

# CITY OF LYNDEN



Mayor  
Scott Korthuis

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

Online (Microsoft Teams) City Council Meeting  
City Annex- 205 Fourth Street  
September 20, 2021

**Unscheduled** public comment will not be taken at online council meetings. To schedule time to address council, contact the city clerk at 360-255-7085 before **12:00 noon on the day of the council meeting**. You will be asked to provide your name and address for the council file. The time limit to speak to any topic that is not on that night's agenda is 3 minutes.

Members of the public may choose to join the city council meeting telephonically by dialing 1-253- 948-9362. You will then be prompted to enter the Conference ID 817 369 598 # . It is necessary to enter the # symbol. For those that prefer to join via Microsoft Teams click here.

## Call to Order

## Pledge of Allegiance- None

## Roll Call

## Oath of Office- None

## Approval of Minutes

1. [Draft Council Minutes- September 7, 2021](#)

## Items from the Audience

### **Scheduled:**

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**Consent Agenda**

- [2.](#) Interim Public Defender Contract
- [3.](#) Set Public Hearing Date of October 4, 2021-Ordinance No. 1636 - Extending the Franchise Agreement with Cascade Natural Gas Corporation

**Public Hearing**

- [4.](#) Public Hearing Ordinance No. 1635 Hear Comments on Franchise Agreement with Sound Internet Services dba Pogozone for Transmission of Telecommunications
- [5.](#) Public Hearing - Ordinance No. 1633 – Amend Lynden Municipal Code Section 12.28 Sidewalk Obstructions
- [6.](#) Public Hearing-Development Standards Variance 21-01 – Lot Design of the Cedarbrook Short Plat

**Unfinished Business**

**New Business**

- [7.](#) Exterior Siding and Roofing Proposal – Lynden Rec Center
- [8.](#) Conditional Use Permit 21-02 - Loeffler Short Term Rental

**Other Business**

- [9.](#) Public Works Committee Meeting Minutes September 8, 2021
- [10.](#) Draft Parks Committee Minutes August 2021
- [11.](#) Draft Public Safety Minutes- September 9, 2021
- [12.](#) Calendar

**Executive Session**

**Adjournment**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Draft Council Minutes- Regular Meeting	
<b>Section of Agenda:</b>	Approval of Minutes	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<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	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	Draft Council Minutes- Regular Meeting	
<b>Summary Statement:</b>	Draft Council Minutes- Regular Meeting	
<b>Recommended Action:</b>	For Council review.	

# 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.***

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



***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

# CITY OF LYNDEN

CITY COUNCIL  
MINUTES OF REGULAR MEETING



## 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.

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



### 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.

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



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.

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



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.***

# CITY OF LYNDEN

CITY COUNCIL  
MINUTES OF REGULAR MEETING



***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 Francess Vander Hage, and Dale and Femmie 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

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



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

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Interim Contract for Public Defender Services	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b>Legal Review:</b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
<b>Attachments:</b>	Contract	
<b>Summary Statement:</b>	<p>The current Public Defender has been appointed to Judge position and her final day as Lynden Public Defender will be September 22<sup>nd</sup>. If approved, the new public defender firm of North County Public Defenders will begin that day and transition all existing cases that day; all new cases will be with the new firm as well. The City has started a RFP process and anticipates a result contract from the process to begin on January 1, 2022. The costs of the interim contract are consistent with the typical expenditures for the service.</p>	
<b>Recommended Action:</b>	Staff Recommends approval of the contract.	

**City of Lynden  
Public Defender Contract for Interim  
Indigent Criminal Defense Services**

This Agreement for Interim Indigent Criminal Defense Services (“Agreement”) entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 by and between the City of Lynden, a municipal corporation, hereinafter referred to as the “City,” and attorney Jason Smith, North County Public Defense, hereinafter referred to as the “Contractor,” collectively referred to as “Parties,” is for the purpose of providing attorney services outlined herein.

The Parties agree as follows:

**Section I – Services:**

Contractor agrees to provide all professional services necessary of indigent defendants charged with misdemeanors and gross misdemeanors in the City of Lynden, Washington. Services include:

- 1) Attending regular special sessions of the Lynden Municipal Court for all assigned defendants, pursuant to the Lynden Municipal Court calendar;
- 2) Timely contacting defendants if the defendant is incarcerated;
- 3) Appearing in Whatcom County Jail for hearings in the jail when necessary and as determined by the Lynden Municipal Court;
- 4) Having available an all-hours pager or phone number to respond to calls;
- 5) Meeting with clients as appropriate;
- 6) Representing indigent defendants in appeals to the Whatcom County Superior Court except when representing the same defendant during the trial; and
- 7) Performing services consistent with the standard of practice within the Lynden community.

The Contractor agrees to provide professional legal services for all Lynden Municipal Court cases that have been determined to be within the scope of indigent defense. Cases shall be assigned to the Contractor at the discretion of the Lynden Municipal Court Judge. The maximum number of cases which the Contractor will be assigned shall be consistent with the Standards for Indigent Defense adopted by the Washington Supreme Court, and as hereafter amended, and which allows the Contractor the ability to give each client the time and effort necessary to ensure effective representation.

Contractor agrees that at least one qualified primary attorney from Contractor’s office shall be assigned to provide all the services outlined herein; provided that, nothing shall prevent additional attorneys in Contractor’s office from being assigned to assist said primary attorney. The identity of the primary attorney shall be disclosed to the City within one week of commencement of this Agreement.

**Section II – Consideration**

In consideration for the services described above, the City agrees to pay the Contractor five thousand five hundred dollars (\$5,500.00), paid monthly, for such services described in this Agreement. for each full month in which such services are provided. Compensation for services provided for a partial month shall

month in which such services are provided. Compensation for services provided for a partial month shall be prorated. Contractor shall send an invoice for such payment each month. The City of Lynden, Finance Department, must receive invoices by the 5<sup>th</sup> of each month (or the following Monday if the 5<sup>th</sup> falls on a weekend day) for processing in the current month's run. The Finance Department is required to seek City Council approval to pay invoices during the second City Council meeting of the month (third Monday) before payment can be rendered.

**Section III – Review and Supervision**

The City reserves the right to assure that indigent clients referred to the Contractor hereunder receive proper representation and further reserves the right to review and investigate the quality of such representation and require the Contractor to assist in any such review or investigation. Nothing in this section shall be construed or applied in any manner that may violate the confidentiality of any privileged information.

**Section IV – Maintenance of Office**

The Contractor shall be responsible for (1) access to an office that accommodates confidential meetings with clients, (2) a postal address, and (3) adequate telephone services to ensure prompt responses to client contacts to provide adequate legal representation as required by this Agreement.

**Section V – Licensing**

The Contractor agrees to remain licensed to practice law in the State of Washington during the term of any criminal defense contract with the City, and will further, at all times pertinent thereto, abide by the code of professional responsibility.

**Section VI – Standards for Indigent Defense Services**

The Contractor agrees to perform services consistent with the requirements contained in the Standards for Indigent Defense Services adopted by the Washington Supreme Court and as hereafter amended.

**Section VII – Malpractice Insurance**

The Contractor shall furnish to the City and file with the City Clerk and at all times during the existence of this Contract, maintain in full force and effect, at its own cost and expense, a professional malpractice insurance policy, each with a minimum liability of \$1,000,000 per occurrence / \$2,000,000 aggregate. Failure to maintain coverage with the limits provided herein shall be a material breach of this Contract and cause for termination at any time. A policy naming the individual Contractor, among others named in the policy, shall be considered in compliance with this provision. A Certificate of Insurance containing the aforementioned minimum limits shall be provided to the City prior to the signing of this Contract. Written notice of cancellation or reduction in coverage shall be delivered to the City thirty (30) days in advance of the effective date thereof. Any company from which said professional malpractice insurance policy is obtained shall be approved by the state insurance commissioner pursuant to Title 48 RCW and shall have at least an A or an A+ Best Rating.

**Section VIII – Assignment or Subcontracting**

The Contractor shall not assign or subcontract any case provided under the terms of this Agreement to an attorney outside of Contractor's office without obtaining prior written approval from the City; except that, from time to time the Contractor may subcontract with another qualified attorney from an approved list of

other attorneys to assist with the services provided under the terms of this Agreement. Should Contractor desire to make use of this provision, Contractor shall submit a list of qualified attorneys outside of Contractor's office to the City Administrator for approval prior to any attorney on said list attorney providing services under this Agreement. Approval by the City Administrator may be withheld in his sole discretion. If after three (3) business days no decision is made by the City Administrator on a requested approved list, said list shall be deemed accepted by the City. A qualified attorney shall mean an attorney licensed to practice law in the State of Washington who is able to certify that he or she complies with the applicable Standards for Indigent Defense Services as adopted by the Washington Supreme Court and as hereafter amended. All terms and conditions of this Agreement shall apply to any approved subcontract related to this Agreement. Contractor shall remain fully responsible for compliance with the terms and conditions of this Agreement on any case assigned to the Contractor, including cases in which services are subcontracted by the Contractor to another attorney as provided herein.

The City shall not assign any defense of indigent defendants to any Contractor or Attorney-at-Law other than the Contractor herein; except that, the City shall assign an indigent defendant with whom the Contractor has a conflict of interest, to an Attorney-at-Law of the City's choice.

**Section IX – Non-Discrimination**

During the term of this Agreement, the Contractor agrees that no person shall, on the grounds of race, creed, color, national origin, sex, marital status, age, religion, or on the presence of any sensory, mental or physical disability, be excluded from full employment rights with the Contractor or from representation by the Contractor. The Contractor shall not discriminate against any employee or applicant for employment for the above reasons, provided the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents performance of the particular work involved.

**Section X – Relationship of Parties**

The parties intend that this Agreement shall create an independent Contractor relationship between the Contractor and the City. The Contractor shall not be considered to be agent, employee, servant or representative of the City for any purpose whatsoever, and no employee of the Contractor will be entitled to any benefits of City employment. The Contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and/or sub-contractors during the term of this Agreement.

In the performance of the services herein contemplated, the Contractor shall be deemed to be an independent Contractor with the authority to control and direct the performance of the details of the work, subject however, to direction by the Lynden Municipal Court and the City's right of inspection and review.

**Section XI – Communication Between Parties**

Communication between the Contractor and the City shall be addressed to the regular place of business of each party.

In the case of the Contractor, all communications to the Contractor, and referral of cases, shall be sent to:

Jason Smith  
North County Public Defense  
1720 Iowa Street  
Bellingham, WA 98229

In the case of the City, all communications to the City shall be sent to:

City of Lynden  
City Clerk  
300 4<sup>th</sup> Street  
Lynden, WA 98264

**Section XII – Duration**

This Agreement shall commence September 23, 2021 and terminate upon either the contract commencement date for a permanent public defender or on February 1, 2022, whichever event occurs first.

**Section XIII – Termination of Parties**

In the event that the City, in its sole discretion, determines that the work of the Contractor or another qualified attorney hired by the Contractor, is unsatisfactory, the City may terminate this Agreement. In such event, the City shall notify the Contractor by serving, at least thirty (30) days prior, written notice to the Contractor stating reasons why this Agreement is being terminated.

Either the City or the Contractor may terminate this Agreement without cause. To terminate this Agreement without cause, the party terminating shall notify the other party at least sixty (60) days in advance of the proposed date of termination and, during that sixty-day period, this Agreement shall remain in force unless terminated earlier by mutual agreement of the parties.

In the event the date of termination of this Agreement passes without the execution of a similar contract for a permanent public defender and if, in that event, the parties continue to perform according to the contract’s terms, then the terms of this Agreement shall control the duties and obligations of the parties until they execute a new written agreement.

Following termination of this Agreement, the Contractor shall cooperate with the City to assist with transfer of all assigned pending cases to the attorney selected by the City to provide permanent indigent defense services. Pending cases shall mean cases assigned to the Contractor in accordance with this Agreement which have not been resolved.

**Section XIV – Remedies for Breach and attorney’s fees and costs**

All remedies available in law and equity shall be available in the event of a breach of this Agreement. In the event legal action is initiated by either party against the other, the prevailing party shall be entitled, in addition to all other amounts to which it is otherwise entitled by this Agreement, to its reasonable attorney’s fees and costs, including those incurred on appeal.

**Section XV – Nonwaiver of Breach**

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

**Section XVI – Venue Stipulation**

This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually agreed that this Agreement shall be governed by the laws of the State of Washington and that any action in law or equity concerning this Agreement shall be instituted and maintained only in Whatcom County Superior Court, Bellingham, Washington.

**Section XVII – Integration**

This writing supersedes all prior agreements between the parties (whether written or oral) and constitutes the full and only agreement between the parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in writing. This Agreement may only be amended or modified by written agreement of the parties.

**Section XVIII – Severability**

If any portion of this Agreement is deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected thereby.

**In Witness Whereof**, the parties enter into this Agreement, mutually agree on above terms, are authorized to execute this Agreement and the parties have executed this Agreement on the day and year indicated above.

  
\_\_\_\_\_  
Jason Smith, North County Public Defense  
Attorney-at-Law

\_\_\_\_\_  
Scott Korthuis  
Mayor, City of Lynden

STATE OF WASHINGTON    )  
  ) ss  
COUNTY OF WHATCOM    )

I certify that I know or have satisfactory evidence that Scott Korthuis is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as Mayor of the City of Lynden to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_, 2021.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that Jason Smith is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it for North County Public Defense to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: September 8, 2021.



*GM*

NOTARY PUBLIC in and for the State of Washington  
Residing at Bellingham, WA  
My commission expires 9-09-23

# CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Set Public Hearing Date of October 4, 2021 to Hear Comments on Ordinance 1636 Extending the Franchise Agreement with Cascade Natural Gas Corporation	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Public Works	
<b><u>Council Committee Review:</u></b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	<b><u>Legal Review:</u></b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
<b>Attachments:</b>	1) Ordinance No. 1636 2) Cascade Natural Gas Request for Franchise Extension	
<b>Summary Statement:</b>	<p>Cascade Natural Gas Corporation has formally requested that the City extend its existing Franchise Agreement adopted by Ordinance No. 1413 in January 2012, by exercising the City’s option for a ten year extension.</p> <p>Cascade provides natural gas service to residents and businesses within the City of Lynden which is considered to have a public benefit. The current franchise would expire in 2022 without this extension or a new franchise.</p> <p>The Public Works Committee reviewed this request at their meeting on September 8, 2021 and concurred to support the extension and recommended to forward the request to City Council to set a Public Hearing.</p>	
<b>Recommended Action:</b>	<p>That City Council set a Public Hearing date of October 4, 2021 to hear comments on the extension of the Cascade Natural Gas Corporation Franchise Agreement.</p>	



August 19, 2021

Public Works Director  
City of Lynden  
300 4<sup>th</sup> St.  
Lynden, WA 98264

Subject: Franchise Renewal Application

Public Works Director,

Cascade Natural Gas Corporation hereby formally requests renewal of the Franchise Agreement between the City of Lynden and Cascade Natural Gas Corporation for another (10) years per Section 3 of the Agreement filed under City of Lynden Ordinance No. 1413. Please respond to this letter with details regarding the next steps to accomplish renewal of this Agreement in accordance with its terms.

Upon acceptance, the new expiration date would be 01-25-2032.

If you have any questions, please do not hesitate to contact me directly.

Respectfully Submitted,

**David Gutschmidt**  
Director, Northwest Region  
Email: [David.gutschmidt@cngc.com](mailto:David.gutschmidt@cngc.com)  
Office: (360) 336-3887  
Cell: 701-426-5565

**AN ORDINANCE EXTENDING THE GRANT TO CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF NATURAL GAS WITHIN AND THROUGH THE CITY OF LYNDEN.**

**WHEREAS**, state statutes and City ordinances authorize the City to grant nonexclusive Franchises;

**WHEREAS**, the current Franchise Agreement with Cascade Natural Gas Corporation (hereinafter "Grantee") adopted by Ordinance No. 1413 on January 3, 2012, had a ten-year term with an option for a ten-year extension;

**WHEREAS**, the initial ten-year term expires on January 25, 2022; and

**WHEREAS**, the City of Lynden considers the continuation of the services provided by the Grantee to be in the best interest of the public.

**NOW, THEREFORE**, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON DO ORDAIN AS FOLLOWS:

**Section 1: Term.** The City approves the Franchise Agreement extension with Cascade Natural Gas Corporation, for a term of ten (10) years which will expire on January 25, 2032.

**Section 2: Entire Franchise.** The Franchise Agreement attached hereto as "Exhibit A" constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings or prior agreements including prior Franchise Agreements written or otherwise shall be binding upon the parties upon execution of this Franchise Agreement.

**Section 3: Acceptance.** Within thirty 30 days after the passage and approval of this Ordinance this Franchise Agreement must be accepted by Grantee by its filing with the City Clerk an unconditional written acceptance thereof Failure of the Grantee to so accept this Franchise within said period of time shall be deemed a rejection thereof and the Existing Franchise shall be deemed to have expired without renewal and thereafter to be null and void and the rights and privileges herein granted shall after the expiration of the thirty 30 day period absolutely cease and desist unless the time period is extended by ordinance duly passed for that purpose.

**Section 4: Effective Date.** This Ordinance being an exercise of a power specifically delegated to the City legislative body shall take effect five 5 days after passage and publication of a summary thereof consisting of the Title to this Ordinance.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_ IN FAVOR \_\_\_  
AGAINST, AND SIGNED BY THE MAYOR THIS \_\_\_ DAY OF \_\_\_\_\_,  
2021.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A**

**FRANCHISE AGREEMENT**

**Between**

**THE CITY OF LYNDEN, WASHINGTON**

**And**

**CASCADE NATURAL GAS CORPORATION**

**Franchise**

This Franchise (hereinafter “the Franchise”) is between the City of Lynden (hereinafter “City”) and Cascade Natural Gas Corporation (hereinafter “Grantee”)

The City, having determined that the financial legal and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future Natural Gas needs of the community, desires to enter into the Franchise with the Grantee for the construction, operation, and maintenance of a Natural Gas Transportation and Distribution System on the terms and conditions set forth herein

**TABLE OF CONTENTS**

	<u>Page</u>
<b>SECTION 1. DEFINITIONS.</b>	<b>5</b>
<b>SECTION 2. GRANT OF AUTHORITY.</b>	<b>6</b>
<b>SECTION 3. TERM.</b>	<b>6</b>
<b>SECTION 4. ASSIGNMENT AND TRANSFER OF FRANCHISE.</b>	<b>7</b>
<b>SECTION 5. COMPLIANCE WITH LAWS AND STANDARDS.</b>	<b>7</b>
<b>SECTION 6. CONSTRUCTION AND MAINTENANCE.</b>	<b>8</b>
<b>SECTION 7. OPERATIONS, MAINTENANCE, INSPECTION, TESTING.</b>	<b>10</b>
<b>SECTION 8. ENCROACHMENT AND CROSSING MANAGEMENT.</b>	<b>10</b>
<b>SECTION 9. LEAKS, PRESSURE, EMERGENCY MANAGEMENT AND RESPONSE.</b>	<b>11</b>
<b>SECTION 10. RELOCATION.</b>	<b>12</b>
<b>SECTION 11. REMOVAL, ABANDONMENT IN PLACE</b>	<b>13</b>
<b>SECTION 12. DISPUTE RESOLUTION</b>	<b>13</b>
<b>SECTION 13. ARBITRATION</b>	<b>14</b>
<b>SECTION 14. INDEMNIFICATION.</b>	<b>16</b>
<b>SECTION 15. INSURANCE AND BOND REQUIREMENTS.</b>	<b>17</b>
<b>SECTION 16. RECEIVERSHIP AND FORECLOSURE.</b>	<b>17</b>
<b>SECTION 17. FEES.</b>	<b>18</b>
<b>SECTION 18. LEGAL RELATIONS.</b>	<b>18</b>
<b>SECTION 19. SERVICE OBLIGATIONS.</b>	<b>20</b>
<b>SECTION 20. CUSTOMER SERVICE.</b>	<b>21</b>

**Section 1. Definitions.**

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

- 1.1. **Construct or Construction** shall mean placing, removing, replacing, adding new, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of placing, removing, replacing, adding new, and repairing Facilities.
- 1.2. **Effective Date** shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.
- 1.3. **Facilities** shall mean the Grantee's pipeline system, lines, valves, mains, appurtenances, and all other Facilities necessary for the purpose of transportation and/or distribution of Grantee's product(s).
- 1.4. **Franchise** shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.
- 1.5. **Franchise Area** means the area within the jurisdictional boundaries of the City, including any areas annexed by City during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.
- 1.6. **Hazardous Substance** shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall specifically include natural gas, petroleum and petroleum products and their bi-products, residue, and remainder in whatever form or state. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, sickness, illness, behavior abnormalities or, genetic abnormalities.
- 1.7. **Maintenance or Maintain** shall mean examining, testing, inspecting, repairing, maintaining and replacing the existing pipeline(s) and/or Facilities or any part thereof as required and necessary for safe operation.
- 1.8. **Pipeline Corridor** shall mean the pipeline pathway through the Franchise Area in which the pipeline(s) and or Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.
- 1.9. **Public Properties** shall mean the present and/or future property owned or leased by City within the present and/or future corporate limits or jurisdictional boundaries of the City.
- 1.10. **Operate or Operations** shall mean the use of Grantee's existing pipeline(s) and/or Facilities for the transportation, distribution and handling of natural gas within and through the Franchise Area.
- 1.11. **Rights-of-Way** shall mean the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas located within the Franchise Area.

