

**ORDINANCE NO. 1605**

**A ORDINANCE TOLLING THE 120-DAY LOCAL PROJECT REVIEW TIMELINE FOR THE DURATION OF THE COVID-19 EMERGENCY**

**WHEREAS**, RCW 36.70B.080(1) requires local governments to establish timelines for review of project permit applications, and states that “The time periods for local government actions for each type of complete project permit application or project type should not exceed one hundred twenty days, unless the local government makes written findings that a specified amount of additional time is needed to process specific complete project permit applications or project types;” and

**WHEREAS**, Lynden Municipal Code (LMC) 17.09.100 implements RCW 36.70B.080 by requiring that “The final decision of the city on a development proposal shall be made within one hundred twenty days from the date of the letter of completeness,” with nine enumerated exceptions tolling the 120-day requirement; and

**WHEREAS**, on January 31, 2020, the United States Department of Public Health and Human Services Secretary Alex Azar declared a public emergency for the novel coronavirus (COVID-19) beginning on January 27, 2020; and

**WHEREAS**, on February 29, 2020, Governor Jay Inslee signed a Proclamation declaring a State of Emergency exists in all counties in the State of Washington due to the number of confirmed cases of COVID-19 in the state and directed that the plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented; and

**WHEREAS**, on March 10, 2020, the Whatcom County Executive, in coordination with the Whatcom County Health Board, declared a Whatcom county public health emergency to reduce the spread of COVID-19 in our community; and

**WHEREAS**, on March 16, 2020, the Mayor of City of Lynden declared that a civil emergency exists due to the outbreak of COVID-19, authorizing the utilization of emergency powers granted under RCW 38.52.070 and LMC 2.10.060; and

**WHEREAS**, on March 23, 2020, the Governor of the State of Washington issued Proclamation 20-25, a stay-at-home order applicable to the general public except employees engaged in essential activities, which do not include processing local project applications; and

**WHEREAS**, on March 25, 2020, the Governor of the State of Washington issued Proclamation 20-28, which requires that gathering subject to the Open Public Meetings Act convene telephonically and limits the agendas of such meetings and hearings to routine and necessary matters or matters related to COVID-19; and

**WHEREAS**, the Governor's proclamations make reviewing some kinds of project applications and holding public hearings on land use projects impracticable or impossible, and

**WHEREAS**, extraordinary measures are required to protect public health, public safety, public welfare, public property, or the public peace within the City of Lynden, and all available resources must be committed to this event and those other limited activities deemed essential; and

**WHEREAS**, for the purposes of this Ordinance, meetings of the Design Review Board that include a public component are open record hearings; and

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

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Lynden as follows:

**Section 1. Tolling of 120-day land use project review timeline in LMC 17.09.100.**

Application of the 120-day project review timeline specified in LMC 17.09.100 is hereby suspended for all project applications filed before or after the date of this ordinance which require an open record hearing that has yet to be held. The operative effect of the suspension shall be tolling of the 120-day project review timeline for all project applications requiring an open record hearing, as described in Section 5.

**Section 2. Staff to continue to work on land use projects.**

During the effective period of this Ordinance, City staff shall continue to process project applications as able.

**Section 3. Scheduled hearings and meetings to be rescheduled.**

All open record hearings on project applications currently scheduled to occur before the expiration of the Governor's "Stay Home, Stay Healthy" proclamation or any extension thereof, shall be rescheduled until dates after the expiration of said proclamation or its extension(s). This Ordinance shall constitute notice that any open record hearing scheduled before the expiration of said proclamation or its extension(s) are hereby cancelled, including:

- April 30, 2020 before the Planning Commission: Hearing on PRD 20-01/Rezone 20-01, the Lionsgate project
- May 5, 2020, before the Design Review Board: DRB Project 20-01, the Parkview West Senior Housing Expansion project

In the event the “Stay Home, Stay Healthy” proclamation is extended, open record hearings scheduled to occur before the expiration of the extension(s) shall be automatically cancelled. Staff may reschedule other open record hearings on land use projects as deemed prudent.

Staff shall send cancellation notices by US First-Class Mail to all members of the public at the address to which notice of the open record hearing was previously sent. When a new date has been chosen for an open record hearing, notice of the new date shall be made pursuant to LMC 17.07.030.

#### **Section 4. Written finding.**

To satisfy the requirements of RCW 36.70B.080(1), this Ordinance constitutes a written finding that additional time will be needed for all planning projects described above due to the COVID-19 emergency and Proclamations of the Governor related thereto.

#### **Section 5. Timing and effect of tolling.**

The tolling of the 120-day project review timeline under Section 1 of this Ordinance shall be retroactive to March 16, 2020, the date the Mayor declared COVID-19 to constitute a civil emergency in the City of Lynden. The period of tolling shall end and the project timeline will recommence running on the date that the Mayor issues a proclamation lifting the COVID-19 emergency.

#### **Section 6. 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 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.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_\_ IN FAVOR \_\_\_\_  
AGAINST, AND SIGNED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney