service/Gas Stations, Fairgrounds, Hotels/Motels, Nursing Homes, Assisted Living Facilities (without full kitchens, including oven and cooktop), Food and Beverage Establishments, Laundromats, Car Washes, Schools, and Industries which the City has determined do not require an NPDES Permit.
- B. Multi-Family shall include apartments, duplexes, Independent Living Facilities, and multiple condominium units served by a single meter.
- C. Mixed Use (with a single meter). Consumer Category to be determined by Public Works.
- D. A non-representative sample will be billed as if 100% of the Daily Maximum Demand was delivered.
- E. If an Industrial User exceeds the permit limit for Flow, BOD or TSS; it will result in a rate 3-times the established per unit rate, for each violation over the permit or contract limit.
- F. A pH reading outside the permit limit will result in a rate 3-times the established rate for flow for the period of violation.
- G. A concentration level in mg/l over the permit or contract level will result in a rate three (3) times the established per unit rate for the permit or contract charge.

⁴ National Pollution Discharge Elimination System (NPDES)

⁵ A late payment charge 5% will be added to payments not made within 30 days of invoice

⁶ Residential Outside City Limits Multiplier applied to Base Rate; Commercial Outside City Limits Multiplier applied to Base Rate and Unit Volume; and installation of flow meter(s) will be required.

CITY OF LYNDEN 2023 BUDGET

ADDENDUM D

Sewer General Facility Capital Improvement Charges (FCI)

The following rates are adopted with the budget and become effective January 1, 2023. The rate table below increases the charges by 7% to reflect increases in the cost of construction.

The general FCI charges applicable to all areas served by the City are shown in the table below in the “All Areas” column and those additional FCI charges only applicable to the East Lynden/ Line Road Sub-Basin, per Ordinance No. 1447, are shown in the “East Lynden” column:

Consumer Category	Unit	All Areas	East Lynden
Single Family Residential		\$ 7,625	\$ 5,671
Accessory Dwelling Unit	Per unit	4,778	3,424
Duplex	Per unit	7,625	5,671
Multi-Family			
3- or 4-unit building	Per unit	5,648	4,071
5 or more-unit building	Per unit	4,777	3,424
Mobile Home Parks			
First 4 pads	Per pad	5,648	4,071
5 or more pads	Per pad	4,777	3,424
Business, Commercial and Industrial Users	Meter Size	All Areas	East Lynden
	¾-inch	\$ 5,648	\$ 4,071
	1-inch	\$ 9,414	\$ 6,778
	1½-inch	\$ 18,816	\$ 13,543
	2-inch	\$ 29,884	\$ 21,674
	3-inch	\$ 60,187	\$ 43,337
	4-inch	\$ 94,027	\$ 67,704
	6-inch	\$ 188,044	\$ 135,388
	8-inch	\$ 300,863	\$ 193,793

Classification Information:

1. Single Family shall include Mobile Homes.
2. Business and Commercial covers all non-residential uses, including: Offices and Retail Stores (with or without public restrooms), Industrial Users (not requiring an NPDES Permit), Churches, Recreation Centers, Service/Gas Stations, Fairgrounds, Nursing Homes, Assisted Living Facilities, without full kitchen (including oven and cooktop) Food and Beverage Establishments, Laundromats, Car Washes, and Schools.
3. Where a property owner is eliminating a septic system and connecting to the City’s sanitary sewer system, the “All Areas” FCI charges shown above may be waived, Per LMC 13.12.55.

CITY OF LYNDEN 2023 BUDGET

ADDENDUM E

STORMWATER RATES

The following stormwater rates reflect a 7% adjustment effective June 1, 2023.

<u>Customer Category</u>	<u>Monthly Base Rate Per Residential Unit</u>	<u>Monthly Increment Rate</u>
Single Family, Duplex and/or Multi-Family Dwelling Unit with Individual Meter	\$ 10.87	N/A
	<u>Monthly Base Rate</u> (up to 10,000 sf Impervious Surface Area)	<u>Monthly Increment Rate</u> (over 10,000 sf Impervious Surface Area)
Non-Single Family	\$ 16.93	\$ 8.29 per each 5,000 sf
NSF w/ Provision of Water Quality	\$ 16.93	\$ 6.79 per each 5,000 sf
NSF w/ Provision of Water Quality & Detention	\$ 16.93	\$ 4.22 per each 5,000 sf
NSF w/ Provision of Water Quality & Retention	\$ 16.93	\$ 2.21 per each 5,000 sf

CITY OF LYNDEN 2023 BUDGET
ADDENDUM F
STORMWATER MANAGEMENT GENERAL FACILITY CAPITAL
IMPROVEMENT (FCI) CHARGES

The following rates are adopted with the budget and become effective January 1, 2023. The rate table below increases the charges by 7% to reflect increases in the cost of construction.