- 1.12. **Encroachment** shall mean any third party activity within the Pipeline Corridor which is not authorized by Grantee.
- 1.13. **Crossing** shall mean any third party activity within the Pipeline Corridor which is authorized by Grantee, whether or not Grantee's facilities are actually crossed or bisected.

**Section 2. Grant of Authority.**

- 2.1. The City hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain its existing and future pipeline(s) and/or Facilities necessary for the transportation, distribution and handling of natural gas within the existing and future Pipeline Corridor passing through the Franchise Area.
- 2.2. This Franchise is non-exclusive. The City reserves all rights to its property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others to use the Rights-of Way and Public Properties, provided that the City shall not grant any other Franchise, license, easement or permit that would unreasonably interfere with Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the City or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of Way and Public Properties, or any part of them, as the City may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Properties of every type and description.
- 2.3. This Franchise is conditioned upon the terms and conditions contained herein and Grantee's compliance with all applicable federal, state or other regulatory programs that currently exist or may hereafter be enacted by any regulatory agencies with jurisdiction over the Grantee.
- 2.4. By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof, when necessary to protect the public health and safety.
- 2.5. This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in the City's Rights-of Way or other Public Property. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or Rights-of-Way.

**Section 3. Term.**

Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for ten (10) years thereafter. Subsequently, City Council will consider renewing this Franchise, at the written request of Grantee, for an additional ten (10) year renewal period at any time within two (2) years before the end of the Franchise's original ten (10) year term, unless either party

expresses its intention in writing and at least two years before the end, to terminate this Franchise at the conclusion of the original ten (10) year term.

**Section 4. Assignment and Transfer of Franchise.**

- 4.1. This franchise shall not be leased, assigned or otherwise alienated without the express consent of the City by ordinance, which approval shall not be unreasonably withheld.
- 4.2. Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than 120 days prior to the proposed date of transfer:
  - (a) Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;
  - (b) Any information reasonably required by the City of a franchise applicant, including information about the proposed assignee's or transferee's safety record; and,
  - (c) An application fee which shall be set by the City to recover costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.
- 4.3. No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the Grantee.
- 4.4. Any transfer or assignment of this Franchise without the prior written consent of the City shall be void and result in revocation of the Franchise.

**Section 5. Compliance with Laws and Standards.**

- 5.1. In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the pipeline and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline(s) and Facilities.
- 5.2. In the case of any conflict between the terms of this Franchise and the terms of the City's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

**Section 6. Construction and Maintenance.**

- 6.1. All pipeline Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a workmanlike manner.
- 6.2. Except in the case of an emergency, prior to commencing any Construction and/or Maintenance work in the Franchise Area that requires disturbance of any Public Properties, the Grantee shall first file with the City such detailed plans, specifications and profiles of the intended work as may be required by the City. The City may require such additional information, plans and/or specifications as are in the City's opinion necessary to protect the public health and safety during such Construction and/or Maintenance work and for the remaining term of this Franchise.
- 6.3. All Construction and/or Maintenance work requiring disturbance of any Public Properties shall be performed in conformity with the plans, specifications and profiles filed with the City, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.
- 6.4. All pipe and other components of any Facilities used in Construction and/or Maintenance activities within the Franchise Area shall comply with applicable federal regulations, as from time to time amended.
- 6.5. Except in the event of an emergency, Grantee shall provide City at least thirty (30) calendar days written notice prior to any Construction and/or Maintenance requiring disturbance of any Public Properties by Grantee, its agents, employees or contractors on Grantee's pipeline(s) or Facilities within the Franchise Area.
- 6.6. Unless otherwise approved by the City in writing, any replacement or construction of gas mains under street surfaces that have been constructed or resurfaced within the last five (5) years shall be done using a trenchless technology so as not to disturb or otherwise degrade the recently constructed roadway surface.
- 6.7. Disturbance of any Public Properties shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the pipeline(s) or Facilities, the City's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof; the City's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.
- 6.8. Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any Rights-of-Way improvements, private facilities and public safety.

- 6.9. Whenever necessary, after constructing or maintaining any of Grantee's pipeline(s) or Facilities within the Public Properties of the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall reference and restore any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise, per WAC 332-120, as from time to time amended. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City and to the City's satisfaction and specifications.
- 6.10. Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice to the City prior to commencing any Maintenance or Construction within Public Properties under this Franchise and additionally to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect access or otherwise impact the property.
- 6.11. Markers demarcating a High Pressure Pipeline's location shall be placed on the surface permitting line of sight at any location on the pipeline and in each side of any road or water crossing so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. A "High Pressure Pipeline" as that term is used in this subsection means any pipeline operating above two hundred fifty pounds per square inch gauge. Grantee shall comply with the provisions of WAC 480-93-124 as hereinafter amended with respect to pipeline markers.
- 6.12. Upon acceptance of this Franchise by Grantee, the Grantee shall file and thereafter maintain at all times with the City a survey depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's pipeline(s) and Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features. The City shall maintain the confidentiality and prevent disclosure of such pipeline and facility locations to the extent permitted by law.
- 6.13. Upon the City's reasonable request, Grantee shall also provide to the City copies of drawings in use by Grantee showing the location of its Facilities within the franchise area. Grantee shall also provide the same information in a digital file format that can be readily incorporated as an overlay into the City's GIS system maps. The City shall use the "one call" number, 811, for utility locate purposes and not rely on Grantee provided mapping information for locates. The City shall maintain the confidentiality and prevent disclosure of such information the extent permitted by law.
- 6.14. On an annual basis at the city's request, Grantee will provide updated drawings and electronic files of its system which will include any new construction that has taken place within that year. The City shall maintain the confidentiality and prevent disclosure of such information to the extent permitted by law.
- 6.15. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

6.16. Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.

**Section 7. Operations, Maintenance, Inspection, Testing.**

7.1. Grantee shall operate, maintain, inspect and test its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to Grantee's pipeline(s) and Facilities, products and business operations.

7.2. If the federal Office of Pipeline Safety or the state regulatory agency significantly decrease their staffs, or if any congressional or legislative study indicates that federal or state regulatory oversight has significantly decreased in effectiveness during the term of this Franchise, the City agrees to expeditiously negotiate new franchise provisions that will provide the City with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. Grantee agrees to cover all reasonable costs incurred by City for expert assistance in interpreting the testing and inspection data. If the City and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution and Arbitration provisions of Sections 12 and 13.

**Section 8. Encroachment and Crossing Management.**

8.1. Upon notification to Grantee of planned construction or any activity that could abnormally load the pipeline by either the City or any third party within fifty (50) feet of Grantee's Pipeline Corridor, Grantee shall mark the precise location of its Facilities before the construction commences, and upon the Cities request provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's Pipeline is not damaged by the construction or activity. In situations where the work in the Pipeline Corridor requires that the depth of the pipeline be accurately known as determined by Grantee, prior to work commencing, Grantee shall pothole or take other action as Grantee deems necessary to ascertain the depth and exact location of the pipeline in the area of the work.

8.2. Upon the City's reasonable request, in connection with the design of any City project, Grantee will verify the exact location of its underground Facilities within the Pipeline Corridor by excavating (pot holing) at no expense to the City. In the event Grantee performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

**Section 9. Leaks, Pressure, Emergency Management and Response.**

- 9.1. Grantee shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area.
- 9.2. During the term of this Franchise, Grantee shall have a written pipeline emergency response plan and procedures for locating leaks, and ruptures, for shutting down valves or isolating sections of their system as rapidly as possible, and specifically for ensuring a prompt, effective and coordinated response with the City to any type of emergency involving a Facility.
- 9.3. Grantee will upon acceptance of this Franchise provide the City with a copy of its pipeline emergency response plans and procedures, including, but not limited to, emergency response for leaks or ruptures. Grantee will provide the City an updated copy of its pipeline emergency response plans and procedures, annually within each calendar year.
- 9.4. Emergency response plans shall comply with all federal and state regulations governing emergency plans. Grantee's pipeline emergency plans and procedures shall designate their responsible local emergency response officials and a direct 24-hour emergency contact number for control center/gas control operator. Grantee shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.
- 9.5. Upon prior written request of the City, the City and Grantee agree to meet annually to review Grantee's pipeline emergency response plans and procedures. If the parties disagree as to the adequacy of Grantee's pipeline emergency response plans or procedures, the parties will submit the plans and procedures to independent, third party review. If the review recommends that Grantee make modifications or additions to their emergency response plan, Grantee shall consider such recommendation in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the City explaining the rationale for not following such recommendations. Grantee shall pay the cost of the third party review identified in this subsection.
- 9.6. Grantee shall be solely responsible for all necessary costs incurred by the City in responding to any rupture or leak from Grantee's Facilities, when said incident is due to either a lack of compliance, defective condition, or faulty act or omission by Grantee, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all actual remediation costs. Further, Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in responding to any emergency that is caused by: (1) any faulty act or omission by Grantee, (2) lack of compliance, or (3) defective condition. This section shall not limit Grantee's rights or causes of action against any third party or parties who may be responsible for a leak or spill from Grantee's Facilities, including such third party's insurers.
- 9.7. In addition to the notification requirements in the emergency response plan, Grantee shall notify the local 911 emergency call center immediately of any 911 Reportable Event.
- 9.8. If requested by the City in writing, Grantee shall follow up any 911 Reportable Event or any other event reasonably determined by the City to have caused a threat to public safety, with a written summary of the event, including, but not limited to, the leak, or rupture's date, time, amount, location, response, remediation, cause, and other agencies

Grantee has notified. Such follow-up summary shall be provided to the City within thirty (30) days of Grantee's receipt of the City's written request.

- 9.9. Following any event reasonably determined by the City to implicate or to have implicated public safety and where federal or state regulators have not yet investigated, the City may request the WUTC or other applicable regulatory agency to investigate any such event.
- 9.10. If the WUTC or other applicable regulatory agency investigates any event that implicates or has implicated public safety and then recommends that Grantee make modifications or additions to Grantee's Facilities or to Grantee's policies or procedures, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow such recommendations, Grantee shall provide a written report to the City explaining its rationale for not following said recommendations. The parties agree to resolve any dispute over whether to follow the recommendations under Section 13 (Arbitration Clause).
- 9.11. Grantee will provide concurrent notice to the City of any application by Grantee for waiver of any state or federal gas safety rule applicable to the integrity or safety of Grantee's natural gas Facilities located in the City of Lynden.

**Section 10. Relocation.**

- 10.1. In the event that the City undertakes or approves the construction of or changes to the grade or location of any water, electric, sewer or storm drainage line, street, sidewalk or other City improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the City or any other governmental agency, undertakes any improvement project and the City determines that the project might reasonably require the relocation of Grantee's Facilities, the City shall provide the Grantee at least one hundred and twenty (120) calendar days prior written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's pipeline(s) and/or Facilities.
- 10.2. The City shall provide Grantee with copies of pertinent portions of the plans and specifications for the improvement project. Upon request, Grantee shall, at its cost and expense, determine and identify for the City the exact location of its pipeline(s) and Facilities potentially affected by the improvement project.
- 10.3. Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to the relocation within forty five (45) calendar days of receiving the plans and specifications. The City shall evaluate the alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by the City, Grantee shall submit additional information to assist the City in making the evaluation. The City shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by the City.
- 10.4. If any improvement project under this Section 10 is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the City, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk.

- 10.5. The City shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting the City's project objectives.
- 10.6. Grantee shall complete relocation of its Facilities so as to accommodate the improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

**Section 11. Removal, Abandonment in Place.**

- 11.1. Except as otherwise provided in this Section, in the event the Grantee permanently ceases use of any of its Facilities within the Franchise Area, Grantee shall, within one hundred and eighty days (180) after such permanent cessation of use, or such additional time as is agreed to between the parties, remove such Facilities at its sole cost and expense; provided that with the express written consent of the City, Grantee may leave such Facilities in place subject to the conditions set forth in this Section. Any such Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve Grantee of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is appropriate or advisable for the health and safety of the public, in which case Grantee shall perform such work at no cost to the City.
- 11.2. If Grantee is required to remove its Facilities and fails to do so and/or fails to adequately restore property or other mutually agreed upon action(s), the City may, after reasonable notice to Grantee, remove the Facilities, restore the property and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.
- 11.3. The parties expressly agree that the provisions of this section shall survive the expiration, revocation or termination of this Franchise.

**Section 12. Dispute Resolution.**

- 12.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, Grantee shall provide written response to the City that shall acknowledge receipt of such notice and state Grantee's intentions with respect to how Grantee shall respond to such notice. Grantee shall further have thirty (30) days (the "cure period") from its receipt of such notice to:
  - (a) Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 12.2; or
  - (b) Resolve the dispute or cure the default; or
  - (c) Notify the City that Grantee cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, Grantee shall promptly take all reasonable steps to begin to resolve the

dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by Grantee and the projected completion date. In such case, the City may set a meeting in accordance with Section 12.2.

**12.2** If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with this Section, then the City shall promptly schedule a meeting between the City and Grantee to discuss the dispute or any alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place not less than ten (10) days after Grantee’s receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party’s interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties’ representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with Section 12 of this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

**12.3** If, at the conclusion of the steps provided for in Section 12.1 and 12.2 above, the City and Grantee are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or Grantee (as Grantee may have authority to do so by the terms of this Franchise) may:

- (a) Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise; and/or
- (b) Demand arbitration, pursuant to Section 13 below, for disputes arising out or based on Subsection 2.2, Section 5, Section 6, Section 7, Section 10.
- (c) By ordinance, and after reasonable notice to Grantee and an opportunity to be heard, declare an immediate forfeiture and revocation of this Franchise for a breach of any material, non-arbitrable, obligations under this Franchise; and/or
- (d) Take such other action to which it is entitled under this Franchise or any applicable law.

**12.4** Unless otherwise agreed by the City and Grantee in writing, the City and Grantee shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

**Section 13. Arbitration.**

**13.1** The Parties agree that any dispute, controversy, or claim arising out of or relating to the Arbitrable Claims, shall be referred for resolution to a binding arbitration proceeding under Chapter 7.04A RCW. The subsections of this Section 13 (Arbitration Clause) and Chapter 7.04A RCW shall govern the arbitration. In the event of any inconsistencies

- 13.2** The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.
- 13.3** The arbitrator shall have the authority to award any and all damages allowed by governing law. Such damages may include, but shall not be limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of any staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and/or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.
- 13.4** Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and appealable only under the provisions of Chapter 7.04A RCW.
- 13.5** Except as provided in Section 13.7 below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party.
- 13.6** Except as provided in Section 13.7 below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.
- 13.7** Notwithstanding the foregoing Sections 13.5 and 13.6, in the event either Party is found within a period of five (5) years during the term of this Franchise to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Section 13 of this Franchise, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by it in which it is found to be the prevailing party within five (5) years of the most recent arbitration award.
- 13.8** In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

## Section 14. Indemnification.

- 14.1. General Indemnification. Grantee shall indemnify, defend, and hold the City, its agents, officers, or employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers, or employees, on account of injury, harm, death, or damage, to persons or property caused in whole or in part by the Construction, Operation, Maintenance, repair, or alteration of Grantee's Facilities. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors, or subcontractors.
- (a) Grantee's indemnification obligations pursuant to this Section shall include assuming potential liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Grantee's exercise of the rights set forth in this Agreement. The obligations of Grantee under this section have been mutually negotiated by the Parties hereto, and Grantee acknowledges that the City would not enter into this Agreement without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.
- (b) In the event any matter for which the City intends to assert its rights under this Section is presented to or filed with the City, the City shall promptly notify Grantee thereof and Grantee shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.
- 14.2. Environmental Indemnification. Grantee shall indemnify, defend and save the City harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the pipeline; (b) any release of a hazardous substance on or from the pipeline; or (c) other activity related to this Franchise by Grantee, its agents, contractors, or subcontractors resulting in environmental damage. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction,

cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

- 14.3. The obligations contained in this Section regarding indemnification shall survive the expiration, revocation or termination of this Franchise.

**Section 15. Insurance and Bond Requirements.**

- 15.1. During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of Ten Million dollars (\$10,000,000.00), in a form and with a carrier reasonably acceptable to the City, naming the City as an additional insured and solely to the extent of Grantee's indemnity obligations hereunder, to cover any and all insurable liability, damage, claims and loss to the extent such coverage is reasonably available in the commercial marketplace, excepting at all times liability for fines and penalties for violation of environmental laws and punitive damages. Insurance coverage shall include, but is not limited to, defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements as is reasonably available in the commercial marketplace.
- 15.2. Proof of insurance shall be provided to the City prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the City, except if such cancellation is due to failure to pay premiums in which case at least 10 days' prior written notice of cancellation is given to the City.
- 15.3. The indemnity, insurance contained herein shall survive the termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in or on the Franchised Areas or until the parties execute a new Franchise Agreement which modifies or terminates these indemnity, insurance and bond provisions.

**Section 16. Receivership and Foreclosure.**

- 16.1. Grantee shall immediately notify the City in writing if it files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.
- 16.2. Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, pipeline(s) or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the pipeline(s) or Facilities within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of Grantee's rights or ability to operate the pipeline(s) or Facilities within or affecting the Franchise Area, Grantee shall notify the City of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the

provisions of this Franchise Agreement governing the consent of the City to such change in control of the Grantee shall apply.

- 16.3. The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
  - (a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and
  - (b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law.

**Section 17. Fees.**

- 17.1. Current state law (RCW 35.21.860) does not allow the City to charge a franchise fee for these services unlike other franchises that use the right-of-way. Should the state law be changed during the term of this agreement, the City reserves the right to charge franchise fees to the Grantee to the extent provided by that revised statute.

**Section 18. Legal Relations.**

- 18.1. Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.
- 18.2. Grantee accepts any privileges granted by the City to the Franchise Area, public Rights-of-Way and other Public Property in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.
- 18.3. This Franchise shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved to the City. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group or entity.

- 18.4. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in Whatcom County, Washington.
- 18.5. In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending. Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.
- 18.6. Force Majeure. In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
- 18.7. The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.
- 18.8. By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.
- 18.9. This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.
- 18.10. Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the City:                   Public Works Director  
  City of Lynden  
  300 4<sup>th</sup> Street  
  Lynden, WA 98264

To Grantee:                    Cascade Natural Gas  
  8113 W. Grandridge Blvd  
  Kennewick, WA 99336-7166

- 18.11. The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.
- 18.12. This Franchise Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Franchise Agreements between the parties pertaining to Grantee's Operation of its pipeline(s) and/or Facilities are hereby superseded.
- 18.13. Grantee shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk its unconditional written acceptance of all the terms and conditions of this Franchise. If Grantee shall fail to so file its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.
- 18.14. This Franchise Agreement, once signed by the City and Grantee, is to be recorded in the office of the Whatcom County Auditor, by the Grantee and at his expense, and a copy of the recorded document is to be provided to the City Clerk for the City files.

**Section 19. Service Obligations.**

- 19.1. General Service Obligation. Grantee’s general service obligations will be governed by their tariffs filed with the Washington Utilities and Transportation Commission (WUTC). These tariffs can be found on Grantees’s web site under Residential Service / rate information / rates and tariffs, rule 3, rule 8, rule 9.
- 19.2. Notice of Tariff Changes. Grantee shall, when making application for any changes in tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide City with an electronic copy of the submitted application within five (5) days of filing with the WUTC. Grantee shall further provide the City with an electronic copy of any actual approved tariff(s) affecting the provisions of this Franchise.
- 19.3. New Developments. The City shall provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within

the Franchise Area. The City agrees to require the developer, as a condition of issuing land use and building permits, to give the Grantee access during construction to all open trenches for deployment of natural gas facilities throughout the development and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of natural gas facilities within the development.

