

ORDINANCE NO. 23-1680

AN ORDINANCE OF THE CITY OF LYNDEN AMENDING THE GENERAL PENALTY PROVISIONS of LYNDEN MUNICIPAL CODE 1.24, ADOPTING A NEW CHAPTER 1.34 TO THE LYNDEN MUNICIPAL CODE ADDRESSING CODE ENFORCEMENT, AND AMENDING NUMEROUS PROVISIONS OF THE LYNDEN MUNICIPAL CODE FOR THE PURPOSE OF INCORPORATING THE REVISED PENALTIES AND CODE ENFORCEMENT SYSTEM.

WHEREAS, the City of Lynden is a noncharter code city operating under the mayor-council plan of government as set forth in RCW Chapter 35A.12; and

WHEREAS, RCW 35A.11.020 authorizes the legislative bodies of code cities to impose penalties for violations of local ordinances; and

WHEREAS, RCW 35A.11.020 further provides that such penalties may constitute a misdemeanor, a gross misdemeanor, or a civil violation; and

WHEREAS, RCW 7.80.010 confirms that a city may establish by ordinance its own system for hearing and determining civil infractions; and

WHEREAS, the Lynden Municipal Code currently contains a range of different penalty provisions; and

WHEREAS, the City desires to establish set penalty amounts that may be adopted by reference in other provisions of the municipal code; and

WHEREAS, the City also desires to establish a uniform process for enforcing violations of certain titles of the municipal code; and

WHEREAS, to implement the new penalty and enforcement process, it is necessary to amend numerous existing penalty provisions throughout the Lynden Municipal Code; and

WHEREAS, the attached **Exhibit A**, which is hereby fully incorporated by reference, shows the proposed revisions to the municipal code in redline; and

WHEREAS, the foregoing recitals are material findings and declarations of the City Council of Lynden.

NOW, THEREFORE, LET IT BE ORDAINED BY THE CITY COUNCIL OF LYNDEN AS FOLLOWS:

SECTION 1: Lynden Municipal Code Chapter 1.24 titled "General Penalty and Enforcement" is hereby repealed in its entirety and a new Chapter 1.24 titled "General Penalty" is hereby adopted, which shall read as follows:

1.24.010 – Classification of Penalties.

Penalties are classified as follows:

A. *General Penalty.* Whenever the performance of any act is specifically prohibited or required by any law or section within this code and no penalty for violating such law or section is imposed, the penalty for performance of such required act or omission shall be a civil infraction.

B. *Civil Infraction*. Unless otherwise provided by law or this code, a person found guilty of committing a civil infraction under this code shall be subject to a monetary fine of not more than \$500.00. Statutory assessments shall be imposed in addition to any monetary fine for a civil infraction. A civil infraction may also be referred to within this code as a “civil violation.”

C. *Misdemeanor*. Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, or by a fine in an amount fixed by the court of not more than \$1,000 or by both such imprisonment and fine. (RCW 9.92.030). Statutory assessments shall be imposed in addition to any monetary fine for a misdemeanor offense.

D. *Gross Misdemeanor*. Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine (RCW 9.92.020). Statutory assessments shall be imposed in addition to any monetary fine for a gross misdemeanor offense.

1.24.020 - Continuing Offenses.

Each day during any portion of which a violation of any provision of this code is committed or is permitted is deemed to be the commission of a separate offense.

1.24.030 – Principles of Liability.

The following statutes of the state of Washington are adopted by reference, as presently constituted or hereafter amended, and made a part of this code:

- A. RCW 9A.08.010, General requirements of culpability
- B. RCW 9A.08.020, Liability of conduct of another, complicity
- C. RCW 9A.08.030, Criminal liability of corporations and persons acting under a duty to act on their behalf.

1.24.040 – Penalties for Civil Infractions – Designated.

Specific civil penalties are adopted by reference in other sections of this code with a specific civil penalty to be imposed for each category of civil infraction as follows:

Category	Penalty
C-1	\$25
C-2	\$50
C-3	\$75

C-4	\$100
C-5	\$250
C-6	\$300
C-7	\$350
C-8	\$500
C-9	\$1,000

SECTION 2: A new Lynden Municipal Code Chapter 1.34 titled “Compliance and Enforcement” is hereby adopted, which shall read as follows:

1.34.010 – Title.

This chapter shall be called “Compliance and Enforcement.”

1.34.020 – Applicability & Purpose.

A. This chapter sets forth the procedures for enforcing violations of the following provisions of the Lynden Municipal Code as now in effect or hereafter amended:

- Title 8 (Health and Safety), Except for Chapter 8.16 (Litter);
- Title 12 (Streets, Sidewalks and Public Places);
- The following provisions within Title 13 (Public Utilities): 13.24.050; 13.24.130; 13.24.140; 13.24.150; 13.24.160(A), (B), (C), (E), and (F).
- Title 15 (Building and Construction);
- Title 16 (Environmental Policy);
- Title 17 (Land Development);
- Title 18 (Subdivisions);
- Title 19 (Zoning); and
- Such other code provisions, ordinances, resolutions, or public rules that adopt this chapter by reference.

C. The provisions of this chapter are in addition to any other provisions of this code and may be enforced separately from such other provisions or in combination therewith. The City shall have any and all remedies available to it in law and equity.

D. It is the express and specific purpose and intent of this chapter to provide for and promote the health, safety, and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be specially protected or benefitted by the terms of this chapter.

E. Nothing contained in this chapter is intended or shall be construed to create or form the basis of any liability on the part of the City, its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

1.34.030 – Definitions.

All definitions contained in LMC 17.01.030 apply to this chapter. In addition, the following words and phrases used in this chapter shall have the following meanings:

- A. “Abate” means to repair, replace, remove, destroy, demolish, board-up, or otherwise remedy a condition which constituted a civil infraction by such means, in such a manner, and to such extent as the Enforcement Official determines is necessary in the interest of the general health, safety, and welfare of the community.
- B. “Enforcement Official” means the City official designated by code with enforcement authority of a particular title, chapter, section, or provision thereof and may include any of the following:
 - (1) The Chief of Police
 - (2) The City Administrator
 - (3) The Director of the department generally responsible for enforcement of the Lynden Municipal Code provision which is the subject of a violation including, but not limited to:
 - i. The Public Works Director (for violations of Titles 12-13)
 - ii. The Community Development Director (for violations of Titles 15-19)
 - iii. The Parks Director (for violations of Chapter 12.24)
 - (4) A Code Enforcement Officer, serving under the direction of the Community Development Director or Building Official;
 - (5) Any employee of the City of Lynden designated to act as an enforcement official by any of the officials identified in subsections B (1)-(3) above. Any such designation shall be made in writing. The written record of all such designations shall be maintained by the designating Enforcement Official.

Any of the officials identified in subsections B (1) – (5) above may act as an Enforcement Official pursuant to violations of Lynden Municipal Code Title 8.

- C. “Determination of Compliance” means a written statement from the City that the violation(s) identified in a Voluntary Correction Agreement, Civil Regulatory Order, or other notice has been sufficiently abated, remediated, or otherwise resolved.
- D. “Emergency” means a situation or civil violation which, in the opinion of an Enforcement Official, requires immediate action to prevent or eliminate an imminent threat to the public health, safety, or welfare of persons or property.

