

# CITY OF LYNDEN



## CITY COUNCIL MINUTES OF REGULAR MEETING

September 3, 2019

### 1. CALL TO ORDER

Mayor Korthuis called to order the September 3, 2019 regular session of the Lynden City Council at 7:00 p.m. at the Lynden City Hall Annex.

#### ROLL CALL

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

Staff present: Fire Chief Mark Billmire, Parks Director Vern Meenderinck, Planning Director Heidi Gudde, Public Works Director Steve Banham, City Clerk Pam Brown, City Administrator Mike Martin, and City Attorney Bob Carmichael.

**OATH OF OFFICE** - None

#### APPROVAL OF MINUTES

*Councilor Kuiken moved and Councilor Strengholt seconded to approve the regular council minutes of August 19, 2019 and the special council meeting held August 28, 2019 during the Community Development Committee meeting. Motion approved on a 7-0 vote.*

#### ITEMS FROM THE AUDIENCE

**Scheduled:** None

**Nonscheduled:** None

### 2. CONSENT AGENDA

#### **Approval of Payroll Disbursed – August 16-31, 2019**

Paychex EFT .....	\$288,101.29
City of Lynden EFT .....	\$64,328.04
Warrant Liability .....	\$57,009.08
<b>Subtotal</b>	<b>\$409,438.41</b>
Paychex EFT Liability	\$6,381.58
<b>Total EFT &amp; Other Liabilities</b>	<b>\$415,819.99</b>



**Approval of Claims – September 4, 2019**

Manual Warrants No.	73682	through	-		\$90.00
EFT Payment Pre-Pays					\$61,526.68
				Sub Total Pre-Pays	\$61,616.68
Voucher Warrants No.	73684	through	73708		\$57,420.95
EFT Payments					0.00
				Sub Total	\$57,402.95
				Total Accts. Payable	<b>\$119,037.63</b>

**Contract with Whatcom County – Buildable Land Programs**

The Buildable Lands program was introduced to the City Council in 2018. The State mandated program is one that examines achieved build-out densities and property availability. The report will also strive to account for the constraints of critical areas and market factors. The planning period in focus for the first report is 2016– 2036 with a specific look at achieved build-out data from 2016 to 2020. The final report is due June 2021.

The Planning Department has been working with Whatcom County and their consultant, Community Attributes, to develop methodology for creating the first Buildable Lands report for Whatcom County. State funding was made available for these efforts and was used toward staff time dedicated to the efforts.

The next phase of the project is also eligible for State funds. Similar to the first phase the County has drafted a contract which indicates the City of Lynden’s share and the timeline for the expenditures of these funds. A \$36,432.69 share will be dispersed in two separate allocations as described in Exhibit B of the scope of work. To have access to this funding, staff is requesting council review and approval of the contract.

***Councilor Bode moved and Councilor De Valois seconded to approve the Consent Agenda. Motion approved on a 7-0 vote.***

**3. PUBLIC HEARING**

**Water System Plan Update – Service Area Map**

City staff has worked with RH2 Engineering to finalize the update to the City’s Water System Plan (WSP). Staff has addressed comments from the various public agencies on our draft submittal, and now it’s time to resubmit the plan for final comments and approval. Whatcom County, as part of their review, requires that the City hold a meeting to hear any public comment on City changes to the service area map per the County’s Coordinated Water System Plan.



The map provides several minor clarifications to the service area. The most significant change is that the City is, at the request of the Department of Health, offering to serve water to adjoining water associations with nitrate contamination, should the City first obtain sufficient water rights. These associations are shown on the map as Potential Future Additions to the Retail Service Area (RSA).

Mayor Korthuis opened the Public Hearing at 7:020 p.m.

There were no comments.

Mayor Korthuis closed the Public Hearing at 7:02 p.m.

***Councilor Bode moved and Councilor De Valois seconded to authorize the Mayor to submit the amended Water Service Area Map along with any public comments to Whatcom County per their Coordinated Water System Plan. Motion approved on 7-0 vote.***

#### Ordinance No. 1591-Extension of the Pepin Creek Moratorium

The Pepin Creek moratorium has been in place since September of 2016. It was established in recognition of significant constraints associated with what is now known as the Pepin Creek Sub-area. The City has undertaken significant efforts to examine these constraints and develop solutions which would allow for growth in this area.