**Section 20. Customer Service.**

- 20.1. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers and in a way that a) is not misleading and b) does not omit material information.
- 20.2. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws.
- 20.3. Upon request Grantee will provide the City with information from its annual customer satisfaction survey which has been conducted historically in the Spring of the year.

**UNCONDITIONAL ACCEPTANCE BY GRANTEE:**

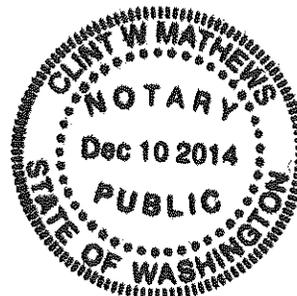
I, the undersigned official of Cascade Natural Gas Corporation, am authorized to bind Cascade Natural Gas Corporation and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. 11-2792), which are hereby accepted by ~~Tim Clark~~ this 25<sup>th</sup> day of JANUARY, 2011. 2012  
ERIC MARTUSCELLI

Cascade Natural Gas Corporation

By: [Signature]  
Name: ~~Tim Clark~~ ERIC MARTUSCELLI  
Title: Vice President Operations Western Region  
Intermountain Gas Corp., A Subsidiary of MDU Resource Group, Inc.

State of Washington

County of Pierce



Subscribed and sworn to before me this 25 day of January, 20112

[Signature]  
Notary Public  
My commission expires Dec 10, 2014

Received on behalf of the City this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

By: [Signature]  
Name: Bill Verwolf  
Title: City Administrator

# CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Ordinance No. 1635 Hear Comments on Franchise Agreement with Sound Internet Services dba Pogozone for Transmission of Telecommunications	
<b>Section of Agenda:</b>	Public Hearing	
<b>Department:</b>	Public Works	
<b><u>Council Committee Review:</u></b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b><u>Legal Review:</u></b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>	Ordinance No. 1635	
<b>Summary Statement:</b>	<p>Sound Internet Services dba Pogozone would like to enter into a non-exclusive Franchise Agreement with the City to operate and maintain telecommunications (phone and high-speed internet) systems within City right-of-way. They are also in the process of seeking franchise agreements from other local jurisdictions as they expand beyond Bellingham and into the rest of Whatcom County.</p> <p>Facilities will be placed on existing infrastructure where practical, which could mean using existing telephone poles (hanging lines from Puget Sound Energy poles) and/or using existing towers. However, there may be cases where new infrastructure is needed. In these cases, City permits will be required.</p> <p>The request for a franchise agreement was discussed at the Public Works Committee meeting on September 8, 2021, and the Committee concurred to recommend that City Council approve the Franchise Agreement.</p>	
<b>Recommended Action:</b>	That City Council, after hearing public comments, approve the Franchise Agreement with Sound Internet Services dba Pogozone and authorize the Mayor’s signature on the Franchise Agreement.	

ORDINANCE 1635

AN ORDINANCE OF THE CITY OF LYNDEN GRANTING SOUND INTERNET SERVICES, INC. (DBA POGOZONE) A NON-EXCLUSIVE FRANCHISE FOR THE TRANSMISSION OF TELECOMMUNICATIONS IN, THROUGH, OVER AND UNDER THE RIGHTS-OF-WAY OF THE CITY OF LYNDEN.

WHEREAS, Sound Internet Services, Inc., a Washington for-profit corporation, dba PogoZone, ("Grantee") has requested that the City of Lynden, a Washington municipal corporation ("City") grant it the right to install, construct, erect, operate, maintain, repair, relocate and remove its Facilities in, upon, along and/or across those Rights-of-Way for purposes of offering and providing Telecommunications Services utilizing said Facilities ("Grantee Services"); and

WHEREAS, pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for railroads and other routes and facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for the transmission and distribution of electrical energy, signals and other methods of communication; and

WHEREAS, the City, having determined that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to construct and operate Grantee's Services to meet the future needs of the community; and

WHEREAS, the City has afforded the public adequate notice and opportunity for comment, and now desires to enter into this Franchise with Grantee for the construction, maintenance and operation of Grantee's Services as provided herein; and

WHEREAS, the City Council finds it desirable for the welfare of the City and its residents that such a non-exclusive franchise be granted to Grantee; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its Rights-of-Way; and

WHEREAS, the City is willing to grant the rights requested by Grantee subject to certain terms and conditions.

NOW, THEREFORE, The City Council of the City of Lynden does ordain as follows:

Section 1. Definitions. Where used in this Ordinance and the franchise granted hereby (the "Franchise") these terms have the following meanings:

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with Grantee.

B. "City" means the City of Lynden, a municipal corporation of the State of Washington.

C. "Emergency Situation" means a condition of imminent danger to the health, safety and welfare involving likely loss of life or substantial property damage located within the City including without limitation, damage to persons or property from natural consequences, riots, acts of terrorism or wars and as determined by the City in good faith.

D. "Facilities" means Grantee's fiber optic cable system constructed and operated within the City's Rights-of-Way, and shall include all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City's Rights-of-Way, designed and constructed for the purpose of providing Telecommunications Service and other lawful services not prohibited by this Ordinance.

E. "Franchise" shall mean the initial authorization or renewal thereof, granted by the City, through this Ordinance, or a subsequently adopted Ordinance, which authorizes construction and operation of the Grantee's Facilities for the purpose of offering Telecommunications Service and other lawful services not prohibited by this Ordinance.

F. "Franchise Area" means the present municipal boundaries of the City, and shall include any additions thereto by annexation or other legal means.

G. "Person" means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

H. "Rights-of-Way" means the surface and the space above and below City streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, rights of way and similar public areas within the City.

I. "Telecommunications Service" means any telecommunications service as defined in RCW 82.04.065, telecommunications capacity, or dark fiber, provided by the Grantee using its Facilities, either directly or as a carrier for its Affiliates, including, but not limited to, the transmission of voice, data or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading and home shopping, or other subsequently developed technology that carries a signal over fiber optic cable. Telecommunications Service shall also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City and other lawful services not prohibited by this Ordinance. However, Telecommunications Service shall not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

J. "Telephone Service" means any telephone business as defined in RCW 82.16.010, which is the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

Section 2. Franchise Area and Authority Granted.

A. Facilities within Franchise Area. The City does hereby grant to Grantee a non-exclusive franchise, subject to the terms of this ordinance between the City and the Grantee. The Grantee is authorized to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across Rights-of-Way in the Franchise Area for purposes of Telecommunications Service as defined above.

B. Permission Required to Enter Onto Other City Property. Nothing contained in this Ordinance is to be construed as granting permission to Grantee to go upon any other public place other than Rights-of-Way within the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case by case basis from the City.

C. Compliance with WUTC Regulations. At all times during the term of the Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

D. Except as explicitly set forth herein, this Franchise does not waive any rights that the City has or may hereafter acquire with respect to the Franchise Area or any other City roads, rights of way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain.

E. City reserves the right to change, regrade, relocate, abandon, or vacate any Right-of-Way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee's Facilities, City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which Grantee may continue to operate any existing Grantee's Facilities under the terms of this Franchise for the remaining period set forth under Section 8.

F. Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to City and the general public's need for municipal infrastructure, travel, and access to the Franchise Area, as applied in a non-discriminatory manner, except as may be otherwise required by law.

Section 3. Construction and Maintenance.

A. Grantee's Facilities shall be located, relocated and maintained within the Rights-of-Way in accordance with City Engineering Design and Development Standards (hereafter, Standards) and any applicable Lynden Municipal Codes (hereafter, LMC), including but not limited to Chapter 13.16, so as not to unreasonably interfere with the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Whenever it is necessary for Grantee, in the exercise of its rights under the Franchise, to make any excavation in the Rights-of-Way, Grantee shall obtain prior approval from the City of Lynden Public Works Department, pay the applicable permit fees, and obtain any necessary permits for the excavation work. Upon completion of such excavation, Grantee shall restore the surface of the Rights-of-Way to the specifications established within the City's Standards and / or the LMC. If Grantee should leave any portion of the excavation in a condition that does not meet the City's specifications per the Standards or the LMC, the City may, on five (5) days' notice to Grantee, which notice shall not be required in case of an Emergency Situation, cause all work to occur necessary to restore the excavation to a safe condition consistent with the City's Standards. Grantee shall pay to the City the reasonable cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work, and any engineering, planning, consulting and / or legal fees incurred (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

B. Any surface or subsurface failure occurring during the term of this Franchise caused by any excavation by Grantee shall be repaired to the City's specifications, within thirty (30) days, or, upon five (5) days written notice to Grantee, the City may order all work necessary to restore the damaged area to a safe and acceptable condition and Grantee shall pay the reasonable costs of such work to the City, including City overhead (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

C. In the event of an Emergency Situation, Grantee may commence such emergency and repair work as required under the circumstances, provided that Grantee shall notify the City Public Works Director in writing as promptly as possible before such repair or emergency work commences, or as soon thereafter as possible, if advanced notice is not reasonably possible. The City may act, at any time, without prior written notice in the case of an Emergency Situation but shall notify Grantee in writing as promptly as possible under the circumstances.

D. Grantee agrees that if any of its actions under the Franchise materially impair or damage any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, the impaired or damaged property to the same condition as existed prior to such action. Such repair work shall be performed and completed to the reasonable satisfaction of the Public Works Director.

Section 4. Location and Relocation of Facilities.

A. Grantee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground. Any new Facilities to be located above-ground shall be placed on existing utility poles. Most utility poles in the City are owned and maintained by Puget Sound Energy. Attachment to existing poles must be documented by a pole attachment agreement. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

B. Grantee recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water and storm drainage utilities owned by the City and other public utility providers. Thus, the City reserves the right to maintain clear zones within the Right-of- Way for installation and maintenance of said utilities. The clear zones for each Right-of-Way segment shall be noted and conditioned with the issuance of each permit necessary for Grantee’s installation of maintenance of said utilities (“Street Obstruction/Excavation Permit”). If adequate clear zones are unable to be achieved on a particular Right-of-Way, Grantee shall locate in an alternate Right-of-Way, obtain easements from private property owners, or propose alternate construction methods which maintain and/or enhance the existing clear zones.

C. Except as otherwise required by law, Grantee agrees to relocate, remove or reroute its Facilities as ordered by the City, at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Pursuant to the provisions of Section 5, Grantee agrees to protect and save harmless the City from any third-party claims for service interruption or other losses in connection with any such change or relocation except to the extent caused by the City’s negligence or willful misconduct.

D. If the City determines that a project necessitates the relocation of the Grantee’s existing Facilities, then:

1. Within a reasonable time, which shall be no less than sixty (60) days prior to the commencement of the project, the City shall provide the Grantee with written notice requiring relocation; provided that in the event of an Emergency Situation, the City shall give the Grantee written notice as soon as practicable;

2. The City shall provide the Grantee with a proposed location for the Grantee’s Facilities so that Grantee may relocate its Facilities in other Rights-of-Way in order to accommodate the project; and

3. The Grantee shall complete relocation of its Facilities at no charge or expense to the City so as to accommodate the project at least ten (10) days prior to commencement of the project. In the event of an Emergency Situation as described in this Section, the Grantee shall relocate its Facilities within the reasonable time period specified by the City.

E. The Grantee may, after receipt of written notice requesting a relocation of its Facilities, promptly submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives are suitable to accommodate the project, which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City, in its sole discretion, ultimately decides against any other proposed alternative, the Grantee shall relocate its Facilities as otherwise provided in this Section.

F. The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any Person or entity other than the City, where the Facilities to be constructed by said Person or entity are not or will not become City-owned, operated or maintained Facilities; provided, that such arrangements shall not unduly delay a City construction project.

G. The Grantee shall indemnify, hold harmless and pay the costs of defending the City against any and all third party claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Grantee to relocate its Facilities in a timely manner; provided, that the Grantee shall not be responsible for damages due to delays caused by the City or circumstances beyond the reasonable control of the Grantee, such as natural weather related disasters, acts of God, fire, or emergencies relating to war or terrorism.

H. In the event that the City orders the Grantee to relocate its Facilities for a project which is primarily for private benefit, the private party or parties causing the need for such project shall reimburse the Grantee for the cost of relocation in the same proportion as their contribution to the total cost of the project.

I. In the event of an unforeseen Emergency Situation that creates a threat to public safety, health or welfare, the City may require the Grantee to relocate its Facilities at its own expense, any other portion of this Section notwithstanding.

Section 5. Indemnification.

A. Grantee shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and reasonable attorney's fees made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of Grantee or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of Grantee's Facilities or in exercising the rights granted Grantee in the Franchise; *provided, however,* such indemnification shall not

extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify Grantee thereof (and in any event prior to the date that Grantee’s rights to defend such claim or demand would be prejudiced), and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, it shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Prior to entering into a settlement or compromise, Grantee shall notify the City and the City shall have the right to, at its election and at its sole cost and expense, to settle and compromise the claim, demand, suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

Section 6. Default.

A. If Grantee shall fail to comply with any of the provisions of the Franchise, unless otherwise provided in the Franchise, the City will serve upon Grantee a written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with the Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee which shall be the responsibility of the Grantee. The City may act without the thirty (30) day notice in case of an Emergency Situation. If any failure to comply with the Franchise by Grantee cannot be corrected with due diligence within said thirty (30) day period, then the time within which Grantee shall so comply may be extended for such time as may be reasonably necessary and so long as Grantee works promptly and diligently to effect such compliance. During such a period, if Grantee is not in compliance with the Franchise, and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of the Franchise and all of Grantee’s rights and obligations thereunder.

B. In addition to other remedies provided in this Franchise or otherwise available at law, if Grantee is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending Grantee Street Obstruction/Excavation Permits until compliance is achieved.

Section 7. Nonexclusive Franchise. The Franchise granted by this Ordinance is not and shall not be deemed to be an exclusive franchise. The Franchise granted by this Ordinance shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area. The Franchise granted by this Ordinance shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 8. Franchise Term.

Unless earlier terminated by Grantee upon notice to the City, the Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of this Ordinance; provided however, Grantee shall have no rights under the Franchise nor shall Grantee be bound by the terms and conditions of the Franchise unless Grantee shall, within thirty (30) days after the effective date of this Ordinance, file with the City its written acceptance of the Franchise, in a form acceptable to the City Attorney.

Section 9. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Ordinance, the applicable laws of the State of Washington and the applicable laws of the United States, and all other applicable ordinances and codes of the City of Lynden, as they now exist or may hereafter be amended, including the City's Public Works Policies and Standards. Nothing in this Ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by Grantee shall be performed by Grantee in accordance with applicable federal, state and city rules and regulations, including the City's Public Works Policies and Standards, and any required permits, licenses or posted fees, and applicable safety standards then in effect.

B. In the event that any territory served by Grantee is annexed to the City after the effective date of the Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

C. The Grantee shall be subject to taxes of general applicability including without limitation the City Utility Tax. City acknowledges that Washington law currently limits the tax the City may impose on Grantee's activities hereunder to 6% of revenue derived from the provision of network Telephone Service (i.e., "telephone business" as defined in RCW 82.16.010) and that the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived by Grantee from Grantee's provision of Internet access services. Grantee agrees that if federal or Washington law is changed, Grantee, following not less than ninety (90) days written notice from the City, will negotiate in good faith with the City to amend the Franchise to expand the revenue base on which such tax is applied. Grantee agrees that should Washington law increase the tax the City may impose on Grantee's activities hereunder applicable to network telephone service, City may in its discretion, increase the tax it imposes for such service.

Section 10. Undergrounding. New Facilities shall be installed underground pursuant to Section 4 of the Franchise. Grantee acknowledges the City's policy of undergrounding of Facilities within the Franchise Area. Grantee will cooperate with the City in the undergrounding of Grantee's existing Facilities within the Franchise Area. If, during the term of the Franchise, the City shall direct Grantee to underground Facilities within any Franchise Area, such undergrounding shall be at no cost to the City except as

may be provided in RCW Chapter 35.99. Grantee shall comply with all federal, state, and City regulations on undergrounding. If the City undertakes any street improvement which would otherwise require relocation of Grantee's above-ground Facilities, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities.

Section 11. Record of Installations and Service.

A. With respect to excavations by Grantee and the City within the Franchise Area, Grantee and the City shall each comply with its respective obligations pursuant to RCW Chapter 19.122 and any other applicable state or federal law.

B. Upon written request of the City, Grantee shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. As-built drawings and maps of the precise location of any Facilities placed by Grantee in any Rights-of-Way shall be made available by Grantee to the City within ten (10) working days of the City's written request. The Grantee shall provide an updated system map showing the general location of all facilities located on City property annually each December. These plans and maps shall be provided at no cost to the City and shall include hard copies and/or digital copies in a format commonly used in the telecommunications industry.

Section 12. Shared Use of Excavations and Trenches.

A. If either the City or Grantee shall at any time after installation of the Facilities plan to make excavations in the area covered by the Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of written request to do so, an opportunity to share such an excavation, *provided that*: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. In addition, pursuant to RCW 35.99.070, the City may request that Grantee install additional conduit, ducts and related access structures for the City pursuant to contract, under which Grantee shall recover its incremental costs of providing such facilities to the City.

B. The City reserves the right to not allow open trenching for five years following a street overlay or improvement project. Grantee shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to the above limit of five (5) year street trenching.

C. The City reserves the right to require Grantee to joint trench with other franchisees if both entities are anticipating trenching within the same franchise area and provided that the terms of this Section are met.

Section 13. Insurance.

A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work under the Franchise by Grantee, its agents, representatives or employees in the amounts and types set forth below.

1. Commercial General Liability insurance with limits no less than \$5,000,000 combined single limit for bodily injury (including death) and property damage, including premises operation, products and completed operations and explosion, collapse and underground coverage extensions;

2. Automobile liability for owned, non-owned and hired vehicles with a combined single limit of \$3,000,000 for each accident for bodily injury and property damage; and

3. Worker’s compensation within statutory limits and employer’s liability insurance with limits of not less than \$1,000,000 for each accident/disease/policy limit or as required by law.

B. Grantee’s insurance coverage shall be primary insurance as respects the City. The policies mentioned above shall name the City, its officers, boards, commissions, agents and employees, as additional insureds. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of Grantee's insurance and shall not contribute with it.

C. Grantee shall furnish the City with certificates of the foregoing insurance coverage or a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement. A certificate of insurance acceptable to the City shall be filed with the City Clerk. The insurance company shall be approved by the state Insurance Commissioner pursuant to RCW 48, and have at least an A- Best Rating.

D. Grantee shall have the right to self-insure any or all of the above-required insurance, subject to approval by the City, in City’s sole discretion.

E. Grantee’s maintenance of insurance as required by the Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit City’s recourse to any remedy to which the City is otherwise entitled at law or in equity. Grantee shall promptly deliver to the City written notice of cancellation or reduction in coverage thirty (30) days in advance of the effective date thereof.

Section 14. Assignment.

A. All of the provisions, conditions, and requirements herein contained shall be binding upon Grantee, and no right, privilege, license or authorization granted to Grantee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold. Notwithstanding the foregoing, Grantee, without the consent of, but upon notice to the City, may assign this agreement in whole or in part to: (a) an Affiliate (as defined in this Ordinance); or (b) a lender for security purposes only provided that, in the event of such an assignment Grantee shall retain exclusive control over its Facilities and remain fully responsible for performance of all terms and conditions of this Franchise.

B. Grantee may lease the Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, *provided that:* Grantee at all times retains exclusive control over such Facilities and remains responsible for locating, servicing, repairing, relocating or removing its Facilities pursuant to the terms and conditions of the Franchise.

Section 15. Abandonment and Removal of Facilities. Upon the expiration, termination, or revocation of the rights granted under the Franchise, the Grantee shall remove all of its Facilities from the Rights-of-Way of the City within ninety (90) days of receiving notice from the City's Public Works Director; *provided however,* that the City may permit the Grantee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Grantee's agreement to transfer ownership of the Facilities to the City, the Grantee shall submit to the City a proposal and instruments for transferring ownership to the City. Nothing contained within this Section shall prevent the City from compelling the Grantee to remove any such Facilities through judicial action when the City has not permitted the Grantee to abandon said Facilities in place.

Section 16. Records Inspection.

