

Ordinance No. 25-1704

AN ORDINANCE OF THE CITY OF LYNDEN RESTORING A PORTION OF
LYNDEN MUNICIPAL CODE TITLE 19.23.110 WHICH WAS INADVERTANTLY
REPEALED BY ORD 23-1669 AND
AMENDING THE SAME TITLE REGARDING THE MAXIMUM HEIGHT
REGULATIONS FOR SMALL-SCALE MIXED-USE DEVELOPMENT

WHEREAS, the Growth Management Act requires that local governments planning under the Act must adopt development regulations which implement the adopted comprehensive plans; and

WHEREAS, the City of Lynden finds it necessary to amend these regulations from time to time to ensure orderly review of zoning regulations within the City; and

WHEREAS, one such amendment to Lynden Municipal Code (LMC) 19.23.110, approved as Ordinance 23-1669 regarding mixed-use applicability to the South Historic Business District, was worded in such a way that it inadvertently repealed a portion of the mixed-use title which should have remained; and

WHEREAS, the City intends to restore these regulations as previously adopted; and

WHEREAS, this ordinance also addresses an amendment to the height of small scale mixed-use development which is applicable only within the Central Lynden and South Historic Business District Subareas; and

WHEREAS, City's mixed-use rules and regulations are intended to encourage thoughtful mixes of residential and commercial development in logical areas of the city by allowing residential development on commercially zoned properties near established commercial centers in a scale which is not detrimental to the surrounding neighborhoods; and

WHEREAS, the maximum building height of small scale mixed-use has been limited to 32 feet in order to be sensitive to the scale of existing development within these subareas; and

WHEREAS, the City also recognizes that these provisions apply to diverse areas of the City in that they include some of the oldest residential neighborhoods, growing church campuses, and active commercial corridors; and

WHEREAS, portions of these applicable subareas such as those adjacent to commercial uses, large structures, or along arterial roadways may be suited to mixed-use structures which are greater than the small scale mixed-use maximum height limitation of 32 feet; and

WHEREAS, a maximum height of 48 feet is used for structures which are 100 percent commercial in nature but this height may not be appropriate for all small-scale mixed use structures; and

WHEREAS, the Conditional Use Permit process has been used elsewhere in the LMC to review site specific conditions and allow additional building height if appropriate to the site and as a tool to require mitigation of impacts if needed; and

WHEREAS, in recognition of this and the previously mentioned inadvertent deletion, the City of Lynden proposes to amend Lynden Municipal Code (LMC) 19.23.110.

WHEREAS, the Lynden Planning Commission held an open record public hearing on November 14, 2024, to accept public comments on the proposed amendments to LMC Chapter 19.23 and recommended adoption to the City Council through Planning Commission Resolution #24-07.

WHEREAS, on January 21, 2025, the Lynden City Council held a public hearing to accept public testimony on the proposed amendments to LMC 19.23 and to consider the matters of record to that date; and

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

SECTION 1

Repeal and replace LMC 19.23.110 in its entirety to read as follows:

19.23.110 Mixed-use centers overlay.

- A. Purpose. The primary purpose of mixed-use projects using the mixed-use centers overlay is to:
1. Provide for a compatible mix of multifamily housing, neighborhood commercial businesses, and semi-public open spaces;
 2. Foster a development pattern offering direct, convenient pedestrian, bicycle, and vehicular access between residences and businesses;

3. Promote a compact growth pattern to efficiently use developable land, and to enable the cost-effective extension of utilities, services, and streets; frequent transit service; and to help sustain neighborhood businesses;
 4. Foster the development of mixed-use areas that are arranged, scaled, and designed to be compatible with surrounding land uses and which provide sensitive transitions between different land uses;
 5. Ensure that buildings and other development components are arranged, and designed, and oriented to facilitate pedestrian access.
- B. Establishment, Scope, and Criteria for Approval of a Mixed-Use Overlay Assignment.

Mixed-use overlay is established in Chapter 2 of the city of Lynden Comprehensive Plan. Locations of the overlay are identified within the city of Lynden Comprehensive Plan land use element according to the criteria described below.

The Mixed-use overlay is assigned to key locations within the city of Lynden which are within one quarter of a mile of existing commercial centers.

