

CITY OF LYNDEN

PLANNING DEPARTMENT

Heidi Gudde – Planning Director

(360) 354-5532



Community Development Committee Meeting Agenda

City Hall - 300 Fourth Street

4:00 PM June 16, 2022

Roll Call

Approval of Minutes

- [1.](#) Minutes of the 5/18/22 Community Development Committee Mtg

Discussion Items

- [2.](#) Camping Prohibition - Draft Ordinances

Informational Items

3. Land Use and Construction Applications - Projects Update

Next Meeting: July 20, 2022

CITY OF LYNDEN

PLANNING DEPARTMENT
Heidi Gudde – Planning Director
(360) 354 - 5532



COMMUNITY DEVELOPMENT COMMITTEE and SPECIAL PLANNING COMMISSION MEETING

MINUTES

4:00 PM May 18, 2022

City Hall Annex Building – Council Chambers

1. ROLL CALL

City Council: Kyle Strengtholt, Gary Bode, Brent Lenssen, Mayor Scott Korthuis

Planning Commission: Tim Faber, Blair Scott, Hollie Lyons, Darren Johnson

Staff: Dave Timmer, Heidi Gudde

Community: Gary Vis, Mike Kooy, Ian VanRy, Tyler Bajema, Blake Starkenburg

2. APPROVAL OF MINUTES

- a. Community Development Committee Meeting Minutes of 4/20/22 approved as presented.

3. DISCUSSION ITEMS

- a. Mixed-Use Zoning Code Amendment – Draft Code Language

Lenssen gave a brief overview as to why the Community Development Committee (CDC) had asked staff to review the mixed-use provisions of the code and noted the moratorium on residential development that Council put in place at the start of the year. Since that time staff had been drafting new sections of code and giving regular updates to the CDC.

Gudde introduced the concepts of the drafted mixed-use code. This included the following points:

- Residential uses permitted on commercially zoned properties when located in close proximity to Qualified Commercial Centers and are at least one acre in size. Close proximity considered to be ¼ of a mile or less – walking distance.
- Qualified Commercial Centers have at least 20,000 square feet of retail space and 6 different entities that are open to the general public. The Historic Business District is also considered a QCC. Using this criterion the City has six Qualifying Commercial Centers:
 1. Bender Plaza
 2. Historic Business District

3. Fairway Center
 4. Fair Square
 5. Food Pavilion Plaza
 6. Safeway Plaza
- Residential developments that meet the criteria of the Mixed-Use Centers Overlay may utilize the associated development standards. Generally, this includes:
 - No maximum density. (Density becomes limited by building height and parking requirements.)
 - Buildings that are 48 feet in height
 - Flex space requirement
 - Open space requirement
 - Opportunities to share parking with nearby commercial uses
 - Small Scale Mixed-Use. Properties that have a CSL zoning but are not at least one acre in size, as drafted, can establish residential uses on upper floors and commercial on the first floor. However, residential units can be established on the first floor if they are constructed as ADA adaptable.

Related to small scale mixed use, the group discussed allowing additional units in the downtown area CSL zone – basically Main to Grover and 1st to 6th. Existing uses are mixed with commercial, churches, old single family uses, small scale multifamily, and houses that have converted to commercial. There is an opportunity for increased residential in some of these but what should it look like? Ideas were discussed regarding allowing existing single family to add units, decreased onsite parking requirements, setbacks, height restrictions...? Staff will analyze and come up with some ideas.

- Flex Space. Properties developing under Mixed-Use provisions must reserve and improve 20% of the site for semi-public plaza space. This space can be used for temporary commercial uses such as food trucks or seasonal sales or be converted into permanent commercial uses.
- Open Space. 10% of the site must be reserved for open space. This can be exclusive to the residents that live there. Some of this area might be inaccessible critical areas but still count toward the open space requirement. Language here has yet to be finalized. Discussion with the Planning Commission contemplated the use of indoor recreational spaces as counting toward this open space requirement. This might include community rooms or exercise facilities.
- Parking. The code related to parking has been updated and reviewed by both the Planning Commission and the CDC. The most significant

changes have to do with an increase in the required number of parking stalls for multi-family development.

