ORDINANCE NO. 1615

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING A NEW CHAPTER 2.09 TO THE LYNDEN MUNICIPAL CODE AND AMENDING NUMEROUS CHAPTERS OF THE LYNDEN MUNICIPAL CODE, FOR THE PURPOSE OF ESTABLISHING THE OFFICE OF HEARING EXAMINER, AND ADOPTING PROCEDURAL RULES FOR THE CITY OF LYNDEN HEARING EXAMINER

WHEREAS, the Lynden City Council and the Lynden Planning Commission have been devoting increasing time to regulatory land use decisions and appeals therefrom; and

WHEREAS, the Lynden City Council believes appointing a hearing examiner to render final regulatory land use decisions will better promote fairness, due process, and efficiency in the hearing and resolution of certain types of land use disputes; and

WHEREAS, the City has the authority to establish the office of the hearing examiner pursuant to the authority provided by Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.170 and Chapter 58.17 RCW; and

WHEREAS, the hearing examiner will assume all duties currently assigned to the board of adjustment and the board of appeals, in addition to some tasks currently assigned to the planning commission and city council; and

WHEREAS, as part of this process, some duties of the public works director are being shifted to the planning director; and

WHEREAS, the public interest will be served by amending the Lynden Municipal Code to include an office of the hearing examiner; and

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

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

SECTION 1:

A new Chapter 2.09 of the Lynden Municipal Code is hereby enacted. Underlines indicate additions to the Code:

Chapter 2.09

HEARING EXAMINER

Sections:

2.09.010 Creation of Office—Purpose
2.09.020 Appointment—Contract—Pro Tem
2.09.025 Qualifications

2.09.030 Freedom from Improper Influence
2.09.035 Conflicts
2.09.040 Jurisdiction—Duties—Powers
2.09.045 Open Record
2.09.050 Procedures

2.09.010 Creation of Office—Purpose

The office of the hearing examiner is hereby created. The office of the hearing examiner is independent of city departments, boards, and commissions. It is responsible for the impartial administration of administrative proceedings in accordance with this chapter and shall preside over all such proceedings. Unless context requires otherwise, the term "hearing examiner" in this chapter shall be interpreted as including any hearing examiners pro tem.

2.09.020 Appointment—Contract—Pro Tem

A. The city council shall appoint the hearing examiner by the vote of the majority of the members. Appointment shall be made by professional service contract.

B. The city council may appoint one or more hearing examiners pro tem for terms specified at the time of appointment to serve in case the hearing examiner has a conflict or is absent. A hearing examiner pro tem shall have the same powers as the hearing examiner.

2.09.025 Qualifications

The hearing examiner shall be appointed based on his or her qualifications for the duties of such office. The hearing examiner shall be an attorney in good standing and admitted to the bar of the State of Washington with experience in land use or as a hearing examiner. Hearing examiners shall hold no other elective or appointive office or position in the city's government. The same qualifications apply to hearing examiners pro tem.

2.09.030 Freedom from Improper Influence

No city official or any other person shall interfere with or attempt to interfere with the hearing examiner in the performance of his or her designated duties. This section does not prohibit the City attorney from rendering legal services to the hearing examiner if requested by the hearing examiner and approved by the mayor.

2.09.035 Conflicts

The hearing examiner shall not conduct or participate in any hearing or decision in which the hearing examiner has a direct or indirect personal interest which might improperly interfere with the decision-making process or violate the appearance of fairness doctrine or the codification of such doctrine in Chapter 42.36 RCW. Any actual or potential conflict of interest shall be disclosed to the parties immediately upon discovery of such conflict and the hearing

examiner shall abstain from any further proceedings in the matter unless all parties agree in writing to have the matter heard by that hearing examiner.

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 Chs. 3.28, 3.40, 3.44, and 19.67 LMC;
2. Appeals of dangerous dog declarations under Ch. 6.09 LMC;
3. Appeals of determinations of eligibility for relocation assistance under Ch. 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 Ch. 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 Ch. 13.24 LMC;
6. Challenges of the written interpretations and/or decisions of the public works director made under Ch. 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 Ch. 13.32 LMC;
8. Appeals of the determination of the planning director regarding moving buildings under Ch. 15.05 LMC;
9. Appeals of the determination of the building code official as described in Ch. 15.14 LMC;
10. Appeals of final SEPA threshold determinations and adequacy of final EISs, made under Ch. 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 Ch. 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 Ch. 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 planning director's decision on mitigation or revision under Ch. 16.16 LMC;

15. Appeals of the administrative approvals described in LMC 17.09.010 and 17.09.020;

16. Appeals of administrative interpretations and approvals under LMC 17.11.010;

17. Appeals of civil regulatory orders and civil fines issued under Ch. 17.13 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 Ch. 17.15 LMC;

19. Amortization periods for nonconforming signs;

20. All variances from the requirements of Title 19, except variances from the requirements of Ch. 19.33 LMC and LMC 19.22.030, .040, and .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 19.42.040;

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

23. 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 to adopt procedures consistent with 2.09.050.

G. With the exception of shoreline permit applications and revisions heard by the hearing examiner, the hearing examiner's decision on these matters identified in subsection (B) shall be final unless timely appealed to the City Council following the procedures in Ch. 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. The determination of the hearing examiner on shoreline permit applications and revisions shall be subject to appeal to the Shoreline Hearings Board.

2.09.045 Open Record and Open to Public

For every matter over which the hearing examiner has jurisdiction, the hearing examiner will conduct an open record hearing, which shall be open to the public.

2.09.050 Procedures

The City Council shall approve rules and regulations for procedural matters related to the duties of the office of the hearing examiner.

SECTION 2:

The following sections of the Lynden Municipal Code are hereby amended. Underlines indicate additions and strikethroughs indicate deletions.

3.28.190 - Appeals to hearing examiner.

Any taxpayer aggrieved by the amount of the fee or tax found by the city finance director to be required under the provisions of this chapter may appeal to the hearing examiner from such finding by filing a written notice of appeal with the city finance director within fourteen days from the time such taxpayer was given notice of such amount. The finance director shall, as soon as practicable, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the appellant. The taxpayer shall be entitled to be heard and to introduce evidence on his or her own behalf. The hearing examiner shall, following the hearing, ascertain the correct amount of the fee or tax and render a decision. The finance director shall immediately notify the appellant thereof, which amount, together with the costs of appeal, if such applicant is unsuccessful therein, must be paid within five days after such notice is given. The hearing examiner may, by subpoena, require the attendance thereat of any person, and may also require him to produce any pertinent books and records. Any person served with such subpoena shall appear at the time and place therein stated, produce the records required, if any, and shall testify truthfully under oath administered by the hearing examiner as to any matter required of him pertinent to the appeal, and it is unlawful for him to fail or refuse so to do.

3.40.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold a public hearing to consider the appeal. In considering the appeal the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue such determination as he or she deems fair and equitable. The decision of the hearing examiner shall be in writing.

3.44.050 - Appeals and adjustments.

Any person desiring to appeal from a decision made in the enforcement of the provisions of this chapter or any person seeking an adjustment to the dedication or mitigation assessments required by this chapter due to unusual circumstances in specific cases shall file an appeal with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required. The appeal shall be

heard by the hearing examiner in conformance with Ch. 2.09 LMC. Upon the conclusion of the hearing, the hearing examiner shall issue a written decision.

3.46.110 – Appeals.

A. A developer or property owner shall have the right to file an appeal of the amount of an impact fee determined by the director. All such appeals shall be filed and reviewed in conformance with the requirements established for filing appeals authorized by Title 17 of this code as set forth in Chapter 17.11 and shall be heard by the hearing examiner as an open record appeal as provided in Chapter 17.03 of this code. The developer or property owner shall bear the burden of proving:

1. That the director committed error in calculating the developer's/property owner's proportionate share, as determined by an individual fee calculation or, if relevant, as set forth in the fee schedule, or in granting credit for the benefit factors;

2. That the director based his/her determination upon incorrect data; or

3. That the director's decision was arbitrary and capricious.

5.02.080 – License – Appeals.