Properties are eligible to utilize the provisions within the mixed-use overlay when the following criteria are met:

1. Sub-Area: Properties located within the West Lynden Commerce Subarea are not eligible for mixed-use overlay provisions.
2. Zoning: The property zoned Commercial Services - Local (CSL) or Commercial Services - Regional (CSR).
3. Scale: The property or contiguous group of subject properties applying to construct a project using the provisions of the mixed-use overlay at least one acre in size.
4. Location: The subject property(s) is within walking distance of a qualifying commercial center.
 - a. Walking distance is one quarter mile or less as measured from the edge of the subject property to the geometric center of the qualifying commercial center following a walkable path.
 - b. Qualifying Commercial Centers are identified in the land use element of the city's comprehensive plan. These centers have at least seventeen thousand square feet of gross floor area dedicated to general retail uses and at least six tenants which provide goods or services to the general public.

- c. New commercial centers can be added to the city's list of qualifying commercial centers through an amendment to the land use element of the city's comprehensive plan.
- C. Small Scale Mixed-Use within the Historic Business District (HBD) and Commercial Services - Local (CSL) Zones of the Central Lynden and the South Historic Business District (SHBD) sub-areas.
 - 1. Applicability within the Historic Business District (HBD).
 - a. Properties within the HBD that do not meet the criteria to utilize mixed-use center provisions due to the scale of the property/development site are permitted to establish residential uses on upper stories.
 - b. Ground level space is limited to commercial (nonresidential) uses permitted within the HBD except that up to forty percent of the ground level may be utilized for Type A and Type B adaptable residential dwelling units as defined by the International Building Code in order to facilitate the creation of accessible units for individuals with disabilities.
 - i. Commercial space used to fulfill the commercial component must equal sixty percent of the gross ground floor(s) of the building(s) constructed.
 - ii. The minimum area dedicated to the commercial component shall not include parking garage, mechanical rooms, riser rooms, or storage facilities. Refer to LMC 19.23.020 for permitted mixed-use overlay commercial uses and special requirements regarding storage facilities.
 - 2. Applicability within the Central Lynden and SHBD Sub-areas. The CSL zones of the Central Lynden and SHBD subareas include properties that have traditionally included a wide variety of uses. These sub-areas, as a whole, represent a mixed-use district. To continue to facilitate this mixed-use identity, properties located in the Central Lynden and SHBD sub-areas that are zoned CSL but are not within the Historic Business District (HBD) and do not qualify for mixed-use centers provisions due to the scale of the property are permitted to establish new residential uses in the following situations:
 - a. Mixed Use within a Single Building. Residential units are permitted in the CSL zone, in the Central Lynden and SHBD subareas, on the upper floors of a building which features commercial space on the first floor but overall building height is typically limited to thirty-two feet unless a Conditional Use Permit is granted to allow building height to reach 48 feet. Conditional Use proposals for additional height should demonstrate consistent scale with other nearby structures and address potential impacts of the additional height.

- b. Conversion of an Existing House.
 - i. A second residential attached unit is permitted within or by adding onto structures that were constructed as single-family homes prior to 1992. All renovations and additions are subject to building permit approval. Additional units may also require utility upgrades.
 - ii. If the net lot area is eight thousand square feet or greater, up to three attached units are permitted through the renovation of an existing structure subject to the standards and design criteria listed in this sub-section. This provision is only applicable for parcels that, as of 2023, due to their scale do not qualify for the mixed-use centers overlay.
 - c. New Construction.
 - i. New duplex structures are permitted on CSL zoned properties within the Central Lynden and SHBD sub-areas subject to the design criteria listed in this sub-section.
 - ii. If the net lot area is eight thousand square feet or greater, up to three attached units are permitted as new construction subject to the standards and design criteria listed in this sub-section. This provision is only applicable for parcels that, as of 2023, due to their scale do not qualify for the mixed-use centers overlay.
3. Design Standards for Small Scale Mixed-Use within the Central Lynden and South Historic Business District Subareas: Commercial Services-Local (CSL) Zone

Max Lot Coverage	Max Height of a Building that includes Residential Units	Maximum Building Stories	Front Setback	Rear Setback	Side Setback
60%	32 feet (48 feet with a CUP)	3 floors	15 feet	20 feet	7 feet

- a. Design Review: New multifamily residential construction within the CSL zones in the Central Lynden and SHBD sub-areas require design review board approval when exterior changes are proposed. In addition to the city's design guidelines the following criteria must be met:
 - i. New construction must match the scale of the surrounding structures. Applicants must supply images of adjacent structures when submitting an application to the design review board.