Following this introduction the group reviewed proposed edits to LMC 19.11 through 19.51 with special attention to the following issues:

New standards that would require multi-family developments to provide shared open space on multi-family sites. This is outside of mixed-use provisions. Sites with 8 or more units would be required to provide 60 sf of open space per unit.

Addition of permitted uses list that is specific to mixed-use centers. This list is designed to include commercial uses that are compatible with residential uses and pedestrian-oriented design. It excludes uses like large scale storage, fueling stations, and vehicle-oriented designs like multi-laned bank drive-thrus.

Kooy expressed concern and asked the group to consider that some franchises prioritize locations that can have multiple lanes in their drive-thrus. Also, he noted, it can be preferable to have vehicle stacking concentrated within a two-lane split rather than wrapping around the building in a single lane.

Faber asked if open space standards drafted in the multi-family residential section would be the same requirement. Gudde noted that open space requirements would be different for the MU overlay developments. The code is drafted to require that 10% of the lot area be reserved for open space.

The group spent some time discussing how much open space should be provided for multi-family developments and what could “count” toward this requirement. Indoor open space and roof top open space was discussed. Generally, the group consensus was that open space should be outdoors. Care should be taken to provide secure space especially if children / families were to be served. Gudde noted that open space could be fenced and accessed through the residential building so that it was exclusive to tenants.

The group briefly discussed open spaces that may not be accessible such as critical areas. The conclusions seemed to indicate that accessible space is important although critical areas, as open space, do benefit residents. Currently the code is drafted to allow some overlap of requirements between critical areas and open space although work needs to be done on rewording for clarity. Blair Scott suggested that the requirement be noted as “recreational space” to indicate that it should be accessible and active.

The open space requirement is separate from the Flex space requirement. In the absence of a commercial component, flex space, at 20% of the site, must be designed improved as semi-public open space such as a plaza.

Flex space provides open area for residents and the general public but also serves as a visual amenity to the community.

While flex space is open to the public, the required open space, Gudde noted, could be gated or enclosed so that it is exclusively for the use of residents. Open space must be maintained as such in perpetuity.

The code is drafted so that flex space could be converted, 100% into a permanent commercial use. The concept is that an increased number of residents in the area will generally increase the viability of a commercial entity on the site. The flex space could be converted only to permitted commercial uses listed in the Mixed-Use Center overlay column of 19.23.020.

The group discussed the pros and cons of having this flex space convert completely into a commercial use. Gudde noted that this is a business-friendly model given that the underlying property is zoned commercial. If flex space is a permanent feature, then it may be more appropriate that subject properties simply be rezoned to a high-density residential category like RM-4.

Design characteristics of the flex space must include seating opportunities, and a couple of other features such as outdoor lighting, public art or sculptural play structures. These requirements are listed in 19.24.110(H) of the proposed mixed-use code.

Lyons asked if, since the public could use the flex space, would additional parking be required to accommodate visitors. Generally, the consensus of the group was that the flex space would likely not draw the public as a destination but may serve as a pedestrian amenity to those walking in the area or those visiting nearby businesses or the residents who live on-site. It would not be a destination in itself.

Gudde notes that the flex space is a more attractive alternative to having a gravel “build-to-suit” commercial pad sitting idle for an unknown amount of time. It can also be used for temporary or seasonal commercial uses such as food trucks or berry stands.

The goal of the flex space is to leave the opportunity for future commercial use but in a way that is attractive in the meantime. It will include up-front construction costs but not to the extent of building commercial structures that remain un-leasable.

Faber questioned the viability of flex space on smaller sites. Flex space requirements on a one-acre site (the minimum lot size for a MU project) is about 8,700. Large enough for a coffee stand but not enough for a restaurant (for example).

Staff to review potential sites throughout the city to get a better grasp on scale of required open space and flex space.

Gudde called attention to LMC 19.23.090 which includes special development conditions for retail stores greater than 50,000 sf. It prioritizes pedestrian oriented design and requires additional architectural features. This existing section can be utilized for the mixed-use center design standards.

Gudde asked that the group review the proposed revision to the Sub-area boundaries which was included as a map in the CDC / PC packet. This proposal was developed because the CDC had previously discussed the potential conflict between industrial properties and residential uses which would be introduced to commercial areas with the mixed-use code. The proposal would create a West Lynden Commerce Sub-area that would be excluded from using mixed use provisions. The intent is to reduce potential conflict between incompatible uses and to designate an area of the City exclusively for large scale commercial and industrial users.