Any person applying for or holding a license under this chapter who is aggrieved by an action of the city clerk or other city official in connection with a license may appeal the matter to the city council by:

A. Filing a letter with the city clerk, stating the matter complained of, within thirty days of the action complained of; and

B. Appearing in person before the council or any of its committees which may be designated to hear and decide the appeal by the mayor.

5.16.100 – Grievance procedure – Hearing – Notice – Decision.

Any person aggrieved by the action of the police chief in the disapproval of a permit or license as provided in Section 5.16.040 may appeal to the city council. Such appeal shall be taken by filing with the city council within fourteen days after notice of the action complained of has been mailed to such person's last known address, and shall consist of a written statement setting forth fully the grounds for the appeal. The council shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant in the same manner as provided in Section 5.16.080 for notice of hearing on revocation. The decision and order of the city council appeal shall be final.

5.40.040 - License issuance for operation of business.

The public works director shall issue all business licenses to operate horse taxis, after review of the license application and inspection reports of the chief of police, or his designee. The public works director may, in his or her sole discretion, approve or deny the application. Any applicant denied a license by the public works director may appeal to the city council. Such appeal shall be filed no later than thirty days after the decision of the public works director.

6.09.050 – Appeal of dangerous dog or potentially dangerous dog declaration.

The owner may file an appeal with the city clerk to be forwarded to the hearing examiner challenging the final written order and declaration of the police chief made pursuant to this chapter. The appeal must be filed within fourteen days of the date of mailing the declaration of dangerous dog or potentially dangerous dog. The hearing examiner shall conduct an open-record public hearing for any timely filed appeal within thirty days of the date of filing and shall issue his or her decision in writing.

12.36.030 – Appeal requirements.

Appeals must be in writing accompanied with the applicable appeal fee if any. The appeal should include the following:

1. The City's project name.
2. The project parcel number or the tax parcel number of the real property involved.
3. Date of the relocation notice that is being appealed.
4. Name of the aggrieved person ("appellant").
5. A statement of issues/concerns.
6. An explanation of what the appellant is claiming, including all facts, reasons, and any supporting evidence as to the nature of the grievance or why the appellant is otherwise aggrieved.
7. The relief requested.
8. The signature, current address and telephone number of the appellant or the appellant’s authorized representative.

12.36.040 - Right to representation and inspection of documents.

Any appellant has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the appellant's own expense. The appellant shall have a right to inspect and copy all written materials in City files pertinent to their appeal, subject to reasonable conditions consistent with the Public Records Act. The City shall have the right to charge a reasonable fee for providing copies of documents requested.

12.36.050 - Scope of review of the appeal.

12.36.051 - Appeal to Public Works Director.

Within fourteen days of receipt of an appeal under this chapter, the Public Works Director will evaluate the appeal to determine if it is complete. The Public Works Director will send written notice to the appellant informing them if the appeal has been determined to be complete or requesting additional information. If the appeal is determined to be complete, the Public Works Director will issue and mail to the appellant a written decision on the appeal, based on applicable relocation assistance regulations, within fifteen days of the date of notice of completeness. If additional information is necessary to process the appeal, the Public Works Director will request the appellant file any additional information within ten days. Within fifteen days of (a) receiving the requested additional information, or (b) the deadline for receiving the requested additional information if sufficient additional information is not received, the Public Works Director will issue and mail to the appellant a written decision on the appeal based on applicable relocation assistance regulations. A written decision on appeal issued by the Public Works Director pursuant to this section shall be the City's final decision unless an appeal of the Public Works Director's decision is filed as set forth in section 12.36.052 LMC.

12.36.052 - Appeal of Public Works Director determination to Hearing Examiner .

If the appellant believes the Public Works Director has not correctly evaluated the appeal, the appellant may appeal the decision of the Public Works Director to the Hearing Examiner by filing a written appeal with the Public Works Director within fourteen days of the date of mailing of the City Public Work Director's decision. Appeals filed after the fourteen-day time period has lapsed will not be considered. The Hearing Examiner will conduct an open record hearing and review and make a decision in writing on the appeal based on applicable relocation assistance regulations.

13.12.285 – Administrative enforcement remedies.

A. State Responsibility for Administrative Actions. The department is charged with permitting and regulating significant industrial users' discharging to the city POTW. Except for emergency actions, it shall be the policy of the director to coordinate actions in regard

to control of such users with the department until such time as a local pretreatment program for the city may be authorized by the state. Failure to conduct such coordination, however, shall not invalidate any action of the city authorized by this chapter.

B. Notification of Violation.

1. Whenever the director finds that any user has violated or is continuing to violate any provision of this chapter, or an order issued hereunder, the director may serve upon such user written notice of the violation.

2. Within ten days of receipt of such notice of violation, the user shall submit to the director an explanation of the violation and a plan to satisfactorily correct and prevent the reoccurrence of such violation(s). The plan shall include specific actions the user will take, and the completion dates of each. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

3. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

C. Consent Orders.

1. The director, upon approval of the city council, is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such consent orders shall include specific action to be taken by the user to correct the noncompliance within a time schedule also specified by the consent order.

2. Compliance schedules, when included in consent orders, may not extend the compliance date beyond any applicable state or federal deadlines. Consent orders shall have the same force and effect as compliance orders issued pursuant to any section regarding criminal prosecution, and shall be judicially enforceable.

3. Failure to comply with any terms or requirements of a consent order by the user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or for any other enforcement action authorized under this chapter and deemed appropriate by the director.

D. Compliance Orders.

1. Whenever the director finds that a user has violated, or continues to violate, any provision of this chapter, or order issued hereunder, the director may issue a compliance order to the user responsible for the violation. This order shall direct that adequate pretreatment facilities, devise, or other related appurtenances be installed and properly operated and maintained. The order shall specify that wastewater services, including

collection and treatment, shall be discontinued and/or applicable penalties imposed unless, following a specified time period, the directed actions are taken.

2. Compliance orders may also contain such other requirements as might be reasonably necessary and appropriate to address the violation or noncompliance, including, but not limited to, the installation of pretreatment technology, additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance beyond any applicable state or federal deadlines, nor does a compliance order release the user from liability from any past, present, or continuing violation(s). Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

3. Failure to comply with any terms or requirements of a compliance order by a user shall be an additional and independent basis for termination of wastewater services, including collection and treatment, or any other enforcement action authorized under this chapter and deemed appropriate by the director.

E. Appeal.

1. A user may appeal the city's determination to suspend services, impose penalties, recover costs, or establish compliance schedules, through cease-and-desist orders (hereinafter called collectively "enforcement actions"). A user shall also have the right to a hearing prior to termination of a user's wastewater collection and treatment services.

2. Notice shall be served on the user specifying the enforcement action, and the reasons for such action.

3. A user wishing to contest an enforcement action shall, within fourteen days of receiving notice of the decision or order, file a notice of appeal with the director. The notice of appeal shall state the grounds for the appeal with specificity and shall be signed by the appellant.

4. The hearing examiner shall hold an open record hearing on the appeal in conformance with the procedures of Chs. 2.09, 17.09 and 17.11 LMC. The hearing examiner shall hear all evidence presented by the user, receive input from city personnel regarding the enforcement action, and shall render a written decision affirming the enforcement action, reversing it, or modifying it. The decision shall be served on the user.

F. Cease and Desist Orders.

1. The director may issue a cease-and-desist order upon finding a user has or is violating this chapter, a wastewater discharge permit order issued by the department, any other pretreatment standard or requirement. The decision to issue a cease-and-desist order shall consider the likelihood that a user's violations in conjunction with other discharges could cause a threat to the POTW, POTW workers, or the public, or cause pass through,

interference, or a violation of the POTW's NPDES permit. The order issued by the director will direct the user to cease and desist all such violations and to:

a. Immediately cease such actions or discharges as described;

b. Comply with all applicable pretreatment standards and requirements;

c. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

2. Issuance of a cease-and-desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.

G. Emergency Suspension of Wastewater Services.

1. The director may immediately suspend wastewater services, including collection and treatment, after informal notice to the user, if it appears to the city that such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to either the environment, normal operation of the POTW, or the health or welfare of any person or the general public.