- E. "Hearing Examiner" means the Lynden Hearing Examiner and the office thereof established pursuant to Lynden Municipal Code Chapter 2.09.
- F. "Person Responsible for the Violation" means the person or persons, firm, corporation, partnership, joint venture, limited liability company, or other legal entity who caused, or is reasonably believed by an Enforcement Official to have caused, the violation and/or the owner, lessor, tenant, or other person entitled to control, use, and/or occupy the property and/or premises where a civil violation occurs.
- G. "Remediate" means to restore a site to a condition that complies with critical area or other regulatory requirements as they existed before the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition which does not pose a probable threat to the environment or to the general public health, safety, or welfare.
- H. "Violation" means:
 - (1) An act or omission contrary to any regulation or provision of the Lynden Municipal Code; and
 - (2) An act or omission contrary to the conditions of any permit, notice, order, or stop work order issued pursuant to any such regulation or provision.

1.34.035 – Declaration of Public Nuisance.

A. *Public Nuisance.* All violations of the following are determined to be detrimental to the public health, safety, and environment, and are declared to be public nuisances:

1. The following provisions within Title 8 (Health and Safety): 8.04.025; 8.04.040; 8.08.010; 8.12.010; 8.12.020; 8.16.020; 8.16.030; 8.20.060.
2. Any act or omission declared to be a nuisance under the following provisions of Title 8 (Health and Safety): 8.16.060; 8.20.010; 8.20.020; 8.24.010; 8.24.015; 8.24.016.
3. The following provisions within Title 12 (Streets, Sidewalks and Public Places): 12.05.030(G) and (H); 12.08.010(B) and (D); 12.16.010; 12.16.020; 12.16.025; 12.16.060; 12.16.065; 12.20.010; 12.24.040; 12.24.050; 12.24.060(E); 12.24.120; 12.24.165(H), (I), (J), (L), and (P); 12.28.010; 12.28.040; 12.40.040; 12.40.050.
4. The following provisions within Title 13 (Public Utilities): 13.12.045(C), (E), and (F); 13.12.060; 13.12.070; 13.12.080; 13.12.090; 13.12.100; 13.12.110; 13.12.120; 13.12.130; 13.12.140; 13.12.150(E); 13.12.160; 13.12.170; 13.12.180; 13.12.280; 13.12.290; 13.12.300(C) and (D); 13.12.310; 13.12.460;

13.12.510; 13.12.540; 13.24.050; 13.24.130; 13.24.140; 13.24.150;
13.24.160(A),(E) and (F).

5. LMC 13.24.160(B)&(C), if the Director determines the discharge is causing pollution, or likely to cause pollution, of surface or groundwater.
6. The following provisions within Title 15 (Building and Construction): 15.02.040; 15.03.040.
7. The following provisions within Title 16 (Environmental Policy): 16.12.040; 16.12.120; 16.12.130; 16.12.135; 16.12.140; 16.16.060; 16.16.140(C); 16.16.370(A); and
8. The following provisions within Title 19 (Zoning): 19.31.020; 19.33.080; 19.39.040; 19.63.050; 19.63.060(A) and (C); 19.66.020.

B. List Not Exhaustive. The list of public nuisances contained in Section A above is not exhaustive. Nothing in this section shall be construed to limit or restrict the City's ability to (1) declare nuisances, or (2) impair any enforcement authority the City would otherwise have to address a nuisance, or other violation of the Lynden Municipal Code, including abatement thereof.

1.34.040 – Enforcement, Authority, and Administration.

A. In order to discourage public nuisances and otherwise promote compliance with applicable code provisions, an Enforcement Official may, in response to field observations, investigations, or reliable complaints, determine that violations of the provisions listed in LMC 1.34.020, or any other provision which adopts the compliance and enforcement scheme established in Chapter 1.34, have occurred or are occurring, and may:

- (1) Enter into a Voluntary Correction Agreement with a person responsible for the violation(s);
- (2) Issue Civil Regulatory Orders, assess civil penalties, and/or recover costs as authorized by this chapter and/or other applicable code sections;
- (3) Require abatement by the Person Responsible for the Violation or undertake summary abatement and charge the reasonable costs of such work as authorized by this chapter;
- (4) Order work stopped at a site by means of a stop work order, and if such order is not complied with, assess civil penalties as authorized by this chapter and/or other applicable code sections;
- (5) Suspend, revoke, or modify any permit previously issued by the City or deny a permit application as authorized by this chapter and/or other applicable code sections when other efforts to achieve compliance have failed;
- (6) Forward a written statement providing all relevant information relating to the violation to the office of the City Attorney with a recommendation to prosecute violations; and

(7) Require any other remedy available by law through the Hearing Examiner and/or court of applicable jurisdiction in Whatcom County.

B. The City has established its own Civil Infraction system for the enforcement of civil violations and nuisances pursuant to the authority of RCW 35A.11.020 and RCW 7.80.010(5), as presently enacted or hereafter amended.

C. The procedures set forth in this chapter are not exclusive. These procedures shall not in any manner limit or restrict the City from remedying or abating violations of the titles listed in LMC 1.34.020 in any other manner authorized by law.

D. *Obligation of Person Responsible for Violation.* The Person Responsible for the Violation shall achieve full code compliance. Payment of civil penalties, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing corrective work and/or performance of actions required for code compliance and/or having the property brought into compliance to the extent reasonably practicable under the circumstances, as determined by the Enforcement Official.

E. *Right of Entry.*

- (1) Nonemergency Permissive Entry. The Enforcement Official may, (1) with the consent of the property owner or other responsible person, (2) pursuant to a lawfully issued administrative or criminal warrant, or (3) as otherwise authorized by law, enter such property to determine whether a civil violation has occurred or is occurring, and/or to enforce any provision of the Lynden Municipal Code.
- (2) Refusal of Entry. If entry is refused or cannot be obtained, the Enforcement Official may apply to a court of competent jurisdiction to obtain entry, and/or shall have recourse to every remedy provided by law to secure entry.
- (3) Emergency Entry. In the event of an Emergency, the Enforcement Official may enter onto property without obtaining consent or a warrant but shall advise the owner or responsible person of such entry as soon as practicable thereafter.
- (4) Other Authority Not Restricted. Nothing in this section shall be construed to limit or restrict a right vested, by other legal authority, in officers or agents of the City to enter upon private or public property for any lawful purpose.

1.34.050 – Voluntary Correction Agreement.

A. *Applicability.* This section applies whenever the Enforcement Official determines that a violation has occurred or is occurring.

B. *General.* The Enforcement Official shall have the discretion to secure voluntary correction by contacting the Person Responsible for the Violation, explaining the violation, and requesting correction.

C. *Issuance of Voluntary Correction Agreement.* A Voluntary Correction Agreement may be entered into between the Person Responsible for the Violation and the City, acting through the

Enforcement Official. The Mayor is authorized to sign a Voluntary Correction agreement on behalf of the City.