The proposal also included a “West Lynden Gateway” Sub-area. Gudde noted this would be an interesting sub-area with many retail opportunities as well as community features like the Fairgrounds and the Cemeteries.

Lenssen expressed support of the Commerce Sub-area but suggested that the Gateway sub-area be divided into 2 so that the northern area which is primarily single family and townhomes be in their own sub-area. Gudde agreed that this was logical and had been discussed by staff. Lenssen suggested a sub-area boundary of Fishtrap Creek and the northern edge of the Farmer’s Equipment property. Staff to review and revise.

Before the conclusion of the meeting the group was asked to weigh in on the use of storage as a commercial use within a mixed-use setting. The consensus seemed to be that household storage (smaller scale) was a very useful amenity for multi-family resident and may play an important role in project development, but that flex space should not permitted to be converted into commercial storage uses and that storage uses should not be the “face” of the project or create vacant-looking spaces of use along major street frontages.

Final questions and discussions touched briefly on the commercially zoned properties that will be considered for a shift in land use and zoning. These properties do not meet the criteria for mixed-use provisions and have proven to be difficult to develop as 100% commercial. Kooy, with his partners, VanRy and Bajema, expressed interest in shifting their commercial property along the Badger Road to a multi-family zoning category with the hopes of creating affordable rentals.

Staff will be putting together the proposal for the Comp Plan amendment including the parcels which may shift land use through the month of June with plans to go to public hearing with the Planning Commission in August.

Conclusions: Staff will review and revise per feedback. Assembly of the Comp Plan amendment will begin and be brought to CDC in June or July. Some code changes related to housekeeping / code updates that the CDC has seen but the Planning Commission has not, will go to the Planning Commission on a similar schedule as the mixed-use code amendments.

- b. Reschedule June Community Development Committee. This issue was not discussed.

Next Meeting Date: June 22, 2022



ROBERT A. CARMICHAEL | Attorney
bob@carmichaelclark.com

MEMORANDUM

TO: John Williams, City Administrator
FROM: Robert Carmichael and Luke Phifer
DATE: June 10, 2022
SUBJECT: Proposed Camping Ordinance – Three Options

BACKGROUND

The city is considering adopting an ordinance that would prohibit camping in public spaces. This new ordinance will need to comply with the 9th Circuit's *Martin v. City of Boise*¹ decision, which prohibits imposing criminal penalties for sleeping in public spaces on homeless individuals who have no "practically available" means to obtain shelter elsewhere. You provided us with a draft ordinance based on the approach taken by Moses Lake. We made a few revisions and comments in an effort to eliminate arguments it is overbroad. The "Moses Lake" ordinance, with our proposed revisions, accompanies this memo. For comparison only, we are providing two alternatives based on ordinances currently in effect in Mercer Island and Vancouver, using the draft ordinance you provided. A brief overview of each approach is provided below.

APPROACH 1: IMPOSE ONLY CIVIL PENALTIES (MOSES LAKE)

Martin specifically prohibited imposing criminal penalties for sleeping in public on those who lack the means to obtain shelter, so an ordinance that imposes only civil penalties will still be constitutional. The first option attached is based on Moses Lake's current ordinance², which utilizes this approach.

Pros: This approach is straightforward -- it can be enforced uniformly at all times and in all locations, and as revised should pass constitutional muster.

Cons: Because this approach only imposes civil penalties, it may not provide a deterrent in practice. While someone violating the ordinance could be given a fine, there would be no mechanism to remove them if they continued camping. Washington law prohibits imposing penalties on a homeless defendant for failure to pay a legal financial obligation.³ This means that even if the fine goes unpaid, there would be no means by which the violator could be compelled to leave their campsite.

¹ 902 F.3d 1031 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019).

² Moses Lake Municipal Code § 9.18.

³ RCW 10.01.180(c).