A. Grantee agrees to supply, upon written request, at no cost to City, any information reasonably requested by the City to coordinate municipal functions with Grantee activities and fulfill any municipal obligations under State law. Said information shall include, at a minimum, as-built drawings of Grantee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within City. Said information may be requested either in hard copy and/or electronic format, if reasonably possible in a format compatible with City's database system, as now or hereinafter existing, including City's geographic information Service (GIS) data base.

B. Any information submitted shall be for informational purposes only and shall not obligate Grantee to undertake any specific improvement, nor shall such plan be construed as a proposal to undertake any specific improvements. Grantee shall use its

commercially reasonable efforts to keep the City informed of its long-range plans for coordination with City's long-range plans.

C. The City agrees not to disclose the information described in this Section to third parties unless required to do so pursuant to the Washington Public Records Act, RCW Chapter 42.56. The City agrees to notify Grantee of the anticipated disclosure of such information at least five (5) days prior to such disclosure and provide Grantee the opportunity to prevent the disclosure via court order.

Section 17. Miscellaneous.

A. If any term, provision, condition or portion of this Ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Ordinance which shall continue in full force and effect. The headings of sections and paragraphs of this Ordinance are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

B. Grantee shall pay for the City's reasonable administrative costs including without limitation, legal review, in drafting and processing this Ordinance and all work related thereto, which payment shall not exceed \$2,000. Grantee shall further be subject to all published permit fees associated with activities and the provisions of any such permit, approval, license, agreement or other document related to this Franchise. In the event of a conflict between said permit, approval, license, agreement or other document, with the provisions of this Franchise, this Franchise shall control.

C. Failure of the City to declare any breach or default under this Franchise or any delay in taking action shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default of the same or unrelated type or nature.

D. Notwithstanding anything to the contrary herein, any determination by the City with respect to matters contained in this Ordinance and matters related to the Franchise shall be made in accordance with applicable federal law, including without limitation any applicable rules and regulations promulgated by the Federal Communications Commission, applicable state law and in a reasonable and non-discriminatory manner.

E. Dispute Resolution, Venue and Applicable Law – In the event of a dispute arising hereunder, venue for such disputes shall solely be the Whatcom County Superior Court. The applicable governing law shall be the Laws of the State of Washington.

Section 18. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City: Public Works Director City of Lynden 300 4th St Lynden, WA 98264	Grantee: Sound Internet Services, Inc. dba: PogoZone Internet 114 W. Magnolia St. Suite 400-147 Bellingham, WA 98225 Attn: JD Sinclair
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Notice shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 19. Effective date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage, approval and publication, but only if the Grantee has endorsed this ordinance and accepted the terms and conditions thereof.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_\_\_ IN FAVOR \_\_\_\_\_ AGAINST, AND SIGNED BY THE MAYOR THIS \_\_\_\_ DAY OF SEPTEMBER, 2021.

\_\_\_\_\_  
MAYOR SCOTT KORTHUIS

Attest:

Approved as to Form:

\_\_\_\_\_  
City Clerk Pamela D. Brown

\_\_\_\_\_  
City Attorney Robert A. Carmichael

Acceptance:

Sound Internet Services, Inc. dba PogoZone for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise.

By: \_\_\_\_\_  
Name: JD Sinclair  
Title: President

Date: \_\_\_\_\_

# CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Ordinance No. 1633 – Amend Lynden Municipal Code Section 12.28 Sidewalk Obstructions	
<b>Section of Agenda:</b>	Public Hearing	
<b>Department:</b>	Public Works	
<b><u>Council Committee Review:</u></b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
<b><u>Legal Review:</u></b>	<input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>	Ordinance No. 1633	
<b>Summary Statement:</b>	<p>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.</p> <p>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.</p> <p>The Public Works Committee reviewed these revisions at their June 9, 2021 and August 4, 2021 meetings and concurred to recommend approval. Based on comments made at the City Council Meeting on September 7, 2021 introducing Ordinance No. 1633, staff amended 12.28.020 L. to include reference to Lynden Municipal Code 19.33.</p>	
<b>Recommended Action:</b>	That City Council, after hearing public comment, approve the Ordinance No. 133 – Amending Lynden Municipal Code Section 12.28 Sidewalk Obstructions, and authorize the Mayor’s signature on the ordinance.	

ORDINANCE NO. 1633

AN ORDINANCE OF THE CITY OF LYNDEN, AMENDING SECTION 12.28  
SIDEWALK OBSTRUCTIONS

WHEREAS, Section 12.28 of the Lynden Municipal Code regulates sidewalk obstructions and use of planting strips, including infractions for violations; and

WHEREAS, The City has determined that additional guidance is required to identify which obstructions are allowed without permits and which obstructions require permits; and

WHEREAS, The City of Lynden seeks to provide opportunity for outdoor dining areas to be placed on sidewalks adjacent to, and operated by the restaurants provided that safe pedestrian access can be maintained; and

WHEREAS, The City seeks to provide clarification on the permit application process required for sidewalk obstructions that require permits;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Section 12.28 of the Lynden Municipal Code is hereby repealed and replaced as follows:

Chapter 12.28 - SIDEWALK OBSTRUCTIONS

12.28.010 - Sidewalk obstructions prohibited—When.

Nothing shall be placed on any sidewalk in the city which either partially or totally obstructs or impedes the flow of pedestrian traffic except as specifically permitted in this chapter.

(Ord. 812 § A(part), 1989).

12.28.020 - Sidewalk Obstructions – Exceptions without permit.

The following obstructions shall be permitted on public sidewalks, provided that a minimum continuous unobstructed width of 5 feet is maintained for pedestrian use and the vision triangles at intersections are unaffected.

- A. Fire hydrants.
- B. Landscaping, traffic-control devices, streetlights, public art, and other objects and items placed permanently or temporarily by the city.
- C. Utility poles and boxes pursuant to franchise, permit, or contract granted by the

city.

- D. Flagpoles or standards therefor placed by community business groups recognized by the city.
- E. Refuse containers where the location of the container is on a sidewalk or planting strip as required by the city.
- F. Postal boxes, either individual or group, erected according to city and post office specifications.
- G. Public art placed by community business groups working with the city.
- H. New awnings or canopies that comply with the provisions of LMC 19.23.070.
- I. Hanging planters overhanging the sidewalk with a minimum clearance of seven feet above sidewalks.
- J. Merchandise being moved into or out of an adjacent business; provided, that such merchandise does not remain on the sidewalk or planting strip for more than 30 minutes.
- K. Merchandise located within thirty-two (32) inches of the building façade.
- L. Sandwich board signs ~~or similar less than thirty-six (36) inches tall placed by the owner or lessee of adjacent property that comply with the provisions of LMC 19.33~~ and with the written permission of the abutting property owner.

12.28.020 – Sidewalk Obstructions and Encroachments – Permit required.

Obstructions of and encroachments onto public sidewalks not covered by section 12.28.010 may be placed by private parties only if a permit is obtained from the city public works department. Obstructions and encroachments may only occur on sidewalks with sufficient width to allow a continuous minimum of width of 5 feet to remain unobstructed for pedestrian travel. The following encroachments or obstructions may be permitted:

- A. Merchandise displays, limited to special sales events of no more than seven days continuously abutting the business offering such merchandise in such a way that an unobstructed pedestrian corridor is maintained at a minimum width of five feet;
- B. Façades for buildings built up to the right-of-way line of the public street; provided, that such addition shall not exceed six (6) inches in depth over the sidewalk as measured perpendicular to the existing façade.
- C. Temporary obstructions occurring as part of a city permitted special event. A description of the obstruction must be included with the special event permit

request and reviewed by the public works department.

- D. Outdoor dining areas, if all of the following conditions are met:
  - a. The dining area must be adjacent to the permit applicant’s property.
  - b. Business must utilize sturdy furniture and provide trash receptacles of good quality and attractive appearance consistent with the streetscape and adjacent architecture.
  - c. No elements including railings, tables, signs, or umbrellas may be permanently affixed to the sidewalk.
  - d. Patio-style umbrellas should be placed within an outdoor dining table and not protrude into the unobstructed sidewalk area outlined in this section.
  - e. Outdoor railings, partitions, or fences may not be taller than forty-two (42) inches in height.
  - f. If alcohol is to be served, the applicant must have a liquor license and comply with all provisions of WAC 314-02-125.
  - g. Written concurrence must be obtained from the immediately adjacent businesses.
  - h. Applications for outdoor dining shall include:
    - i. Proof of insurance and covenant. The business must continually maintain during the term of the permit, a certificate of insurance naming the City as an additional insured, with respect to liability, and providing that it shall be primary as to any other policy of insurance. The policy must contain the additional insured statement, coverage amounts of no less than \$1,000,000 and cancellation notification.
    - ii. A copy of City of Lynden business license.
    - iii. A copy of Whatcom County Health Department approval.
    - iv. If alcohol is to be served, a copy of approval by the Washington State Liquor and Cannabis Board per WAC 314-02-125.
    - v. The proposed site plan, that shows the location, number, and dimension of all seating, dining, signs, and barriers, such as railings or planters within the dining area and the dimension of clear zone(s) which are contiguous with the clear zones or the adjacent properties.
    - vi. Statement of concurrence from the immediately adjacent businesses.
  - i. The applicant shall sign a covenant to hold harmless and indemnify the City to be retained by the City for the duration of the business activity.
- E. Term. All permits approved under this chapter shall be temporary and shall vest no permanent right. The term of each permit shall be clearly stated on its face.
- F. Revocation

- a. All permits approved under this chapter may in any case be revoked at the sole discretion of the City upon 30 days' notice. Such permits may also be revoked without notice in the event any such use or occupation shall become dangerous; any structure or obstruction so permitted shall become insecure or unsafe; shall become a public nuisance; or shall not be constructed, maintained or used in accordance with the provisions of this chapter or the application materials submitted for review. The determination by the City Building Official that a structure is dangerous, insecure, unsafe, a nuisance or has not been constructed, used or maintained in accord with this chapter and applicable codes and standards shall be conclusive.
- b. Permits shall also be revoked if:
  - i. Following written notice of the lapse of an insurance policy required to be maintained by LMC 12.28.020, the permittee fails to supply a valid certificate of insurance; or
  - ii. Following written notice of the lapse of the annual renewal, or any associated renewal fee, or fees for the exclusive use of the right-of-way, the permittee fails to bring fees current.
- c. If any such obstructions, or use occupancy is not discontinued on notice to do so by the City and with the time period designated, the City may remove any structure or obstruction, or make such repairs upon the structure or obstruction as may be necessary to render the same secure and safe, at the expense of the permittee, or his successor, and such expense may be recorded as a lien and otherwise collected in the manner provided by law.

G. Denial

- a. The Public Works Director or their designee may reject or deny an Outdoor Dining Permit application when he/she determines, in his or her sole discretion, that any of the following apply:
  - i. Encroachment into the public right-of-way at the location proposed is prohibited by recorded documents associated with the property;
  - ii. The Lynden Municipal Code, the Lynden Development Standards and/or other adopted codes, regulations and standard prohibit encroachment of the type and/or quality proposed.
  - iii. Insufficient area exists to preserve a five-foot clear zone and automobile ingress/egress.
  - iv. The proposed obstruction would result in a threat to life or safety.
  - v. The proposed encroachment would result in an undue financial burden for the City, such as due to increased maintenance costs.
  - vi. The permit application includes information that is false, misleading, or is intentionally erroneous.
  - vii. The encroachment proposed is within a right-of-way not controlled

by the City at the time of application, either as the result of separate ownership or as part of an ongoing project in which state or federal control supersedes.

- viii. An alternative design or location is available to the applicant that would reduce or eliminate potential impacts to the City, and would not cause a hardship to the applicant.
- ix. The encroachment will be otherwise detrimental to the public interest.

- H. Appeal. Final decisions of the Public Work Director or their designee may be appealed to the hearing examiner pursuant to Chapter 17.11 LMC.
- I. Violation. Nothing in this chapter shall be construed as limiting or prohibiting the city from enjoining the obstruction of or encroachment upon any street or sidewalk or other public place in the city, or the right of the city to seek a writ for the removal of any such encroachment or obstruction which is now or may hereafter be authorized by the general laws of the state of Washington. Enforcement procedures and penalties resulting from violations of this chapter shall be administered pursuant to LMC 12.28.060.
- J. Fees. All application fees for sidewalk obstruction permits shall be established by the City Council and shall be paid prior to issuance of any permit

12.28.040 - Use of planting strips.

Sandwich board signs, garbage cans, merchandise, flower containers, benches and/or newspaper stands may be placed on a planting strip between the street and sidewalk in CS, CSC, RS and I zones; provided, that they are at least twenty feet from any street intersection, are less than fifty inches high and do not constitute a safety hazard in the opinion of the Lynden police and public works departments. No fee shall be charged for the permit which is issued by public works. Use of the planting strip shall not interfere with city stormwater facilities or infiltration functions.

(Ord. 812 § A(part), 1989).

12.28.050 Reserved

(Ord. 812 § A(part), 1989).

12.28.060 - Penalty.

The penalty per violation of this chapter shall be at the rates set forth in the adopted annual budget:

(Ord. 812 § A(part), 1989).

Section 2 – Severability.

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, then the original ordinance or ordinances shall be in full force and effect.

Section 3 – Effective Date.

This ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor, otherwise as provided by law, five 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 20th DAY OF September, 2021.

MAYOR

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_

CITY ATTORNEY

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Development Standards Variance 21-01 – Lot Design of the Cedarbrook Short Plat	
<b>Section of Agenda:</b>	Public Hearing	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<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: _____
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>		
Technical Review Committee Report, Hearing Examiner SSD Decision, Proposed plat map, Application for the design standards variance and supporting information		
<b>Summary Statement:</b>		
<p>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.</p> <p>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 and has approved the request.</p> <p>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.</p> <p>Variance requests must be brought forward to a public hearing and public comment received on the item. Staff has included the Technical Review Committee report which concludes with support for the variance.</p>		
<b>Recommended Action:</b>		
Motion to approve Development Standards Variance Request #21-01 associated with the Cedarbrook Short Plat application.		

# CITY OF LYNDEN



## TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	September 9, 2021
Project Name:	DSV #21-01, Cedarbrook Partners DSV
Applicant:	Shane Bajema and Bob Libolt
Property Owner:	Cedarbrook Partners, LLC
Site Address:	131 E Cedar Drive, Lynden
Zoning Designation:	RS-100
Application Type:	Development Standards Variance
Parcel Size:	N/A
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed Development Standards Variance meets the criteria found within Section 17.17.040 of the Lynden Municipal Code.
Date application determined complete:	June 4, 2021
Date of Publication:	September 8, 2021
SEPA Determination:	MDNS issued on June 16, 2021
Project Description:	Applicant is requesting a Development Standards Variance requesting to vary the requirement outlined in Section 18.14.020 (A) regarding lot design. The applicant is proposing to create three parcels deeper than 3 times their width.

### **Standard Requirements:**

The applicant has met the minimum submittal requirements and the application was determined to be complete on June 4, 2021. The notice of application was published on September 8, 2021.

The City has received proof of certified mailing and the affidavit of posting in accordance with the City's requirements.

### **Project Summary**

Running concurrently with the request for a Development Standards Variance is a 4-lot Short Plat and a Shoreline Substantial Development permit. This report is specifically for the Development Standards Variance, which will be decided on by the Lynden City Council at a hearing date scheduled for September 20, 2021. The decision on the

Shoreline Substantial Development will be made by the City of Lynden’s Hearing Examiner. As per LMC 18.12.010, the decision regarding the Short Plat application is administrative and will be made by the City’s Planning Director subsequent to the findings made on the Shoreline Substantial Development permit and the Variance request.

**Development Standards Variance** The proposal includes the subdivision and site development of the subject property to create three new parcels deeper than 3 times their width. The applicant states that the variance is necessary due to its proximity to the shoreline and critical areas. Running concurrently with the request for a development standards variance is a 4-lot short plat and a shoreline substantial development permit.

LMC Section 18.14.020(A) – Lot Design Guidelines, states that no residential lot shall be created deeper than three times its width unless specifically varied under the provisions of Chapter 17.17 LMC.

LMC 17.17.040 states, where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

- A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;
- B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;
- C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; and
- D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.
- E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.”

**Conclusions**

The Technical Review Committee (TRC) acknowledges that the applicant has provided a response to each of the development standards variance criteria submitted with the

DSV application dated April 30, 2021. The TRC agrees that the site is significantly constrained by critical areas which creates a special circumstance as described by criteria B (listed above). The property could be divided so that the majority of the creek area remains with lot 1 and thus the new lots would meet the proportions outlined in LMC 18.14.020(A). However, consistent with criteria E, the variance allows for a more logical subdivision of property so that each lot owner is responsible for the critical areas within their rear yards and lot 1 is not disproportionately burdened with care of the creek shoreline.

The proposed lot configuration results in lots which are relatively narrow at about 70 feet wide (at the most logical locations for home construction). After the application of side setbacks and avoiding the 150-foot critical area buffer this leaves building envelopes as follows:

- Lot 4 building envelope is approximately 43' x 165'
- Lot 3 building envelope is approximately 48' x 123'
- Lot 2 building envelope is approximately 48' x 105'.

Note that these envelopes apply to living space. Garages and outbuildings can fall outside of this envelope but are also subject to other restrictions.

While these building envelopes are relatively narrow and will likely require architecture that responds specifically to lot dimensions, these lots are not unbuildable or unreasonable dimensions for a single-family home. It is also relevant to note that each lot is over 20,000 square feet in size which is more than twice the minimum size required by the RS-100 zoning category.

The TRC did not identify any aspects of the variance that would be detrimental to the public health, safety and general welfare. It can be noted, however that the general public benefits from the recreational amenity of the Jim Kaemingk Trail which utilizes the subject property and provides public access to the creek's shoreline. Additionally, in association with the subdivision of the property, and outlined in the SEPA findings, the applicant will be required to make life safety improvements on Cedar Drive which will improve traffic flow around two existing tree islands.

Staff recommends approval of the variance under the following conditions and advisory comments listed below:

**Recommended Conditions of Approval**

- 1. Shoreline Substantial Development Permit: All conditions associated with the approval of Shoreline Substantial Development Permit #21-01.
- 2. SEPA Determination: The subdivision of the property is subject to the conditions of SEPA determination issued June 14, 2021. This includes conditions related to critical areas, improvements on Cedar Drive, and trail easement requirements.
- 3. Critical Area Mitigation Required: Consistent with the SEPA determination, future impacts including, but not limited to home construction, vegetation clearing, streambank modification which are proposed within the 150-foot stream buffer are subject to additional critical area review specific to that proposal. This must be noted on the face of the plat.

The applicant has provided an addendum to the March 9, 2020, Critical Areas Report and Mitigation Plan which was previously provided for the Cedarbrook PRD proposal. This addendum recognizes the proposed changes to the project since the PRD proposal was withdrawn and the short plat submitted.

The addendum identifies 1,100+ square feet of impact (associated with the access easement) to the 150 ft stream buffer and proposes 1:1 ratio of enhancement area on the parcel. Staff considers this addendum preliminary and approved adjustments (off-site improvements, planting location) to the mitigation plan are expected based on the short plat review process.

- 4. Recreational Trail Easement Required: The Jim Kaemingk Trail runs through the northeast corner of the subject property running across lots 2, 3, and 4 of the proposed short plat configuration. The applicant will be required to record a public access easement in association with the trail. Additionally, this easement must be recorded in such a way as to, in the future, allow the trail to be shifted west and away from the eroding edge of the Fishtrap Creek. This shift will take place on lots 3 and 4. Final easement configuration to be shown on the face of the plat.

**Advisory Comments**

- 5. Life Safety Requirements: The Lynden Fire Department does not object to the variance request. Be advised, the final plat configuration must meet life safety requirements. This may include additional hydrants, fire truck turnaround, and visible addressing of future residences. Final comments related to life safety will appear on the findings associated with the short plat
- 6. Surveying: Be advised, all surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all

improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use.

