

**ORDINANCE NO. 1661**

**ORDINANCE OF THE CITY OF LYNDEN ESTABLISHING AN INTERIM  
ZONING ORDINANCE ON THE LOCATING OF COMMUNITY RESIDENTIAL  
FACILITIES WITHIN 500 FEET OF ALL COMMUNITY SCHOOLS AND 300  
FEET OF OTHER COMMUNITY RESIDENTIAL FACILITIES**

**WHEREAS**, the City of Lynden (“City”) notes that House Bill 1220 (“E2SHB 1220”), passed by the Washington State Legislature in May 2021, compels municipalities to support efforts to provide indoor emergency housing, indoor emergency shelters, transitional housing, and permanent supportive housing consistent with Chapters 35.21 and 35A.21 RCW; and

**WHEREAS**, for the purposes of this interim zoning ordinance (“Ordinance”), these four types of facilities identified in E2SHB 1220 are collectively referred to herein as “Community Residential Facilities” or “CRFs”; and

**WHEREAS**, E2SHB 1220 also states that reasonable occupancy, spacing, and intensity of use requirements may be imposed by ordinance to protect public health and safety as it relates to CRFs; and

**WHEREAS**, the Lynden City Council (“City Council”) desires to establish reasonable standards for the safe operation and appropriate siting of CRFs within the City of Lynden so as to protect public health and safety for both facility residents and the broader community; and

**WHEREAS**, ensuring compliance with existing City code and development standards and promoting a safe, calm, and focused atmosphere on and near the grounds of City schools are important priorities for the City; and

**WHEREAS**, populations served by CRFs often have higher instances of substance abuse, mental health crises, and criminal histories, which can result in disruptive behavior and emergency response activity in and around facilities which is not compatible with the atmosphere the City seeks promote around City schools; and

**WHEREAS**, the City’s zoning regulations have not yet been updated to address E2SHB 1220’s emphasis upon municipal support for the establishment of CRFs; and

**WHEREAS**, the City does not presently have in place any spacing requirement regulations governing CRFs; and

**WHEREAS**, a new ordinance is currently being drafted which will provide comprehensive zoning regulation of CRFs in a manner consistent with E2SHB 1220; and

**WHEREAS**, additional time is needed to develop comprehensive zoning regulations for CRFs—including careful consideration of regulations on the spacing of such facilities related to schools per public concerns, and each other; and

**WHEREAS**, if short-term action is not taken now, new CRFs may either vest or obtain nonconforming status prior to the development and adoption of the forthcoming comprehensive zoning regulations, thereby interfering with and potentially undermining the development of a meaningful comprehensive and permanent ordinance reasonably regulating occupancy, spacing, and intensity of use of CRFs in the City; and

**WHEREAS**, the City’s development of reasonable comprehensive zoning regulations pertaining to CRF occupancy, spacing, and intensity of use is necessary prior to establishment of new CRFs in order to protect the public health, safety, welfare, property, and peace in the City; and

**WHEREAS**, the City notes that a number of Washington municipalities have adopted spacing requirements between CRFs and schools, including the City of Kent and City of Federal Way (both imposing 1,000-foot spacing restrictions), the City of SeaTac (imposing a 1,750-foot spacing restriction), and the City of Orting (imposing a 1,320-foot spacing restriction); and

**WHEREAS**, this interim Ordinance does not prohibit building permit applications for or the locating of CRFs in any zone of the City, but rather imposes limited interim spacing requirements for CRFs pending adoption of comprehensive zoning regulations applicable to CRFs; and

**WHEREAS**, an interim zoning ordinance adopted pursuant to RCW 36.70A.390 and RCW 35A.63.220 is a means for local governments to rapidly adopt temporary zoning controls during the time in which permanent regulations are being developed and enacted; and

**WHEREAS**, RCW 36.70A.390 and RCW 35A.63.220 authorize the enactment of an interim zoning ordinance without holding a public hearing as long as a public hearing is held within at least sixty (60) days of its adoption; and

**WHEREAS**, at a special city council meeting on September 15, 2022, an emergency interim zoning ordinance was adopted by the City Council under Ordinance No. 1650; and