D. *Content.* The Voluntary Correction Agreement is a contract between the City and the Person Responsible for the Violation under which such person agrees to correct the violation within a specified time and according to specific conditions. The Voluntary Correction Agreement shall include, at a minimum, the following:

- (1) The name and address of the Person Responsible for the Violation;
- (2) The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
- (3) A description of the violation(s) and a reference to the provision(s) of the City code which has been violated;
- (4) The necessary corrective action to be taken, and the date by which the correction must be completed;
- (5) An agreement by the Person Responsible for the Violation that the City may inspect the premises as may be necessary to determine compliance with the Voluntary Correction Agreement;
- (6) The amount of the minimum civil penalty that will be imposed if the terms of the Voluntary Correction agreement are not complied with; and
- (7) A statement that if the City determines that the terms of the Voluntary Correction Agreement are not complied with, the City may impose any remedy authorized by this chapter, including:
 - I. Assessment of the civil penalties identified in the Voluntary Correction Agreement;
 - II. Abatement of the violation at expense of Person Responsible for Violation;
 - III. Assessment of all costs and expenses incurred by the City to pursue code enforcement and to abate the violation, including legal and incidental expenses; and
 - IV. Suspension, revocation, or limitation of any related permit(s).
- (8) A statement that the Person Responsible for the Violation knowingly waives the right to a hearing.

E. *Right to a Hearing Waived.* In consideration of the City's agreement to enter into a Voluntary Correction Agreement, the Person Responsible for the Violation shall have no right to an administrative or judicial hearing, under this chapter or otherwise, regarding the matter of the violation or the required corrective action.

F. *Administrative Review of Compliance.* After the Person Responsible for the Violation has given written notice to the City of completion of the corrective action required under the Voluntary Correction Agreement, the Enforcement Official shall, within five business days, determine if the corrective action is complete. If the Enforcement Official determines that the corrective action is not complete, the Enforcement Official shall notify the Person Responsible for the Violation in writing. The Person Responsible for the Violation shall have seven business days from the date of mailing of said notice in which to file an appeal with the Enforcement Official for review of such determination by the Hearing Examiner. Said review shall be completed and a decision issued by the Hearing Examiner within thirty calendar days of receipt of a timely appeal. The only issue subject to review during an appeal at this stage shall be whether there has been complete compliance with the terms of the Voluntary Correction Agreement.

G. *Extension and Modification.* An extension of the time limit to complete the corrective action or a modification of the required corrective action may be granted by the Enforcement Official, in writing, if in the judgment of the Enforcement Official the Person Responsible for the Violation has shown due diligence and/or substantial progress in correcting the violation but unforeseen circumstances render correction required under the original agreement impossible or impractical.

H. *Abatement by the City.* The City may abate the violation in accordance with Section 1.34.100 if the terms of the Voluntary Correction Agreement are not complied with.

I. *Monetary Penalty.*

(a) The Enforcement Officer may reduce or waive any related monetary penalties if the violation(s) are corrected or mitigated according to the terms and schedule of a Voluntary Correction Agreement.

(b) If the terms of the Voluntary Correction Agreement are not met, the Person Responsible for the Violation may be assessed a monetary penalty not to exceed \$1,000 for each violation. Each separate day, event, action, or occurrence shall constitute a separate violation. In addition, such person shall be liable for all costs and expenses of abatement, as set forth in Section 1.34.100(C). Penalties will begin to accrue from the date the Voluntary Correction Agreement was issued. The date the City completes the abatement shall be the last day a monetary penalty may be imposed.

1.34.060 – Civil Regulatory Order.

When the Enforcement Official determines that a violation has occurred or is occurring and does not secure voluntary correction pursuant to Section 1.34.050, the Enforcement Official may issue a Civil Regulatory Order to the Person Responsible for the Violation.

1.34.061 – Civil Regulatory Order – Issuance & Service.

A. *Issuance.* When the Enforcement Official determines that a violation has occurred or is occurring, the Enforcement Official may issue a Notice of Civil Regulatory Order to any Person Responsible for the Violation.

B. *Person Receiving Notice – Identification and Detention.* A person who is to receive a Notice of Civil Regulatory Order is required to identify themselves to the Enforcement Official by giving their name, address, and date of birth. Upon the request of the Enforcement Official, the person shall produce reasonable identification.

A Person Responsible for the Violation who is unable or unwilling to reasonably identify themselves to the Enforcement Official may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing the Notice of Civil Regulatory Order.

C. *Contents.* The Notice of Civil Regulatory Order shall include, at a minimum, the following:

1. The name and address of the Person Responsible for the Violation;
2. The street address or a description sufficient for identification of the building, structure, premises, or land upon which or within which the violation has occurred or is occurring;
3. A statement that the Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;
4. A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;
5. A statement of the specific violation for which the notice was issued;
6. A statement of the monetary penalty established for the civil infraction, including any portion of said penalty that may be suspended, conditioned on timely correction, abatement, or remediation;
7. A statement that the recipient must respond to the notice as provided in this chapter within fifteen calendar days by (1) providing evidence that the violation has been sufficiently corrected, abated, or remediated, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.
8. A statement that at any hearing to contest the determination, the rules for Hearing Examiner Proceedings established pursuant to LMC Chapter 2.09 will apply; and
9. A statement that failure to respond to a Notice of Civil Regulatory Order within fifteen calendar days or to appear at a requested hearing is a misdemeanor and may be punished by a fine, imprisonment, or by both such fine and imprisonment; and

10. A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for purposes of explaining mitigating circumstances will result in a default judgment against the Person Responsible for the Violation in the amount of the penalty. In addition, the failure to appear may be referred to the prosecuting attorney for criminal prosecution for failure to respond and/or appear.

The Notice of Civil Regulatory Order may also include the following, as applicable:

11. A statement of the steps required to correct, abate, or remediate the violation;
12. The date by which the required corrective action, abatement, or remediation must be completed by; and/or
13. An order to stop work, but only if in the judgment of the Enforcement Official the subject continuing violation of this code will materially impair the Enforcement Official's ability to secure compliance with the code, when the continuing violation threatens the health or safety of the public, or when the continuing violation is likely causing ongoing environmental damage. Said stop work order shall specify the violation and may prohibit any or all work or other activity at the site until the required correction, abatement, or remediation is completed and a Determination of Compliance is issued by the Enforcement Official.

D. *Service*. Service of the Notice of Civil Regulatory Order shall be made by one or more of the following methods:

- A. By personal service on the Person Responsible for the Violation;
- B. If the violation involves a business, by personal service on any employee of the business of a suitable age and discretion;
- C. By mailing a copy of the notice by regular first-class mail to the last known address of the Person Responsible for the Violation; or
- D. For violations involving real property, by placing the notice in a conspicuous place on the property where the violation is occurring.

Service shall be deemed effective upon personal service, or one business day following the posting of the notice upon the property, or three business days following placement of the notice in the U.S. mail, postage prepaid.

E. *Determination Final Unless Contested*. A Notice of Civil Regulatory Order represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in LMC 1.34.062.

1.34.062 – Civil Regulatory Order – Response.

A. A person who receives a Notice of Civil Regulatory Order shall respond to the notice within fifteen calendar days of the date the notice was served by either (1) providing evidence that the

violation has been sufficiently corrected, abated, or remediated, and paying any penalty prescribed in the order, (2) filing a notice of appeal with the Enforcement Official to be heard by the Hearing Examiner, or (3) requesting a mitigation hearing with the Enforcement Official to explain mitigating circumstances surrounding the violation.

