

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 December 15, 2021

Roll Call

Approval of Minutes

- [1.](#) CDC Minutes of November 17, 2021

Discussion Items

- [2.](#) Moratorium on Residential Development in CSL Zones
- [3.](#) Interlocal Agreement for Building Inspection and Permit Review Services

Informational Items

4. Buildable Lands Report Update - Methodology
- [5.](#) Land Use Projects Map Update

Next Meeting: January 19, 2022

CITY OF LYNDEN

PLANNING DEPARTMENT

Heidi Gudde – Planning Director
(360) 354 - 5532



COMMUNITY DEVELOPMENT COMMITTEE

MINUTES

4:00 PM November 17, 2021

1. ROLL CALL

Council Members: Gary Bode, Brent Lenssen, Mayor Scott Korthuis

Staff: John Williams, Dave Timmer, Heidi Gudde

Chamber of Commerce: Gary Vis (joined last half of meeting)

2. APPROVAL OF MINUTES

- a. Community Development Committee Meeting Minutes of 9/22/21 approved as presented.

3. DISCUSSION ITEMS

- a. Introduction to a Prohibition of Public Camping in Public Spaces: Legal Framework and Potential Next Steps

John Williams gave an introduction to the topic. He noted that initial discussion on this issue had occurred at the Parks Committee and will be going to the Public Safety Committee at the beginning of December. Discussion was initiated because of a concern related to the potential of overnight camping / sleeping on City spaces and the City's ability to regulate these activities.

Williams recommended that an ordinance begin with some basics such as defining camping as well as camping paraphernalia. Other cities have helpful ordinances that we can model, and case law gives us guidance as well.

The Committee and staff discussed the use of park rules as a tool to regulate activities include a provision on camping. Parks hours of operation become key in order to limit overnight use of the parks. This gives some flexibility for folks to use tents during the day for example, for sporting events, but would prevent overnight stays.

Parks closing at dusk raised the question about trail use after dusk. Williams noted that some park rules / ordinances make provisions for the active use of the trail (as it runs through the park) for its intent can be included so that trail use and even park use of lighted areas could continue after dusk.

Noting special events – such as camping during the Tractor Club event – could include camping for a specific amount of time.

While Parks can utilize and adopted set of rules, other public spaces will also need to be addressed. And, of note, camping prohibitions have not been supported by the courts unless other sheltering options are available.

The Committee discussed the option of partnering with non-profits and the Health Department to develop a plan. This may need to include provisions which would provide transportation to those in need of sheltering and also a location for the City to store camping paraphernalia that may be collected from public spaces during the enforcement of a camping prohibition.

Mayor recommends getting an ordinance in place as soon as possible which covers the basics. Reach out to the Lighthouse Mission to be the sheltering option.

Next Steps:

- Draft an ordinance that defines camping, camping paraphernalia and prohibitions of camping.
- Potentially amend the Master Parks Plan to comprehensively define the areas considered parks (funding source for those properties are a consideration before they can be called a park).
- Policy to address homelessness should be in place. Transportation provisions or storage of personal items should be included in this policy.

b. Land Use Projects Map

General discussion of ongoing projects and especially those along the edge of the flood plain.

c. Additional Topics:

- Adjacent short plats versus long plats. Potential revision to code to clarify when a long plat might be triggered.
- Street widths, on-street parking, and cul-de-sacs discussed. Currently the Public Works Director makes the determination as to the standard required when code does not otherwise stipulate. Gudde noted that revisions related to street standards could potentially be added to the upcoming change to the Engineering Design Standards set to go before Council on December 6. The potential revision to Engineering Design Standards discussed additional clarifications / parameters to:

1. When private streets can be used and

2. When hammer heads can be used rather than a cul-de-sac.
- Lenssen raised a new issue related to the construction of multi-family housing and a potential moratorium on additional multi-family housing. Concerns related to parking and to mixed used concepts within the CSL which may not be functioning as well as hoped. Of note is the corner property located at Bay Lyn Drive and Guide Meridian as well as the potential annexation area in west Lynden. Suggested next steps:
 1. Code revision on the commercial and multi-family section of code related to the mixed-use provisions.
 2. Evaluate Census data to determine the status of multi-family ratio to the single-family ratio as set in the City's comprehensive plan.
 3. Review provisions related to CSL and the intent of the code as it relates to mixed use.
 4. Define mini-storage and storage in general where its permitted.