APPROACH 2: IMPOSE CRIMINAL PENALTIES FOR VIOLATING THE ORDINANCE, BUT LIMITED TO CERTAIN AREAS OF CONCERN WITHIN THE CITY (VANCOUVER)

This approach, which is based on part of Vancouver’s ordinance⁴, complies with *Martin* by only imposing criminal penalties within certain areas of the city. Under this approach, certain public places where camping is of particular concern are identified as “Camping Impact Areas.” The current draft includes within this category city parks, public water, wastewater, and stormwater facilities, as well as certain creeks. Other areas could be added, so long as sufficient space is left to reasonably accommodate the needs of the local homeless population.

Imposing criminal penalties in these limited areas provides an effective enforcement mechanism through which violators could be forced to leave their campsite. As currently drafted, civil penalties would remain in effect for camping in all public places that are not Camping Impact Areas.

Pros: Provides an effective enforcement mechanism to remove campers from areas where camping would be particularly problematic.

Cons: Because different penalties are imposed for violations that take place in different areas, enforcement personnel must determine whether the camping is taking place within a Camping Impact Area. Depending on what is included as “Camping Impact Areas” it could be difficult to determine the precise borders of those areas.

APPROACH 3: IMPOSE CRIMINAL PENALTIES THROUGHOUT THE CITY, BUT WITH ENFORCEMENT CONTINGENT ON THE AVAILABILITY OF SHELTER SPACE (MERCER ISLAND)

Criminal penalties may be enforced when there is “practically available” shelter space within the “jurisdiction.” Existing court decisions have not clarified how far away an available shelter space can be and still be within the jurisdiction, but Mercer Island’s ordinance conditions enforcement on the availability of shelter space in Kirkland and Redmond.⁵ Arguably, if shelter space is available in Bellingham, Lynden could enforce a city-wide prohibition on camping in public places, so long as the person camping had sufficient means to access the shelter space.

Nightly capacity figures for the Lighthouse Mission’s Base Camp in Bellingham are reported at:

<https://www.thelighthousemission.org/stories-and-info/nightly-numbers-at-base-camp/>

Over the prior month (2/17/2022 – 3/17/2022) Base Camp was never at capacity.

⁴ Vancouver Municipal Code § 8.22.040(B).

⁵ Mercer Island Code § 9.60.060; <https://komonews.com/news/local/homeless-shelter-leaders-ask-why-they-werent-told-about-merc-island-camping-ban>.

Pros: This approach most clearly aligns with *Martin*. In addition, this approach allows for enforcement of criminal penalties throughout the entire city when shelter space is available.

Cons: Contingent on the availability of shelter space, which can fluctuate and is subject to factors outside the City's control. Furthermore, enforcement personnel would have to go through a process of determining if shelter space is available and "practically accessible" in each instance prior to pursuing enforcement.

Chapter ~~12.40~~
CAMPING ON PUBLIC PROPERTY

Sections:

- XX.010 Findings.
- XX.020 Purpose.
- XX.030 Definitions.
- XX.040 Unlawful Camping.
- XX.050 Unlawful Storage of Personal Property in Public Places.
- XX.060 Camping Impact Areas
- XX.070 Penalty for Violations.
- XX.080 Permit.
- XX.090 Public Duty Created.

Commented [DT1]: Chapter 12 which deals with Public Places seems to be the correct location for this new chapter.

As I understand the Boise case, though, I don't think this chapter will be deemed "constitutional". As it is written, it is a complete ban and there is no other option in Lynden.

Commented [HG2]: 12.40 is a new section. No comments from me at this time.

XX.010 Findings:

People camping on public property and on public rights-of-way create a public health and safety hazard due to the lack of proper electrical and/or sanitary facilities for these people. People without proper sanitary facilities have openly urinated, defecated, and littered on public property on the public rights-of-way. Use of public property for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. (~~Ord. 2021, 4/9/19~~)

XX.020 Purpose:

~~It is the purpose of this chapter to prevent harm to the health or safety of the public and to promote the public health, safety and general welfare by making public streets and other areas readily accessible to the public and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for which they were intended.~~

It is the purpose of this chapter to:

- A. Prevent harm to the health and safety of the public and to promote the public health, safety, and general welfare by prohibiting camping within all camping impact areas at all times, except as allowed by permit.
- B. Prevent harm to the health or safety of the public and to promote the public health, safety, and general welfare by making public streets, parks, and other areas readily accessible to the public and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for which they were intended.
- C. Prevent harm to the city's sensitive ecological areas, including the city's water sources.