7. Impact Fees: Be advised, as a condition of the associated short plat approval, the developer will be required to pay transportation mitigation fees, park and fire mitigation fees at the time of development based on proposed impacts. Contact Planning Staff for a fee estimate.
8. Civil Review Deposit Required: Be advised, there is a review deposit of \$400 per lot, \$4,000 minimum, to review the construction plans and a plat construction inspection deposit of \$500 per lot, \$10,000 minimum, due prior to review and construction, respectively.
9. Maintenance Bonding Requirements: *Be advised, a post construction* maintenance bond for infrastructure in the amount of 10% of the construction costs will be required prior to final approval. Bonding requirements also relate to street trees and any required mitigation planting. Bonds are due prior to final plat approval.
10. Agreement: The Public Works Department will require the applicant to submit an Applicant Checklist and Agreement to Construct (Division 2 and 10 of City of Lynden Engineering Design and Development Standards) as part of future application requests.
11. Water: Be advised that future water system improvements shall meet City standards for extension to and through the property.
12. Sewer: Be advised that future sewer system improvements shall meet City standards for extension to and through the property.
13. Stormwater: Be advised, all improvements and development must meet the City of Lynden and current Department of Ecology requirements for stormwater/drainage management
14. Bonding: Be advised, a post construction maintenance bond for 10% of the public facility construction costs will be required prior to final plat approval. A 150% performance bond is required for all work in the City's right-of-way or on city owned property.

**CITY OF LYNDEN  
HEARING EXAMINER**

**re:** The application of **Cedarbrook Partners, LLC** for a Shoreline Substantial Development Permit in regard to a Short Plat Subdivision proposal

**SSD #21-02**

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION

**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant requests approval for a short plat subdivision where the applicant would subdivide a three acre parcel into four single family lots where the parcel is adjacent to a shoreline in the form of Fishtrap Creek.

Decision: The requested Shoreline Substantial Development Permit is granted, subject to conditions.

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing, in which opportunity was afforded to interested parties to object, comment, or bring information forward.

**FINDINGS OF FACT**

**I. PRELIMINARY INFORMATION**

Applicant: Cedarbrook Partners, LLC

Property Owner: Shane Bajema, Cedarbrook Partners, LLC  
131 E Cedar Drive  
Lynden, WA 98264

Property Location: 131 E Cedar Drive

Parcel Number: 4003174461160000

Legal Description: LOT 1 VAN DYKEN SHORT PLAT AS REC AF 2000201901

Adjacent Water Body: Fishtrap Creek

Shoreline Designation: Shoreline Residential

Statewide Significance: No

Notice Information:

Application Submitted:	May 17, 2021
Notice of Application:	June 16 and July 21, 2021
Notice of SEPA determination:	June 16, 2021
Notice of Hearing:	August 11, 2021
Comment Period Ending:	August 25, 2021

SEPA Review: Lynden SEPA #21-05. Mitigated Determination of Non-Significance (MDNS) issued June 14, 2021

Authorizing Codes, Policies, Plans, and Programs:

- RCW 36.70B Local Project Review
- RCW 43.21C State Environmental Policy Act (SEPA)
- RCW 90.58 Shoreline Management Act (SMA)
- WAC 173-27 Shoreline Management Permit and Enforcement Procedures
- WAC 197-11 State Environmental Policy Act Rules
- LMC 2.09 Hearing Examiner
- LMC 16.08 Shoreline Management Program (SMP), City of Lynden SMP, approved by Dept of Ecology September 10, 2019
  - SMP 1.03 Shoreline Jurisdiction
  - SMP 3.01 SMP Goals
  - SMP 4.03 Shoreline Residential Environment
  - SMP 4.06 Development Standards
  - SMP 6.09 Residential Development
  - SMP 8.00 Administration
- LMC 16.16 Critical Areas Ordinance
- LMC Chapter 17 Land Development
- LMC Chapter 18 Subdivisions
- City of Lynden Manual for Engineering Design and Development Standards

Parties of Record

Bob Libolt, Managing Member

Cedarbrook Partners, LLC  
125 Rosemary Way, Lynden

Dave Timmer, City Planner  
City of Lynden - Planning & Community Development  
300 4th St.  
Lynden, WA 98264

Mark Sandal, Programs Manager  
City of Lynden – Public Works  
300 4th St.  
Lynden, WA 98264

Mel Fullner  
325 Kwanzan Drive  
Lynden, WA

Admitted Exhibits:

1. Staff Report, *dated* 8/20/21
2. SSD Permit Application, 4/30/21
3. SSD Project Plan Map, *dated* 5/10/21
4. Critical Areas Report Mitigation Addendum, *dated* 6/14/21
5. SEPA Mitigated Determination of Non-Significance, *dated* 6/14/21
6. Cedar Drive Neighbors / Traxler Public Comment Letter, *dated* 6/30/21

**II.**

The Applicant is requesting proposing to subdivide a 3-acre parcel at the terminus of the dead-end of East Cedar Drive into 4 single family residential lots. The parcel currently contains a centrally located single family home and detached accessory structure accessed by an approximately 300 ft asphalt driveway. The parcel is characterized by maintained lawn/pasture, scattered large trees, and approximately 450 foot of Fishtrap Creek which forms the eastern boundary of the parcel. Furthermore, a portion of the existing Jim Kaemingk Sr. public trail (including a pedestrian bridge over Fishtrap Creek) crosses the NE portion of the property. The 200 foot zone of shoreline jurisdiction partially extends into the parcels on the northern portion and fully encompasses the southern portion. Similarly, the 150 foot Critical Area Buffer from Fishtrap Creek encompasses the existing home, touches the southern portion of the access easement, and partially extends into the new vacant proposed lots.

**III.**

Hearing Examiner Rules §27(B) allows the Hearing Examiner to issue subpoenas and compel attendance of witnesses— but in this case no party requested the Hearing Examiner to compel a witness or any public comment provider to appear in person and be cross examined. There was no public comment at the Hearing. Public comments were received, reviewed, and discussed at the hearing.

**IV.**

Hearing Examiner Rules §33 grants parties the right to object to evidence and for the Hearing Examiner to rule on such objections. In the case at hand, with full knowledge of the evidence being admitted, no objection was made by any party to any of the exhibits that were admitted into the record.

Admitted Exhibit 1-6 are deemed to be relevant in regard to the facts represented therein.

**V.**

Public comment was given from a neighbor referencing Exhibit 6 indicating that the concerns in the letter had been largely met and satisfied despite concerns about future enforcement of the conditions. The City also addressed how the concerns raised were addressed in the conditions recommended.

**VI.**

The City of Lynden’s Technical Review Committee (“TRC”) made a written specific recommendation to approve the Shoreline Substantial Development Permit in Exhibit 1 and did also review and reference the applicable facts and laws with proposed necessary conditions, in a report entitled “Development Project Report,” dated August 20, 2021 (herein “Staff Report”).

The Applicant has indicated that the Staff Report is factually correct and agreed with all the recommended conditions put forward by the TRC.

Any factual findings set forth in the Staff Report, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference.

**VII.**

Any Conclusion of Law made below which is deemed a Finding of Fact is hereby

adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

**CONCLUSIONS OF LAW**

**I.**

The proposed Application for a Substantial Development Permit to subdivide the parcel adjacent to Fishtrap Creek should be approved if it is consistent with the SMP criteria.

SMP §8.03.01 specifies that unless a project is exempt, no development, use or activity shall be undertaken within the jurisdiction of the SMA without a Shoreline Substantial Development Permit. This project is not exempt under SMP §8.03.02-04, and thus requires a permit.

SMP §8.03.01 specifies that the criteria for granting a Shoreline Substantial Development Permit is that all proposed uses and developments must be consistent with the policies and provisions of the SMP and the SMA, unless an exemption applies. The eight policy goals are outlined in SMP §3.

The proposed permit does in fact allow for a proposed use and development that is consistent with the policies and provisions of the SMA and the SMP.

Subject to the Conditions of Approval attached hereto, the proposed use complies with the SMP criteria, and a Shoreline Substantial Development Permit should be granted with those conditions.

**II.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

**DECISION**

***A Shoreline Substantial Development Permit is hereby granted to Cedarbrook Partners, LLC to, as described in their application: subdivide a 3-acre parcel at the terminus of the dead-end of East Cedar Drive into 4 single family residential lots, on Assessor's Parcel No. 400317 446116 0000, addressed as 131 E Cedar***

**Drive in the City of Lynden, WA. The permit is granted subject to the following conditions:**

**CONDITIONS ASSOCIATED WITH PERMIT**

- 1) Planning and Development
  - a) The proposed shoreline developments shall be consistent with the scope and site plan approved by this SSD permit. Any changes to the proposal may require additional review and approval by City staff and/or the Lynden Hearing Examiner.
  - b) Issuance of this SSD permit does not release the applicant from any other Local, State, or Federal statutes or regulations applicable to the proposed development.
  - c) *Joint Review:* The Shoreline Substantial Development Application for the Cedarbrook Short Plat is subject to joint review with other land use applications. These include a Short Plat Application, a Development Standards Variance request, and SEPA environmental review. Be advised, comments generated in association with other applications will not necessarily be repeated in this staff report but remain applicable to the project.
  - d) *Proposal Maps:* The submitted maps associated with this proposal shall be updated to remove the “112.5 foot Critical Area Buffer” reduction line from all project maps (Short Plat map, Mitigation Map, SSD Map, and any others) as there is no buffer reduction being proposed with this short plat.
  - e) *Critical Area Review:* The “1,181 sq ft Buffer Enhancement Area” as shown in the June 14, 2021 Mitigation Addendum (Mitigation Map) will be moved subject to the final determined location of the Trail Easement (see the Parks Dept comment below). There is sufficient adequate space on the parcel for mitigation plantings.
  - f) *Floodplain:* A portion of the Cedarbrook parcel is within the FEMA mapped floodplain for Fishtrap Creek. No work is being proposed within the mapped floodplain. Note that any future proposed development within the floodplain is regulated by LMC 16.12 Floodplain Management.
  
- 2) Public Works
  - a) *Drainage Plan Required:* A stormwater management plan prepared by a professional engineer and meeting the requirements of the Department of

Ecology's Best Management Practices (including all known and reliable technologies) and the standards approved in the Manual for Engineering Design and Development Standards will be required for this development.

- b) *Erosion Control Required:* An erosion control plan must be included in the drainage plan and construction plans as necessary. This must be designed and constructed in compliance with the Department of Ecology's Best Management Practices (including all known and reliable technologies) and the standards approved in the Manual for Engineering Design and Development Standards.
- c) *Agency Review and Permitting:* The applicant will be responsible for obtaining all required permits from the Department of Ecology and the Department of Fish and Wildlife for all stormwater and construction activity. This may include a Department of Ecology NPDES discharge permit.

3) Fire Safety

- a) A hydrant is required, as proposed, within the plat.
- b) A fire apparatus turnaround is required to be delineated within the existing driveway of the existing single-family house.

4) Parks

- a) Dedication of the public trail easement along the existing portion of trail which crosses the northeastern corner of the property is required as a condition of short plat approval. Furthermore, due to erosion concerns along the existing trail, the easement shall be extended westward away from the creek to allow for future realignment of the trail away from the eroding stream edge. The precise location of the easement extension shall be located below the top of bank and will be determined in the recorded easement document and indicated on the recorded plat.

5) Environmental Impacts

- a) Mitigation measures shall be installed according to the June 14, 2021 Mitigation Addendum (Performance Standards, Plant list, Invasive Plant Removal, Maintenance and Monitoring, and a 5 year surety to be released after Performance Standards are met).
- b) The "Buffer Enhancement Area" as noted in the above Technical Review Committee comments will be moved to accommodate the trail easement location.

- c) Any unanticipated impacts to the environment that occur as part of this proposal will necessitate additional Critical Area Review and revisions to the mitigation plan determined by the project biologist. These changes will require approval by the Planning Department.
- 6) Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop and the area be secured. An Inadvertent Discovery Plan (IDP) has been produced by the applicant. It identifies protocol for contacting the appropriate authorities and protecting archaeological resources if they are inadvertently found during any future construction activity. Project managers and contractors shall be familiar with this IDP prior to any construction occurring.
- 7) If ground disturbing activities encounter human skeletal remains during the course of any construction activity, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the preservation, excavation, and disposition of the remains.
- 8) Variance Contingency
  - a) The Shoreline Substantial Development Permit may be modified in terms of the lot configuration approved by City of Lynden Planning and Community Development without additional hearing *if* the Development Standards Variance if it is not supported by Council. This modification could increase the size of Lot 1 and reduce the depth of Lots 2, 3, and 4 so that the depth does not exceed three times the proposed width. Lots would remain subject to minimum size requirements and all other subdivision standards described in LMC 18.14. The modification will not be allowed if the change includes additional impacts associated with the access drive or utilities.
- 9) Any change or modification in this project in design or scope shall be immediately routed to City of Lynden Planning and Community Development staff for review. Any change in this project will likely require more information and critical areas assessment submittals pursuant to SMP 8.04 REVISION OF PERMITS.

**NOTICE OF POTENTIAL REVOCATION AND PENALTIES**

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation.

Complaints regarding a violation of the conditions of this permit should be filed with City of Lynden Planning and Community Development staff. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute misdemeanors pursuant to LMC 16.16.140 under the municipal code.

FURTHER, in addition to incurring civil liability under the Shoreline Master Program's sections 8.08.03 and 8.09, and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Master Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Master Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any City requirements other than the requirement to obtain a Shoreline Substantial Development Permit. This permit may be rescinded pursuant to SMP 8.08 or RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof. Pursuant to RCW 90.58.143 this permit shall expire within two years of the date of its approval and a new permit will be required if the permittee fails to make substantial progress toward completion of the project for which it was approved, unless the permittee has requested a review, and upon good cause

shown, been granted an extension of the permit pursuant to RCW 90.58.143(2).

**THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL TWENTY-ONE (21) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.180 AND WAC 173-27-100, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5).**

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE LYNDEN HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Lynden City Council or other body as within 14 days as specified by LMC 2.09.040(G); or for shoreline permit applications and revisions which are subject to appeal to the State Shoreline Hearings Board within 21 days pursuant to SMP 8.05.02, RCW 90.58.180, and WAC 461-08.

Dated this 2<sup>nd</sup> day of September 2021



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Rajeev Majumdar, Hearing Examiner



# CEDARBROOK SHORT PLAT

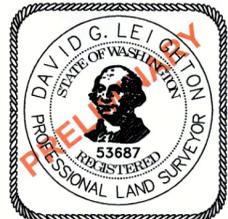
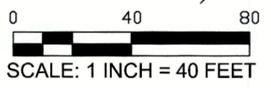
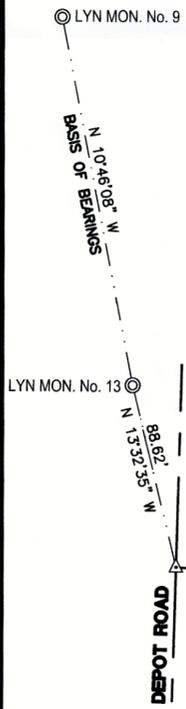
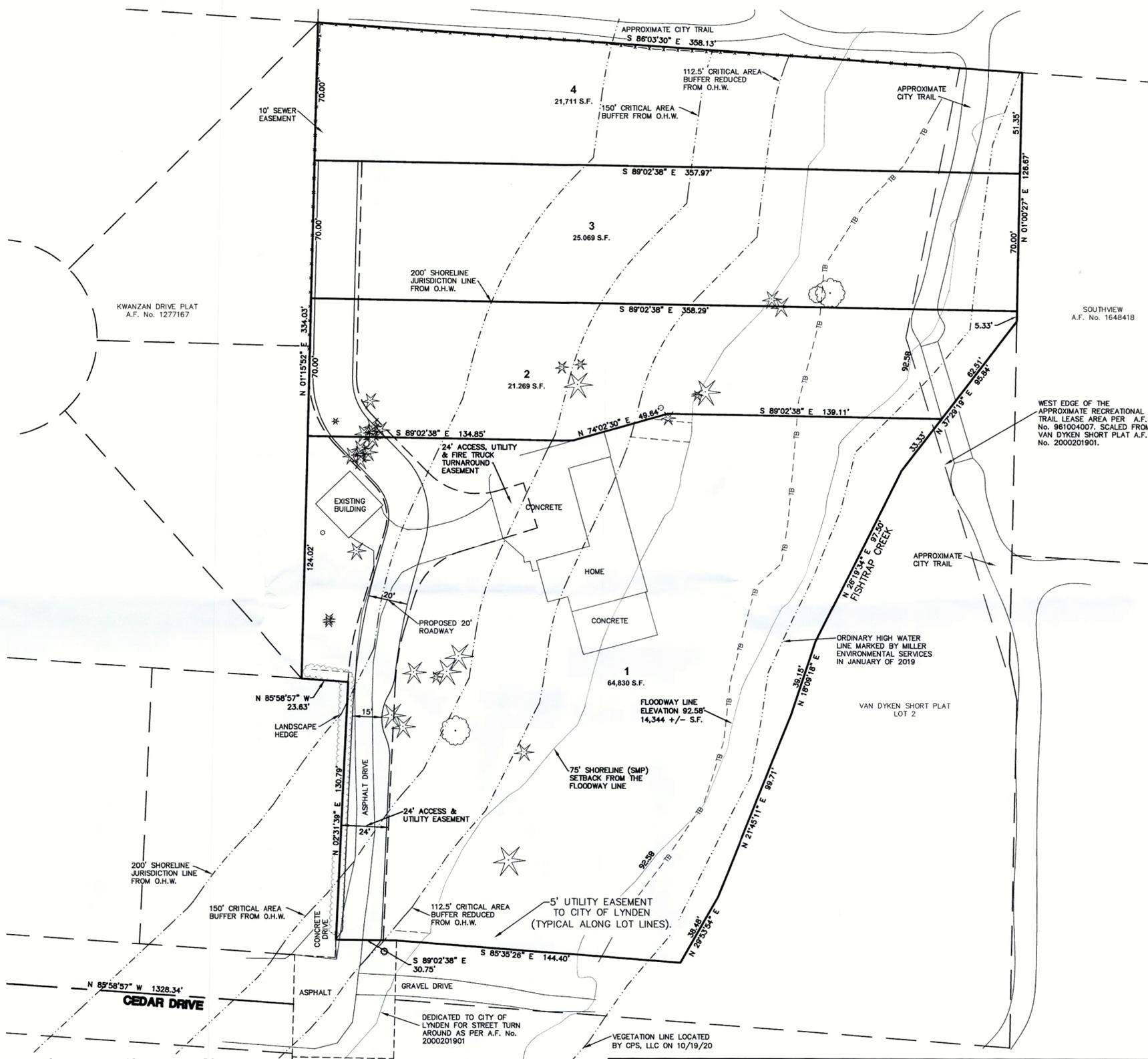
PORTION OF THE SE 1/4, SE 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

### SURVEYOR'S NOTES:

- "O" DENOTES 5/8 INCH REBAR WITH PLASTIC CAP MARKED "CPS PLS 53687" SET BY THIS SURVEY IN XXXX OF 2019.
- "●" DENOTES 5/8 INCH REBAR WITH PLASTIC CAP MARKED "XXXXXX" OR OTHERWISE NOTED FOUND BY THIS SURVEY IN XXXX OF 2019.
- "⊕" DENOTES BRASS DISC IN CONCRETE FOUND BY THIS SURVEY IN XXXX OF 2019 AND HELD FOR STREET INTERSECTION MONUMENTS.
- "□" DENOTES HUB AND LATH SET ON PROPERTY LINE BY THIS SURVEY IN XXXX OF 2019.
- "\*" DENOTES CALCULATED POINT ONLY.
- THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A GEOMAX ZOOM 90 TOTAL STATION WITH A CARLSON SURVEYOR 2 DATA COLLECTOR/FIELD COMPUTER IN XXXX OF 2019.
- THIS SURVEY WAS PERFORMED USING A LEICA RX1250T GPS SYSTEM IN XXXX OF 2019.
- THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE LOT 1 OF VAN DYKEN SHORT PLAT INTO THREE LOTS. COMPASS POINT SURVEY, LLC ASSUMES NO LIABILITY IF THIS SURVEY IS USED FOR ANY PURPOSE OTHER THAN STATED ABOVE.
- THIS SURVEY TIED INTO STREET MONUMENTATION AS SHOWN. THE BASIS OF BEARINGS FOR THIS SURVEY IS VAN DYKEN SHORT PLAT FILED UNDER A.F. No. 2000201901. THIS SURVEY RELIED UPON SAID SURVEY FOR SECTION SUBDIVISION AND LOT DIMENSIONS.
- THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ALL EASEMENTS THAT A CURRENT TITLE REPORT MIGHT REVEAL.