Next Meeting Date: December 22, 2021 unless moved to an earlier date to avoid conflicts with Christmas holiday activities.

CITY OF LYNDEN

EXECUTIVE SUMMARY – Community Development Committee



| | | |
|---|--|--|
| CDC Meeting Date: | December 15, 2021 | |
| Name of Agenda Item: | Moratorium on Residential Development in CSL Zones | |
| Section of Agenda: | Discussion | |
| Next Steps Proposed by Staff: <input type="checkbox"/> Staff revisions <input type="checkbox"/> Planning Commission <input type="checkbox"/> Return to CDC <input type="checkbox"/> Other Committees <input checked="" type="checkbox"/> Schedule for full Council <input type="checkbox"/> Other: _____ | | Legal Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Recommended <input type="checkbox"/> Not Required |
| Attachments: | | |
| Draft Ord 1642, Map of Affected Properties, Spreadsheet re Residential Development in CSL Zones | | |
| Summary Statement: | | |
| <p>Under certain provisions, the City of Lynden's Zoning Ordinance allows multi-family residential development within the Commercial Services- Local (CSL) Zones in conjunction with first floor commercial spaces. These projects are often referred to as "mixed-use" and are intended to facilitate a symbiotic relationship between commercial uses and the residents that live nearby. In the North Lynden Sub-Area the code makes additional provisions for residential development with a lower ratio of required commercial use.</p> <p>As the demand for commercial space wanes the viability of mixed-used projects has been called into question by the Community Development Committee.</p> <p>Staff research shows that since 2013 the city has approved 276 multi-family units within CSL zones. While the corresponding commercial spaces associated with these projects is about 92,000 square feet much of that space is accounted for by one farm and garden store (Tractor Supply), is used as mini or condo storage spaces, or is currently vacant.</p> <p>The Committee has requested an interim moratorium on multi-family residential development within the city's CSL zones while adequate review of this issue is conducted. Review will consider the effects of mixed-use development to the City's housing goals, will review the intent and success of the mixed-use ordinance, and examine how mixed-use provisions may affect new areas of annexation.</p> | | |
| Recommended Action: | | |
| Discussion. Public hearing scheduled for December 20, 2021. | | |

ORDINANCE NO. 1642

INTERIM ORDINANCE ESTABLISHING A MORATORIUM ON RESIDENTIAL DEVELOPMENT WITHIN THE COMMERCIAL SERVICES – LOCAL (CSL) ZONE

WHEREAS, the 2016 City of Lynden Comprehensive Plan Section 3.7 includes Housing Goal H-2 which states that the City will strive to:

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

and;

WHEREAS, the policy associated with Goal H-2 states:

“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.”

and;

WHEREAS, community feedback collected in the writing of the 2016 Comprehensive Plan, appearing as Community Value Statement 4C, indicated a preference for an even higher ratio of single-family housing, calling for a ratio of 75% single-family units to 25% percent multi-family units; and

WHEREAS, the purpose of the Commercial Services – Local (CSL) zone stated in the 2016 Comprehensive Plan is “to provide a location for local scale retail development (stores less than 65,000 square feet), medical, professional and financial services;” and

WHEREAS, per the permitted uses listed in Lynden Municipal Code (LMC) 19.23.020, properties within the Commercial Services – Local (CSL) zone may construct multi-family development; and

WHEREAS, the North Lynden Sub-area made additional provisions for residential development within the CSL zone, requiring only development with 200 feet of the intersection of Badger Road and Depot Road be commercial in nature; and

WHEREAS, since 2013, the City has approved construction of 276 multi-family dwelling units within the CSL zone; and

WHEREAS, these projects have typically been at a density of 14 to 21 units per acre, consistent with the permitted densities for the Residential Multifamily 3 and 4 zones, which is where dense multifamily development was intended to be concentrated; and

WHEREAS, the residential development occurring within the CSL zone at such high densities may be frustrating the purpose of the CSL zone, Comprehensive Goal H-2, Community Value Statement 4C, and other goals and policies in the Comprehensive Plan; and

WHEREAS, because the zone was intended for community-scale commercial use, residential development within CSL zones may not be located in areas which provide adequate amenities to future residents of these developments; and

WHEREAS, tracking land uses and residential densities can be done more accurately and consistently if land use and zoning categories align with how properties are actually developed; and

WHEREAS, the City Council has granted an approval to a petition for the annexation of 277 acres within the city's southwest Urban Growth Area; and

WHEREAS, the area of potential annex includes a number of parcels south of Birch Bay Lynden Road which are slated for commercial land use designations, possibly including CSL; and

WHEREAS, the City will shortly begin reviewing commercial land use with the City limits and its Urban Growth Areas in light of the Comprehensive Plan Goal H-2 and the existing and future impact that residential development on CSL properties; and

WHEREAS, this review and any necessary subsequent actions, which are outlined in Section 3 below, will require significant staff time, and possibly one or more public hearings; and

WHEREAS, to assure that the issue of residential development in the CSL zone is addressed consistently with the objectives of the Comprehensive Plan and zoning code, and with the public health, safety, and welfare of the community, a moratorium on residential development in the CSL zone is required; and

WHEREAS, the City duly noticed the public hearing by publicly setting the public hearing on December 6, 2021 and publishing the notice of hearing in the Lynden Tribune; and

WHEREAS, the City held a public hearing on this proposed Ordinance on the 20th day of December 2021; and

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

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

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

Section 2. Moratorium Established for Certain Building Permit Applications. The City shall not accept design review applications or building permit applications for new residential structures intended for human occupancy, or for additions to existing residential structures of more than fifty percent (50%) of the existing square footage, on any CSL zoned property, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, or unless extended, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Resolution of Issues related to Residential Development within CSL Zones. During the term of this interim ordinance the City shall work on resolving the following issues.

- A. Analysis. City staff will analyze the latest housing and permit data, including the pending 2020 Census data, to determine the existing ratio of single-family to multi-family housing units within the City of Lynden.
- B. Code Amendment. In response to data analysis, LMC 19.23 and other areas of the code may be revised as they relate to the development of residential units on commercially zoned properties.
- C. Additional Recommendations and Land Use Actions. If warranted, a Comprehensive Plan Amendment may be needed to create alignment between Land Use Designations and actual land use.

Section 4. Emergency Situation. Based on the findings herein, the City Council hereby declares that an emergency exists necessitating that this Ordinance take effect immediately upon passage by a majority vote plus one of the whole membership of the Council as required by RCW 35A.13.190.

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

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

Section 7. This ordinance shall not be construed as a moratorium on repair or reconstruction of single-family homes existing prior to 1992 which are permitted per LMC 19.23.020.

Section 8. This Ordinance shall take effect immediately.

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

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

City of Lynden - Mixed-Use Projects within CSL Zones

12/1/2021

| Date Approved | Project Name(s) | Res Unit Count | Constructed or Approved Comm SF | Current commercial use |
|----------------------|--|---------------------------|--|---|
| 2008 / 2016 | Lynden Market Square (Salmonberry, Tractor Supply) | 70 | 50730 | Farm and Garden Retail (Tractor Supply), Hair Salon |
| 2013 | Strawberry Meadows (Mercedes Dr) | 70 | 25820 | Storage, Vacant (Additional 6720 storage proposed) |
| 2016 | Depot Villas (West side of Depot) | 44 | 0 | Commercial required only at Depot and Badger intersection corner (see Badger Business Park below) |
| 2019 | Bouma 4th St Mixed Use | 2 | 1560 | Vacant |
| 2020 | Depot Estates (East side of Depot) | 48 | 3420 | Commercial required only at Depot and Badger intersection corner (existing Ag related business - Terralink) |
| 2021 | Forge Townhomes | 3 | 6600 | Vacant |
| 2020 | Badger Business Park (Engels) | 24 | 3870 | Commercial storage approved but not constructed. |
| 2021 | Skyview Townhomes | 15 | 0 | Existing ag (dairy farm) buildings - largely vacant |
| | | 276 | 92000 | |