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XX.030 Definitions:

The following definitions are applicable in this chapter unless the context otherwise requires:

"Camp" or "camping" means ~~(a) to pitch, create, use, or occupy camp facilities and/or to use camp paraphernalia to facilitate temporary or permanent habitation; or (b) the construction or use of camp facilities.~~

"Camp facilities" ~~includes without limitation, any of the following when used for temporary or permanent habitation: include, but are not limited to,~~ tents, huts, temporary shelters made of any material, or vehicles.

"Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-City designated cooking facilities and similar equipment.

"Camping Impact Areas" means any area identified in LMC XX.060.

"City" means the City of Lynden, ~~Washington, the area within the official geographic boundaries thereof, and such territory outside the City over which the City has jurisdiction or control by virtue of any constitutional provision, statute, or ordinance.~~

"Park" means the same as defined in Section XX.

"Store" means to put aside, ~~or accumulate, or leave for later use or for use when needed, to put for safekeeping, to place or leave in a location.~~

"Street" means any highway, lane, road, street, right-of-way, boulevard, alley, and every way or place in the City of Lynden that is publicly owned or maintained for public vehicular travel.

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Commented [BC4]: Another change to avoid overbreadth problem for vehicles.

Commented [BC5]: Using the term "place" as part of the definition could implicate innocent conduct and made the definition of "store" overbroad. No need to reference public property in definition as the ordinance uses the term "store" in context of storing in any park, street, or public parking lot.

"Trail" means any path, lane or walkway for public use, primarily for walking, bicycling, or other non-motor vehicle, and that is publicly owned in fee or by easement or maintained by the public.

"Vehicle" means the same as defined in RCW [46.04.670](#), which is hereby adopted as now enacted or hereafter amended.

XX.040 Unlawful Camping:

A. At any time, it shall be unlawful for any person to camp, or to occupy camp facilities ~~for purposes of habitation~~, or use camp paraphernalia for purposes of habitation, in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

1. Any park;
2. Any street or trail; or
3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

B. At any time, it shall be unlawful for any person to occupy a vehicle for the purpose of camping while that vehicle is parked in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

1. Any park;
2. Any street or trail; or
3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

Commented [BC6]: Added to clarify that the prohibition on use of camp paraphernalia is when used for the purpose of habitation, to avoid overbreadth concern mentioned in one of comments above.

XX.050 Unlawful Storage of Personal Property in Public Places:

At any time, it shall be unlawful for any person to store personal property, including camp facilities (other than vehicles) and camp paraphernalia, in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

- A. Any park;
- B. Any street or trail; or

C. Any publicly owned or maintained parking lot or publicly owned or maintained area, improved or unimproved.

XX.060 Camping Impact Areas

The following locations are Camping Impact Areas:

1. City parks;
2. Any land used to operate a public water station, wastewater, or stormwater facility; and
3. All land below the ordinary high water within the high water mark of Bertrand Creek, Fishtrap Creek, Kamm Creek, and Pepin Creek.

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XX.070 Penalty for Violations:

Any person violating any of the provisions of this chapter within a Camping Impact Area shall be deemed to have committed a misdemeanor.

Any person who violates any of the provisions of this chapter outside a Camping Impact Area
~~Any person violating any of the provisions of this chapter~~ shall be deemed to have committed a civil infraction and shall be subject to the following penalties as set forth in Chapter XX:

First violation within a twelve (12) ??
 month period

Second and subsequent violation ??
 within a twelve (12) month period

Each and every day, or portion thereof, that the violation continues shall constitute a separate violation.

XX.080 ~~Special Event Permit~~

A. ~~The Mayor~~, or his/her designee, is authorized to issue a Special Event Permit which may authorize permit persons to camp, occupy camp facilities, use camp paraphernalia, or store personal property in parks, streets, or any publicly owned parking lot or publicly owned area, improved or unimproved, in the City of Lynden in conjunction with special events.

Commented [HG7]: Is this our special event permit or a specific camping permit? I'd recommend using our existing special event permit and adding camping as an option.

Commented [HG8]: The Mayor or the City Administrator?

B. Upon receipt of an application for any permit under this chapter, the Mayor, or his/her designee, shall send a copy of the application to the City departments of police, parks, public works, community development, and fire. Each of these departments shall inspect the application and each such department shall report to the Mayor, or his/her designee, within ten (10) working days after the filing of the application. Such reports shall mention any problems which the proposed activity is expected to pose for the public. It shall make any necessary recommendations for protecting the public peace, health, safety, life, property, and welfare in the event a permit is, or was, issued.

C. The Mayor, or his/her designee, is authorized to promulgate other rules and regulations regarding the implementation and enforcement of this chapter.

D. The Mayor, or his/her designee, may approve a permit as provided under this section when, from a consideration of the application, reports from other City departments, and from such other information as may otherwise be obtained, he or she finds that:

1. Adequate sanitary facilities are provided and accessible at or near the proposed camp site;
2. Adequate trash receptacles and trash collection are provided; and
3. The camping activity will not unreasonably disturb or interfere with the safety, peace, comfort and repose of private property owners.

E. No permit shall be issued for a period of time in excess of fourteen (14) calendar days in any one (1) calendar year.

F. The Mayor, or his/her designee, is authorized to revoke a permit that has been issued if he or she finds lack of compliance with any requirement of subsection [D](#) of this section, or of any rule or regulation promulgated under subsection [C](#) of this section, or of any ordinance or statute.

G. Any person who is denied a permit, or had his/her permit revoked, may appeal the denial/revocation to a hearing examiner appointed by the Mayor, or his/her designee. Notice of appeal must be in writing, and filed with the City Clerk within seven (7) working days from the date of the denial.

XX.090 Public Duty Created:

A. This chapter is intended to be for the benefit of the public as a whole. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general

public and not to create or otherwise establish or designate any particular class or group of persons or individual who will or should be especially protected or benefited by the terms of this chapter.

B. Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees or agents.

Disclaimer: The city clerk has the official version of the Lynden Municipal Code. Users should contact the city clerk for ordinances passed subsequent to the ordinance cited above.

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XX.020 Purpose:

It is the purpose of this chapter to prevent harm to the health or safety of the public and to promote the public health, safety and general welfare by making public streets and other areas readily accessible to the public and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for which they were intended.

XX.030 Definitions:

The following definitions are applicable in this chapter unless the context otherwise requires:

"Available Overnight Shelter" means a public or private facility open to person(s) experiencing homelessness at no charge, with space available that day.

"Camp" or "camping" means ~~(a) to pitch, create, use, or occupy camp facilities and/or to use camp paraphernalia to facilitate temporary or permanent habitation; or (b) the construction or use of camp facilities.~~

"Camp facilities" ~~includes without limitation, any of the following when used for temporary or permanent habitation: include, but are not limited to,~~ tents, huts, temporary shelters made of any material, or vehicles.

"Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-City designated cooking facilities and similar equipment.

"City" means the City of Lynden, ~~Washington, the area within the official geographic boundaries thereof, and such territory outside the City over which the City has jurisdiction or control by virtue of any constitutional provision, statute, or ordinance.~~

"Park" means the same as defined in Section XX.

"Store" means to put aside, ~~or accumulate, or leave for later use or for use when needed, to put for safekeeping, to place or leave in a location.~~

"Street" means any highway, lane, road, street, right-of-way, boulevard, alley, and every way or place in the City of Lynden that is publicly owned or maintained for public vehicular travel.

"Trail" means any path, lane or walkway for public use, primarily for walking, bicycling, or other non-motor vehicle, and that is publicly owned in fee or by easement or maintained by the public.

"Vehicle" means the same as defined in RCW [46.04.670](#), which is hereby adopted as now enacted or hereafter amended.

XX.040 Unlawful Camping:

A. At any time, it shall be unlawful for any person to camp, ~~or to occupy camp facilities for purposes of habitation,~~ or use camp paraphernalia ~~for purposes of habitation,~~ in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

1. Any park;
2. Any street or trail; or

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3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

B. At any time, it shall be unlawful for any person to occupy a vehicle for the purpose of camping while that vehicle is parked in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

1. Any park;
2. Any street or trail; or
3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

XX.050 Unlawful Storage of Personal Property in Public Places:

At any time, it shall be unlawful for any person to store personal property, including camp facilities (other than vehicles) and camp paraphernalia, in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

- A. Any park;
- B. Any street or trail; or
- C. Any publicly owned or maintained parking lot or publicly owned or maintained area, improved or unimproved.