2. Any user notified of a suspension of its wastewater discharge shall immediately cease all such discharges. In the event of a user's failure to immediately comply voluntarily with the suspension order, the director shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or the danger to the public. The director may allow the user to recommence its discharge when the user has demonstrated that the period of endangerment has passed, unless termination proceedings (under subsections F and G of this section) are initiated against the user.

3. It is unlawful for any person to prevent the director and/or city from terminating wastewater collection and treatment services in an emergency situation, by barring entry, by physically interfering with city employees or contractors, or by any other means.

4. A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the director prior to the date of any administrative hearing authorized by this chapter.

5. Nothing in this section shall be interpreted as requiring an administrative hearing prior to any emergency suspension under this section.

H. Termination of Treatment Services (Non-Emergency):

1. The director shall have authority to terminate wastewater services, including collection and treatment, through the issuance of a termination order to any user upon determining that such user has:

a. Refused access allowed by this chapter thereby preventing the implementation of any purpose of this chapter;

b. Violated any provision of this chapter including the discharge prohibitions and standards of Section 13.12.140; or

c. Violated any lawful order of the city issued with respect to this chapter.

2. For users holding permits to discharge to the city POTW, violation of the following conditions is also grounds for terminating discharge services:

a. Failure to accurately report wastewater constituents or characteristics;

b. Failure to report significant changes in operations or wastewater constituents or characteristics; or

c. Violation of any term or condition of the user's waste discharge permit.

3. Issuance of a termination order by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

13.24.090 – Appeals; 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 days of the director's determination of said charges ~~d~~ 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 Chs. 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, may be subject to a

civil penalty, in accordance with Chapter 1.24 of this Code, due and payable not later than ten days after issuance of final decision.

A. 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.

B. Penalties shall be per Section 1.24.015 of this code.

C. Aiding or Abetting. Any person who, through an act of commission or omission, aids or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.

D. Notice of Penalty. The notice shall be in writing, which shall be served either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall describe the violation, the date(s) of violation, and shall order the acts constituting the violation to cease and desist, and, in appropriate cases, require necessary corrective action within a specific time.

E. Collection. Civil penalties shall be due and payable not later than ten days following issuance of notice of penalty. If remission or appeal of the fine is sought, the fine shall be due and payable not later than ten days following issuance of a final decision. If a fine remains unpaid thirty days after issuance, the director may take actions necessary to recover the fine. Penalties shall be paid into the appropriate city fund.

F. Application for Remission. Any person incurring a civil penalty may, within ten days of issuance of the notice of penalty, apply in writing to the director for remission of the fine. The director shall issue a decision on the application for remission within ten days.

G. Issuance of Decisions. For purposes of this chapter, any written decisions of the director shall be deemed issued upon the date said written decision is deposited in the U.S. mail to the last known address of the person subject to the decision or is hand delivered to said person.

13.28.150 - Appeal.

A developer may file an appeal to the hearing examiner challenging the written interpretations and/or decisions of the public works director made pursuant to this chapter. The appeal must be filed with the public works director within fourteen days of the date of mailing the interpretation or decision of the public works director.

13.32.070 – Utility Fee.

A. Monthly Utility Fee Formula. A monthly utility fee for the operation of the Utility shall be established from time to time by resolution of the city council in conformity with RCW 35.21.766, as now or hereafter amended. The amount of the fee shall be based upon cost of regulating ambulance service and the cost of providing utility services as determined by a cost-of-service study pursuant to RCW 35.21.766(3). Those costs shall be divided among City of Lynden residents and occupants based on a combined demand and availability calculation consistent with accepted principles of utility rate setting. The rate attributable to costs for availability of the utility shall be uniformly applied across user classifications within the utility. The rate attributable to demand costs shall be established and billed to each utility user classification based on each user classification's burden on the utility. The fee charged by the utility shall reflect a combination of the availability cost and the demand cost and may in the discretion of the city council be reduced or subsidized by other city funds as authorized by RCW 35.21.766, as amended. The resulting fee shall be assessed to identifiable use classifications. Fees will not exceed the revenue requirements to cover the costs of the utility, as authorized by the city council by adoption of an annual budget and subsequent amendments.

B. Classifications. The utility fee shall be collected on a monthly basis from each of the following utility user classifications:

1. Single family residential;

2. Multifamily residential;

3. Commercial/ non-profit business not listed in other categories;

4. Assisted living/nursing homes;

5. Adult family homes/boarding homes;

6. Public;

7. Hotel/motel;

8. Campgrounds;

9. Fairground.

The owner or occupant of each single-family dwelling unit, adult family home, and boarding home and each owner or occupant of each dwelling unit for the multifamily residential classification and each owner of all other classifications shall be responsible for payment of the utility fee. Adult family homes and boarding homes which are single family dwelling units shall be classified as an adult family home or boarding home as applicable. The public classification is limited to all users which are political subdivisions of the state, state or federal agencies,

municipal corporations, schools, school districts. The City will determine which user classification applies when more than one classification is applicable.

C. Utility Fee Exemptions—Reductions.

1. Persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home or receive in-home services are exempt from the utility fee, pursuant to RCW 35.21.766 (4)(d)(i).

2. Any change in use of a dwelling unit, parcel or building, or any other change in circumstance that eliminates application of an exemption from the utility fee shall immediately make the affected property subject to applicable utility fees. The utility fee shall become due and payable as of the date of the change in use and shall continue until qualification for an exemption. It is the owner's or occupant's responsibility to notify the City of all use changes.

3. Monthly rates, and initial and final charges may be prorated in accordance with the City's standard utility prorating practices.

4. Any customer seeking an exemption from payment of the utility fee and/or conversion from covered to exempt status, must file a written petition with the city public works director seeking a determination as to whether a specific dwelling unit, parcel or building satisfies the exemption requirements set forth in this section. The public works director shall forward the petition to the hearing examiner, who shall conduct an open record hearing and issue a written decision.

5. The utility fee charged shall reflect an exemption for persons who are Medicaid eligible and who reside in a nursing facility, boarding home, adult family home, or receive in-home services.

6. The utility fee charged may reflect an exemption or reduction for designated classes consistent with Article VIII, Section 7 of the State Constitution.

7. The amounts of exemption or reduction shall be a general expense of the utility, and designated as an availability cost, to be spread uniformly across the utility user classifications.

D. Appeal. Fees assessed under this section may be appealed to the hearing examiner by submission of a written statement of appeal to the director within fourteen days of receipt of the director’s determination. The appeal shall be heard as an open record hearing. The director shall submit a staff recommendation for the hearing examiner’s review. After the open record hearing, the hearing examiner shall issue a written decision.

E.Periodic Utility Fee Review. The city finance director, or the city finance director's designee, in consultation with the city administrator shall periodically perform financial review and analysis of the utility's revenues, expenses, indebtedness, fees and accounting, and recommend budgets, fee adjustments and financial policy. Based on such review, the city finance director may recommend changes, amendments or additions for adoption by the city council.

F. Limitation on Total Revenue. The total revenue generated by the utility shall not exceed the total costs necessary to regulate, operate, maintain the utility.

15.02.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his or her designee in administering the International Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.03.060 - Building valuation schedule—Permit fees.

A. The valuation schedule to be utilized by the planning director or his designee in administering the International Existing Building Code shall be set by resolution of the city council.

B. Building permit fees shall be as set forth by resolution of the city council.

15.05.010 - Moving buildings—Allowed when.

Previously occupied buildings located within the city limits may be moved to another location with the permission of the planning director under the following conditions:

1) The building is to be relocated on the same parcel; or the building is non-residential, the occupied area is less than five hundred square feet, and the building is to be relocated to a non-residential parcel; or the building is listed, or deemed by an approved professional survey to be potentially listed on the National Register of Historic Places and/or the Lynden Register of Historic Places and all other preservation options have been exhausted, or the building faces the prospect of demolition; and
2) The building shall comply with the existing building and zoning codes and other applicable ordinances in the city.
3) The applicant shall, within ten days after making an application to move any building with an area greater than or equal to five hundred square feet, cause the interior or exterior walls, ceiling or flooring to be removed to such an extent necessary to permit a registered professional engineer to examine the materials and type of construction of

the building to ascertain whether it can be safely moved and that it will comply with the existing building code and other applicable ordinances in the city. A written report shall be provided to the building official.

4) In addition to the above inspection, the applicant shall comply with all other relevant city approval and permit procedures; and

5) A bond, assignment of savings, or irrevocable letter of credit, in a form approved by the city attorney, shall be filed with the city in an amount sufficient to:

    a. Remove and dispose of the structure should the applicant abandon it before the move is completed; and

    b. Guarantee the site improvements, construction, painting, and finishing the exterior of the building shall be completed in accordance with the Lynden Municipal Code within ninety days; and

    c. Guarantee the restoration of the original location by capping the existing utilities, removal of the existing foundation, grading and clearing the location of all debris resulting from the move.

6) Should the moving operation require use of or travel over city rights-of-way, the applicant shall:

    a. Prove they have liability insurance in the amount of at least one million dollars, listing the city as an additional named insured. This insurance will remain in full force and effect during the moving operation and will hold the city harmless from all claims arising from the moving operation.

    b. If moving the building will require use of an oversize/overheight vehicle, then a permit will be required from the public works department.

7) The applicant shall execute and deliver to the city a document holding the city harmless from any and all claims arising from the removal and relocation of the house.

In any case in which the planning director denies permission for such a move, the applicant may appeal the decision to the hearing examiner under the provisions of Chapter 17.11 of the Lynden Municipal Code.

15.08.030 - Plumbing system inspection authorized when.

Where any structure is permitted to connect to any city sanitary sewage system and/or water system, the planning director or his/her designee may make or require an inspection of the plumbing system to ensure compliance with any city requirements, prior to a final inspection by the planning director or his/her designee.

15.14.010 - Application for appeal.

After exhausting all administrative remedies, a person shall have the right to appeal a decision of the building code official to the hearing examiner. An application for appeal shall be based on a claim that the true intent of the codes adopted in this chapter or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better alternate material or method of construction is proposed. The application shall be filed on a form obtained from the city building code official within fourteen days after the notice of the decision was mailed and shall be accompanied by an application fee in an amount set by the city council.

15.14 .020 - Open hearing.

All hearings before the hearing examiner related to a provision of this chapter shall be open to the public. The appellant, the appellant's representative, the city building code official and any person whose interests are affected shall be given an opportunity to be heard.

15.14 .030 - Authority.

The hearing examiner shall have authority to review decisions of the code official for the following legally adopted codes:

A. International Building Code;

B. International Mechanical Code;

C. International Fire Code;

D. Uniform Plumbing Code;

E. Washington Energy Code;

F. Washington State Ventilation and Indoor Air Quality Code.

15.14 .040 - Hearing examiner decision.

If the appellant convinces the hearing examiner either that the true intent of the codes or the rules adopted thereunder have been incorrectly interpreted, or that the provisions of this code do not fully apply to the appellant's situation or that there is an equally good or better interpretation of the section or sections in question, then the hearing examiner may modify or reverse the decision of the code official . The hearing examiner shall have no authority relative to the interpretation of the administrative provisions of the code nor shall the hearing examiner be empowered to waive specific requirements of the codes listed in this chapter. The city's building code official shall take immediate action in accordance with the decision of the hearing examiner.

16.05.160 – Substantive authority

A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Lynden.

B. The city may attach conditions to a permit or approval for a purpose so long as:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The city has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

C. The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

D. The city designates and adopts by reference the following policies as the basis for the city's exercise of authority pursuant to this section:

1. The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural, and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The city recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the hearing examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within fourteen days of the decision being appealed. Review by the hearing examiner shall be on a de novo basis.

16.08.020 – Shoreline Permit Review.

The hearing on shoreline permit applications and revisions shall be consolidated with other applications pertaining to the same project. Unless consolidated with another application, the hearing for which will be conducted by another hearing body, the hearing examiner shall conduct an open record hearing and decide whether to grant, grant with conditions, or deny all applications for shoreline permits or revisions to shoreline permits. The open record hearing shall generally follow the procedures outlined in Title 17 LMC. Regardless of whether the hearing is before the hearing examiner or another hearing body, staff shall submit a staff report with a recommendation as part of the hearing process.

16.08 .030 – Shoreline Permit Appeal.

The hearing examiner, city council or Department of Ecology decision on a shoreline permit or revision thereto may be appealed to the Shoreline Hearings Board within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.12.110 – Appeals and Variance procedure.

A. Hearing Examiner.

1. The hearing examiner shall hear and decide appeals described in LMC 16.12.110(A)(2), and requests for variances from the requirements of this chapter not accompanied by or for an underlying project application that will be heard by a different hearing body. Appeals and variance requests shall be heard in open record hearings. In all cases, the public works director shall supply the hearing examiner with a staff report and recommendation.

2. The hearing examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the public works director in the enforcement or administration of this chapter.

3. For both appeals and variance requests filed under this chapter, the hearing examiner's decision shall be subject to closed-record appeal to the city council. The hearing examiner's decision shall be the final decision of the city if not timely appealed to the city council.

4. In passing upon appeals and variance requests , the hearing examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

a. The danger that materials may be swept onto other lands to the injury of others;

b. The danger to life and property due to flooding or erosion damage;

c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

d. The importance of the services provided by the proposed facility to the community;

e. The necessity to the facility of a waterfront location, where applicable;

f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

g. The compatibility of the proposed use with existing and anticipated development;

h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

i. The safety of access to the property in times of flood for ordinary and emergency vehicles;

j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

l. Compliance with the Endangered Species Act.

5. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing paragraphs a through l of subdivision 4 of subsection A of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing a variance increases.

6. Upon consideration of the factors of subdivision 4 of subsection A of this section and the purpose of this chapter, the hearing examiner or city council may attach such conditions to the granting of variances as deemed necessary to further the purposes of this chapter.

7. The public works director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances.

1. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

2. Variances shall not be issued within any designated floodway.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subdivision 4 of subsection A of this section, or conflict with existing local laws or ordinances.

5. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations are quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria, except subdivision 5 of this subsection, and otherwise complies with Section 16.12.120(A) and (B).

16.16.140 – Offense and penalty.

A. Any person, firm, partnership, limited liability company, corporation, or other legal entity that fails to comply or causes the failure to comply with any provision of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which such a violation is found to have occurred shall constitute a separate offense.

B. The city may levy civil penalties against any person, firm, partnership, limited liability company, corporation, or other legal entity for failure to comply or causing a failure to comply with of any of the provisions of this chapter. The civil penalty shall be assessed as a one-time penalty of five hundred dollars and/or a maximum rate of five hundred dollars per day per violation.

C. 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.

D. The penalty provided in subsection B above shall be imposed by serving the responsible party with a notice in writing, either by certified mail with return receipt requested, or by personal service. The notice shall include the amount of the penalty imposed and shall describe the

violation with reasonable particularity in ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

E. Within thirty days after the notice is received, the party incurring the penalty may apply in writing to the planning director for remission or mitigation of such penalty. Upon receipt of the application, the planning director may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper. The planning director's final decision on mitigation or revision shall be reviewed by the hearing examiner if the aggrieved party files a written appeal of said decision with the planning director withinfourteen days of its issuance.

17.01.030 - Definitions

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

…

"Final decision" means the final action by the staff, city board, hearing examiner, or city council.

…

<u>“Hearing body” means the city council, planning commission, hearing examiner, or other officer, board, or commission before which an open or closed record hearing occurs.</u>

<u>“Hearing examiner” means the hearing examiner or hearing examiner pro tem of the city of Lynden as established by ordinance.</u>

…

"Open record hearing" means a hearing, conducted by a hearing body that creates the city's record through testimony and submission of evidence and information. An open record hearing may be held prior to the city's decision on a development permit application; or may be held on an appeal if no open record hearing has already been held on the development permit application. <u>Provisions of this code require either that an open record hearing be held before the final decision-making body (e.g., city council or hearing examiner) or before a body making a recommendation to a decision-making body (e.g., planning commission).</u>

…

"Variance" means a permissible modification of the application of Titles 13, 16, 17, 18, and 19 or other development standards of this code to a particular property, subject to the approval of the hearing examiner, city council, or other hearing body as provided by this code.

17.03.020 - Planning director.

The planning director shall review and act on the following:

A. Authority. The planning director, "the director," is responsible for the administration of Titles 16, 17, 18 and 19 of this code, except for Chapter 16.12.

B. Administrative Interpretation. Upon request or as determined necessary, the director shall interpret the meaning or application of the provisions of the titles and issue a written administrative interpretation within thirty days. All requests for interpretation shall be written and shall concisely identify the issue and desired interpretation. Appeals of an administrative interpretation shall be filed in conformance with Section 17.11.020.

C. Administrative Approvals. Administrative approvals as set forth in Sections 17.09.010(A) and 17.09.020 and as otherwise provided in Titles 16, 17, 18 and 19.

17.03.030 - City council.

In addition to its legislative responsibility, the city council shall:

A. Review and make the final decision of the city on development permit applications and open record appeals that were heard, reviewed, and had recommendations entered thereon by the planning commission. A nonexclusive listing of the development permit applications and appeals on which the planning commission will conduct open record hearings and make recommendation to the city council is set forth in Section 17.03.040(A). The final decision of the city in such matters shall be made by the city council without conducting an additional hearing or considering additional evidence.

B. Conduct the closed record appeal and make the final decision of the city on appeals from the decisions of the hearing examiner. A nonexclusive list of the matters for which the hearing examiner renders a decision is at LMC 2.09.040(B). The hearing examiner's decision on all of these matters is subject to closed record appeal before the city council.

C. Conduct the hearing(s), review, and make the final decision of the city on the following:

1. Open record hearings on requests for variances from development standards identified in Section 17.17.010 when such requests do not include another development permit application as described in Section 17.17.020(B);

2. Closed record appeals of design review board decisions;

3. Open record hearing on petitions for the vacation of right-of-way;

4. Open record hearings on the revocation or modification of existing permits or approvals, as provided in Section 17.13.070;

5. All other matters as are required or authorized by this code or state law.

17.03.040 - Planning commission.

A. Planning Commission Open Record Hearings and Recommendation to City Council. The planning commission shall conduct an open record hearing, review, enter findings, and make recommendations to the city council on the following development permit applications and open record appeals:

1. Subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments;

2. Conditional use permits;

3. Site-specific rezones, including site-specific comprehensive plan map amendments;

3. Variance requests from development standards identified in Section 17.17.010 when such requests are accompanied by another development permit application as described in Section 17.17.020(A);

4. Shoreline permit and revisions applications when such applications are accompanied by another development permit application to be heard by the planning commission;

5. Other actions requested or remanded by the city council or as required by this code.

17.03.050 – Hearing examiner.

The hearing examiner shall review and act on the subjects over which the hearing examiner has jurisdiction pursuant to 2.09.040.

17.05.090 - Consolidated processing of development applications and appeals.

A. Consolidated Processing Required. Except as otherwise authorized or required by provisions in city code, the city shall provide for consolidated processing of development permit applications and appeals so that there is not more than one open record hearing and one closed record hearing for the same development proposal or project, as required by Chapter 36.70B RCW.

B. Exclusions from Consolidation Requirements.

1. Appeals of SEPA Threshold Determinations. Hearings on appeals of SEPA threshold determinations shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the hearing examiner. The SEPA threshold determination appeal shall be the only matter discussed at the hearing, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

2. Grounds for Excluding Appeals of SEPA Threshold Determinations. Appeals of SEPA threshold determinations often involve technical issues best suited to the expertise of the

hearing examiner. Further, from a procedural standpoint, it is efficient to resolve SEPA issues before evaluating other aspects of the project.

3. Determinations by Design Review Board. Design review, landscape plan, and signage issues shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the design review board in conformance with Chapter 19.45 of this code. Aside from design review, landscape plan, and sign issues, the design review board shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

4. Grounds for Excluding Design Review by Design Review Board from Consolidation Requirements. The sole function and purpose of the design review board is to review and make decisions on design, landscape plan, and signage aspects of development proposals for multifamily dwellings and commercial buildings. The design review board has longstanding exclusive special expertise in the city in reviewing and deciding upon design review, landscape plan, and signage issues. Such expertise is not possessed by or readily transferred to any other hearing body in the city. Special circumstances under RCW 36.70B.140(1) are therefore presented warranting exclusion of design, landscape plan, and sign review as conducted by the design review board from consolidated processing requirements. In addition, design review may take place for development proposals involving only the issuance of building permits exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140(2).

5. Administrative Approvals. Administrative approvals identified in Sections 17.09.010 and 17.09.020 which are categorically exempt from environmental review under Chapter 43.21C RCW shall be exempt from the consolidation requirements in this chapter and Chapter 36.70B RCW. Nothing in this section shall prevent consolidation of such administrative approvals with related development proposals, in the discretion of the director.

6. Grounds for Excluding Administrative Approvals from Consolidation Requirements. The city has authority to exclude the administrative approvals which are categorically exempt from environmental review from consolidation requirements pursuant to RCW 36.70B.140(2).

17.07.050 - Notice of decision.

A written notice for all final decisions of the city shall be sent to the applicant and all parties of record. For development applications requiring planning commission review and city council approval, the notice shall include the minutes, or the signed ordinance or resolution. For decisions made by the hearing examiner, the notice shall include the hearing examiner's written

findings of fact, conclusions of law, and decision. For shoreline permits, notice of decision must also be sent to the department of ecology and the Washington State Attorney General.

17.09.010 - Administrative approvals without notice.

A. The director may approve, approve with conditions, or deny the following without notice:

1. Lot line adjustments;

2. Extension of time for approval;

3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units or density or (iii) decrease the quality or amount of open space.

B. The public works director may approve, approve with conditions, or deny the following without notice:

1. Fill and grade permits;

2. Floodplain development permits;

3. Building permits.

C. Decisions under this section shall be deemed made on the date issued. Appeals therefrom shall be governed by Chapter 17.11 of this code. Upon receipt of any such appeal, a notice of development application shall be prepared substantially in conformance with the requirements of Section 17.07.010 and shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall enter findings and render a decision on appeal.

17.09.020 - Administrative approvals subject to notice.

A. The director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:

1. Home occupations;

2. Short plats.

B. Final Administrative Approvals. Preliminary approvals under this section shall become final subject to the following:

1. If no appeal is submitted, the preliminary approval becomes the final decision of the city at the expiration of the fourteen-day notice period established in Section 17.07.020.

2. If a written notice of appeal is received within the specified time the matter will be referred to the hearing examiner for an open record hearing, except as otherwise noted in Titles 16 through 19. Upon receipt of any such appeal, the notice of application shall be combined with notice of the open record appeal hearing substantially in conformance with Section 17.07.030. Following the open record hearing, the hearing examiner shall make a decision on the appeal.

17.09.025 – Hearing Examiner Actions on Appeals.

A. Actions. Following completion of an open record hearing on an appeal, the hearing examiner shall enter a decision on the matter in writing. The decision shall be supported by written findings of fact and conclusions of law.

B. The hearing examiner's decision shall include one of the following actions:

1. Approve;

2. Approve with conditions;

3. Modify, with or without the applicant's concurrence, provided that the modifications do not:

   a. Enlarge the area or scope of the project,

   b. Increase the density or proposed building size,

   c. Significantly increase adverse environmental impacts as determined by the responsible official;

4. Deny without prejudice;

5. Deny with prejudice;

6. Remand to City staff for action consistent with its decision.

C. The hearing examiner's decision on any matter is subject to a closed-record appeal before the city council. If not timely appealed, the hearing examiner's decision shall become the final decision of the city.

17.09.060 - Procedures for public hearings.

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Before the planning commission, the chair shall open the public hearing. Before the hearing examiner, the hearing examiner shall open the public hearing. Before the city council, the mayor shall open the public hearing. In general, the following sequence of events shall be observed:

A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.

B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.