CITY OF LYNDEN

EXECUTIVE SUMMARY – Community Development Committee



| | | |
|--|---|--|
| CDC Meeting Date: | December 15, 2021 | |
| Name of Agenda Item: | Interlocal Agreement for Building Inspection and Permit Review Services | |
| Section of Agenda: | Discussion | |
| Next Steps Proposed by Staff: <input type="checkbox"/> Staff revisions <input type="checkbox"/> Planning Commission <input type="checkbox"/> Return to CDC <input type="checkbox"/> Other Committees <input checked="" type="checkbox"/> Schedule for full Council <input type="checkbox"/> Other: _____ | | Legal Review: <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Recommended <input type="checkbox"/> Not Required |
| Attachments: | | |
| Redlined Interlocal Agreement | | |
| Summary Statement: | | |
| <p>The small cities of Whatcom County have an interlocal agreement for mutual aid. In addition, a more specific agreement is also in place that provides for the exchange of building inspection and building permit review. This agreement has been valuable to the organization as only one person fills this role for the City of Lynden. A few times per year we have utilized inspectors from other cities (usually Blaine or Sumas).</p> <p>The existing agreement is set to expire at the end of 2021 and a revised agreement has been circulating among the small cities. The final issue of discussion relates to fees but this is expected to be resolved in the coming weeks.</p> <p>Ahead of the interlocal coming to the Council for approval it is on the agenda of the Community Development Committee for review. The redlined version of the agreement is attached.</p> | | |
| Recommended Action: | | |
| Discussion. Item to be scheduled for a December or January Council meeting. | | |

INTERLOCAL AGREEMENT
CITY OF LYNDEN - CITY OF BLAINE - CITY OF EVERSON –
CITY OF FERNDALE CITY OF NOOKSACK - CITY OF SUMAS
RELATING TO BUILDING CODE ADMINISTRATION, PLANS EXAMINATION AND
BUILDING INSPECTION

This Agreement is made and entered into by the City of Lynden, a Washington municipal corporation, hereinafter referred to as "Lynden", the City of Blaine, a Washington municipal corporation, hereinafter referred to as "Blaine", the City of Everson, a Washington municipal corporation, hereinafter referred to as "Everson", the City of Ferndale, a Washington municipal corporation, hereinafter referred to as "Ferndale", the City of Nooksack, a Washington municipal corporation, hereinafter referred to as "Nooksack", the City of Sumas, a Washington municipal corporation, hereinafter referred to as "Sumas", individually referred to as Party and collectively referred to as "Parties", to establish an arrangement pursuant to RCW Chapter 39.34.

WHEREAS, the Parties each regularly enforce and administer building code requirements, review building permit plans and conduct building inspections; and

WHEREAS, the Parties each desire to utilize the resources of each other to assist in performing building code administration, review of building permit plans and conducting building inspections; and

WHEREAS, the Parties agree to compensate each other for performing the above services; and

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

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

NOW THEREFORE, in consideration of the terms and provisions contained herein, the Cities of Lynden, Blaine, Everson, Ferndale, Nooksack, and Sumas agree as follows:

- I. *Purpose*: The purpose of this Agreement is to set the terms whereby the Parties will assist each other in performing building code administration, review of building permit plans, and conducting building inspections.
- II. *Administration*: No new or separate legal or administrative entity is created

to administer the provisions of this Agreement.

III. *Party Responsibilities:* Each Party agrees to provide building code staff services including building code administration, review of building permit plans, and conducting building inspections ~~up~~ on request by another Party. In the case of emergencies where transportation systems are effectively cut off, the inspector residing in or ~~in close proximity to~~ nearest to other jurisdictions may be called upon to assist with building code inspections, review building permit plans, conduct building inspections, conduct an inventory of destroyed or damaged buildings or other building code related duties, as necessary. Each Party reserves the right to refuse the provision of services if in the judgment of the person responsible for the Party under this Agreement determines that such provision would cause an unreasonable hardship on the Party's available resources.