XX.060 Penalty for Violations:

Any person who violates any of the provisions of this chapter shall be deemed to have committed a misdemeanor.

[XX.070 Enforcement Suspended](#)

The City shall not enforce the provisions of Section XX.040 or Section XX.050 against persons who lack the financial means to pay for adequate shelter unless the City first confirms there is an available overnight shelter space that can be utilized by the particular person(s).

Commented [LP7]: If option #3 outlined below is adopted, this section should be inserted.

XX.080 Special Event Permit

A. The Mayor, or his/her designee, is authorized to issue a Special Event Permit which may authorize permit persons to camp, occupy camp facilities, use camp paraphernalia, or store personal property in parks, streets, or any publicly owned parking lot or publicly owned area, improved or unimproved, in the City of Lynden in conjunction with special events.

B. Upon receipt of an application for any permit under this chapter, the Mayor, or his/her designee, shall send a copy of the application to the City departments of police, parks, public works, community development, and fire. Each of these departments shall inspect the application and each such department shall report to the Mayor, or his/her designee, within ten (10) working days after the filing of the application. Such reports shall mention any problems which the proposed activity is expected to pose for the public. It shall make any necessary recommendations for protecting the public peace, health, safety, life, property, and welfare in the event a permit is, or was, issued.

C. The Mayor, or his/her designee, is authorized to promulgate other rules and regulations regarding the implementation and enforcement of this chapter.

D. The Mayor, or his/her designee, may approve a permit as provided under this section when, from a consideration of the application, reports from other City departments, and from such other information as may otherwise be obtained, he or she finds that:

1. Adequate sanitary facilities are provided and accessible at or near the proposed camp site;
2. Adequate trash receptacles and trash collection are provided; and
3. The camping activity will not unreasonably disturb or interfere with the safety, peace, comfort and repose of private property owners.

E. No permit shall be issued for a period of time in excess of fourteen (14) calendar days in any one (1) calendar year.

F. The Mayor, or his/her designee, is authorized to revoke a permit that has been issued if he or she finds lack of compliance with any requirement of subsection D of this section, or of any rule or regulation promulgated under subsection C of this section, or of any ordinance or statute.

G. Any person who is denied a permit, or had his/her permit revoked, may appeal the denial/revocation to a hearing examiner appointed by the Mayor, or his/her designee. Notice of appeal must be in writing, and filed with the City Clerk within seven (7) working days from the date of the denial.

Commented [HG8]: Is this our special event permit or a specific camping permit? I'd recommend using our existing special event permit and adding camping as an option.

Commented [HG9]: The Mayor or the City Administrator?

XX.090 Public Duty Created:

A. This chapter is intended to be for the benefit of the public as a whole. It is expressly the purpose of this chapter to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons or individual who will or should be especially protected or benefited by the terms of this chapter.

B. Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees or agents.

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Chapter ~~12.40~~
CAMPING ON PUBLIC PROPERTY

Sections:

- XX.010 Findings.
- XX.020 Purpose.
- XX.030 Definitions.
- XX.040 Unlawful Camping.
- XX.050 Unlawful Storage of Personal Property in Public Places.
- XX.060 Penalty for Violations.
- XX.070 Permit.
- XX.080 Public Duty Created.

XX.010 Findings:

People camping on public property and on public rights-of-way create a public health and safety hazard due to the lack of proper electrical and/or sanitary facilities for these people. People without proper sanitary facilities have openly urinated, defecated, and littered on public property on the public rights-of-way. Use of public property for camping purposes or storage of personal property interferes with the rights of others to use the areas for which they were intended. (~~Ord. 2021, 4/9/19~~)

XX.020 Purpose:

It is the purpose of this chapter to prevent harm to the health or safety of the public and to promote the public health, safety and general welfare by making public streets and other areas readily accessible to the public and to prevent use of public property for camping purposes or storage of personal property which interferes with the rights of others to use the areas for which they were intended.

XX.030 Definitions:

The following definitions are applicable in this chapter unless the context otherwise requires:

Commented [DT1]: Chapter 12 which deals with Public Places seems to be the correct location for this new chapter.