**WHEREAS**, the City Council held a public hearing at its regular meeting on October 17, 2022 and adopted Ordinance No. 1658, a substitute ordinance which extended Ordinance No. 1650 and made minor modifications to the findings therein; and

**WHEREAS**, the City Council held a public hearing at its regular meeting on December 5, 2022 to consider adopting this ordinance as a substitute ordinance modifying the findings and provisions of Ordinance No. 1658; and

**WHEREAS**, the City Council finds that adoption of this substitute Ordinance modifying the findings and provisions of Ordinance No. 1658 is in the best interest of the City; and

**WHEREAS**, the adoption of this Ordinance will provide the City with the time necessary to develop and finalize comprehensive zoning regulations applicable to CRFs while simultaneously addressing immediate public concerns as to the proximity of CRFs to community schools; and

**WHEREAS**, the City Council concludes that it has the authority to establish an interim zoning ordinance; and

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

**NOW, THEREFORE**, THE CITY COUNCIL OF THE CITY OF LYNDEN DOES ORDAIN as follows:

Section 1. Findings of Fact. The City Council adopts the above “WHEREAS” recitals as findings of fact in support of this Ordinance. The City Council reserves the right to adopt additional findings in the event that additional evidence is presented.

Section 2. CRF Defined. “Community Residential Facilities” or “CRFs” is a collective term for the housing categories regulated under this Ordinance, namely Emergency Housing, Indoor; Emergency Housing, Outdoor; Emergency Shelter; Transitional Housing; and Permanent Supportive Housing. All CRFs regulated under this Ordinance are forms of supportive housing intended to address the needs of persons who are or were experiencing homelessness or who are or were at risk of imminent homelessness. For the purposes of this Ordinance, facilities primarily intended to serve persons with disabilities as defined in the Fair Housing Act, 42 U.S.C. §§ 3601-3631, including without limitation homes for non-using persons recovering from a substance use disorder, are not considered CRFs and are not regulated under this Ordinance.

Section 3. Community School Defined. “Community School” as used herein shall refer to any elementary school, middle school, or high school located within the City of Lynden.

Section 4. CRF Minimum Spacing Requirements Established. No proposed Community Residential Facility shall be located within 500 feet of a Community School or within 300 feet of another approved Community Residential Facility.

Section 5. Measurement Standard. For the purposes of the spacing requirement established herein, distance shall be measured in a straight line between the closest property line of the proposed Community Residential Facility and the closest property line of the Community School or other approved Community Residential Facility.

Section 6. Reasonable Accommodations. The Fair Housing Act (“FHA”), 42 U.S.C. 3604(f)(3)(B), requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. The Planning Director is therefore authorized to make accommodations in the provisions of this Ordinance as applied to CRFs occupied or to be occupied by persons with disabilities as defined in the FHA, when the Planning Director determines that such accommodations reasonably may be necessary in order to comply with the requirements of the FHA.

Section 7. Washington Housing Policy Act. Nothing in this Ordinance shall be applied in violation of the Washington Housing Policy Act’s requirement under RCW 35A.63.240 to treat a residence occupied by individuals with disabilities no differently than a similarly situated residence occupied by a family or other unrelated individuals.

Section 8. Religious Organizations. Nothing in this Ordinance shall be applied to the extent it would infringe upon a religious organization’s ability to serve the homeless consistent with a sincere religious belief as protected under the First Amendment of the United States Constitution, Article I § 11 of the Washington State Constitution, the Religious Land Use and Institutionalized Persons Act (42 U.S.C. 2000cc et seq.), and RCW 35.21.915 (Hosting the homeless by religious organizations).

Section 9. Duration. This Ordinance shall be in effect for six (6) months from September 15, 2022 and may be renewed for one or more successive six-month periods pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 10. Conflict with Other LMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 11. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, subsection, clause, or phrase of this Ordinance.

Section 12. Effective Date. This Ordinance shall take effect five (5) days after the date of its publication. Ordinance 1658 shall remain in effect until the effective date of this substitute Ordinance.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND  
APPROVED BY THE MAYOR ON THIS \_\_\_\_ DAY OF DECEMBER, 2022.

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Scott Korthuis, Mayor

ATTEST:

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Pamela Brown, City Clerk

APPROVED AS TO FORM:

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ROBERT CARMICHAEL, City Attorney