C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed and/or allowed by the chair, hearing examiner, or mayor at his or her discretion.

D. Rebuttal, response or clarifying statements by the staff and the applicant.

E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

17.09.080 - Reconsideration.

A. A party of record to an open record hearing or closed record appeal may seek reconsideration of a final decision of the hearing examiner, planning commission, or council, or of a planning commission recommendation on a matter identified in LMC 17.03.030, 17.03.040, or 17.03.050 by filing a written request for reconsideration with the director within five days of the date of issuance of the final decision or mailing of the planning commission recommendation, as applicable. The request shall comply with the content requirements listed in Section 17.11.020(B).

B. The hearing body that issued the final decision of which the party seeks reconsideration shall consider the request at its next regularly scheduled meeting which follows the request by five or more days, except that the hearing examiner shall consider a request for reconsideration at least five days but not more than thirty days after the request is filed. All hearing bodies shall consider reconsideration requests without public comment or oral argument by the party filing the request.

C. If the hearing body denies the request for reconsideration, said denial must be in writing and issued in the same form as the original final decision or recommendation, and notice of the denial shall be provided to all parties in the same manner as a final decision. The date of written denial of a timely filed written request for reconsideration shall be considered the new date of issuance of the final written decision by the city, or recommendation of the planning commission, as applicable.

D. If the request is granted, the hearing body may immediately revise and reissue its decision or recommendation or may call for argument in accordance with the procedures for closed record appeals. Notice of the granted request for consideration shall be provided to all parties in the same way as notice of a final decision.

E. Reconsideration shall be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

17.09.090 - Remand.

In the event the hearing examiner or city council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the hearing examiner or council may remand the matter back to the decisionmaker or hearing body to correct the deficiencies. The remand order shall specify the items or issues to be considered and the time frame for completing the additional review and work.

17.09.100 - Final decision.

A. Time. 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. The one hundred twenty-day deadline does not apply to the following matters or circumstances:

1. Amendments to the comprehensive plan or development code;

2. Any time required to correct plans, perform studies or provide additional information, provided that within fourteen days of receiving the requested additional information, the director shall determine whether the information is adequate to resume the project review;

3. Substantial project revisions made or requested by an applicant, in which case the one hundred twenty days will be calculated from the time that the city determines the revised application to be complete;

4. All time required for the preparation and review of an environmental impact statement;

5. Projects involving the siting of an essential public facility;

6. An extension of time mutually agreed upon by the city and the applicant;

7. All time required to obtain a variance;

8. Any remand to the hearing body;

9. All time required for the administrative appeal of a determination of significance.

B. Effective Date. The final decision of the city made by the city council, hearing examiner or applicable hearing body shall be effective on the date of issuance of the decision, motion, resolution or ordinance, or subsequent decision in response to a timely filed motion for reconsideration. For purposes of this chapter, the date of issuance of the decision is:

1. Three days after a written decision is mailed by the city or, if not mailed, the "date of notice" listed in the decision which shall be the date on which the city provides notice that a written decision is publicly available;

2. If the final decision is made by ordinance or resolution by the city council sitting in a quasi-judicial capacity, the date the council passes the ordinance or resolution;

3. If neither subsections(B)(1) or (B)(2) of this section applies, the date the decision is entered into the public record.

17.11.010 - Appeal of administrative interpretations and approvals.

Administrative interpretations made pursuant to Section 17.03.020(B) and administrative approvals made pursuant to Sections 17.09.010 and 17.09.020 may be appealed to the hearing examiner by applicants or parties of record in accordance with the provisions of this chapter. The hearing examiner's decision shall be subject to closed record appeal to the city council.

17.11.020 – Appeals

A. Filing. All appeals, either open or closed record, and to any hearing body, authorized by this title shall be filed with the director within fourteen days after the date of the decision of the matter being appealed. These deadlines are jurisdictional. Appeals untimely or improperly filed shall not be considered.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed;
2. The name and address of the appellant and his or her interest(s) in the matter;
3. The specific reasons why the appellant believes the decision to be wrong;
4. The desired outcome or changes to the decision;
5. The appeals fee.

Notwithstanding any other provision in city code, for an open record appeal of an impact fee determination, the appellant may elect to have the appeal consolidated with another open record hearing before the planning commission on the same project. Such election shall be clearly stated on the notice of appeal at the time of filing. Failure to so state this election on the notice of appeal at the time of filing shall result in the impact fee open record appeal hearing being conducted by the hearing examiner.

C. Appeal Process. Appeals shall be reviewed and processed, depending on the nature of the appeal, in conformance with Chapter 17.03 of the city code. Consolidation, notice, and other procedural requirements governing appeals are set forth in Chapters 17.05, 17.07 and 17.09 of the city code.

D. Burden of Proof and Standards for Granting Relief on Appeal. In any open record or closed record appeal, the burden of proof shall be on the appellant. Except where a different standard

of review is specified for a particular type of appeal elsewhere in city code, the decision on appeal shall be upheld unless it is shown to be:

1. Clearly erroneous under the law;
2. Not supported by substantial evidence; or
3. Arbitrary and capricious.

17.11.030 - Judicial appeal.

A. Appeals from the final decision of the city council or other city body involving Titles 16 through 19 of this code, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Whatcom County Superior Court pursuant to the time limits and process established in Chapter 36.70C RCW ("Land Use Petition Act").

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by Chapter 36.70C RCW. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant, as prescribed in Chapter 36.70C RCW. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

17.11.040 – Appeal to the shoreline hearings board.

Final decisions of the city on shoreline substantial development permits, shoreline conditional use permits and shoreline variance requests are made by the hearing examiner when not accompanied by another project application to be heard by a different hearing body, or by the city council after recommendation from the planning commission pursuant to the city's shoreline management program. Appeals of such final decisions may be taken to the shoreline hearings board as provided in the Shorelines Management Act of 1971 and implementing regulations.

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.

17.13.050 – Civil fines.

A. Authority. A person who violates any provision of the development code, or who fails to obtain any necessary permit or who fails to comply with a civil regulatory order shall be subject to a civil fine.

B. Amount. The civil fine assessed shall not exceed one thousand dollars for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

C. Notice. A civil fine shall be imposed by a written notice and shall be effective when served or posted as set forth in Section 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.

D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid thirty days after it becomes due and payable, the director may take actions necessary to recover the fine. Civil fines shall be paid into the city's general fund.

E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the director for remission of the fine. The director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.

F. Appeal. Following the director's final determination on a timely application for remission, the civil fine imposed may be appealed to the hearing examiner in an open record hearing as set forth in Chapter 17.11 of this code.

17.15.060 – Application – Procedures.

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project's ability to meet the requirements for concurrency.

A. Preapplication Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a nonbinding concurrency determination (see subsection (C)(1) of this section) to learn whether adequate public facilities are available to serve new development.

B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the planning director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the planning director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications—Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements:

1. Concurrency Inquiry. An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the city council may be charged for such "concurrency determination."

2. Concurrency Test. Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the comprehensive plan and in Section 17.15.070.

If the planning director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the city within thirty days of receipt of a complete application as set forth in subsection A of this section. A "finding of concurrency" will be rendered only in conjunction with a complete development/concurrency application.

a. If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.

b. Transportation Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:

i. Accept the city's denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e);

ii. Accept mitigation for transportation facilities as provided in Section 17.15.080 of this chapter;

iii. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.

c. Other Public Facilities. If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is not passed. The applicant may:

i. Accept a ninety-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist;

ii. Accept a ninety-day reservation of the available, existing capacity and demonstrate to the city's satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate;

iii. Accept a ninety-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or

iv. Accept the city's denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the city to investigate whether there is just cause or ability to amend or revise the comprehensive plan;

v. Appeal the results of the concurrency test to the hearing examiner in accordance with Chapter 17.11 of this code.

3. Finding of Concurrency. The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the planning director. The finding of concurrency shall be binding on the city at such time as the city determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. Term of Capacity. A finding of concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The planning director may at his or her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the finding of concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. Unused Capacity. Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.