It has been determined that the significant infrastructure improvements associated with the creek re-alignment and the improvement of Benson and Double Ditch Roads must be undertaken in a phased approach. Given this approach, the engineering team and the Public Works department is developing a preferred scenario which is expected to be finalized in September. Subsequently, the financial mitigation study, which began in March, can then be completed as it must correspond closely with a specific plan for creek realignment and a corresponding transportation network. This is scheduled to be completed by the end of November 2019.

As these final elements are defined and executed, City staff recommends that the moratorium on construction and development within the Pepin Creek area be continued an additional 6 months from the current date of expiration of September 9, 2019. The moratorium may be lifted earlier as sub-area planning work is completed.

Mayor Korthuis opened the Public Hearing at 7:05 p.m.

Kathy Stanford spoke in opposition to Ordinance No.1591, extension of the Pepin Creek moratorium.

Mayor Korthuis closed the Public Hearing at 7:12 p.m.

***Councilor Lenssen moved and Councilor Bode seconded to approve Ordinance 1591 extending, by six months, the existing moratorium of development on those properties***



*previously identified within the Pepin Creek Sub-area and authorize the Mayor's signature on the document. Motion approved on 7-0 vote.*

#### 4. UNFINISHED BUSINESS- None

#### 5. NEW BUSINESS

##### Public Defender Interim Contract

The City of Lynden provides Public Defender services to individuals who are accused of a crime but who cannot afford an attorney. Our previous Public Defender is no longer able to provide those services. As a result, the City needs to hire an interim replacement while recruiting a permanent Public Defender.

Sharon Westergreen, a qualified attorney living in Everson, has agreed to provide Interim Public Defender services for the City until a permanent replacement can be identified. That search is expected to take 60 to 90 days. The cost and scope of the contract are generally comparable with of the cost and scope of the previous contract the City had with the previous Public Defender.

***Councilor Lenssen moved and Councilor Kuiken seconded to approve the contract for interim Public Defender services. Motion approved on 7-0 vote***

##### Ordinance No. 1592-Amending LMC 10.08.400-Parking and Loading

At the August 7<sup>th</sup> Public Works Committee meeting, Jim Frey, Lynden School District Superintendent, submitted a letter explaining that the District is repurposing the old middle school facilities to be used for early childhood classrooms and district offices. Part of the plan is to include a bus loop and parent drop off next to the school along Main Street. The school district would like to add 8 parallel parking spaces on Main Street. Currently parking is not allowed along the sidewalk next to the school as previously that would have created unsafe circumstances.

At their August 7<sup>th</sup> meeting, the Public Works Committee reviewed this request and directed staff to amend Section 10.08.100 of the Lynden Municipal Code to reflect this change and submit it to the full City Council for approval.

***Councilor Bode moved and Councilor Wohlrab seconded that City Council approves Ordinance No. 1592 - Amendment to Chapter 10.08.100 Parking and Loading and authorize the Mayor's signature. Motion approved on 7-0 vote***



## Downtown Residential Parking Agreement – 610 Front Street

Property owners of 610 Front Street (the liquor store location), (represented as TWIGA NW & RAH) are developing plans for a significant renovation of the existing building. Parking requirements have been a concern as the renovation would add two additional floors and 6 residential units.

Properties located within the Historic Business District are exempt from providing onsite parking. However, when new floor area is created, LMC 19.51.160 states that residential units must provide a minimum of one parking stall per unit. While this is a 50% reduction in what is typically required for residential units, providing onsite parking at this location is a challenge as the building covers nearly the entire the lot.

The property owner is exploring other options including parking agreements with nearby property owners however opportunities are few and the solutions short-term in nature. Recognizing the value of residential development within the downtown core, City staff has worked with the property owners to develop the parking agreement.

The agreement would provide a parking easement for the necessary code required parking stalls. (In this case this equals 3 spaces as the property owner will be providing 3 alley-accessed garage spaces.) The value of the parking easement is outlined in the agreement. In addition, the parking agreement also proposes to offer as many as 6 annual parking passes at a rate set out by the agreement and subject to adjustment.

This issue has been discussed with both the Community Development Committee and the Public Works Committee. Subsequently, the City's legal counsel has created the parking agreement for the Council's consideration.