B. Declaration of Compliance. If the Person Responsible for Violation provides evidence the violation has been corrected and/or pays any prescribed penalty, an Enforcement Official will undertake further investigation to determine whether compliance has been achieved. If compliance has been achieved, the Enforcement Officer will issue a Determination of Compliance within five business days to the person(s) named in the order. If the Enforcement Official determines that compliance has not been achieved, they may elect to issue a new Civil Regulatory Order or pursue any other action available in law or equity.

C. Hearing Examiner Appeal. A Civil Regulatory Order may be appealed to the Hearing Examiner within 15 calendar days of the effective service of the order by filing a statement of appeal with the Enforcement Official. A statement of appeal shall include the following:

1. The name of the appellant,
2. The date of the Civil Regulatory Order, and
3. An explanation of the grounds for appeal, including citation to applicable sections of the Lynden Municipal Code or other legal authority.

If an appeal is not timely filed with the Enforcement Official, the Civil Regulatory order becomes a final order. The final order, including the collection of penalties and required correction, abatement, or remediation, may be enforced by the City Attorney in Whatcom County Superior Court.

D. Explanation of Mitigating Circumstances. Within 15 calendar days of the effective service of a Civil Regulatory Order, the Person Responsible for the Violation may request a hearing with the Enforcement Official for the purpose of explaining any mitigating circumstances surrounding the violation. The hearing shall be an informal proceeding. The Person Responsible for the Violation may not subpoena witnesses. The determination that a violation has been committed may not be contested at a hearing held for the purpose of explaining mitigating circumstances. Within 10 calendar days of the hearing, the Enforcement Official will provide the Person Responsible for the Violation a written notice of the decision and any revisions to the Civil Regulatory Order.

E. Any person who fails to comply with a Notice of Civil Regulatory Order is guilty of a misdemeanor regardless of the disposition of the Notice of Civil Regulatory Order.

F. A person who willfully fails to pay a monetary penalty under this chapter may, unless indigent, be found in contempt of a court as provided in Chapter 7.21 RCW.

1.34.070 – Penalties.

A. *Monetary Penalty.* If corrective action is not completed by the date specified in a Notice of Civil Regulatory Order, a daily C-4 penalty (see LMC 1.24.040) shall commence. The daily monetary penalty shall increase to a C-5 penalty (see LMC 1.24.040) if corrective action is not completed by the second deadline established in the initial or any subsequent Notice of Civil Regulatory Order. The daily monetary penalty shall increase to a C-8 penalty (see LMC 1.24.040) per day if the corrective action is not completed by the third deadline established in the initial or any subsequent Notice of Civil Regulatory Order. This penalty shall be in addition to any penalty imposed in the Civil Regulatory Order for the underlying violation(s) and any penalty pursuant to a Voluntary Correction Order entered into prior to issuance of the Civil Regulatory Order. Civil fines shall be paid into the City's general fund.

B. *Restitution.* The Hearing Examiner or a reviewing court may also order a person found to have committed a violation to make restitution and perform abatement or remediation.

C. *Collection of Monetary Penalty.* Civil penalties imposed under this section shall be due immediately and payable upon issuance and receipt of a Notice of Civil Regulatory Order. The City may, but is not required to, send the Person Responsible for the Violation periodic statements of the total monetary penalty currently due. If a penalty remains unpaid 30 calendar days after it becomes due and payable, the City Attorney is authorized to take all actions available to collect the full amount owed. The City Attorney is authorized to take all actions available to collect the monetary penalty.

D. *Continued Duty to Correct.* Payment of a monetary penalty pursuant to this section does not relieve the Person Responsible for the Violation of the duty to correct, abate, or remediate the violation as called for in the Civil Regulatory Order.

E. *Compromise, Settlement, and Disposition of Disputes.* The Enforcement Official or the City Attorney may negotiate a settlement or compromise, or otherwise dispose of a dispute enforced under this chapter when to do so would be in the best interests of the City. A settlement may include reducing or waiving any monetary penalties.

1.34.090 – Civil Regulatory Order – Appeal.

A. *How to Appeal.* The person to whom a Notice of Civil Regulatory Order is issued pursuant to this chapter may appeal to the Hearing Examiner by sending a written notice of appeal to the Enforcement Official along with the applicable appeal fee established by resolution of the City Council, if any, within 15 calendar days from the date of effective service of the Notice of Civil Regulatory Order. The written notice of appeal shall contain, at a minimum, the following information:

1. A brief statement identifying the decision being appealed;
2. The name and address of the appellant;
3. A brief statement identifying the relief sought and the reasons why the Enforcement Official's determination should be reversed, modified, or set aside; and

4. Identification of any witness testimony, photographs, or documentary evidence to be presented.

B. *Effect of Appeal.* The monetary penalty for a continuing violation does not continue to accrue during the pendency of the appeal. However, the Hearing Examiner may impose a daily monetary penalty from the effective date of service of the Notice of Civil Regulatory Order if the Hearing Examiner finds that the appeal is frivolous or intended solely to delay compliance. All other provisions of the Civil Regulatory Order remain in effect during the pendency of the appeal.

C. *Date of Hearing.* Within 10 calendar days of the Enforcement Official's receipt of a timely written notice of appeal, the Hearing Examiner shall set a public hearing for a date within 45 calendar days, unless a longer period is agreed to by both parties.

D. *Conduct of Hearing.* The Hearing Examiner shall conduct the hearing according to the Hearing Examiner Procedural Rules established pursuant to LMC 2.09.

E. *Preponderance of the Evidence Standard.* For each violation appealed, the Hearing Examiner shall determine whether the City has established by a preponderance of the evidence that (1) a violation has occurred, and (2) that the required corrective action is reasonable.

F. *Decision.* The Hearing Examiner shall affirm, vacate, or modify the City's decision regarding each alleged violation appealed and the related required corrective action, with or without written conditions. The Hearing Examiner may reduce or waive any related monetary penalties.

G. *Notice of Decision.* The Hearing Examiner's decision shall be mailed to the Appellant, Enforcement Official, and City Attorney within 14 calendar days of the hearing. The decision shall contain, at a minimum, the following:

1. The decision regarding the alleged violation, including findings of fact and conclusions of law based thereon; and
2. A statement that noncompliance with the Hearing Examiner's decision is punishable as a misdemeanor under LMC 1.34.90(l).

I. *Effect of Decision.* The decision of the Hearing Examiner shall constitute the final decision of the City. If a notice of appeal is not timely filed, the failure to comply with the decision of the Hearing Examiner shall constitute a misdemeanor. In addition to criminal punishment pursuant to this subsection, the City may pursue abatement as provided for in this chapter.

1.34.100 – Abatement by the City.

A. *Summary Abatement.* Whenever a condition constitutes an immediate threat to the public health, public safety, public welfare, or to the environment, the City may summarily and without prior notice abate the condition. Written notice of such abatement, including the reason(s) for it, shall be given to the Person Responsible for the Violation as soon as reasonably practicable after the abatement.

B. *Judicial Abatement.* Alternatively, the City may at any time seek a judicial abatement order from Whatcom County Superior Court to abate a condition which continues to be a violation of this code when other methods of remedial action have failed to produce compliance.