6. Level of Service Areas. The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. Funded Projects. The developer may rely on capacity provided by funded projects, including projects in the current capital facilities plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that the applicant must fully fund or mitigate any impacts as required in this chapter. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. Development Approval. No final development permit shall be issued by the city unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. Nonassignability of Determination. The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.080 – Mitigation for transportation facilities.

A. General. If mitigation is required to meet the intersection level of service standard, the applicant may instead choose to: 1. Reduce the size of the development until the standard is met; 2. Delay development schedule until city and/or others provide needed

improvements; or 3. Provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the city in form and amount, to guarantee the applicant's pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:

1. Transportation mitigation fees shall be based on the per peak hour trip rate.

2. City standards shall include:

a. Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report—Trip Generation. The presumption is that rates used by the city are accurate unless proven otherwise.

b. For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.

3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.

4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of five hundred trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation Approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the planning director for council approval as follows:

1.Payment for and Timing of Improvements. Payment for developer-funded transportation improvements affecting streets and intersections within the city's direct operational control necessary to meet the requirements for concurrency must be made as follows:

a. For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.

b. For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.

c. For any project over one hundred peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with fifty percent being paid at the issuance of the building permit and the balance paid within twenty-four months.

d. Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.

e. All improvements shall comply with construction standards provided in Title 12 of this code, and the city's Project Manual for Engineering Design and Development Standards.

f. Furthermore, the city administrator or his or her designee shall require an assurance device to guarantee completion of such improvements in accordance with the construction standards.

g. The finance director shall be responsible for maintaining all mitigation funds received under this chapter.

h. Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the city's direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the planning director or his or her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the city administrator may substitute for the payment required in this subsection.

i. The project proponent may provide funding in an amount equal to the cost estimate of the city administrator or his or her designee, for necessary traffic improvements. The city administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the city must be paid in full by the project proponent to the city prior to issuance of a development permit, final plat approval or such other approval for the project.

2. Transportation Demand Management. As a mitigation measure, the project proponent may establish transportation demand management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subdivision 3 of this subsection. The planning director or his or her designee must approve the strategies and

shall monitor and enforce the performance of agreed upon TDM measures. The planning director will determine if performance measuring devices shall be imposed and may require annual documentation of the continued effectiveness of such measures. The planning director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria—Acceptable Mitigation. Acceptable mitigation requires a finding by the planning director that:

a. The mitigation is consistent with the comprehensive plan;

b. The mitigation contributes to system performance;

c. Improvements to an intersection or roadway may not shift traffic to a residential area;

d. Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available;

e. Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction's policies and regulations;

f. Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such;

g. The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes;

h. The adverse environmental impacts of the facilities improvement can be reasonably alleviated;

i. The improvement will not violate accepted engineering standards and practices.

Notwithstanding the foregoing, the planning director may require correction of a documented safety-related deficiency.

4. Mitigation Denial—Appeal Process. If the planning director determines that the proposed mitigation does not meet the requirements of this chapter, the planning director may deny the proposed improvements and determine the project is inconsistent with this chapter. The planning director's decision may be appealed by the applicant to the hearing examiner pursuant to the provisions of Chapter 17.11.

17.15.090 – Accounting and appeals.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the city can justify a longer period.

B. Any person aggrieved by the action of the planning director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action to the hearing examiner. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall be processed pursuant to the appeals procedures set forth in Chapter 17.11 of this code.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of the ordinance codified in this chapter, and (2) if for any reason the terms of the ordinance codified in this chapter are found inappropriate, such fee as necessary to assure concurrence for all facilities identified in this section, but not to exceed the fee collected pursuant to this chapter.

17.17.020 – Review and approval process.

A. When a request for a variance from development standards listed in Section 17.17.010 is consolidated with a development application, the variance request shall be considered concurrently with the development application. Such a variance application shall be heard in accordance with the provisions of Sections 17.09.025, 17.09.040 and 17.09.050 of the Lynden Municipal Code.

B. When a request for a variance to any provisions, standards or requirements listed in Section 17.17.010 does not include an application for additional development permits, or the proposed action does not require an open record public hearing, the application will be reviewed in accordance with the provisions of Chapter 17.05 of the Lynden Municipal Code. Said variance request will be heard by the city council in an open record public hearing consistent with the provisions of Section 17.09.060 of the Lynden Municipal Code.

17.17.040 – Standards and criteria for granting a variance.

Where unnecessary hardships and practical difficulties render it difficult to carry out the development standards of the City of Lynden as listed in Section 17.17.010, the hearing body shall have power to grant a variance in harmony with the general purpose and intent of the provisions of the development standards so that the spirit of those standards will be observed, public safety secured and substantial justice done. However, the hearing body shall not vary any of the rules, regulations or provisions of those development standards unless findings are made that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;

C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located; and

D. That the variance request is based on sound engineering judgment and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography, geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

19.22.010 Establishment, Relief, and Purpose

A. Establishment and Relief. There is established therein residential design standards and regulation by which residential structures may be permitted and maintained.

1. Relief from the required standards must be sought through the variance process.
2. Variance requests which relate specifically to site design development standards described in Section 19.22.020 shall be submitted to the hearing examiner consistent with Chapter 19.47 LMC.
3. Variance requests which relate specifically to the residential design criteria described in Section 19.22.030 through 19.22.050 shall be submitted to the Design Review Board consistent with LMC 19.45.035.

B. Purpose.

1. The essential purpose of the residential design standards to ensure that new developments meet and maintain a number of objectives that strive to promote orderly community growth and protect and enhance property values for the community as a whole.
    a. To soften and enhance the built environment using yards and green space, to incorporate inviting pedestrian scale elements into all residential construction, and to provide adequate parking areas.
    b. To create high-quality communities that have variation of architectural style and durable materials.

c. To reduce the visual impact of the garage and accessory structures and emphasize the pedestrian environment.
d. To enhance the aesthetics of communities through the installation of landscape and the screening of undesirable elements. Also, to enhance safety and function of residential properties through appropriate exterior lighting, addressing, and fencing.

2. Residential design standards also seek to encourage low impact design (LID) techniques such as rain gardens, xeriscape, or pervious pavement to minimize adverse impacts on the natural environment.

19.42.040 – Appeal of determination of building official.

Any interested or aggrieved person, or any officer, official of any department, board or commission of the city, jointly or severally, may appeal to the hearing examiner any determination of the building official in the application of the provision of the zoning ordinance to a particular land and/or structure. The hearing examiner's decision shall be final unless appealed to the city council. The city council shall hear the appeal as a closed record appeal and shall make the final decision of the city.

19.45.040 – Decision by the design review board.

The design review board shall review each application to determine if the design meets the guidelines as adopted in the design review guidebook for signs, and commercial and multi-family construction. It shall:

A. Grant approval of the proposed exterior design or sign, or

B. Deny the proposed design, or

C. Approve the exterior design with conditions, which shall be noted by the building inspector.

The building official shall enforce the decisions of the design review board when granting a building permit. All designs shall be subject to the International Building Code as well as all Lynden Municipal codes.

The design review board shall not impose conditions which are contrary to the requirements of any applicable building codes.

The decision of the design review board shall be the final decision of the city, unless appealed within fourteen days to the Lynden City Council.

19.47.010 - Hearing examiner – Variances.

The hearing examiner has jurisdiction over requests for variances from the requirements of Title 19, except for Chapter 19.33 and LMC 19.22.003, .040, and .050, when such variances are not

applied for in conjunction with an underlying project, the application for which will be heard by a different hearing body, as provided by section 2.09.040. The decision of the hearing examiner shall be subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. Applications for variances from the requirements of Title 19 that are made in conjunction with another project application for which an open record hearing is required shall be consolidated with that project application, and the hearing body hearing the underlying project application shall also issue a decision on the variance application. Terms used in this chapter are defined in LMC 17.01.030.

19.47. 020 - Variance—Request—Hearing.

Any property owner or developer may make a request to the hearing body authorized to hear such request for a variance from bulk provision of the zoning ordinance. The applicant shall appear at the public hearing, at the time and place fixed by the hearing body, in person, by agent or by attorney.