Customer Category	Base Fee	Increment over 10,000 SF
Single Family, Duplex and/or Multi-Family Dwelling Unit with Individual Meter in a Platted Subdivision with approved Stormwater Facilities	\$ 200.00 /unit	Not Applicable
Single Family, Duplex and/or Multi-Family Dwelling Unit with Individual Meter	\$ 400.00 /unit	Not Applicable
Non-Single Family (up to 10,000 sf)	\$ 797.00	Additional \$ 334.00 for each 5,000 sf over 10,000 sf
Non-Single-Family w/ Water Quality Treatment	\$ 797.00	Additional \$ 250.00 for each 5,000 sf over 10,000 sf
Non-Single-Family w/ Detention and Water Quality Treatment (up to 10,000 sf)	\$ 797.00	Additional \$ 152.00 for each 5,000 sf over 10,000 sf
Non-Single-Family w/ Retention and Water Quality Treatment (up to 10,000 sf)	\$ 797.00	Additional \$ 76.00 for each 5,000 sf over 10,000 sf

CITY OF LYNDEN 2023 BUDGET

ADDENDUM G

COMPOST FEES

The following rates, adopted on January 1, 2022, will continue to be in effect in 2023.

Category	Amount	Fee
Any customer	up to 50 cubic yards per year	\$ 14.00/cubic yard + tax
Any customer	50 to 100 cubic yards per year	\$ 11.00/cubic yard + tax
Any customer	100 to 299 cubic yards per year	\$ 8.00/cubic yard + tax
Double Screened	N/A	20% additional cost per cubic yard
Fall Clearance October 1 – December 31	N/A	20% discount per cubic yard

Notes:

1. Citizens who are utility customers may self-load one-half yard per visit at no charge, depending on availability.
2. Please call ahead for large orders.

CITY OF LYNDEN 2023 BUDGET

ADDENDUM H

CITY EQUIPMENT RATES

The following rates will be effective January 1, 2023:

1. The hourly rate for City equipment will be charged at the FEMA Schedule of Equipment Rates for the current year.
<https://www.fema.gov/assistance/public/tools-resources/schedule-equipment-rates>
2. The hourly labor rate for a City Equipment Operator will be \$55.00 (including wages, benefits, and overhead).

CITY OF LYNDEN 2023 BUDGET

ADDENDUM I

PUBLIC WORKS DEVELOPMENT REVIEW FEES

**Updated with the 2023 Engineering Design and
Development Standards Project Manual**

Review Deposits

Development Type	Amount of Deposit
Residential	\$400.00 per lot, \$4,000.00 minimum
Non-Residential	2% of Civil Construction Cost Estimate, \$6,000.00 Minimum

Inspection Deposits

Development Type	Amount of Deposit
Residential	\$500.00 per lot, \$10,000.00 minimum
Non-Residential	2% of Civil Construction Cost Estimate, \$10,000.00 Minimum

CITY OF LYNDEN 2023 BUDGET
ADDENDUM J
LYNDEN MUNICIPAL AIRPORT FEES

The following fees are effective January 1, 2023:

Fuel

Current fuel price for Lynden Municipal Airport (38W) listed at www.airnav.com.

Access Fees

Residential Access from Adjacent Parcels\$ 47.25 /month or \$472.50 /year if paid prior to January 15th of current year

Off Premises Access Fees

Commercial (Jansen Hangers)\$ 308.70 /month if 8 or more planes are stored (less than 8 planes - price will be negotiated with Public Works Director). \$3,087.00 /year if paid prior to January 15th of current year

362 Piper Street.....\$ 47.25 /month or \$472.50 \$/year if paid prior January 15th of current year
Lot is adjacent to the airport and is grandfathered into the airport overlay zone.

366 Piper Street.....\$ 101.85 /month or \$1,018.50 /year if paid

Lot is adjacent to the airport and is grandfathered into the airport overlay zone. prior to January 15th of current year

Vehicle Parking Fees

Daily\$ 7.00 *
Monthly\$ 35.18 *
Yearly\$ 347.29 *

**Plus effective leasehold excise tax rate*

Note: If Tie-Down Agreement executed, one vehicle may be parked at no charge.

Tie-down Fees

First night\$ 13.00 *
Each additional night\$ 7.00 *
Per Month.....\$ 52.50 *

**Plus effective leasehold excise tax rate*

Note: First night at no charge with fuel purchase

Late Payment Penalty

Assessed Per Month on Past-Due Balance

Less than \$200.00\$ 11.00
\$200 or greater5% of the outstanding balance

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Select Mayor Pro Tem for 2023	
Section of Agenda:	New 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 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:	N/A	
Summary Statement:	<p>Each year council selects a Mayor Pro Tem to conduct the business of presiding over council meetings and other regularly conducted business in the Mayor's absence. Currently that position is held by Councilor Gary Bode.</p>	
Recommended Action:	<p>Make and approve a motion to select a 2023 Mayor Pro Tem.</p>	

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
Name of Agenda Item:	Community Development Committee Minutes of November 16, 2022	
Section of Agenda:	Other	
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 Meeting Minutes of Community Development Committee		
Summary Statement:		
Draft CDC Minutes of November 16, 2022 attached for review.		
Recommended Action:		
Council review.		