C. *Cost of Summary Abatement.* In addition to any other penalty imposed under this chapter, the City may levy a special assessment on the property or premises where a nuisance is situated to reimburse the City for the expense of the abatement of said nuisance, in accordance with the requirements of RCW 35A.21.405, as presently enacted or as hereafter amended.

D. *Other Methods Not Excluded.* Nothing in this chapter shall be construed as prohibiting the abatement of public nuisances by the City or its officials in accordance with another ordinance or the laws of the state of Washington.

1.34.130 – Interference with Code Enforcement Unlawful.

Any person who intentionally obstructs, impedes, or interferes with any lawful attempt to serve a Civil Regulatory Order, stop work order, emergency order, or intentionally obstructs, impedes, or interferes with lawful attempts to correct a violation being processed under this chapter shall be guilty of a gross misdemeanor.

1.34.140 – Conflicts.

In the event of a conflict between this chapter and any other provision of the Lynden Municipal Code or City ordinance, this chapter shall control.

1.34.150 – Severability.

If any section, subsection, clause, paragraph, phrase, or word of this chapter should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity of any other section, subsection, clause, paragraph, phrase, or word of this chapter.

SECTION 3: The following provisions of the Lynden Municipal Code are hereby amended to read as follows:

2.09.040 - Jurisdiction-duties—powers.

A. The hearing examiner shall have the power to receive and examine available information, conduct public hearings, prepare a record thereof, and enter decisions as provided by ordinance.

B. The hearing examiner shall have the exclusive jurisdiction to hold an open record hearing and make a decision on the following matters:

1. Appeals of the determinations of the fees and dedications made under Chapters 3.28, 3.40, 3.44, and 19.67 LMC;

2. Appeals of dangerous dog declarations under Chapter 6.09 LMC;
3. Appeals of determinations of eligibility for relocation assistance under Chapter 12.36 LMC;
4. Appeals of the city's determination to suspend services, impose penalties, recover costs, establish compliance schedules, or terminate a user's wastewater and/or collection services, under Chapter 13.12 LMC;
5. Appeals of the city's computation or application of the stormwater management utility service charge or FCI charges or imposition of sanctions or fines under Chapter 13.24 LMC;
6. Challenges of the written interpretations and/or decisions of the public works director made under Chapter 13.28 LMC;
7. Petitions for exemptions from payment of the utility fee or for conversion to exempt status, and appeals of the city's computation of the applicable fees assessed, under Chapter 13.32 LMC;
8. Appeals of the determination of the Community Development Director regarding moving buildings under Chapter 15.05 LMC;
9. Appeals of the determination of the building code official as described in Chapter 15.14 LMC;
10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Chapter 16.05 LMC, including related procedural and substantive issues;
11. Appeal of director's final critical area determinations;
12. All applications for shoreline permits or revisions to shoreline permits under Chapter 16.08 LMC, except where the permit or revision is part of a project application being decided upon by a different hearing body;
13. Under Chapter 16.12 LMC, Floodplain Management, all appeals of determinations of the director, and variance requests where not consolidated with an underlying project application being decided upon by a different hearing body;
14. Appeals of the imposition of penalties or of the Community Development Director's decision on mitigation or revision under Chapter 16.16 LMC;
15. Appeals of the administrative approvals described in LMC Sections 17.09.010 and 17.09.020;
16. Appeals of administrative interpretations and approvals under LMC Section 17.11.010;
17. Appeals of civil regulatory orders and civil fines issued under Chapter 1.34 LMC;

18. Appeals of the results of concurrency tests, denials of proposed mitigation for transportation facilities, and any other determinations of capacity or calculations or assessments of any fees made under Chapter 17.15 LMC;

19. Amortization periods for nonconforming signs;

20. All variances from the requirements of Title 19, except variances from the requirements of Chapter 19.33 LMC and LMC Sections 19.22.030, 19.22.040, and 19.22.050, and except where the variance is part of a project application being decided upon by a different hearing body;

21. Appeals of determinations of building official as described in LMC Section 19.42.040;

22. Appeals of administrative interpretations made under Chapter 19.59 LMC; and

23. Appeals of a determination of incomplete abatement under a voluntary correction order made under LMC Section 1.34.050(F) and

24. Other actions as required by this code.

C. In order to avoid the city holding two hearings on one project, the hearing examiner shall only hear variance applications and shoreline permit applications or revisions that are not filed as part of an underlying project for which another hearing body will conduct a hearing. For example, if an applicant submits a long plat application along with a variance application to use an alternative cul-de-sac design, the hearing on the variance on the cul-de-sac shall be consolidated with the hearing on the long plat, and the consolidated hearing shall be before the hearing body holding the hearing on the long plat.

D. The hearing examiner is empowered to act in lieu of the board of adjustment, the board of appeals, the city council, the planning commission and such other officials, boards, or commissions as may be assigned for those matters listed in subsection (B) of this section. Wherever existing ordinances, codes or policies authorize or direct the board of adjustment, the board of appeals, the city council, the planning commission or other officials, boards, or commissions to undertake certain activities which the hearing examiner has been assigned under said subsection (B), such ordinances, codes or policies shall be construed to refer to the hearing examiner.

E. The hearing examiner may include in a decision any conditions of approval that are necessary to ensure that the proposal complies with all applicable code criteria and comprehensive plan policies.

F. The hearing examiner has such other powers as are necessary to carry out the purpose and intent of this chapter, including without limitation to conduct pre-hearing conferences; to require the submittal of information; to schedule and continue hearings; to administer oaths and affirmations; to issue subpoenas; to regulate the course of pre-hearing discovery; to preside over hearings and the conduct of parties; to question parties and witnesses at a hearing; to rule on all evidentiary, procedural and other matters, including all motions; to maintain order; to establish post-hearing procedures; to issue findings of fact and conclusions of law; to enter final decisions and orders; and to adopt procedures consistent with Section 2.09.050.

G. With the exception of shoreline permit applications, and revisions heard by the hearing examiner, and decisions on appeals of Civil Regulatory Orders, the hearing examiner's decision on these the matters identified in subsection (B) shall be final unless timely appealed to the city council following the procedures in Chapter 17.11 LMC. The city council shall hear appeals of these matters as closed record appeals. The hearing examiner shall make the final decision of the city on the shoreline permit issues he or she hears and on appeals of Civil Regulatory Orders. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the shoreline hearings board.

2.10.070 - Violation—Penalty.

It shall be a misdemeanor, for any person during a disaster:

- A. To willfully obstruct, hinder or delay any member of the emergency management organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;
- B. To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of a nature as to give, or be likely to give, assistance to the enemy, or to imperil the lives or property of inhabitants of the city, or to prevent, hinder or delay the defense or protection thereof;
- C. To wear, carry or display, without authority, any means of identification specified by the department of emergency management of the state.

3.28.180 - Noncompliance—Penalty.

A violation of any provision of this chapter including, but not limited to:

- A. Failing or refusing to apply for a utility occupation license,
- B. Failing or refusing to make tax returns or to pay the tax and/or any applicable penalty when due, or
- C. Making a false statement or representation in connection with any such application

is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence. Each and every day or portion thereof during which any violation of any of the provisions of this chapter is committed, continued, or permitted will be considered a separate offence.

3.12.070 - Penalties.

Any seller who fails or refuses to collect the tax as required with the intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter shall be guilty of a misdemeanor.

3.36.060 - Penalty.

A violation of any provision of this chapter or any lawful rule or regulation adopted pursuant hereto is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each day of violation will be considered a separate offense.

5.02.110 - Violation—Penalty.

A violation of any of the provisions of this chapter or any lawful rule or regulation adopted by the city clerk pursuant thereto is a civil infraction and shall subject the violator to a C-5 penalty (see LMC 1.24.040).

5.04.040 - Violation—Penalty.

Violation of any provision of this chapter is a misdemeanor.

5.12.080 - Violation—Penalty.

A violation of any of the provisions of this chapter is a misdemeanor.

8.04.090 - Violation—Penalty.

A violation of any of the provisions of this chapter is a civil infraction and shall subject the person responsible for the violation to a C-3 penalty (see LMC 1.24.040).

8.16.080 - Penalties.

A. It is a civil infraction for a person to litter in an amount less than or equal to one cubic foot. Such civil violation shall subject the violator to a C-2 penalty (see LMC 1.24.040).

B. It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard.

C. Is it a gross misdemeanor for a person to litter in an amount of one cubic yard or more.

8.24.050 - Penalty for noncompliance.

The failure or refusal to comply with any of the provisions of any sections of this Chapter 8.24 is a civil infraction and shall subject the violator to a C-2 penalty (see LMC 1.24.040).

9.04.090 - Promise of court appearance, non-appearance penalty, fail to pay.

Any person arrested for violation of this title, or Title 10, who is eligible for release on personal recognizance shall give his or her written promise to appear in municipal court at an agreed time in order to secure release pending said appearance.

A. Any person who fails to sign a notice of civil infraction is guilty of a misdemeanor.

B. Any person who willfully fails to pay a monetary penalty or to perform community service as required by the Municipal Court under this title or Title 10 may be found in contempt of court as provided in RCW Chapter 7.21.

C. Any person who willfully fails to respond to five or more notices of parking infraction issued pursuant to Lynden Municipal Code Title 10 shall be guilty of a misdemeanor regardless of the disposition of the notices of infraction.

D. Violating a written promise to appear or failure to respond to a criminal citation or summons, as directed by the citation or summons, shall be punishable as a misdemeanor. The penalty for failure to respond to a civil or traffic infraction shall be a C-1 penalty (see LMC 1.24.040). The penalty for failure to respond to five or more parking infractions shall be a C-1 penalty (see LMC 1.24.040) per infraction.

9.22.110 - Order of abatement—Procedures authorized—Penalties designated.

A. If the existence of a nuisance is admitted or established in an action as provided for in Section 9.22.120, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance and not already released under authority of the court as provided for in Sections 9.22.070 and 9.22.080 and shall direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution. Lewd matter shall be destroyed and not sold.

B. Such judgment shall impose a C-5 penalty (see LMC 1.24.040) for the maintenance of such nuisance, which penalty shall be imposed against the person or persons found to have maintained the nuisance, and, in case any owner or agent of the building found to have had actual or constructive notice of the maintenance of such nuisance, which penalty shall be collected by execution as a civil action, and when collected, shall be paid into the current expense fund of the city.

C. The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided in Section 9.22.080.

D. Owners of unsold personal property and contents so seized must appear and claim the same within ten calendar days after such order of abatement is made, and prove innocence to the satisfaction of the court of any knowledge of such use thereof, and that with reasonable care and diligence they could not have known thereof. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section. For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution; and for closing the place and keeping it closed, a reasonable sum shall be allowed by the court.

E. Contempt under the provisions of this section shall be a misdemeanor.

9.24.070 - Sitting or lying on public sidewalks prohibited.

A. Prohibition. No person shall sit or lie down upon a public sidewalk or upon a blanket, chair, stool, planter, fountain, railing, or any other object placed upon a public sidewalk, during the hours between seven a.m. and nine p.m. in the following zones:

1. Central Business District ("CBD"). The Central Business District, for the purposes of this Section, is the area bounded by the streets hereafter named, including said streets and their abutting sidewalks:

- a. The south side of the west half of Front Street between Second and Third Streets;
- b. Front Street between Third Street and Seventh Street;
- c. Third, Fourth, Fifth and Sixth Streets between Front Street and Grover Street;
- d. Seventh Street between Front Street and Grover Street, except the north half of the west side thereof;
- e. The north side of Grover Street between Fourth Street and Sixth Street;
- f. All city owned parking lots including the library parking lot, but excluding the Lynden Community Center parking lot and the public parking lot located at the northeast corner of Fourth and Grover Streets;
- g. The south half of the west side of Fourth Street between Grover Street and Liberty Street;
- h. The south half of Fifth Street between Grover Street and Liberty Street;
- i. The north side of Front Street between Seventh Street and Eighth Street;
- j. The east side of Seventh Street between Front Street and Judson Alley.

B. Exceptions. The prohibitions in subsection A shall not apply to any person:

1. Sitting or lying down on a sidewalk due to a medical emergency.

2. Who, as the result of a disability, utilizes a wheelchair, walker, or similar device to move about the public sidewalk.
3. Operating or patronizing a commercial establishment conducted on the public sidewalk pursuant to a street use permit; or a person participating in or attending a parade, festival, performance, rally, demonstration, meeting or similar event conducted on the public sidewalk pursuant to a street use or other applicable permit;
4. Sitting on a chair or bench located on the public sidewalk which is supplied by a public agency or by the abutting private property owner;
5. Sitting on a public sidewalk within a bus stop zone while waiting for public or private transportation.

Nothing in any of these exceptions shall be construed to permit any conduct which is prohibited by LMC Section 9.24.005 (RCW 9A.84.030 B Disorderly Conduct) or LMC Section 9.24.040 (Pedestrian Interference).

C. No person shall be cited under this section unless the person engages in conduct prohibited by this section after having been notified by a law enforcement officer that the conduct violates this section.

D. A violation of this section is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040), plus statutory assessment. If the person is unable to pay the monetary penalty, the court may order performance of a number of hours of community service in lieu of a monetary penalty.

9.24.120 - Public disturbance noise.

A. It is unlawful for any person to cause, or for any person in possession of property to allow to originate from the property, sound that is a public disturbance noise. The following sounds are determined to be public disturbance noises:

1. The frequent, repetitive, or continuous sounding of any horn or siren attached to a motor vehicle, except as a warning of danger or as specifically permitted or required by law.
2. Frequent, repetitive, or continuous sounds in connection with the starting, operation, repair, rebuilding or testing of any motor vehicle, motorcycle, off-highway vehicle or internal combustion engine within a residentially zoned area, so as to unreasonably disturb or interfere with the peace, comfort and repose of others.
3. Frequent, repetitive, or continuous sounds which emanate from any building, structure, apartment, or condominium, which unreasonably interfere with the peace, comfort, and repose of a person or persons on public or private property, other than the property from which the sound emanates, such as sounds from musical instruments, audio sound systems, band sessions or social gatherings.