- ii. Although multiple units are accommodated, the architectural styles of new construction must mimic that of a single-family home if the adjoining properties were constructed as single-family homes.
 - iii. Garage access, if proposed, must be from the alley if alley access is available so as to limit garage doors along street frontages.
 - iv. Front entry must be shared between units or distributed to different facades of the building so as to appear as a single-family home.
- b. Residential parking standards within the CSL zones of the Central Lynden and SHBD sub-areas: Two parking spaces are required for the first residential unit, one space per every additional unit.

D. Separation of Uses/Transition Buffers.

To ensure that different land uses are adequately separated, landscape buffers shall be instituted as detailed in LMC 19.61.090. Additionally, setbacks immediately adjacent to residentially zoned properties increase in association with greater building heights as described within this subsection.

E. Mixed-Use Overlay Development Standards

1. A project developing within a Mixed-Use Overlay, that is not meet the description of Small Scale Mixed-Use as described in LMC 19.23.110(C), is subject to the following development standards:

Flex Space: Semi-public Open Space or Neighborhood Commercial Requirement	Residential Recreation al Open Space	Multi-Family Housing and Parking	Max building stories	Max Residenti al Bldg Height	Max Commercial Bldg Height
20% of net lot area as flex space or 60% of cumulative first floor area as commercial use. See LMC 19.23.110(H).	10% of net lot area	70% of lot area	4 floors	52 feet (60 feet with a CUP)	48 feet

2. The maximum height of residential building may be increased to up to 60 feet through the successful approval of a Conditional Use Permit. Additional height proposals must demonstrate how the extra height is appropriate to the scale of the site and how it is mitigated to be cohesive with other buildings on

the site and the surrounding land uses. A stepped-back façade or additional architectural articulation may be required.

3. Setbacks: If an adjacent property has a residential zoning, the setbacks along that property line must be a minimum of 20 feet or half of the proposed mixed-use overlay building height, whichever is greater.

Setbacks from adjacent properties with commercial, industrial, or public use zoning must be a minimum of 15 feet.

Setbacks from street frontage must be consistent with the front setbacks of the underlying CSL or CSR zoning.

4. Building articulation and façade treatment. Refer to LMC 19.23.090 for specific design requirements affecting building articulation and façade treatments.

F. Shared Parking Opportunities in Mixed-Use Commercial Centers

A mix of non-residential and residential uses provide an opportunity to share parking resources as peak demand times for these uses vary.

1. Parking for residential uses must be provided consistent with LMC 19.51 or as established through a Planned Residential Development contract.
2. Parking for non-residential uses may be reduced by 25% when developed in conjunction with the Mixed-Use Center provisions on a shared site.
3. Mobile or seasonal commercial uses such as food trucks or fruit stands that are set up within semi-public flex spaces are not required to provide parking in association with their use.
4. Parking counts may be further reduced from the allowance described in this section only if a parking study demonstrates feasibility. In order for a parking study to be considered, the following standards apply:
 - i. The parking study must be prepared by a professional engineer using industry accepted practices and methodologies.
 - ii. The study shall use acceptable data sources and the data shall be comparable with the uses and intensities proposed for the proposed development activity.
 - iii. If the director determines that the independent parking study more accurately captures the parking need, he or she may adjust the parking requirement in accordance with said study.
 - iv. If the director determines, in his or her sole discretion, that the independent fee calculation study is not accurate, reliable, or

sufficient, the director may reject the said study and requirement parking capacity consistent with that outlined in LMC 19.51.

- v. The director may require the applicant to submit additional or different documentation for consideration at any time. If the director decides that third-party engineers are needed to review the calculation and related documentation, the applicant shall pay for the reasonable cost of a review by such engineers.
- vi. Determinations made by the Planning Director pursuant to this section may be appealed to the Hearing Examiner subject to the procedures set forth in LMC 17.11.

G. Residential Open Space Requirements

Shared open space is required when residential components are introduced to a commercial property through the Mixed-Use Centers Overlay. The open space must include functional amenities that provide outdoor recreational / leisure spaces such as playgrounds, picnic or patio areas, sports courts, off-leash dog areas, or similar. These community open spaces will be reviewed and approved through Design Review Board (DRB) approval process. The DRB will review for the following criteria:

1. Minimum size of the open space is ten percent (10%) of the net lot area. Net lot area, in this case, is calculated by removing the area dedicated to public right-of-way, critical areas and protected critical area buffers from the gross lot area.
2. The minimum open space calculation cannot indoor common areas such as party rooms. Shared, outdoor patios or balconies may be included in the open space calculation but private patios or balconies that are specific to a residential unit may not be included.
3. Inclusion of critical areas in the open space requirement only equal to the space dedicated to a recreational trail or other accessible amenity that has been established via the appropriate permitting process. Proposed improvements for active use within a critical area and/or its buffer are subject to critical area review (LMC 16.16.150).
4. The recreational portions of the open space must be readily accessible and visible to residents. This can include trails, playground, dog park, courts, or similar functional space that is proportionally scaled to the number of residents who will be using the amenity.
5. Open spaces may be gated or otherwise restricted so that only residents can access.
6. Lighting and landscape must be utilized to create safe and attractive spaces.

H. Required Commercial Area or Flex Space

A priority of the Mixed-Use Centers Overlay is to facilitate pedestrian-oriented development and street-level activity. This serves to benefit residents within the development, nearby businesses, and the greater Lynden community. Commercial properties which utilize the provisions of the Mixed-Use Centers Overlay must include neighborhood-oriented commercial uses or reserve space on site called Flex Space.

1. Required interior commercial component.
 - a. If an interior commercial space will be used to fulfill the commercial component, it must equal sixty percent (60%) of the gross ground floor(s) of the building(s) constructed.
 - b. The minimum area dedicated to the commercial component shall not include parking garage, mechanical rooms, riser rooms, or storage facilities. Refer to LMC 19.23.020 for permitted Mixed-Use Overlay commercial uses and special requirements regarding storage facilities.
2. Flex space. If interior commercial uses are not established prior to, or simultaneously with residential components of the Mixed-Use Centers Overlay the project must reserve a portion of the property as Flex Space as described in this section.
 - a. Flex space must equal twenty percent (20%) of the net lot area. Net lot area, in this case, is calculated by removing the area dedicated to public right-of-way, critical areas and protected critical area buffers from the gross lot area.
 - b. A public access easement must be recorded which addresses policing and posting of permitted hours of access.
 - c. A pedestrian oriented plaza or irrigated lawn areas that are visible and easily accessible to the public as well as onsite residents.
 - d. Outdoor seating.
 - i. At least one sitting space for each two hundred fifty (250) square feet of flex space shall be included in the plaza or lawn areas.
 - ii. Seating shall be a minimum of sixteen inches (16") in height and thirty inches (30") in width. Ledge benches shall have a minimum depth of thirty inches (30").
 - iii. Half of the seating must be located in areas that would experience seasonal shade.
 - e. Trash receptacles must be provided in pedestrian areas. These are to be maintained by the property management / owner / association

- f. Trees and landscape. Trees in proportion to on-site plaza and sidewalk space at a minimum of one tree per eight hundred (800) square feet, at least two (2") caliper when planted.
- g. Accommodations for outdoor vending and food trucks must be included. This includes water and electrical hook-up locations.
- h. Stormwater facilities or critical area buffers that prevent pedestrian access may be included under the following provisions:
 - i. Inaccessible areas shall encompass no more than forty percent (40%) of the required semi-public area.
 - ii. Inaccessible areas must act as amenities to the accessible portion of the required area by being visually appealing, providing landscape variety or natural habitat in a way that enhances the pedestrian experience within the remainder of the semi-public area.
 - iii. Additionally, privately-owned public spaces shall include at least three (3) of the six (6) following elements:
 - a. Covered seating options;
 - b. Water features or public art;
 - c. Outdoor dining areas; and
 - d. Decorative pedestrian lighting;
 - e. Children's play structures. This may include interactive sculpture, or traditional playground equipment;
 - f. Other amenities not listed above that provide a public benefit.
- I. **Flex Space Conversion.** The portion of the property designated as flex space semi-public open space may be converted into commercial use. When this occurs, shared parking provisions described in LMC 19.23.110(F) may be utilized. Pedestrian connections must be maintained from the residential structures to any commercial use. Design must be consistent with LMC 19.23.090 and is the development is subject to Design Review.

SECTION 2: 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 ordinance 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, and if, for any reason, this ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION 3: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall be in full force and effect five (5) days after its passage, approval and publication as provided by law.

AFFIRMATIVE VOTE _____ IN FAVOR, AND _____ AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF _____, 2025.

Scott Korthuis, Mayor

ATTEST:

Pam Brown, City Clerk

APPROVED TO AS FORM:

Robert Carmichael, City Attorney