***Councilor Bode moved and Councilor Lenssen seconded to approve the downtown residential parking agreement with TWIGA NW & RAH, the owners of 610 Front Street, and to approve the Mayor's signature on the document. Motion approved on 7-0 vote***

## Award Contract for Old Elevated Water Tank foundation and Soil Remediation

On May 30th staff solicited bids from seven qualified firms on the City's Small Works Roster for the "Old Elevated Water Tank Foundation and Soil Remediation Project." No bids were received. It was determined that the schedule and limited working days during this busy construction season might be the problem. So, bids were re-solicited on June 28th. Again, no bids were received. After consulting the City Attorney on next steps, negotiations were held with three interested bidders to determine appropriate amendments to the specifications. After making these changes and soliciting small works bids a third time two companies submitted bids - Strider Construction and DeKoster Excavating.

Reichhardt & Ebe Engineering reviewed the bids determined that Strider Construction Company, Inc. provided the lowest responsive and responsible bid in the amount of \$242,048.81, including tax. The



Public Works Committee reviewed the progress on this bid process at their June, July and August meetings; and were sent the bid tabulation prior to this meeting.

***Councilor Bode moved and Councilor De Valois seconded that the city council award the contract for the Old Elevated Water Tank Foundation and Soil Remediation work to Strider Construction Company, Inc., in the amount of \$242,048.81, including sales tax and authorize the mayor to sign. Motion approved on 7-0 vote***

#### Award Construction Contract to DeKoster Excavating, Inc. – 7th Street Rehabilitation Project

Bids for the 7th Street Rehabilitation Project were submitted on August 1, 2019. This project provides for the improvement of approximately 800 linear feet of 7th Street, between Judson Street and Grover Street. Improvements include roadway construction, curb, gutter, driveways; the installation of a storm drain system and water main improvements. Work also includes improvement of 250 feet of existing alley between 6th Street and 7th Street and the reconstruction and restriping of the public parking lot adjacent to 7th Street.

Reichhardt and Ebe Engineering reviewed the 8 bids submitted and determined that DeKoster Excavating, Inc. submitted the lowest responsive and responsible bid for Schedules A, B, C, D and E in the amount of \$1,722,450.83, including tax. This is below the engineer's estimate of \$1.8 million. This project is funded in part by a Transportation Improvement Board (TIB) Street Pavement Restoration Grant of \$750,000.

At their August 7th meeting, the Public Works Committee authorized staff to forward the final recommendation for this project directly to City Council if all the bid criteria were met and TIB gave their approval; which has now been received.

***Councilor Bode moved and Councilor De Valois seconded that City Council awards the contract for the 7th Street Rehabilitation Project to DeKoster Excavating Inc. in the amount of \$1,722,450.83, including tax, and authorizes the Mayor to sign. Motion approved on 7-0 vote.***

#### Ordinance No. 1589- Shoreline Master Program Update

Lynden adopted its first Shoreline Management Program (SMP) in 1975 after the requirement by the State Shoreline Management Act was passed in 1971. The Shoreline Management Act mandates that jurisdictions, including Lynden, regularly review and update their SMP in coordination with the State. Lynden is required to do so before June 30, 2020.

In 2014, City Council approved a draft SMP after a lengthy update process. The changes being proposed in this 2019 update are not substantive in that they do not significantly change the way that the 2014 Program regulates shoreline development. This proposed 2019 update is meant to fulfill the periodic review requirements, to finalize the comprehensive update to the Program and to continue to protect and manage appropriate use along the City's designated shorelines (Nooksack River and Fishtrap Creek).



This update was recommended for approval by the City Planning Commission at a joint Dept of Ecology/City public hearing on July 25. It has received an Initial Determination of Consistency from the Dept of Ecology and has gone through Dept of Commerce review without comment. Public participation on the proposed update has included website updates, published notices, and an April 12, 2019 open house to which every owner within the Shoreline jurisdiction was invited to attend.

***Councilor Lenssen moved and Councilor Strengholt seconded to approve Ordinance 1589 updating the City's Shoreline Master Program and authorizing the Mayor's signature on the Ordinance. Motion approved on 7-0 vote***

#### Dumpster Easement Agreement- 610 Front Street

Property owners of 610 Front Street (the liquor store location), (represented as TWIGA NW & RAH) are developing plans for a significant renovation of the exiting building which would add two additional floors and 6 residential units.