4. Sound from motor vehicle audio sound systems including, without limitation, tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the vehicle itself.
5. Sound from portable audio equipment, such as tape players, radios, and compact disc players, operated at a volume so as to be audible greater than fifty feet from the source and outside the property of the operator.
6. Construction and industrial noises, including but not limited to, motorized construction and equipment operation, hammering, blasting, drilling and sawing in residentially zoned areas, between the hours of ten p.m. and seven a.m., which unreasonably disturb or interfere with the peace, comfort and repose of others; provided that this subsection shall not apply to noises caused by projects required in an emergency to repair public facilities or utilities or to prevent immediate damage or harm to persons or property; and further provided that this subsection shall not apply if the city council grants a variance from the provisions of this subsection for the construction or repair of a public facility or utility upon a finding that it is either necessary or in the public interest for all or a portion of the work to be performed between the hours of ten p.m. and seven a.m. The council may impose such conditions as it deems appropriate upon the granting of a variance.
7. Subsections 3 and 5 shall not apply to regularly scheduled events at parks or the Northwest Washington Fairgrounds, such as public address systems for games and activities or park concerts. Provided, that the foregoing enumeration of acts and noises are not to be construed as excluding other acts and noises which offend the public peace.

B. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction and shall be subject to a C-5 penalty (see LMC 1.24.040).
2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a misdemeanor and shall be as set forth in LMC 9.04.050.

9.24.130 - Public disturbance/barking dogs.

A. No person shall cause or permit or allow any dog or dogs owned, harbored, controlled or kept by them in the city to remain outside of the dwelling of such a person while such animal is causing excessive or frequent noise, such as habitual howling, yelping or barking, which noise disturbs or is likely to disturb the comfort or repose of any person in the neighborhood. A violation of this section is declared a public nuisance and adverse to the public welfare and is punishable as follows:

B. Penalties.

1. Any person violating this section shall, upon commission of the first such offense, be guilty of having committed a civil infraction, and shall be subject to a C-4 penalty (see LMC 1.24.040).
2. Any person violating this section shall, upon conviction for a second or subsequent offense, be guilty of having committed a misdemeanor and shall be punished as set forth in LMC 9.04.050.

9.56.080 - Driving, riding or walking on runways—Prohibited—Penalties.

A. It shall be illegal for any person to drive a motor vehicle, ride a bicycle or walk on the runways of the Lynden municipal airport. Runways are those areas designated for the take-off and landing of aircraft and shall not include the those areas designated for the parking or storage of aircraft.

B. This section does not apply to emergency personal responding to an emergency.

C. A violation of this section is a civil infraction and shall subject the violator to the following penalties:

First Violation: C-5 Penalty (see LMC 1.24.040)

Each Subsequent Violation Within
a Twelve (12) Month Period: Misdemeanor punishable as provided by LMC
9.04.050

9.60.140 - Handbills and posters—Violation—Penalty.

Any person violating any provision of this chapter shall be guilty of a misdemeanor.

10.04.060 - Violation—Penalty.

Unless another penalty is expressly provided by law in the MTO or in the statutes that are adopted by reference in Section 10.04.010, any person who is convicted of violating or failing to comply with any of the provisions of the ordinance codified in this chapter shall be guilty of a civil infraction and subject to a C-4 penalty (see LMC 1.24.040).

10.08.090 - Parking restrictions between nine a.m. and five-thirty p.m. on certain streets—Violation and penalty schedule.

A. When corresponding time limit signs are posted, it is unlawful for any person to park any motor vehicle on the following streets between nine a.m. and five-thirty p.m. for a period of time exceeding three hours except on Saturdays and Sundays or days designated as state holidays:

1. The south side of the west half of Front Street between Second and Third Streets;

- 2. Front Street between Third Street and Seventh Street;
- 3. Other areas signed or appropriately marked as a three-hour parking limit.

B. It is unlawful for any person to park any motor vehicle for a period of time longer than fifteen minutes in any parking space signed or appropriately marked as a fifteen-minute parking limit.

C. A violation of any provision of this section is a civil infraction and shall subject the violator to the following penalties:

- 1. First offense within any twelve months: a written warning;
- 2. Second offense within twelve months: a second written warning. The second warning shall notify the defendant that subsequent violations within twelve months of the first violation will be punishable subject the violator to the monetary penalties set forth in subsection 3 below.
- 3. Third and subsequent offense within twelve months:

Third violation within twelve months:	C-1 Penalty
Fourth violation within twelve months:	C-2 Penalty
Fifth violation within twelve months:	C-3 Penalty
Sixth violation and all subsequent violations within twelve months:	C-4 Penalty

10.08.100 - Parking prohibited on certain streets.

A. It is unlawful for any person to park any motor vehicle on any portion of Bradley Road within the city limits of Lynden.

B. A violation of this provision is a civil infraction and shall subject the violator to a C-2 penalty (see LMC 1.24.040).

10.16.030 - Penalties.

A. A violation of this chapter is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040). Each time a vehicle is used contrary to this chapter such occasion shall constitute a separate offense within the meaning of this chapter.

B. The city of Lynden shall have a lien against the vehicle used contrary to this chapter in the amount of the penalty imposed and shall foreclose on such lien according to law, including costs and attorney's fees, if the penalty is not paid as required.

C. In his discretion, the officer may issue a notice of civil infraction and release the driver upon his signature, or he may require the driver or owner to deposit with the municipal court clerk a

sum equal to a C-4 penalty (see LMC 1.24.040) prior to release of the vehicle as a guaranty of appearance in court.

10.18.030 - Violation—Penalty.

A violation of any provision of this chapter is a civil infraction and shall subject the violator to a C-3 penalty (see LMC 1.24.040). Furthermore, the device ridden at the time of the violation shall be subject to impound by the city for a period of ten days.

12.16.065 - Vehicle weight limited when—Exceptions—Penalty.

A. Whenever in the opinion of the Public Works Director it becomes necessary to place weight limits on streets in the city to avoid unnecessary damage to such streets caused by freezing and thawing, there shall be imposed a maximum weight limit of five tons gross vehicle weight on all streets in the city except the following:

1. Front Street from the west city limits to First Street;
2. Main Street from the west city limits to Third Street;
3. Third Street from Front Street to the north city limits.

B. Special exceptions may be made by the Public Works Director in the case of extraordinary need. Such weight restrictions shall be effective upon posting of notice of such weight restrictions on such streets.

C. A violation of this Section is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).

12.24.190 - Violations—Penalty.

Any violation of any provision of this chapter shall constitute a civil infraction and shall subject the violator to a C-3 penalty (see LMC 1.24.040). Each and every calendar day during any portion of which any violation of this chapter is committed, continued or permitted by any such person shall constitute a separate offense.

12.28.060 - Penalty.

A violation of any of the provisions of this chapter is a civil infraction and shall subject the violator to a C-4 penalty (see LMC 1.24.040).

13.08.010 – General standards – Developer requirements.

All work shall comply with the latest edition of the city of Lynden Engineering and Development Design Standards Project Manual:

- A. Mains shall be laid only in dedicated streets or in easements which have been granted to the city. A street is normally not considered dedicated until the plat which created it has been filed with the Whatcom County Auditor.
- B. The developer shall obtain all necessary easements without cost to the *city*. Whenever a main is to be laid other than in a public street, a permanent easement of not less than ten feet on each side of the centerline shall be provided. The developer shall supply the Public Works Director with the supporting data necessary to verify the location of the easement. If legal services are required by the *city* in connection with the easement, other than formal review, the cost of such services shall be reimbursed by the developer to the *city* on demand and before acceptance of the extension.
- C. The developer shall pay for permits as may be required for the work, and shall pay for all surveys, easements, rights-of-way, and franchises required for the work. The developer shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work.