PLAT AREA BREAKDOWN TABLE

	ACRES & SQUARE FOOTAGE	PERCENTAGE
GROSS PARCEL AREA	3.05 AC. / 132,879 S.F.	100%
RESERVE TRACTS	0.00 AC. / 0 S.F.	0%
CRITICAL AREAS	0.17 AC. / 7,685 S.F.	6%
RIGHT OF WAYS (ROWS)	0.00 AC. / 0 S.F.	0%
OTHER INFRASTRUCTURE	0.00 AC. / 0 S.F.	0%
NET DEVELOPABLE	2.88 AC. / 125,194 S.F.	94%
PERCENT ROW & INFRASTRUCTURE	0.00 AC. / 0 S.F.	0%

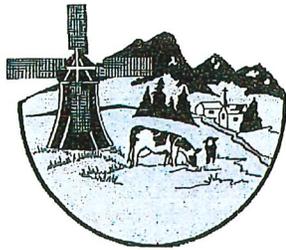


BASIS OF BEARINGS =  
VAN DYKEN SHORT PLAT  
A.F. No. 2000201901  
(CITY OF LYNDEN MONUMENT NETWORK)

Sheet: 2 of 2	Date: 05/10/21
Drawn by: RL	Drawing: CEDARBROOK- 062419.dwg
Reviewed by: RL & DL	Dir: G:\174003- LIBOLT CEDAR ST Crd:174003-LIBOLT CEDAR ST.CRD



**COMPASS POINT SURVEY, LLC**  
523 FRONT STREET, LYNDEN, WA 98264  
PH. 360-354-8320 FAX. 360-354-8321



# City of Lynden

## Development Standards Variance Application

2101

### Property Owner

Name: CADAR BROOK PARTNERS (SHANE BASUMA / BOB LIBOLT)  
 Address: 131 E CADAR DRIVE, LYNDEN, WA 98264  
 Telephone Number: 360 410 1554 Fax Number: \_\_\_\_\_  
 E-mail Address: bajemashane@gmail.com

### Applicant (Agent, Land Surveyor or Engineer)

Name: SHANE BASUMA / BOB LIBOLT  
 Address: 5 Apple  
 Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

Who is the primary contact for this project? This person will receive all official correspondence for the project. Property owner  Applicant

### Property Information

Project Location (street address / block range): 131 E CADAR DR, LYNDEN, WA

### Variance Request:

Section of the Municipal Code or Engineering Design and Development Standards to be varied: \_\_\_\_\_

LMC 18.14.020 A - SEAMING VARIANCE

Identify Desired Result: DESIRED RESULT IS TO ALLOW FOR THE 3 NEW LOTS BEING DESIGNED TO BE CREATED DEAPER THAN 3 TIMES ITS WIDTH.

### DSV Criteria must be 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: [Signature] Date: 4/30/2021

PRE-APPLICATION MEETING DATE: \_\_\_\_\_ HEARING DATE: \_\_\_\_\_

(APPLICATIONS WILL NOT BE ACCEPTED WITHOUT A PRE-APPLICATION MEETING)

FEE'S (DSV ~~\$300.00~~ BASE FEE OR FINAL REVIEW COST) DATE PAID: 5-17-21 RECEIPT # \_\_\_\_\_

350.00 paid 5-17-21

§ 17.17.040. Standards and criteria for granting a variance. \_

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- Where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards of the City of Lynden as listed in Section 17.17.010, the city council shall have power to grant a variance in harmony with the general purpose and intent of the provisions of the development standards so that the spirit of those standards will be observed, public safety secured and substantial justice done. However, the city council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

Criteria applied: This request is not a special privilege, given other vicinity properties are not typically developed in a shoreline condition. The use of vicinity properties is primarily unrestricted by shoreline setbacks and other critical area limitations nor do they have the responsibility for care and upkeep. In this case, allowing for the variance affords practically adding limited use areas within shoreline buffer and watershed to lots rather than awkwardly leaving them associated with the original home and lot which is impractical and unnecessary. Further, the usable portion of space on each new lot is similar in shape, and proportions to vicinity properties. In essence, the unusual "extra" length being proposed allows for inclusion of the limited use portions to the logical lots near and associated with the space and does not constitute a "special privilege" .but rather mitigates unnecessary difficulty in maintaining the resultant spaces.

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;

Criteria applied: The addition of extra length beyond 3 times is necessary due to the special circumstance of surroundings being that each lot is part of and would otherwise only be beside a large portion of shoreline land. Given this extra land is limited in use, it remains to be important however it be associated with its logical nearby lot for care, maintenance and security. Leaving this land associated with another lot such as the original home exposes the new lots to not being able to manage their own surroundings. Examples such as overgrowth in shoreline view corridors, managing invasive species spread and a limit to their ability to maintain a safe perimeter to the east end of the three lots to name a few.

C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare;

Criteria applied: Not only will the granting of such a variance be void of any material detriment to the public health, safety and welfare it actually significantly enhances by contrast the public health, safety and general welfare. Adding the extra length to the lots allows for the eventual owners to responsibly maintain the spaces being added. Such maintenance affords aesthetic, preventative, safe and overall positive care along the Kaemingk trail which is a high use easement across each added portion of the lots. Without adding this to personal property most proximate, one could argue the northern and eastern most portions of the overall plat might be neglected and could foster less than ideal public health and safety concerns along the included trail easement.

D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.

Criteria applied: Again, the granting of requested extra length to each lot has the opposite effect on the property being injured by the variance approval. Existing improvements such as the trail easement / lease area will benefit from having the proximate lot owners care for the space rather than alternatively leaving the space to the not so proximate original residence and owner. I cannot think of any injury to vicinity properties associated with the variance approval.

E. That the variance request is based on sound engineering judgment and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance; and

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography , geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

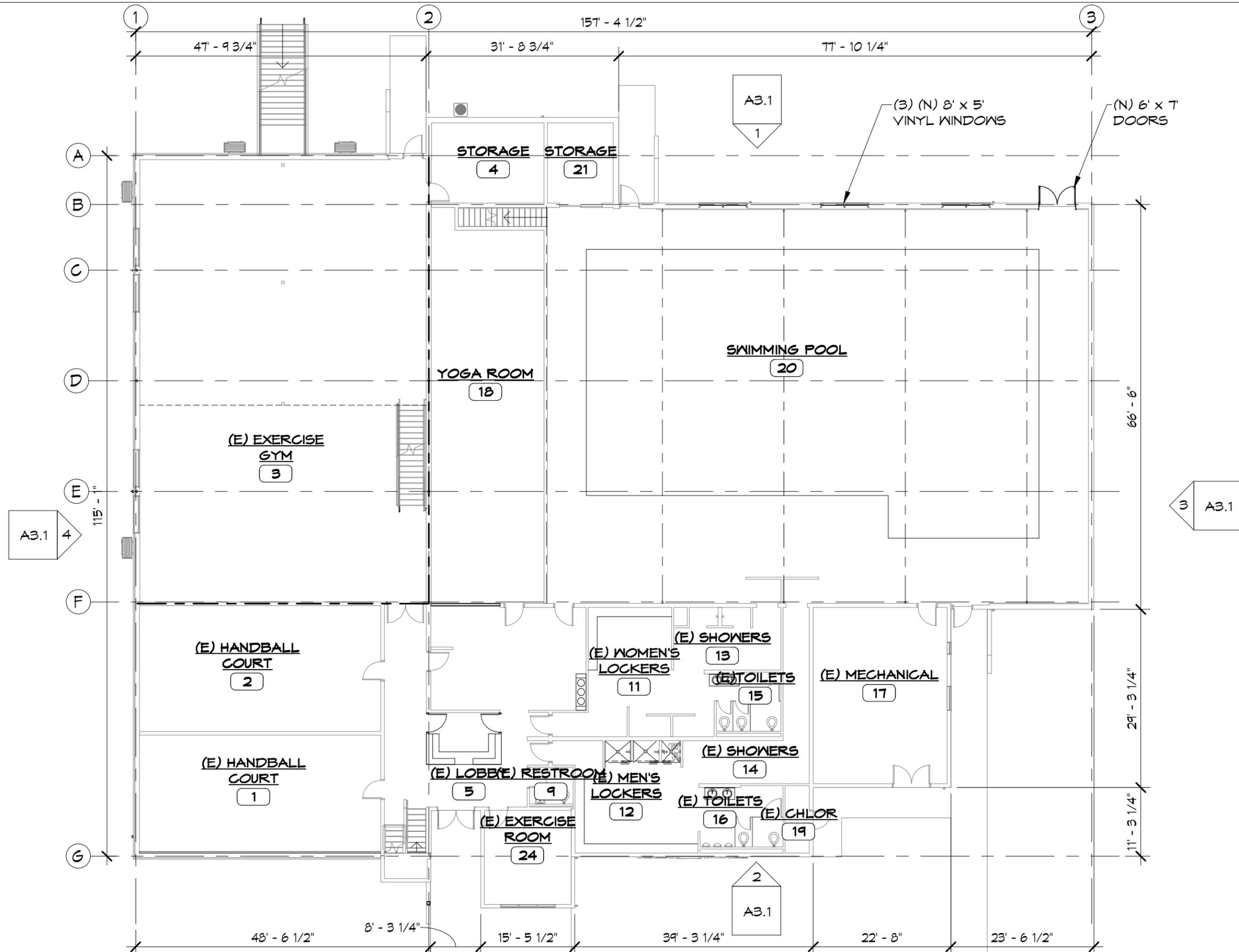
Criteria applied: According to a Critical Areas report written August 19, 2019 by Miller Environmental Services, the area associated with the "extended lots" is all within shoreline and critical area. Essentially within the Fishtrap Creek watershed. Pairing the lots with the area within watershed affords sound judgement and specific accountability for monitoring and maintaining the spreading of non-native invasives such as primarily cutleaf and Himalayan blackberries and reed canarygrass identified in this area in the Miller report. These existing conditions grow out of control if they are not maintained and could not only overcome the existing trail easement but also further unwanted impact to the watershed ecology. I would offer that as a condition of variance approval the development process include a one-time requirement to remove the above named invasive species associated with the expanded lot lengths area.

# CITY OF LYNDEN



## EXECUTIVE SUMMARY – City Council

<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Exterior Siding and Roofing Proposal – Lynden Rec Center	
<b>Section of Agenda:</b>	New Business	
<b>Department:</b>	Public Works	
<b><u>Council Committee Review:</u></b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b><u>Legal Review:</u></b>
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>		
1) Bid for re-siding and re-roofing 100 Drayton Street (Forge Fitness). 2) Architectural renderings of building exterior.		
<b>Summary Statement:</b>		
<p>The wood exterior siding and composition roof on the south side of the former YMCA facility needs repair. After the YMCA ended their lease because of COVID-19 the City entered into a new lease with Forge Fitness to operate a Pool/Fitness Center at 100 Drayton Street. Recognizing the urgent need for repairs to the building exterior and HVAC systems, the City Council at their meeting on June 8, 2021, approved an amendment to the Recreational Facility Lease Agreement allowing for \$250,000.00 per year in reimbursements of out-of-pocket Capital Expenditures on this City Building by the owners of Forge Fitness.</p> <p>A proposal was obtained by the Davidsons from Bay Road Building and Consulting LLC, the only firm available and able to perform this work in a timely manner, in the amount of \$410,269.65 plus Washington State Sales Tax.</p> <p>At their meeting on September 8, 2021, the Public Works Committee reviewed the proposal for siding replacement and recommended including graffiti protection (\$3,000) and concurred to recommend approval to City Council to split this work between 2021 and 2022 to allow the work to be completed within the annual reimbursement limits.</p>		
<b>Recommended Action:</b>		
<p>That City Council approve the Davidsons request for siding and roof replacement at the Lynden Recreation Center and authorize the Davidsons to execute the agreement with Bay Road Building and Consulting LLC in the amount of \$413,269.65 plus Washington State Sales Tax with City reimbursement up to \$250,000 in 2021 and 2022.</p>		



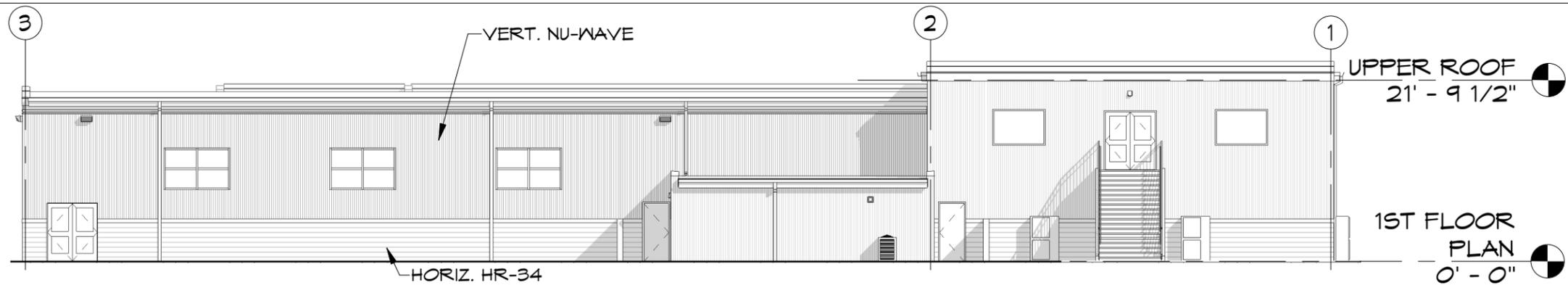
CITY OF LYNDEN  
REC CENTER

26 AUG 21

**1 1ST FLOOR PLAN**  
A2.1 1/16" = 1'-0"

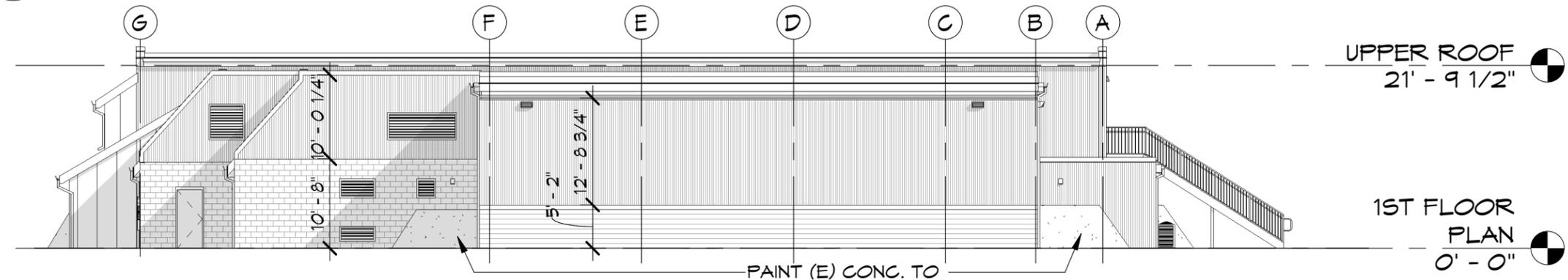


A2.1



**1 EXTERIOR ELEVATION - NORTH**

A3.1 1/16" = 1'-0"



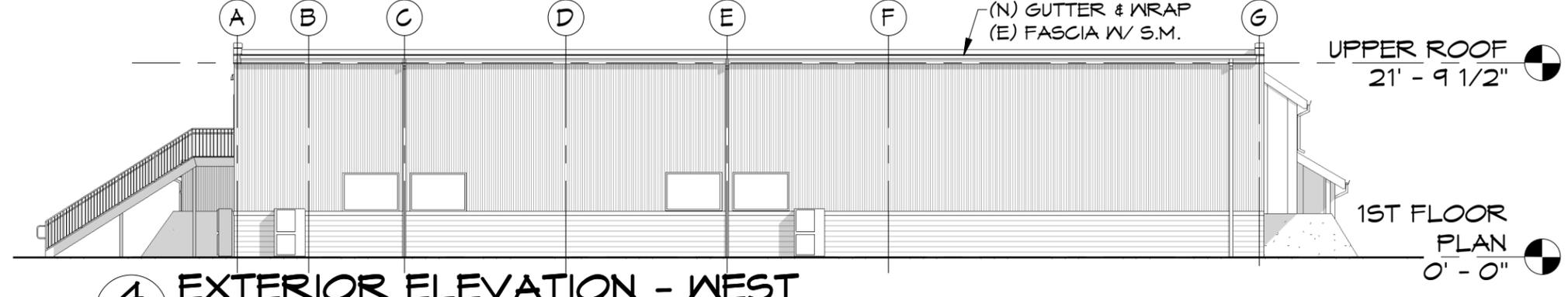
**3 EXTERIOR ELEVATION - EAST**

A3.1 1/16" = 1'-0"



**2 EXTERIOR ELEVATION - SOUTH**

A3.1 1/16" = 1'-0"



**4 EXTERIOR ELEVATION - WEST**

A3.1 1/16" = 1'-0"

26 AUG 21

CITY OF LYNDEN  
 REC CENTER

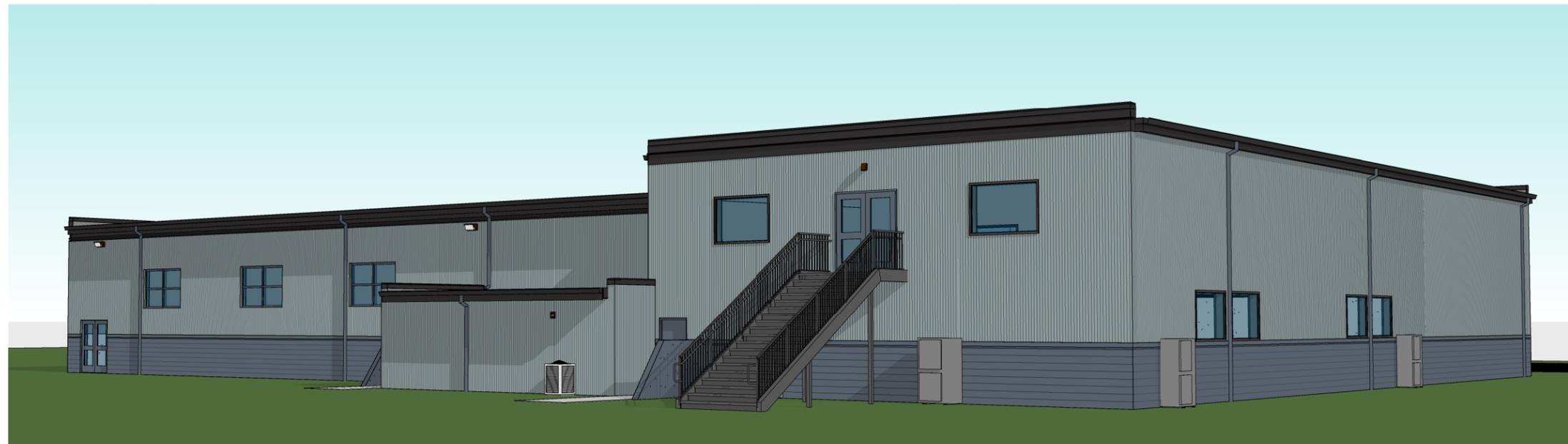
A3.1



**SE CORNER**



**SW CORNER**



NW CORNER

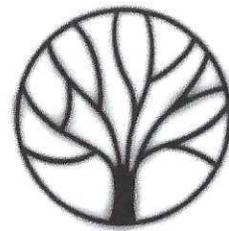


NE CORNER

# Bay Road Building & Consulting LLC

4626 Bay Road, Blaine, WA 98230

360.815.3109 · jat5263@yahoo.com



September 6, 2021

To: Brian & Jeannie Davidson

Re: Forge Fitness Exterior Renovations Rev. #2

Brian & Jeannie, Thanks for the opportunity to continue quoting your projects. Included in this quote for exterior renovation of 100 Drayton St. are the following:

- 1] Demolition and disposal of existing T1-11 siding
- 2] Demolition and disposal of existing composition roof areas on the south side of the building.
- 3] Sheeting all walls and comp roof areas as needed with ½" CDX plywood.
- 4] Waterproofing walls with Sopraseal VP system and roof areas with high temp ice & water dam.
- 5] Re-siding & re-roofing as per specifications included in King Architecture drawings dated 8-26-2021.
- 6] Replacing gutters and downspouts.
- 7] Re-painting CMU wall areas, exterior doors as needed and concrete wing walls.

Base bid: \$410,269.65 + sales tax.

Budget for door in north pool wall: \$10,819.00 + sales tax.

Budget for 3 windows in north pool wall: \$4,851.00 + sales tax.

I don't have dimensions for the proposed patio slabs at this time but would be happy to quote them for you.

Any structural rot repair, replacing of rotten or damaged barge or fascia or replacing or adding to insulation would be billed at \$55.00 per man hour + material cost + 5%.

No landscaping is included in this proposal.

Due to market volatility, this proposal may be withdrawn if not accepted within 25 days.

Accepted Date: ----- Signature: -----

9/14/2021

Addition of anti-graffiti coating to exterior walls. \$3,000 plus sales tax \_\_\_\_\_ initial/date

Best Regards, Jeff Turner

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Loeffler Short Term Rental	
<b>Section of Agenda:</b>	New Business	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<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: _____
	<b>Legal Review:</b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
Planning Commission Resolution, Technical Review Committee Report, Conditional Use Permit Application 21-02		
<b>Summary Statement:</b>		
<p>Steven and Denise Loeffler have applied for a Conditional Use Permit to allow for the operation of a short term (vacation) rental at their home located at 8283 Double Ditch Road. The rental unit is a 640 square foot apartment above their garage. The unit has been in place as an accessory dwelling unit (ADU) for some time. As an ADU it is permitted to accommodate long term rentals. The Conditional Use Permit would allow the unit to also be used for short term vacation rentals.</p> <p>Short term rentals are reviewed like bed and breakfast establishments per Lynden Municipal Code 19.49.020 and 19.49.030. As required by code, the applicant sent notices to surrounding property owners about the proposal and a public hearing was held in front of the Planning Commission on September 9. No public comment was submitted to the city and no testimony given at the public hearing about the proposal.</p> <p>The Technical Review Committee has reviewed the application and created the attached report. The report concludes that the rental unit could operate with little to no impact to the surrounding property owners due to the size and location of the property, the existing surrounding landscape, and the design of the rental unit which all serve to minimize impacts of the proposed rental.</p> <p>The Planning Commission reviewed the application and the criteria as outlined in LMC 19.49. Their hearing also concluded with a recommendation to approve the proposed Conditional Use Permit.</p>		
<b>Recommended Action:</b>		
Motion to approve Conditional Use Permit 21-02 which authorizes the operation of a short-term rental at 8283 Double Ditch Road and to authorize the Mayor’s signature on the Finding of Fact and Conclusion of Law.		



# City of Lynden

## Conditional Use Permit Application

**General Information:**

**Property Owner**

Name: STEVEN LOEFFLER & Denise Loeffler  
 Address: 8283 Double Ditch Rd  
 Telephone Number: 360-393-8284 Fax Number: \_\_\_\_\_  
 E-mail Address: bertloeffler@outlook.com

**Applicant** (Agent, Land Surveyor or Engineer)

Name: Same  
 Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_

Who is the primary contact for this project? This person will receive all official correspondence for the project. Property owner  Applicant

**Property Information**

Project Location (street address / block range): 8283 Double Ditch rd  
 Legal Description (attach if necessary): Lot 2 Nuefeldt short Plat as rec AF 197020/333  
 Assessor's Parcel Number: 400319234/233000 Zoning Designation: \_\_\_\_\_  
 Parcel Square Footage: \_\_\_\_\_ Property Dimensions: \_\_\_\_\_  
 Applicable Sub-Area: \_\_\_\_\_ Building/Structure Size: \_\_\_\_\_  
 Height of Structure: \_\_\_\_\_ Addition Size: \_\_\_\_\_

**Please describe request in detail:**  CUP Criteria must be attached

requesting permission to utilize existing Attached ADU for nighty stays through Air bnb

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.

SUBMITTED BY: Steven Loeffler DATE: \_\_\_\_\_  
 PROPERTY OWNER SIGNATURE: Steven Loeffler DATE: \_\_\_\_\_  
 PROPERTY OWNER PRINTED NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

**Excerpts from Chapter 19.49 of the Lynden Municipal Code**  
Standards and criteria for granting a CUP

- A. Certain uses may be allowed by a CUP granted by the City Council, after it receives the recommendation of the Planning Commission. The Planning Commission shall issue its recommendation after a public hearing on the CUP application. In the application and during the hearing process, it shall be clearly shown by the applicant that the proposed use is not detrimental to the surrounding area or a liability to adjacent uses. For the purpose of this ordinance, the surrounding area, or neighborhood, means those parcels that are in close proximity to the subject parcel.
- B. An application for a CUP may be made only for those uses specified under the conditional use section of the appropriate zoning district.
- C. The Planning Commission and Council shall enter findings to support any recommendation or decision on a CUP application. Conditions may be attached to CUP approvals to mitigate any adverse impacts, protect surrounding properties and to promote the general welfare of the public. A CUP will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings:
1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district;
  2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:
    - i) traffic and pedestrian circulation,
    - ii) noise, smoke, fumes, glare or odors generated by the proposed use,
    - iii) building and site design,
    - iv) the physical characteristics of the subject property
  3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services; and
  4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service.
  5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code.
  6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use.
  7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.
  8. The proposed use is generally consistent with the purposes and objectives of the City Comprehensive Plan and applicable Sub-Area Plan.



### **Special conditions for the approval of a bed and breakfast establishment**

Bed and breakfast establishments require a CUP in all single-family zones and the RM-3 and RM-4 zones and are permitted within the RM-1, RM-2, HBD and CS-1 zones. All proposed bed and breakfast establishments, regardless of zone, shall be required to show compliance with the standards listed below. Bed and breakfast establishments proposed within an area requiring a CUP will be required to meet the standards and criteria listed in Section 19.49.020 as well as those conditions listed below.

- A. A bed and breakfast establishment shall appear as any other single-family residence within the surrounding area. One flat, unlighted sign, not exceeding 16 square feet mounted flush against the building will be permitted. In addition, a single monument sign may be permitted if it meets the requirements for monument signs within Chapter 19.33.
- B. The applicant shall comply with local fire and building codes and guidelines fixed by the city fire chief and building inspector, including, but not limited to adequate exits as required by the Uniform Building Codes. A smoke alarm and a household size fire extinguisher shall be present in each guestroom.
- C. A telephone shall be available for occupant use with emergency numbers and the address of the establishment posted.
- D. Proprietors of the bed and breakfast establishment shall follow health guidelines and regulations of the Whatcom County Department of Health and Washington State regulations.
- E. The applicant shall meet all requirements for the provision of off-street parking. Parking shall be adequately screened from the neighboring properties.
- F. An annual business license shall be required and an inspection fee, in an amount set by resolution of the Lynden City Council, shall accompany each application and renewal. The Public Works Director, Building Inspector or, Fire Chief may require inspections.
- G. Dwellings with more than two rooms available for guests shall be considered transient accommodations and will be subject to regulation by the State Board of Social and Health Services under Chapter 248-144 WAC "TRANSIENT ACCOMMODATIONS."
- H. The operator of the bed and breakfast shall reside on the premises. Owner and operator quarters and guestrooms shall be in the same building.
- I. No other business, service or commercial activity may be conducted on the premises. Breakfast only may be served and no meals may be served to the general public.

Date: 7-8-21 Project: \_\_\_\_\_

RECEIVED



**City of Lynden  
Planning Department**

**Conditional Use Permit (CUP) - Criteria Worksheet**

JUL 08 2021

City of Lynden  
Planning Department

A Conditional Use Permit (CUP) will be granted only if the proposed use complies with the standards and criteria listed below. The applicant shall bear the burden of proof in all CUP proceedings.

**Please describe the proposed use.** Relevant information may include hours of operation, parking requirements, anticipated traffic to the site, and how the site will be developed and used. Attach additional information and plans as needed.

*The proposed use of the designated attached portion of our home will be available and used for overnight or extended periods by individuals reserving through Air bnb.*

**Respond to each of the criteria below with the specifics of the proposed use in mind.** (per LMC 19.49) Identify nearby streets and the uses surrounding the site.

1. The proposed use in the proposed location will not be detrimental to surrounding uses legally existing or permitted outright within the zoning district.

*The Air bnb will not be detrimental to existing areas or neighbors. Designated parking is available and is hidden by a large laurel hedge.*

2. The proposed use, together with proposed mitigation, will not be detrimental to public health or safety and will be compatible with the surrounding area and land uses with respect to the following:

- a. Traffic and pedestrian circulation;

*We live on a dead end street which by virtue has minimal traffic. The Air bnb guest will have no more impact than current family or friends who currently visit.*

- b. Noise, smoke, fumes, glare or odors generated by the proposed use;

*The Air bnb really only tends itself to two maybe three guest, noise levels will not be a problem*

- c. Building and site design; and

*The structure in question is and has existed for over 20 years*

Date: 7-8-21 Project: \_\_\_\_\_

d. The physical characteristics of the subject property.

*See attached photos*

3. The proposed use is supported by adequate public facilities and services unless conditions can be established to mitigate adverse impacts to those facilities or services.

*The proposed Air bnb is fully equipped with Kitchen and bath/shower.*

4. The traffic generated by the proposed use will not cause the traffic circulation system in the vicinity to deteriorate below the adopted level of service.

*The traffic generated by the Air bnb will hardly be noticed by current neighbors. Both neighbors have a steady flow of traffic by their family and friends.*

5. The proposed use complies with the performance standards, parking requirements, height, setback and lot coverage requirements, landscaping standards and other provisions of the Lynden Municipal Code.

*The proposed site has existed for over 20 years and is compliant with code.*

6. There are adequate buffering devices, as specified in the landscape standards, or other topographic characteristics, to protect the adjacent properties from adverse impacts of the proposed use.

*Being the site has existed for over 20 years I have to assume there is no adverse impacts.*

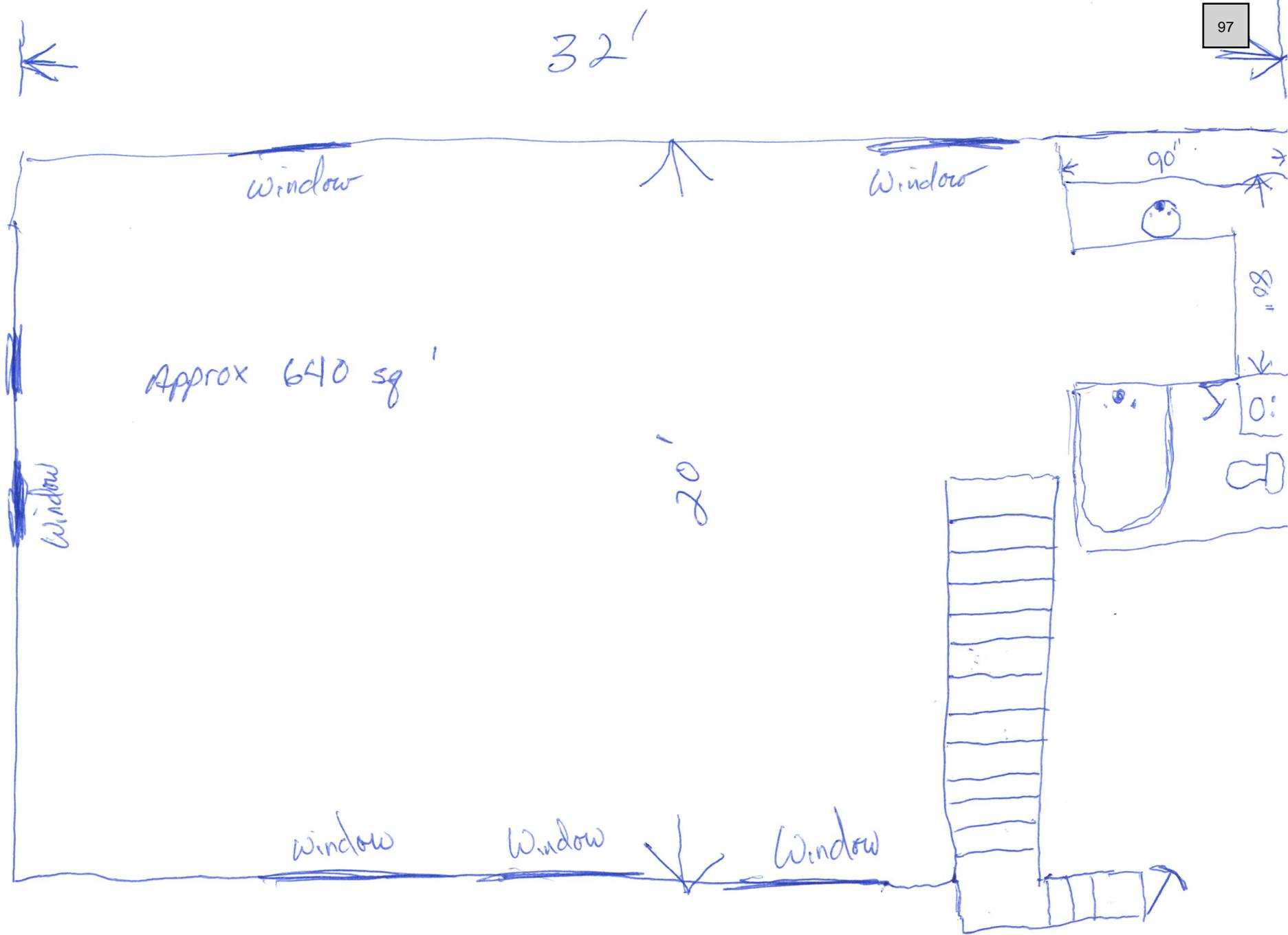
7. The proposed use will not destroy or substantially damage any natural, scenic or historic feature of major importance.

*The proposed use will have no impact.*

Date: 7-8-21 Project: \_\_\_\_\_

- 8. The proposed use is generally consistent with the purposes and objectives of the city comprehensive plan and applicable sub-area plan.

*Yes.*

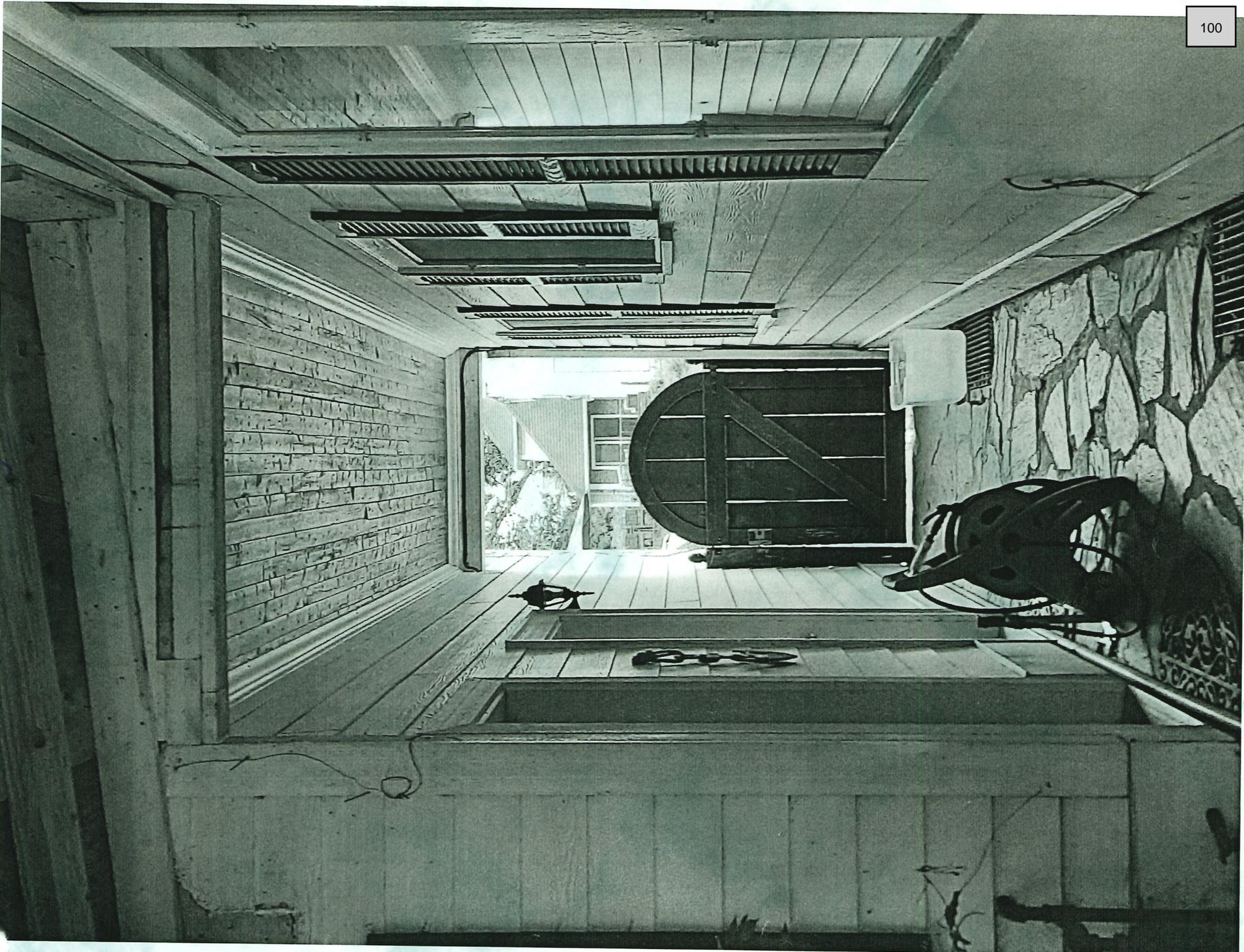




The circled area is approx 30' x 20' with approx 3" thick gravel. This area will accommodate 2 vehicles and cars are hidden by laurel hedge.



Parking area approx. 30' x 20'  
laurel blocks view from the street



Breeze way

*Alloted parking*

101



400

401

8283

8281

404

403

Wood Creek Drive

405

407

approx 32' x 20' x 20'

Facing South, from  
driveway



Facing North, from  
back deck.



CITY OF LYNDEN  
PLANNING COMMISSION RESOLUTION #21-06

**A resolution of recommendation for the approval of  
Conditional Use Permit 21-03, Steven and Denise Loeffler**

WHEREAS, Steven and Denise Loeffler, hereinafter called the "Proponent," submitted a complete application to the City of Lynden, hereinafter called "the City," for a conditional use permit to allow short term Air BNB rentals at their home located within the RS-100 zone.

WHEREAS, the City of Lynden does not have regulations regarding "Short Term Rentals", however, it has been determined by the Planning Director and the Community Development Committee that until regulations are developed, this type of use is best regulated under LMC Chapter 19.49 - Conditional Use Permits and Bed and Breakfast Establishments.

WHEREAS, the application was determined to be complete on July 19, 2021, and the notice of application was published in the Lynden Tribune on August 11, 2021; and

WHEREAS, the Proponent has provided the City with receipts for the certified mailing of all required notices to all property owners within three hundred feet of the subject property together with the affidavits of posting said notices; and

WHEREAS, the Lynden Planning Commission held a public hearing on September 9, 2021, at the City of Lynden, City Hall Annex, 205 4<sup>th</sup> Street, Lynden, Washington, to accept public testimony on the proposed conditional use permit request, and that meeting was duly recorded;

WHEREAS, the City's Technical Review Committee has reviewed the request for the conditional use permit and has provided comments and recommendations to the Planning Commission in a report dated August 17, 2021,

WHEREAS, the Lynden Planning Commission has reviewed the conditional use permit request and has found that the application meets the criteria for granting a conditional use permit under Chapter 19.49.020 and 19.49.030 of the Lynden Municipal Code.

NOW THEREFORE, BE IT RESOLVED by the Lynden Planning Commission to recommend approval by a vote of 4-0, to the Lynden City Council, of Conditional Use Permit #21-03, Steven and Denise Loeffler, subject to conditions of the Technical Review Committee Report dated August 17, 2021.

PASSED by the Planning Commission of the City of Lynden, Whatcom County, by a vote of 4-0, at their regular meeting held on the 9<sup>th</sup> day of September 2021.

\_\_\_\_\_  
Tim Faber, Chair  
Lynden Planning Commission

  
\_\_\_\_\_  
Heidi Gudde  
Planning Director

# CITY OF LYNDEN



## TECHNICAL REVIEW COMMITTEE Development Project Report

Date Issued:	August 17, 2021
Project Name:	CUP #21-02, Loeffler (STR)
Applicant:	Steven and Denise Loeffler
Property Owner:	Steven and Denise Loeffler
Site Address:	8283 Double Ditch Road
Parcel Number	400319-234233
Zoning Designation:	RS-100
Application Type:	Conditional Use Permit
Parcel Size:	N/A
Hearing Type:	Quasi-Judicial
Hearing Objective:	The objective of this public hearing is to determine whether the proposed Conditional Use Permit meets the criteria found within Section 19.49.020 of the Lynden Municipal Code.
Date application determined complete:	July 19, 2021
Date of Publication:	August 11, 2021
SEPA Determination:	N/A
Project Description:	The applicant is requesting a conditional use permit to allow short term rentals, through an Air BNB unit, at their home located within the RS-100 zone.