~~IV. Payment:~~ ~~Building inspections s~~Services performed pursuant to this Agreement shall be reimbursed to cover the actual cost of the service provided. ~~compensated at the rate of \$50.00~~55.00 per hour plus mileage. ~~Building permit plan review and code administration performed pursuant to this agreement shall be compensated at a rate of \$65.00~~ 72.00 per hour plus mileage. These rates will be adjusted at the beginning of each new year starting January 1, 2023 by a standard escalation rate of 2.5% per year. The actual costs shall include the hourly cost of the employee providing the service including reimbursement for mileage. The hourly cost for an employee includes their hourly pay and the cost of their benefits. The mileage rate shall be the rate published by the Internal Revenue Service for the year during which services are performed. Each Party shall submit itemized invoices monthly to the Pparty for the services performed ~~for the month invoiced~~. The Parties understand that in some months no invoicing will occur if no services are performed. Each invoice shall detail work performed and supplies or materials purchased. Each Party agrees to pay invoices within 30 45 days from receipt of the invoice. ~~Lynden's Finance Department is required to seek City Council approval to pay invoices during the second Council meeting of the month (third Monday) before payment can be rendered. Invoices will be reviewed for completeness before payment will be authorized.~~

~~V. IV.~~

~~VI. V.~~ Term: The Term of the Agreement shall be from January 1, ~~2016~~ 2022 through December 31, ~~2024~~ 2027.

~~VII.~~VI. *Responsible Persons:* The persons responsible for administration of this Agreement shall be the City of Lynden ~~Public Works~~Planning Department Director, the City of Blaine Community Development Services Director, the City of Everson Public Works Department Director, the City of Ferndale Community Development ~~Services~~ Director, the City of Nooksack Public Works Department Director and the City of Sumas Public Works Department Director, or their respective designees.

~~VIII.~~VII. *Treatment of Assets and Property:* No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.

~~IX.~~VIII. *Relationship of the Parties:* The Parties are separate entities organized under the laws of the State of Washington and this Agreement is not intended to create any new legal or corporate entity. No agent, employee, servant, or representative of any Pparty shall be deemed to be an employee, agent, servant, or representative of any other Pparty for any purpose. Each Pparty will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement.

~~X.~~IX. *Indemnification:* Each Party providing services to another Party pursuant to this Agreement agrees to be responsible and hold harmless the Party receiving services from liability for the wrongful and/ or negligent acts or omissions of those officials, officers, agents, or employees of the Party providing services pursuant to this Agreement to the extent caused by the Party providing services. Each Party receiving services pursuant to this Agreement agrees to be responsible and assume liability for the wrongful and/ or negligent acts or omissions of its own officials, officers, agents, or employees to the extent caused by the Party receiving services, and further agrees to save, indemnify, defend, and hold the Party performing services pursuant to this Agreement harmless from any such liability.

~~XI.~~X. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.

~~XII.~~XI. *Non-discrimination in Employment and Client Services:* No Party shall discriminate against any person on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of an-y sensory, mental or physical handicap. No Party shall discriminate against any employee or applicant for employment because of handicapdisability; provided that, this

provision shall not apply if the disability prevents proper performance of the work involved.

~~XIII.~~XII. *Termination:* ~~This~~ Any party may individually terminate their participation in this Agreement without cause effective upon sixty (60) days' written notice, mailed postage pre-paid by certified mail or electronic mail (e-mail), return receipt requested, to all remaining Parties last known address for the purposes of giving notice under this section. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination. Any such termination by an individual Party shall have no effect upon nor result in the termination of the Agreement for the remaining parties.

~~XIV.~~XIII. *Modifications:* This Agreement may be changed, modified, amended, or waived only by written agreement executed by the Parties hereto. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

~~XV.~~XIV. *Applicable Law:* In the performance of this Agreement, it is mutually understood and agreed upon by the Parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance. The venue of any action arising ~~from the terms~~ herein ~~from~~ shall be in the Superior Court of the State of Washington in and for Whatcom County.

~~XVI.~~XV. *Severability:* In the event any term or condition of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement that can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

~~XVII.~~XVI. *Entire Agreement:* This Agreement contains all the terms and conditions agreed upon by the Parties. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

~~XVIII.~~XVII. *Counterparts:* This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.

~~XIX.~~XVIII. *Effective Date:* This Agreement shall be in full force and effect upon full execution by the Parties and filing with the Whatcom County Auditor posting on each Party's website, whichever method of filing is chosen.

Signature pages . . .