13.24.080 – Unpaid Stormwater Utility Charge – Termination of Water Service.

In the event a property owner shall fail to pay the stormwater management utility charge, the city shall have the authority to terminate domestic water service to said property owner. Termination of such water service shall not limit other remedies available to the city under state law. For property owners without water service, a lien may be placed on the property, in accordance with Section 13.24.100.

13.24.090 – Appeals of Stormwater Management Utility Service Charge; burden of proof.

A. Appeal to Hearing Examiner. Any property owner who believes that the stormwater management utility service charge for their property has been incorrectly computed or applied and/or that FCI charges have not been properly assessed may appeal to the hearing examiner within fourteen calendar days of the director's determination of said charges by filing a written statement of appeal with the director. The appeal to the hearing examiner shall be an open record appeal and shall be conducted according to the procedures in Chapters 2.09, 17.09, and 17.11 LMC. During the hearing, the hearing examiner shall consider the recommendation of the director. The hearing examiner shall issue a written decision, notice of which shall be provided to the parties. Any adjustments authorized by the appeal process shall only be effective against billings subsequent to the date the appeal is filed and shall not be retroactively applied.

B. Burden of Proof. The burden of proof in any petition or appeal filed under this chapter shall be on the property owner.

13.24.095 - Sanctions.

In addition to any other remedy or sanction available, a property owner who fails to comply with any provision of this chapter, with a final order issued by the city pursuant to this chapter, or who fails to conform to the terms of an issued approval, shall be subject to a C-7 penalty (see LMC 1.24.040), due and payable not later than ten calendar days after issuance of final decision.

Late Payment Fees. A late payment fee shall be added to each property owner's account if payment is not received by the due date. Said late fees shall be in an amount established by resolution of the city council.

13.24.130 - Damage to system prohibited.

No person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is part of the city stormwater management facilities. If any person violates this section they shall be subject to a C-7 penalty (see LMC 1.24.040) for each offense. This penalty shall be in addition to any other civil or criminal sanction provided in this chapter or by other law or in equity.

13.24.145 - Enforcement.

Enforcement of the following provisions in Chapter 13.24 shall be in accordance with Chapters 1.24 & 1.34 LMC: 13.24.050; 13.13.24.130; 13.24.140; 13.24.150; 13.24.160(A), (B), (C), (E), and (F).

15.02.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the Planning & Community Development Department, the building permit holder shall be subject to a C-5 penalty (see LMC 1.24.040).

15.03.030 - Conditional certificate of occupancy—Penalty for failure to complete.

In the event the work to be completed pursuant to a conditional certificate of occupancy is not completed within the time allotted by the Planning and Community Development Department, the building permit holder shall be subject to a C-5 penalty (see LMC 1.24.040). For every additional day the work remains uncompleted, the building permit holder shall be subject to an additional C-1 penalty (see LMC 1.24.040).

16.12.040 - Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of permit or approval conditions and safeguards established in connection with such conditions) shall constitute a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040). In addition, the person responsible for the violation shall pay all costs and expenses involved in the case. Nothing in this chapter contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

16.16.140 - Offense and penalty.

A violation of, or failure to comply with, any provision of this chapter is a civil infraction and shall subject the violator to a C-8 penalty (see LMC 1.24.040).

A failure to comply with a provision of this chapter occurs when a party:

- (1) Develops within or disturbs a critical area or its buffer without fully complying the requirements of this chapter; or
- (2) Fails to comply with mitigation requirements imposed pursuant to this chapter.

17.13.010 - Enforcing official—Authority.

The director shall be responsible for enforcing Titles 15 through 19 of this code, and may adopt administrative rules to meet that responsibility. The director may delegate enforcement responsibility to the city engineer, director of public works, building official, fire chief or chief of police as appropriate.

17.13.020 - General penalty.

Compliance with the requirements of Titles 15 through 19 of this code, shall be mandatory. The general penalties established at Chapter 1.24 of this code and the provisions for enforcing and obtaining compliance established in Chapter 1.34 of this code shall apply to any violation of those titles. The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies.

17.13.050 - Civil fines for violation of Development Code.

A. *Failure to obtain necessary permit.* The failure to obtain any necessary permit required under the Development Code is a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

B. *Other violation of the Development Code.* A violation of any provision of the Development Code for which a penalty is not specified shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

18.20.050 – Permanent control monuments – Within streets – Requirements.

Permanent control monuments within the streets shall be set after the streets are graded. In the event a final plat is approved before streets are graded, the surety deposited to secure grading shall be sufficient to pay the costs estimated by the Public Works Director of settling such monuments.

19.49.060 - Content—Violations.

Any CUP that is issued, shall certify the location, nature and extent of the uses, together with all conditions that are imposed and other information deemed necessary for the issuance of the permit. A copy of the permit shall be kept on file and reviewed annually by the director. If at any time it is found that the use no longer complies with the conditions specified therein the owner shall be declared in violation of this chapter. Any such violation is a civil infraction and shall subject the person responsible for the violation to a C-9 penalty (see LMC 1.24.040) and/or revocation of the conditional use permit.

19.57.160 - Violations.

A. If the Community Development Director finds that the home occupation use violates the conditions of a home occupation use permit or this chapter, the Community Development Director shall notify the permit holder or licensee in writing of the decision that the home occupation use permit or business license shall be suspended or revoked unless the violation is abated.

Appeal of the Community Development Director's administrative decision to suspend or revoke a home occupation use permit or business license may be appealed according to the procedures set forth in LMC 17.11.

19.59.240 - Violation—Penalty.

A. A violation of any term or provision of this chapter or of any permit hereunder, or failure to comply with a lawful order of the city planner Community Development Director as provided in this chapter is a civil infraction and shall subject the person responsible for the violation to a C-8 penalty (see LMC 1.24.040).

B. Each calendar day of any continuing violation shall be deemed a separate and distinct violation.

SECTION 4: The following provisions of the Lynden Municipal Code are hereby repealed in their entirety:

9.04.085 – Person receiving civil infraction notice—Identification and detention.

A person who is to receive a notice of infraction under the Lynden Municipal Code is required to identify himself or herself to the enforcement officer by giving his or her name, address and date of birth. Upon request of the officer, the person shall produce reasonable identification, including a driver's license or identicaid.

The officer may detain the person for a reasonable period of time necessary to confirm the identity of the person, to check for outstanding warrants and to complete and issue the notice of civil infraction.

17.13.040 – Civil regulatory order.

A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the development code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

1. The name and address of the person to whom it is directed;
2. The location and specific description of the violation;
3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed;
4. An order that the violation immediately cease, or that the potential violation be avoided;
5. An order that the person stop work until correction and/or remediation of the violation as specified in the order;
6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions;
7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The director may require any action reasonably calculated to correct or avoid the violation, including, but not limited to, replacement, repair, supplementation, revegetation or restoration.

~~E. Appeal. A civil regulatory order may be appealed in an open record appeal to the hearing examiner in accordance with Chapter 17.11 of this code.~~

SECTION 5: 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 6: Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7: 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 _____, 2024.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

Robert Carmichael, City Attorney