### **Background and Notification Requirements:**

In accordance with Chapter 17.15 LMC, the proposed action was reviewed for concurrency and should the conditions listed within this report be met, a finding of concurrency will be made in accordance with Section 17.15.060(C)(3).

The City of Lynden regulates short term rentals (such as Air BNB and VRBO) consistent with code provisions for bed and breakfast establishments. This is done recognizing that establishments which offer short term lodging accommodations *could* have an

impact on a neighborhood if certain conditions are not met. As such, a Conditional Use Permit is required as established in LMC Chapter 19.49 - Conditional Use Permits and Bed and Breakfast Establishments.

The applicant has met the minimum submittal requirements and the application was determined to be complete on July 19, 2021. The notice of application was published on August 11, 2021.

The City has received proof of certified mailing and the affidavit of posting in accordance with the City's requirements.

Chapter 19.49.020 (C) states that a Conditional Use Permit will be granted only if the proposed use complies with the standards and criteria listed below. The applicant's response to the criteria have been provided and included in the application package.

**Planning Department Comments:**

1. *Accessory Dwelling Unit:* The ADU must be used as previously permitted and located within the single-family home.
2. *Designated Parking:* Code requires that one parking space be provided for each rentable bedroom in addition to the surface parking required for the home. The applicant has indicated that additional parking is available on-site. Parking on the street is permitted within residential areas however staff recommends that visitors be required to park in the designated parking area on the property rather than the street.
3. *Landscaping / Buffering:* This property is surrounded by landscaping which adequately buffers the use. Staff recommends that no additional screening be required.
4. *Advisory Regulations:* Be advised, in addition to the criteria listed in Section 19.49.020, all proposed establishments shall be required to show compliance with the standards listed under Section 19.49.030 as follows:
  - a. A bed and breakfast establishment shall appear as any other single-family residence within the surrounding area. One flat, unlighted sign, not exceeding 16 square feet mounted flush against the building will be permitted. In addition, a single monument sign may be permitted if it meets the requirements for monument signs within Chapter 19.33.
  - b. The applicant shall comply with local fire and building codes and guidelines fixed by the city fire chief and building inspector, including, but not limited to adequate exits as required by the Uniform Building Codes. A smoke alarm and a household size fire extinguisher shall be present in each guestroom.
  - c. A telephone shall be available for occupant use with emergency numbers and the address of the establishment posted.

- d. Proprietors of the bed and breakfast establishment shall follow health guidelines and regulations of the Whatcom County Department of Health and Washington State regulations.
  - e. The applicant shall meet all requirements for the provision of off-street parking. Parking shall be adequately screened from the neighboring properties
  - f. An annual business license shall be required and an inspection fee, in an amount set by resolution of the Lynden City Council, shall accompany each application and renewal. The Public Works Director, Building Inspector or, Fire Chief may require inspections.
  - g. Dwellings with more than two rooms available for guests shall be considered transient accommodations and will be subject to regulation by the State Board of Social and Health Services under Chapter 248-144 WAC "Transient Accommodations."
  - h. The operator of the bed and breakfast shall reside on the premises. Owner and operator quarters and guestrooms shall be in the same building.
  - i. No other business, service or commercial activity may be conducted on the premises. Breakfast only may be served, and no meals may be served to the general public.
5. *Business License Required:* Be advised, the establishment must obtain a business license from the State of Washington Department of Revenue (DOR) at <https://dor.wa.gov/open-business/apply-business-license>. A City of Lynden license must also be secured. This can be done through the DOR online process.

**Fire and Life Safety**

- 6. The Fire Department has reviewed the application and has no comment.

**Parks and Recreation**

- 7. The Parks Department has reviewed the application and has no comment.

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 8, 2021	
<b>Name of Agenda Item:</b>	Public Works Committee Meeting Minutes September 8, 2021	
<b>Section of Agenda:</b>	Approval of Minutes	
<b>Department:</b>	Public Works	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>		
September 8, 2021 Draft Public Works Committee Meeting Minutes		
<b>Summary Statement:</b>		
Draft minutes for the September 8, 2021 Public Works Committee meeting.		
<b>Recommended Action:</b>		
For Review		

# CITY OF LYNDEN

## PUBLIC WORKS DEPARTMENT

Main Number: (360) 354-3446



### Public Works Committee Meeting Minutes

City Hall – 300 4<sup>th</sup> Street  
 Microsoft Teams Virtual Meeting  
 4:00 PM September 08, 2021

#### Roll Call

Members Present: Mayor Scott Korthuis, Councilors Gary Bode and Ron De Valois

Staff Present: City Administrator John Williams, Public Works Director Steve Banham, Programs Manager Mark Sandal, Building Official Ted Brouwer, Sr. Admin. Assistant Miriam Kentner

Public Present: Gary Vis, Jeannie Davidson, Eddy Martin

#### Action Items

##### 1. **Approve Minutes from August 4, 2021**

De Valois motioned to approve the minutes and Bode seconded the motion.

**Action:**

***The minutes from August 04, 2021 were approved.***

##### 2. **KOA Pond Maintenance**

Eddy Martin, representing Lynden KOA, reviewed his concerns regarding shoreline erosion in the KOA's ponds. At the May 5, 2021 meeting, the Public Works Committee asked staff to review the design regarding maintenance and operation of the City's Greenfield stormwater detention pond. Staff has obtained survey data and is working with an engineer to identify required maintenance or removal of accumulated solids.

The Public Works Committee discussed in depth the previous conversation and the possible impact of the stormwater draining to the KOA property.

**Action:**

***The Public Works Committee concurred to recommend that staff meet with a professional in drainage and erosion control to understand the impact and bring the findings to an upcoming meeting. Staff also suggested Martin work with a contractor that specializes in stormwater drainage and requested that Martin forward a bid for work to staff.***

##### 3. **Franchise Agreement - Cascade Natural Gas**

The City's franchise agreement with Cascade Natural Gas (CNG) expires in January, 2022. CNG recently requested to extend that agreement an additional ten years, per Ordinance No. 1413. This franchise allows Cascade Natural Gas to operate and maintain a natural gas pipeline system within and through the City of Lynden.

**Action:**

**The Public Works Committee concurred to recommend approval to City Council to renew the existing franchise agreement between the City of Lynden and Cascade Natural Gas for an additional ten years.**

**4. Professional Service Agreement - Welch Ecological Services**

Banham presented a proposal from Welch Ecological Services for 2022. Welch Ecological Services provides compliance support for meeting the terms and conditions of the NPDES Phase II stormwater permit. The NPDES permit has additional requirements for 2022, thus the increase in the proposed agreement.

**Action:**

**The Public Works Committee concurred to support the renewal of the Welch Ecological Services agreement.**

**5. Interlocal Agreement, West Lynden Drainage**

Banham presented a draft Interlocal Agreement between the City of Lynden, Bertrand Watershed Improvement District, and North Lynden Watershed Improvement District.

The purpose of this agreement is to set the terms whereby all parties to the agreement will mutually plan, develop, and implement Comprehensive Stormwater and Drainage Plans for the West Lynden Commercial Area and other areas adjacent to the City that serve the best interest of all parties.

**Action:**

**The Public Works Committee concurred to recommend that staff finalize the terms of the Interlocal Agreement and forward it to City Council for approval.**

**6. Lynden Recreation Center- Forge Fitness Siding Proposal**

Brian and Jeannie Davidson, leaseholders of the Lynden Recreation Center, operating as Forge Fitness, are following up on their request for funding to replace the siding. The lease agreement was amended earlier this year authorizing the Davidsons to be reimbursed up to \$250,000 as discussed in the August 4, 2021 Public Works Committee meeting.

Bode presented the exhibits showing the siding and paint colors of the bid proposal. Banham explained the need for removing the berms located around most of the building.

Davidson explained that a base bid for the siding replacement was received from Bay Road Building & Consulting LLC for \$410,269.65 plus sales tax. Only one bid was received as no other companies were able to perform this specific work. This work will straddle 2021 and 2022 calendar years and is expected to use \$250,000 in each year with contingency taken into account.

**Action:**

**The Public Works Committee concurred to recommend forwarding the updated two-year siding proposal to City Council for approval.**

**Information Items**

**7. 2022 Public Works Budget**

Banham distributed the 2022 Public Works Capital Project “Placemat”, which lists all budgeted capital projects and their funding sources, including grant funds, for review.

**8. Front Street Pin Oaks.**

Banham reported Urban Forester Tree Services is currently trimming the Pin Oak trees located on Front Street and is expected to provide feedback on the health of the trees.

**9. Projects**

6th Street Alley Cured in Place Pipe (CIPP) (Sewer)

Staff explained that the 6th Street Alley Cured in Place Pipe project is in progress and noted that pipes located on 6th Street were in poor condition and full of grease which needs to be removed prior to relining. This 2021-funded project may overrun into 2022.

Stormwater Decant Facility

The pre-engineered metal building arrived in August and the steel structural members are complete. The waterline work that will extend the water main along the western property edge of the shop from Badger Road to the south property line. This work is expected to begin the week of September 13th.

Industrial Condensate (Hannegan Road)

Sandal stated that the Small Works Roster project installing sanitary sewer manholes along Hannegan Road is complete.

Pepin Creek Parkway – Alignment

The Committee discussed the street location and cross-section information for the Pepin Creek Parkway project which shifts the parkway to the west within City limits to provide a perpendicular crossing of the creek. The Committee also discussed the use of the runway safety area and Benson Road.

**New Business:**

**9. Sidewalk Ordinance Chapter 19.33 - Signage on Sidewalk**

Banham explained that the amendment to the Sidewalk Ordinance currently under public review will be amended by staff to include a reference to Chapter 19.33 in response to comments by Councilman Lenssen.

**10. Complete Streets Policy**

Banham suggested the need for a Complete Streets Policy, which is required for certain grant funding applications. Complete Streets are designed and operated to enable safe multimodal use.

**Adjournment:** The meeting was adjourned at 5:23 pm

**Next Meeting:** October 6, 2021

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021,	
<b>Name of Agenda Item:</b>		
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Parks	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input checked="" type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>		
ES-Draft Parks Committee Minutes August 23. 2021		
<b>Summary Statement:</b>		
See Next page		
<b>Recommended Action:</b>		
For Council Review		



### PARKS COMMITTEE MINUTES

August 23, 2021

**1. ROLL CALL:**

**Members Present:** Councilors Ron DeValois, and Nick Laninga

**Staff Present:** City Administrator John Williams; Parks Director Vern Meenderinck; Parks Admin. Assistant Nancy Norris; and Brent DeRuyter Park Maintenance Supervisor, Chief Steve Taylor Police Dept.

**2. ACTION ITEMS:**

**A. Approval of Parks Committee Minutes- July 19, 2021**

DeValois motioned to approve the minutes and Laninga approved the motion.

**Action: *The Parks Committee Minutes from July 19, 2021, were approved.***

**B. Come up with a plan to deal with the “rowdy” teenage crowd**

PD will be in attendance. Start trespassing the groups? What can we legally do We do have and ordinance relating to behaviors? (included)

Chief Taylor shared with the Parks Committee the need to call 911 and report miss behaviors and vandalism right away when it occurs. With out record it makes it hard to respond or address a problem or a crime. With the new laws review of the current ordinance needs to be updated relating to behaviors.

**Action: *Parks Committee would like to review other City Ordinances related to this subject, and revise to current ordinance to abide to the new law.***

**C. Fees for park usages for 2022.**

Copy of Resolution 983 from 2018

Last raised in 2018

Definite need to increase field fees (due to huge increase in painting costs).

**Action: *Parks Committee asked that the Parks Department increase the fees and bring forward the recommended fee increases to the September Parks Committee meeting. Parks Committee also asked if an annual fee increase could be included.***



### 3. INFORMATION ITEMS:

#### A. Glennig property

There will be a community planning meeting sometime in Sept.

First splash day was cool and cloudy. About 125 in attendance.

Thoughts on future/further days? Vern will discuss this with Councilor Wohlrab

#### B. Updates on Parks projects:

##### Benson Park

Waiting for final contract with SKHS

Master Plan for the park will begin work in Sept.

##### Dickinson

House occupancy to be discussed -price, duties, house inspection, dates we can expect it to be available?? Once it is determined when the house will be vacated.

Set at time and date for a community meeting regarding plans for the park.

Have been contacted by several neighbors requesting information on what the plans for the park and parking etc. will be.

##### Depot to 8<sup>th</sup> Trail

Purchase agreement with VG Lumber for needed property, this is being drawn up.

#### C. Succession plan

We have 2 applications from within the City of Lynden:

Interviews will take place toward the end of September.

### 4. ITEMS ADDED: None

Meeting Adjourned: 4:56pm.

**NEXT MEETING DATE**

**September 20, 2021**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Public Safety Draft Minutes- September 9, 2021	
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Police	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Public Safety <input type="checkbox"/> Finance <input type="checkbox"/> Public Works <input type="checkbox"/> Parks <input type="checkbox"/> Other: _____	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	Public Safety Draft Minutes- September 9, 2021	
<b>Summary Statement:</b>	Public Safety Draft Minutes- September 9, 2021 attached for review.	
<b>Recommended Action:</b>	For Council review.	

# CITY OF LYNDEN

## POLICE DEPARTMENT

Steve Taylor, Police Chief

(360) 354-2828



### Public Safety Committee Meeting Minutes

Online (Microsoft Teams)

4:00 PM September 09, 2021

#### Call to Order

#### Roll Call

Members Present: Mayor Scott Korthuis and Councilors Mark Wohlrab, Brent Lenssen and Gerald Kuiken

Staff Present: City Administrator John Williams, Chief Mark Billmire, Lieutenant Jeremy Bos, Lieutenant Russ Martin, HR Manager Kim Clemons, Support Services Manager Holly Vega

#### Approval of Minutes

##### 1. **Approval of July 1, 2021 meeting minutes**

The minutes from the July 1, 2021 meeting were approved.

#### Items from the Audience

##### ***Scheduled/Unscheduled***

None.

#### Committee Items

##### 2. **Budget Request Review for Fire and Police**

Chief Billmire noted 3 requested items for the budget.

1. A new command vehicle, F150 crew cab
2. Refurbished LifePak 15 for the backup ambulance
3. Hurst Combi Tool for Engine 75

Mayor Korthuis noted these items are penciled into the budget.

Police Department requested 2 fleet vehicles and 2 additional employees. Mayor Korthuis referenced a meeting with Chief Taylor and supports 1 additional employee for next year and suggests looking at a population-based system of adding employees. Councilors expressed the need for flexibility within that system and staying proactive.

##### 3. **Vaccine Mandate Implications and Waiver**

Chief Billmire advised the potential impacts are unknown at this time until October 18<sup>th</sup> when employees are required to provide either proof of vaccination or exemption waiver. The County could pull the City's EMS License if unvaccinated employees are sent out on calls. Waivers would likely have various levels of review on a case-by-case basis.

#### 4. **Staffing Vacancies at Fire and Police, Civil Service Hiring Lists**

Councilor Lenssen suggests always having an active hiring list at both Fire and Police to fill vacancies. Chief Billmire supports that and suggests amending the civil service rules to allow the list to be active for 1 year instead of 6 months, and an opportunity to extend the list for an additional year.

There is one vacancy at Fire, 7 candidates are scheduled for Chief's interviews tomorrow. Police has one anticipated vacancy and currently open for lateral officer applications, closing September 15<sup>th</sup>.

#### 5. **Public Safety Overtime - July - August 2021**

Fire Dept overtime was high (643 hours) in August due to being down 1 firefighter, and 3 career firefighters tested positive for COVID and were out for an extended period.

Police overtime in July was at 276 hours and 199.5 hours in August. An officer was also out in August with COVID.

### **Fire Department Items**

#### 6. **Fire Monthly Report - August 2021**

August was a busy month with 205 total calls, 47 transports, and 75 overlapping calls. Aid was given 26 times, aid received 12 times, 3 of which no Lynden units were available. COVID response calls ticked up significantly to 13. Fire prevention, inspections, and public education have all decreased due to increased COVID rates.

Chief Billmire received 40 rapid COVID test kits from the County, which are 90-95% accurate, providing results within 15 minutes. The cost is about \$25 each.

#### 7. **Career & Volunteer Hiring & Recruitment Update**

Discussed earlier in Item 2 and 4, Mayor Korthuis informed that 5 part-time positions are penciled into the 2022 budget to help Chief Billmire manage the schedule and fill shifts. The money allocation would be moved from the volunteer pool of funds to the new part-time positions. Volunteer participation has declined recently, and several current volunteers are candidates for the part-time positions. A civil service hiring list should be available in approximately a week.

#### 8. **NWWF Fire/EMS Review**

Personnel from outside agencies worked along with 6 volunteers from Lynden during the 10-day fair. There were over 200 contacts for mostly minor incidents, 3 BLS transports and 2 ALS transports.

#### 9. **IAFF Local 106 - Contract Negotiations Update**

Good progress has been made, about 90% complete. A few financial/benefit items remain to work through but expect to be finished in a few weeks.

**10. Fire Station Renovation Update**

The renovation is still on schedule. There was one hiccup with the alerting system, but the sub-contractor is playing catch up and shouldn't affect the mid-October completion date.

**Police Department Items****11. Police Monthly Report - August 2021**

Lieutenant Martin presented the monthly report for August, noting a busy month as well. Most of the increased statistics were Fair related, including assaults and accidents. Vehicle prowls on the east side of town were unrelated, investigation is going well though.

The Fair went very well with no major incidents. Sharing the command post with Fire and Security allowed for better communication and coordination.

The new detective vehicle is in service, which replaces the last Crown Victoria in the active fleet. Vehicle 51 is expected to return to service after being out for repair.

**Added tems**

12. City Administrator John Williams advised that our current public defender has accepted a position as a judge. An interim contract with North County Public Defense will be on the September 20<sup>th</sup> City Council agenda.

**Adjournment**

Meeting adjourned at 4:48 p.m.

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	September 20, 2021	
<b>Name of Agenda Item:</b>	Calendar	
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<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
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	Outlook Calendar	
<b>Summary Statement:</b>	See next page.	
<b>Recommended Action:</b>	None	

3:00 PM - 4:00 PM

Finance Committee Meeting -- Microsoft Teams Meeting  
Finance Committee Meeting

~~UPDATE: beginning June 21<sup>st</sup> the location will return to the City Hall 1<sup>st</sup> Floor Large Conference room~~

-

**UPDATE: beginning September 20<sup>th</sup> the Finance committee meetings will return online via TEAMS**

Thank you!

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Microsoft Teams meeting

**Join on your computer or mobile app**

[Click here to join the meeting](#)

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Phone Conference ID: 699 053 786#

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4:00 PM - 5:00 PM

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

**September 20, 2021 Continued**

Monday

7:00 PM - 9:00 PM

City Council Meeting- 9/20/2021 -- Online TEAMS Meeting  
[To join via Microsoft Teams click here.](#)

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**September 22, 2021**

Wednesday

All Day

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

4:00 PM - 5:30 PM

Community Development Committee Mtg -- TBD

**September 23, 2021**

Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- Microsoft Teams Meeting  
Hi All, We are rescheduling TRC for this meeting from September 16<sup>th</sup> to September 23<sup>rd</sup>. Meeting will still take place at 2:00.

Thank you!

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Microsoft Teams meeting  
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**September 23, 2021 Continued**  
Thursday

7:00 PM - 10:00 PM                      **Planning Commission Meeting -- Annex Council Chamber**

**September 28, 2021**  
Tuesday

8:30 AM - 9:30 AM                      **Leadership Team Meeting -- TEAMS**

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Microsoft Teams meeting  
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**September 29, 2021**  
Wednesday

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

**October 4, 2021**  
Monday

7:00 PM - 9:00 PM                      **Online City Council Meeting- 10/4/2021 -- Online TEAMS Meeting**  
[To join via Microsoft Teams click here.](#)

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Microsoft Teams meeting  
**Join on your computer or mobile app**  
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**Or call in (audio only)**  
[+1 253-948-9362,,152041605#](#) United States, Tacoma  
Phone Conference ID: 152 041 605#  
[Find a local number](#) | [Reset PIN](#)  
[Learn More](#) | [Meeting options](#)

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