Working with the Public Works Department, properties owners have developed a plan to utilize a portion of City property at the corner of 7<sup>th</sup> Street and Front Street on the day of garbage collection. Utilizing the City's property requires an easement to do so.

The City's legal counsel has created a dumpster easement agreement for the Council's consideration. This issue has been discussed with the Community Development Committee with minor changes.

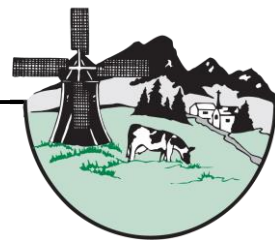
***Councilor Lenssen moved and Councilor Kuiken seconded to approve the dumpster easement agreement with TWIGA NW & RAH, the owners of 610 Front Street, as modified by the Community Development Committee and to approve the Mayor's signature on the document. Motion approved on 7-0 vote.***

#### Restrictive Covenant Agreement – 610 Front Street

Property owners of 610 Front Street (the liquor store location) are developing plans for a significant renovation of the exiting building. The renovation would add two additional floors and 6 residential units.

Notably the western façade of this building is the location of a well-known mural sponsored by the Lion Club and the owners seek to preserve this mural. To facilitate the protection of the mural and the residential addition to the building, the property owners have requested the City to grant a 10-foot "no build easement" along the west property line of the adjacent City-owned parking lot in the form of a restrictive covenant.

The covenant would prevent construction of structures within 10 feet of eastern property line of the City's parking lot property located at the intersection of Front and 7th Street. The covenant would not prevent the City from continued use of the parking lot. The restriction would allow for more appealing architecture at 610 Front Street building by permitting windows on a property-line wall (which would



otherwise be prohibited by fire code). And, the covenant would offer some protection of the existing mural.

This issue has been discussed with both the Community Development Committee and the Public Works Committee. Both committees agreed the mural preservation had value and noted that it would be unlikely that the City would sell or build on the parking lot property. They were therefore amenable to the covenant. As a result, the City's legal counsel has created a restrictive covenant document for the Council's consideration.

***Councilor Bode moved and Councilor Kuiken seconded to approve the restrictive covenant affecting the City's parking lot property located at the intersection of Front and 7th Street and to authorize the Mayor's signature on the document. Motion approved on 7-0 vote.***

#### Temporary Construction Easement – 610 Front Street

Property owners of 610 Front Street (the liquor store location) are developing plans for a significant renovation of the existing building. The renovation would add two additional floors and 6 residential units.

To facilitate the residential addition to the building, the property owners have requested that the City grant a temporary construction easement along their west property line which is adjacent City-owned parking lot on Front and 7th Street. The easement is temporary in nature and consistent with others the City has granted. The City's legal counsel has created a temporary construction easement for the Council's consideration.

***Councilor Bode moved and Councilor Strengholt seconded to grant a temporary construction easement to the property owners of 610 Front Street for the proposed renovation of the existing building and authorize the Mayor's signature on the document. Motion approved on 7-0 vote.***

## 6. OTHER BUSINESS

#### Council Committee Updates

***Mayor Korthuis thanked Councilor Wohlrab for arranging and coordinating the Splash Fest event held on the Glenning Street property on September 2nd, Labor Day. Councilor Wohlrab stated that the event was a success because of the efforts of many, Vern Meenderinck the Park Director, Nancy Norris in the Parks Department, Chief Billmire and the Fire Department Crew.***





## CITY COUNCIL MINUTES OF REGULAR MEETING

Councilor De Valois reporting for the Parks Committee meeting which involved the discussion of:

- Renovations/repairs to the YMCA building
- Berthusen restrooms will not happen this year
- Vandalism in city parks, discussion about possible camera placement and \$500 reward offer
- Fire hydrant spray day (Splash Fest) that occurred on Labor Day
- Bender Field restroom upgrade
- Rotary project at Bender Fields will soon begin
- Ordinance that outlines Parks hours

Councilor Lensen reporting for the Community Development Committee meeting which involved the discussion of:

- 610 Front Street
- Parking & travel trailers
- Trailer Park property on West Front Street
- Development fees
- Protection of agricultural lands

### 7. EXECUTIVE SESSION

Council did not hold an executive session.

### 8. ADJOURNMENT

The September 3, 2019 regular session of the Lynden City Council adjourned at 8:00 p.m.

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Pamela D. Brown, MMC  
City Clerk

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Scott Korthuis  
Mayor