As I understand the Boise case, though, I don't think this chapter will be deemed "constitutional". As it is written, it is a complete ban and there is no other option in Lynden.

Commented [HG2]: 12.40 is a new section. No comments from me at this time.

"Camp" or "camping" means ~~(a) to pitch, create, use, or occupy camp facilities and/or to use camp paraphernalia to facilitate temporary or permanent habitation; or (b) the construction or use of camp facilities.~~

"Camp facilities" ~~includes without limitation, any of the following when used for temporary or permanent habitation: include, but are not limited to,~~ tents, huts, temporary shelters made of any material, or vehicles.

"Camp paraphernalia" includes, but is not limited to, tarpaulins, cots, beds, sleeping bags, blankets, mattresses, hammocks, or non-City designated cooking facilities and similar equipment.

"City" means the City of Lynden, ~~Washington, the area within the official geographic boundaries thereof, and such territory outside the City over which the City has jurisdiction or control by virtue of any constitutional provision, statute, or ordinance.~~

"Park" means the same as defined in Section XX.

"Store" means to put aside, ~~or accumulate, or leave for later use or for use when needed, to put for safekeeping, to place or leave in a location.~~

"Street" means any highway, lane, road, street, right-of-way, boulevard, alley, and every way or place in the City of Lynden that is publicly owned or maintained for public vehicular travel.

~~"Trail" means any path, lane or walkway for public use, primarily for walking, bicycling, or other non-motor vehicle, and that is publicly owned in fee or by easement or maintained by the public.~~

"Vehicle" means the same as defined in RCW [46.04.670](#), which is hereby adopted as now enacted or hereafter amended.

XX.040 Unlawful Camping:

A. At any time, it shall be unlawful for any person to camp, ~~or to occupy camp facilities for purposes of habitation,~~ or use camp paraphernalia ~~for purposes of habitation,~~ in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

1. Any park;
2. Any street ~~or trail~~; or
3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

Commented [BC3]: As originally written, the definition of "camp" or "camping" included to "... use, or occupy camp facilities and/or to use camp paraphernalia." "Camp facilities" is defined to include "vehicles." "Camp paraphernalia" is defined to include "blankets" and "hammocks." Under this original definition as used in the ordinance, it would be unlawful to "use" or to "occupy" one's vehicle in a city park parking lot, to spread a "blanket" in a park for a picnic lunch, or connect a "hammock" between two trees for a short afternoon nap. The original definition was overbroad. As revised, these issues are eliminated.

Commented [BC4]: Another change to avoid overbreadth problem for vehicles.

Commented [BC5]: Using the term "place" as part of the definition could implicate innocent conduct and made the definition of "store" overbroad. No need to reference public property in definition as the ordinance uses the term "store" in context of storing in any park, street, or public parking lot.

Commented [BC6]: Added to clarify that the prohibition on use of camp paraphernalia is when used for the purpose of habitation, to avoid overbreadth concern mentioned in one of comments above.

B. At any time, it shall be unlawful for any person to occupy a vehicle for the purpose of camping while that vehicle is parked in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

- 1. Any park;
- 2. Any street or trail; or
- 3. Any publicly owned or maintained parking lot or other publicly owned or maintained area, improved or unimproved.

XX.050 Unlawful Storage of Personal Property in Public Places:

At any time, it shall be unlawful for any person to store personal property, including camp facilities (other than vehicles) and camp paraphernalia, in the following areas, except as otherwise provided by ordinance or as permitted pursuant to Section [XX.070](#):

- A. Any park;
- B. Any street or trail; or
- C. Any publicly owned or maintained parking lot or publicly owned or maintained area, improved or unimproved.

XX.060 Penalty for Violations:

Any person violating any of the provisions of this chapter shall be deemed to have committed a civil infraction and shall be subject to the following penalties as set forth in Chapter [XX](#):

First violation within a twelve (12) month period	??
Second and subsequent violation within a twelve (12) month period	??

Each and every day, or portion thereof, that the violation continues shall constitute a separate violation.

XX.070 Special Event Permit

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1. Adequate sanitary facilities are provided and accessible at or near the proposed camp site;
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B. Nothing contained in this chapter is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees or agents.

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