19.47.030 - Variance —Support or Opposition

Any interested or aggrieved person or persons, jointly or severally, and any officer or official of any department, board or commission of the city, jointly or severally, may support or oppose, in writing, any applicant's request for a variance. The written statement shall specify the reasons for supporting or opposing the applicant's request, contain the signature and description of the land of each property owner, and be submitted timely to the hearing body .

19.47.040 - Variance —Application procedure.

Unless stated otherwise in this Chapter, the notice and procedural requirements for variance proceedings shall be substantially the same as an appeal before the hearing examiner brought under Ch. 17.11 LMC, and shall be conducted consistent with Ch. 17.09 LMC.19.47. .050 - Variance —Stay authorized when.

A request to a hearing body for a variance from the requirements of Title 19 stays all proceedings, in furtherance of the action for which the variance is sought. However, upon a motion by a party, the hearing body may make a finding supported by clear, cogent, and convincing evidence that a stay would cause imminent peril to life or property, in which case such action shall not be stayed other than by an order issued by the Superior Court.

19.47.060 - Jurisdiction—Variances—Power to vary rules and regulations when.

Where unnecessary hardships and practical difficulties render it difficult to carry out a bulk provision of the zoning ordinance, the hearing body may grant a variance in harmony with the general purpose and intent of the provisions contained in this title from any rules, regulations or provisions of the zoning ordinance relating to the bulk provisions of the zoning ordinance, so that the spirit of the ordinance will be observed, public safety secured, and substantial justice done.

However, the hearing body may only grant a variance if it finds that all of the following conditions exist for each variance application:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and

C. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is located.

19.47.070 – Hearing—Decision.

Hearings on variance requests shall be open record hearings and shall follow substantially the same format as provided in Section 17.09.060. Notice and other procedural elements shall be as provided in the other applicable sections of Title 17, including Ch. 17.11 LMC.

The hearing body's decision shall be in substantially the same form as a decision on an appeal under Title 17 and shall include written findings of facts, conclusions of law, and decision. The findings of fact shall include pertinent information regarding any existing or preexisting conditions relating to topography, geology, utilization, and such conditions set forth by the official plans, development plans, and the comprehensive plans, and relevant facts which support and oppose the contention of the applicant. The hearing body's decision on a variance request may grant the variance, deny the variance, or grant the variance with conditions. The hearing body's decision may be subject to reconsideration under the same process set forth in Section 17.09.080.

19.47.080 –Decision by hearing body—Appeal—Effective date.

Section 17.09.100(B) provides the effective date of the decision, unless the hearing body makes a finding that making the decision effective immediately is necessary for the preservation of property or personal rights. If the hearing body's decision is associated with a pending permit application, the decision shall cease to be effective on the same date said application expires without having been granted. Otherwise, if the applicant does not obtain a building permit and/or occupancy permit within one year from the effective date of the effective date of the final decision of the city, the decision shall cease to be effective.

19.59.180 - Variances.

When an application for a communications facility does not require the approval of the planning commission and is not otherwise associated with a project application to be heard by another

hearing body, the hearing examiner shall have the authority to grant a variance from the requirements of this chapter, subject to closed record appeal to the city council as provided in Ch. 17.11 LMC. If the communication facility requires the planning commission's approval under LMC 19.59.060, the planning commission shall consolidate the hearing on the variance with the hearing on the application and make a decision on both matters. If the variance application for the communication facility is otherwise dependent on or connected to another underlying project application for which an open record hearing is required, the two hearings shall be consolidated and the hearing body making the decision on the underlying project shall also issue a decision on the variance application.

19.59.190 – Interpretations.

Where there is any dispute concerning the interpretation of this chapter, the decision of the city planner shall prevail, subject to open record appeal to the hearing examiner. The hearing examiner's decision shall be in writing and shall be subject to closed record appeal to the city council pursuant to Ch. 17.11 LMC.

19.59.220 – Nonconforming facilities.

A. Nonconforming facilities shall be removed or brought into compliance with this chapter no later than the expiration of the amortization period of each such facility, determined as follows:

1. For facilities made nonconforming by passage of the ordinance codified in this chapter, January 1, 2002.

2. For facilities made nonconforming by passage of any subsequent ordinance, five years after the effective date of such ordinance.

B. Loss of Nonconforming Status.

1. A nonconforming wireless communications facility shall immediately lose its legal, nonconforming status if:

a. The facility is altered in any way in structure or color, or if the structure exceeds the allowable number of appurtenance facilities;

b. The facility is damaged in excess of fifty percent of the original cost of the facility;

c. The facility is relocated; or

d. The facility is replaced.

2. On the occurrence of any of the events described in subsection (B)(1) of this section, the wireless communications facility shall be immediately brought into compliance with

this chapter with a new permit secured therefor, or shall be removed; provided, however, that the city planner may authorize specific alterations of such nonconforming facilities if it is found that:

a. The end of the nonconforming facility's amortization period is more than two years away; and

b. The total amount of aggregate noncompliance of the facility area of the existing facilities on the premises is reduced at least fifty percent by the proposed alterations; and

c. The alteration shall not affect the original amortization period for the nonconforming facility.

C. Notice of Nonconforming Facilities. The city planner shall endeavor to give notice of the legal nonconformance and amortization periods set forth in this section to the owners of wireless communications facilities required to be removed. Such notice should be given to the owners of the facilities as shown by city records within one hundred twenty days of the effective date of the ordinance which renders the facilities nonconforming, whichever occurs later. Only one such notice need be given. Failure of the city planner to give the notice specified in this section, or failure of the facility owner to receive any such notice shall not limit or affect the city's power to enforce this chapter, or in any way reduce the ability of the city to require removal of the nonconforming facilities as provided by law.

D. Administrative Appeal. The owner of a nonconforming wireless communications facility may appeal to the city planner to request an extended period of use of such facility beyond the amortization period determined by this section. Any such appeal must be made to the city planner upon forms provided by the city and must be accompanied by an appeal filing fee as set by resolution of the city council. The city planner shall require that the appellant provide as part of the appeal a general description of the facility, its dimensions and physical position; evidence sufficient to establish the date and cost of the facility as originally constructed and installed; the amount of depreciation claimed and the depreciation schedule used for such facility as reflected by Internal Revenue Service schedules for prior years; the estimated cost of relocation or alteration of such facility, where applicable; together with any other information or documents specified by the city planner which are reasonably necessary to assist the city in making a determination on the appeal. The city planner shall consider the statements and documentary evidence contained in the application and any supplementary information which may reasonably be required. In addition, the city planner shall inspect the subject facility to determine its general condition, state of repair, and the extent to which the facility does not conform to the requirements and limitations of this chapter. The city planner may also request that the facility is inspected by the building official for structural soundness and building details. In making the determination, the city planner shall consider the unrecoverable cost invested in the

facility, the estimated remaining life of the facility, and the degree of nonconformity. The city planner shall prepare and make available for public inspection the specific method used in processing such appeals. All determinations of appeals made pursuant to this section shall be made in writing with specific findings of fact and conclusions in support of the decision. All such determinations of the city planner are subject to open record appeal to the hearing examiner as provided by this title. The hearing examiner's decision shall be subject to closed record appeal to the city council under the procedures in Ch. 17.11 LMC.

19.67.110 – Appeals and adjustments.

Any person(s) seeking an adjustment to the dedication or mitigation assessments required by this chapter shall have a right to appeal to the hearing examiner. Any such appeal shall be filed with the city clerk in writing within fourteen days after the date of mailing or transmittal by the city of written notice of the specific dedication or mitigation assessments required by this chapter. Following receipt of such an appeal, the hearing examiner shall hold an open record hearing to consider the appeal. In considering the appeal, the hearing examiner may, in his or her discretion, take into account unusual circumstances in a specific case and may consider studies and data submitted by the appellant(s). The hearing examiner shall issue a written decision as he or she deems fair and equitable.

SECTION 3:

The City Council hereby approves the procedures of the office of the hearing examiner attached as Exhibit A hereto.

SECTION 4:

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 5:

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

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

PASSED by the City Council this _____ day of _____, 2021,

and signed by the Mayor on the _____ day of _____, 2021.

_____

MAYOR

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney