

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



September 7, 2021

### 1. CALL TO ORDER

Mayor Korthuis called to order the September 7, 2021, regular session of the Lynden City Council at 7:00 p.m., held online via Microsoft Teams.

### ROLL CALL

Members present: Mayor Scott Korthuis and Councilors, Gary Bode, Jerry Kuiken, Brent Lenssen, Kyle Strengholt, and Mark Wohlrab.

Members absent: Councilors De Valois and Laninga absent with notice.

Staff present: Fire Chief Mark Billmire, Planning Director Heidi Gudde, Public Works Director Steve Banham, City Administrator John Williams, City Attorney Bob Carmichael, and City Clerk Pam Brown.

### OATH OF OFFICE- None

### APPROVAL OF MINUTES

***Councilor Strengholt moved and Councilor Kuiken seconded to approve the August 16, 2021, regular council minutes as presented. Motion approved on a 5-0 vote.***

### EXECUTIVE SESSION

Council recessed into executive session at 7:10 p.m. to discuss a litigation matter to which the city is a party and a matter related to code enforcement. It was anticipated that the executive session would last until 7:25 p.m. and that a decision would not be made.

The Council meeting reconvened at 7:25 p.m.

### Statement read into the record by Mayor Korthuis:

***We are the recipients of a citizen petition complaint seeking city enforcement action on certain matters pertaining to the Homestead PRD development. The complaint is currently under review and includes claims that are part of an active lawsuit which the city is one of the defendants.***

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***This evening Mr. Button you are free to speak in open session, however; we cannot comment or engage in dialogue on potential code enforcement matters under review and cannot comment on or engage in claims currently being litigated in court. This is on the advice of our legal counsel.***

***One thing city council considered doing was inviting Mr. Button to the Community Development Committee (CDC) and on advice of counsel we will put that off until October.***

### ITEMS FROM THE AUDIENCE

#### Scheduled:

Lynn Button, 8856 Depot Road, Lynden

Mr. Button spoke on behalf of other owners in the Homestead PRD. He addressed the increase of fees and assessments for maintenance of a few acres of private property and that these fee assessments have nearly tripled over the past three years. Mr. Button also believes that City officials have not enforced the ordinances, codes, and contracts associated with the Homestead PRD.

Mr. Button stated that the Homestead owners' petition reflects more than 700 parcels within the Homestead PRD which reflects a population of approximately 2,000 people. He also asked that Lynden City officials assist in resolving this dispute by simply enforcing city codes and ordinances.

Karsten Wise, UFCW LU 21, Seattle

Mr. Wise spoke on behalf of 46,000 UFCW workers working in the grocery, healthcare, and service industries. Mr. Wise stated that local governments have the authority to act on the issue of hazard pay for frontline workers and would welcome the opportunity to speak with members of the council concerning these issues.

***Mayor Korthuis referred Mr. Wise to Community Development Committee for the opportunity to dialogue with council members regarding this matter.***

#### Unscheduled- None

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## 2. CONSENT AGENDA

### Payroll Liability to August 16 through August 31, 2021

#### EFT & Other Liabilities

#### Non-L&I Liabilities

Monthly EFT .....	\$419,591.94
Check Liability.....	\$102,032.65
Total Non-L&I Liabilities .....	\$521,624.59
Quarterly Liabilities .....	\$13,003.21
<b>Total EFT &amp; Other Liabilities</b>	<b>\$534,627.80</b>

### Approval of Claims – September 8, 2021

Manual Warrants No.	<u>22766</u>	through	=		\$1,904.13
EFT Payment Pre-Pays					\$41,573.81
				Sub Total Pre-Pays	\$43,477.94
Voucher Warrants No.	<u>22769</u>	through	<u>22818</u>		\$236,409.56
EFT Payments					\$0.000
				Sub Total	\$236,409.56
				Total Accts. Payable	<b>\$279,887.50</b>

### Appoint Representative for WTA Review Committee

Every four years a member of the county legislative authority and an elected representative from each city within the boundaries of the Public Transportation Benefit Area shall meet and review the composition of the WTA governing body. The Commission Review Committee may change the composition of the Board if change is deemed appropriate.

Pursuant to RCW 36.57A.055, the County Council will designate the County Council's member to serve on the Composition Review Committee, and the Bellingham, Lynden, Ferndale, Blaine, Everson, Nooksack, and Sumas City Councils will each designate one of their City's elected officials to serve on the Committee. Each respective Council may choose to appoint the present WTA Board member representing their jurisdiction to serve on the Committee, or they may choose another council member.