CITY OF LYNDEN



PLANNING DEPARTMENT
Heidi Gudde – Planning Director
(360) 354 - 5532

COMMUNITY DEVELOPMENT COMMITTEE and **SPECIAL (Non-quorum) PLANNING COMMISSION MEETING**

MINUTES

4:00 PM November 16, 2022

Police Department Training Room – Lynden Police Department

1. ROLL CALL

City Council: Gary Bode, Brent Lenssen, Nick Laninga, Mayor Scott Korthuis
Kyle Strengholt – absent

Planning Commission: Blair Scott, Hollie Lyons, Khush Brar

Staff: Dave Timmer, Heidi Gudde, John Williams

2. APPROVAL OF MINUTES

- a. Community Development Committee Meeting Minutes of 9/28/22. No decision made on Minutes approval as Councilor Strengholt is not present.

3. DISCUSSION ITEMS – Community Residential Facilities – Draft Ordinance 1654

Councilor Lenssen read a prepared statement as introduction to the discussion. The statement explained the work that has gone into the drafting of this Ordinance and the previous temporary ordinances. Furthermore, it explained that the City has received a legal challenge to some of the previous wording regarding distancing regulations on recovery housing. It was found that this type of housing is federally protected by the Fair Housing Act. As such the new draft ordinance is not including that type of housing in its regulations.

Director Gudde welcomed the Planning Commission members, and explained the basics of the new draft Ordinance, including the table (proposed LMC 19.49.030) which defines the various categories of CRFs which are being regulated by this Ordinance. Notice this does not include recovery housing. Also, these are not government run facilities – in practice, in Lynden, these facilities tend to be privately, or non-profit managed and operated. The regulations associated with each of these are careful to take into account that there are currently several CRF facilities already actively operating in the City. We do not want these regulations to render them out of compliance, or not able to continue their use. Furthermore, the Ordinance creates a registry so that the

City is knowledgeable of their location, purpose, and if there are any specific unique characteristics associated with the property (privacy concerns, medical equipment, resident mobility issues, etc).

With this Ordinance, staff is recognizing a need for these types of facilities in the city and attempting to balance gov't involvement (mostly by the registry and distancing regulations where applicable), and legal requirements, with private, non-profit, and religious endeavors to meet this need. Staff is requesting feedback on the ordinance as presented. It will come to the Planning Commission in a public hearing in December and to the City Council, for adoption, in March of 2023.

Committee / Public Discussion

Discussion did not revolve around the Ordinance, or its proposed regulations, as was presented. PC members, and the public, had several questions and concerns about this issue – for the most part, about recovery residences which this Ordinance does not address. In general, they felt that the City was being forced by the state to provide housing for these people and to create this ordinance. Questions and statements included:

- Would a church that housed flood victims during last year's flood now need a permit from the City to do that?
- Will the State force Lynden to take care of disaster victims from other places? Will they bus homeless people to Lynden?
- Expressions of trepidation regarding the type of people that would be housed in these facilities. Drug addicts, criminals, and murderers?
- Can the City allow some but then place a limit on the number of these facilities so they don't end up on every corner?
- Can the City decide to break Federal and State laws on this issue?
- Who is going to be held accountable when something goes wrong at one of these houses? When a Fisher student finds a fentanyl needle?
- Is the City gearing up to hire more police officers because of these houses?

In conclusion, Director Gudde asked for feedback regarding the notification requirements as are detailed in the Ordinance. Should these CRFs have to notify the neighbors of their existence? The consensus from the Committee was that they should notify the neighbors.

Councilor Lenssen then described the upcoming schedule for additional review and eventual adoption of this Ordinance.

- Dec 1 – Public Safety Committee
- Dec 15 – Planning Commission hearing, after which it will be sent to the Dept of Commerce for their 60-day review.
- March 5 – City Council adoption

Meeting adjourned at 5:45pm.

Next Meeting Date: December 20, 2022

CITY OF LYNDEN

EXECUTIVE SUMMARY



Meeting Date:	December 5, 2022	
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: _____
	Legal Review: <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
Attachments:		
Summary Statement:		
Recommended Action:		

December 5, 2022
Monday

7:00 PM - 9:00 PM Copy: Council Meeting -- Annex Council Chamber

December 6, 2022
Tuesday

5:00 PM - 6:30 PM Design Review Board -- TBD

December 7, 2022
Wednesday

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

4:00 PM - 6:00 PM Public Works Committee Meeting -- City Hall 2nd Floor Large Conference Room

December 8, 2022
Thursday

7:00 PM - 9:00 PM Planning Commission -- TBD: Virtual Meeting or Annex Council Chamber

December 9, 2022
Friday

All Day PAYDAY
PAYDAY

December 14, 2022
Wednesday

8:00 AM - 5:00 PM Court -- Annex Council Chamber; Annex South East Conference Room; Annex East Training Room; Annex North East Conference Room

7:00 PM - 9:00 PM Parks & Rec District Meeting -- Annex South East Conference Room

December 15, 2022

Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- tbd

December 18, 2022

Sunday

All Day

12-18 thru 12-31 Pay Period

December 19, 2022

Monday

4:00 PM - 5:00 PM

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

7:00 PM - 9:00 PM

Copy: Council Meeting -- Annex Council Chamber