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### License Agreement for Shared Parking between City of Lynden and Upper End, LLC

The owner of 110 5th Street, Upper End LLC, is remodeling this building which is adjacent to the downtown Historic Business District. There are five existing angled parking spaces located on the north side of the Upper End property. These spaces are partially on the City

Community Center parking lot owned by the City. These parking spaces have historically been used for parking by 110 5th Street and are accessed from the Community Center parking lot.

The License Agreement provides for the continued shared use of these five parking spaces And reservation of the spaces for nighttime use by residents in the mixed-use building. The Public Works Committee discussed the License Agreement for Shared Parking at their August 4, 2021, meeting and concurred to recommend approval to City Council.

### Ordinance No. 1634- Amendatory Ordinance to Increase the Line of Credit Limit

Ordinance No. 1231 was approved by council on May 2, 2005. It allowed the city to have a revolving line of credit. The notes have provided interim financing for capital projects such as the Water Reservoir project (for DWSRF reimbursement), Arterial Street capital improvements, Police Station Acquisition/Remodel (prior to issuance of permanent financing), and East Lynden Sewer Sub-Basin improvement projects. Presently, outstanding balances on the line of credit consist of several funds awaiting reimbursement money from State and Federal Grants. The line of credit is available to provide interim financing for Street Capital Construction projects. These projects are secured by grant and/or other intergovernmental funding on a reimbursement basis.

The current Line of Credit Limit is set at \$2,100,000. The level of funding required on current projects is going to exceed the current limit. Ordinance No. 1634 is an amendatory Ordinance that would increase the current \$2,100,000 line of credit limit up to \$3,000,000. The City's Bond Counsel and Finance Director have reviewed this proposal. The Finance committee was notified of the requested increase prior to the September 7<sup>th</sup>, 2021 council meeting.

### TRC Report Revising- Kamm Creek MPRD Application 20-02

On November 16, 2020 the City Council granted preliminary approval to the Kamm Creek MPRD application. On December 7, 2020 the City Council confirmed the findings of fact related to this approval. The Council may recall that the MPRD concept for the 20-acre property located on the west side of Northwood Road includes 40 lots.

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Design of infrastructure for the project has advanced since the preliminary approval. However, the property owner has raised a concern related to one staff comment on the Technical Review Committee's (TRC) report. This relates to the presence of a mineral rights claim on the property dating back to 1962. The TRC report required that this claim be cleared from the property prior to commencement of construction. While State law provides a pathway for clearing claims that are more than 20 years old the process is time consuming and tedious. Properties throughout Whatcom County are frequently developed with a mineral right still in place.

The property owner has asked that staff revise the TRC report to remove this requirement. The City's legal counsel has agreed that the presence of a mineral right claim poses little risk to the City. As such, staff has agreed that the comment be revised to be advisory in nature. As TRC report conditions are part of the preliminary approval's findings of fact, the revised findings of fact are being brought forward for City Council approval and the Mayor's signature.

### Set a Public Hearing- September 20, 2021, to Hear Comments on Amending LMC Section 12.28- Sidewalk Obstructions

The City has received requests from dining establishments to use portions of the City sidewalk for outdoor dining. There have also been previous requests for additional clarification on the use of sidewalks for other purposes. The proposed code amendment clarifies which obstructions require permits and which are exempt from permit requirements. Provisions have been included for outdoor dining facilities. The permitted uses are required to preserve a five-foot continuous strip of sidewalk for pedestrian movement.

The Public Works Committee reviewed these revisions at their June 9, 2021 and August 4, 2021 meetings and concurred to recommend setting a Public Hearing date of September 20, 2021.

### Set a Public Hearing – September 20, 2021, to Hear Comments on Franchise Agreement with Sound Internet Services dba Pogozone for Transmission of Telecommunications

Sound Internet Services dba Pogozone would like to enter into a Franchise Agreement with the City to operate and maintain telecommunications (phone and high-speed internet) systems within City right-of-way. They are in the process of seeking franchise agreements from other local jurisdictions as they expand beyond Bellingham and into Whatcom County.

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Facilities will be placed on existing infrastructure where it makes sense, which could mean using existing telephone poles (hanging lines from Puget Sound Energy poles) and/or utilizing existing towers as well. However, there may be cases where new infrastructure is needed. In these cases, a permit will be required.

The request for a franchise agreement was introduced at the Public Works Committee meeting on August 4, 2021 and will be discussed at the Public Works Committee meeting on September 8, 2021.

### Set Public Hearing-September 20, 2021, to Hear Comments on Development Standards Variance 21-01 Lot Design of the Cedarbrook Short Plat

A Development Standards Variance application has been brought forward by Cedarbrook Partners LLC to vary a subdivision standard that relates to the proportions of residential lots. Specifically, LMC 18.14.020(A) states that no residential lot shall be created deeper than three times its width. The request to vary this standard comes forward as part of a Shoreline Substantial Development (SSD) Permit and a Short Plat application.

The Hearing Examiner held a public hearing regarding the Shoreline permit on August 26, 2021. The final determination of this hearing is pending but will be available prior to the Council's hearing on this variance. The short plat determination will be made subject to the outcome of the Shoreline permit and the Council's decision on the Variance request.

The subject property is unique in that the Fishtrap Creek runs along its eastern boundary. The creek and associated critical areas limit the development along this eastern half of the property. As such, the 4 lots that are proposed to be created are accessed from the western edge. Three of the lots run lengthwise west to east across the 3-acre parcel so the lot depth is more than three times the lot width. The variance does not seek to reduce the minimum size of the lots as each is over 20,000 square feet, well above the 10,000 square foot minimum.

Variance requests must be brought forward to a public hearing. At this time staff is requesting that the public hearing be set for September 20, 2021.

***Councilor Strengholt stated that the Finance Committee had not yet had an opportunity to review item no. 5 (Ordinance No. 1634) on the consent agenda although the executive summary explained the matter well.***

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***Councilor Lenssen discussed a couple of questions related to LMC Section 12.28 - Sidewalk Obstructions. Mayor Korthuis reminded council that this agenda item was meant to set a public hearing date and assured Councilor Lenssen that there would be an opportunity for discussion of the item before Council voted on the issue.***

***Councilor Bode moved and Councilor Kuiken seconded to approve the Consent Agenda. Motion approved on a 5-0 vote.***

### **3. PUBLIC HEARING - None**

### **4. UNFINISHED BUSINESS- None**

### **5. NEW BUSINESS**

#### Request to Petition for Annexation of the West Lynden UGA

Property owners Bill and Frances Vander Hage, and Dale and Femie Rutgers have submitted a request to petition for the annexation of their property and others within the City's western Urban Growth Area (UGA). The proposed annexation action would include the entirety of the UGA located at the southwestern edge of the City. This extends to the intersection of Birch Bay Lynden Road and Berthusen Road and encompasses approximately 277 acres.

The City's Comprehensive Plan assigns land use with UGA areas and specific zoning categories are usually designated at the time of annexation. If annexed, the area would add Industrial, Commercial, and Medium-density Residential properties to the City. It would also include the City-owned parcel that contains the West Lynden Pond which is zoned Public Use. As required by code, the assessed value of the property represented by the Vander Hages and Rutgers is at least 10% of the total assessed value. In order to move forward with the next stage of the annexation process, the petitioners will need to acquire signatures from property owners representing at least 60% of the assessed value of the area.

The west Lynden area represents opportunities for growth near the commerce and transportation corridor of the Guide Meridian. Annexation of an area this size also facilitates comprehensive and proactive planning of infrastructure and stormwater

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facilities. The Community Development Committee expressed support for the circulation of a petition at the May 2021 meeting.

***Councilor Lenssen moved and Councilor Bode seconded to approve the request to petition for the annexation of the west Lynden Urban Growth Area. Motion approved on a 5-0 vote.***

### Appointment to Planning Commission – Hollie Lyons

The Mayor has appointed a new member, Hollie Lyons, to fill a vacancy on the Planning Commission. The Planning Commission consists of seven volunteer members. At the time of appointment and throughout their term of office, the primary residence of each member of the Planning Commission must be within the city limits of Lynden. The term of office for each member is four years unless specifically completing the term of another member.

This appointment is being brought forward to the City Council meeting for confirmation. Hollie's experience as a long-time resident of the Lynden area and her active role in the community will undoubtedly be an asset to the Planning Commission. Hollie also has previous experience serving on the Planning Commission. Hollie will be joining the Planning Commission in October.

***Councilor Bode moved and Councilor Kuiken seconded to confirm the appointment of Hollie Lyons to the Lynden Planning Commission for a 4-year term expiring October 2025. Motion approved on a 5-0 vote.***

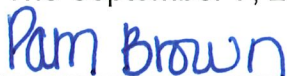
## 6. OTHER BUSINESS

Council convened into a closed-door meeting for discussion for collective bargaining.

## 7. EXECUTIVE SESSION

## 8. ADJOURNMENT

The September 7, 2021, regular session of the Lynden City Council adjourned at 8:25 p.m.



Pam Brown, MMC  
City Clerk



Scott Korthuis  
Mayor