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MEMORANDUM

TO: Lynden City Council
FROM: Robert A. Carmichael
DATE: April 1, 2025
SUBJECT: Overview for Public Hearing on Guide Meridian Sewer Improvements Assessment Reimbursement Area (April 7, 2025)

Background: Pursuant to [RCW 35.91.060](#) and [LMC 13.28.180](#), the City is authorized to create an assessment reimbursement area for utility improvements financed by the City and become the beneficiary of reimbursements for those improvements collected when properties within the area either (1) connect to the improvements, or (2) are developed or redeveloped in a manner requiring connection to or use of the improvements. These are city-initiated latecomer assessments.

Project: The City has completed construction of sewer improvements along Guide Meridian between Front Street and Main Street. The total reimbursable costs associated with the improvements financed by the City are \$1,094,898.08.

Preliminary Determinations by Public Works Director: Pursuant to [LMC 13.28.180\(A\)](#), the Public Works Director determines (1) the boundaries of a preliminary assessment reimbursement area, and (2) a preliminary assessment roll, which includes each property within the area. These determinations are subject to the following limitations:

- The boundaries of the assessment area must be formulated based on which parcels would (1) require construction or improvements upon development or redevelopment, or (2) would be allowed to connect to the improvements. [RCW 35.91.060\(1\)\(b\)](#).
- The RCW specifies that a property's reimbursement assessment "**may be no greater than a property's pro rata share**" of costs associated with the improvements required to meet utility service. [RCW 35.91.060\(2\)](#); [RCW 35.91.050](#). (Emphasis added)
- City code specifies that the assessment must be "**an equitable allocation of the cost of construction among the properties**" within the area. [LMC 13.28.050\(E\)](#). City code specifies that the method utilized may be (1) front footage, (2) number of units, (3) square footage, (4) the zone and termini method, or (5) "any other recognized methods reasonable calculated to equitably allocate the assessment." *Id.* (Emphasis added).

-No costs for any portion of the improvements that only benefit property outside the assessment area may be reimbursed. [RCW 35.91.060\(2\)](#); [LMC 13.28.180\(A\)\(1\)](#).

-The City's administrative and legal costs are not subject to reimbursement. *Id.*

-Notably, there is no requirement that the assessment for a particular property not exceed the increase in the fair market value of the property that results from the improvements, as is the case with a local improvement district assessment. [RCW 35.43.150](#).

Here, the Public Works Director allocated the preliminary assessment amounts based on the square footage method.

Procedure: On February 18th, Preliminary Determination Notices were mailed to property owners within the preliminary reimbursement area. [RCW 35.91.060\(1\)\(c\)](#); [LMC 13.28.060\(A\)](#). A property owner may request a public hearing in writing within twenty days of the mailing of the notice. *Id.* If no written request is received, the Public Works Director's preliminary determinations becomes final. *Id.*

Here, the Public Works Director received a timely request for a public hearing. At its March 17th meeting, the City Council scheduled the public hearing for its April 7th. Notice of the public hearing was subsequently (1) mailed to each property owner within the preliminary assessment area, and (2) published in the Lynden Tribune. [LMC 13.28.060\(B\)](#).

Quasi-Judicial Public Hearing: At the public hearing the City Council will be acting in a quasi-judicial capacity. The City Council will consider any and all written and oral evidence, objections, and comments offered regarding the preliminary assessment reimbursement area and the preliminary assessment roll establishing individual property assessments. Participation is not limited to property owners who filed a request for a public hearing.

Appearance of Fairness Doctrine: As the City Council's decision is a quasi-judicial action of the local legislative body determining the legal rights and duties of specific parties in a hearing, the Appearance of Fairness Doctrine applies. [RCW 42.36.010](#).

The Appearance of Fairness Doctrine provides that during the pendency of a quasi-judicial proceeding, no member of the City Council may engage in ex parte communication with a proponent or opponent of the proposal which is the subject of the proceeding unless the Councilmember:

-Places on the record of the substance of any written or oral ex parte communications regarding the matter;

- Publicly announces the content of the communication at each hearing where action on the matter is considered or taken; and

- An opportunity is provided to the party the Councilmember was communication with to rebut the substance of the communication.

[RCW 42.36.060](#). Here, (1) the proponent of the proposal which is the subject of the quasi-judicial action is the City, acting through the Public Works Department, and (2) the action has been pending for the purposes of the Appearance of Fairness Doctrine since a request for public hearing was received on March 3, 2025. Accordingly, if a Councilmember has had ex-parte communication about the subject of these proceedings with City staff or any constituent since March 3, 2025, that communication must be placed on the record pursuant to the above requirements.

Notably, the Appearance of Fairness doctrine does not apply to communications between a Councilmember and a constituent regarding any matter other than the pending quasi-judicial action. [RCW 42.36.020](#).

If at the conclusion of the public hearing the City Council elects to either take the matter under consideration or remand the matter back to the Public Works Director, the requirements of the Appearance of Fairness Doctrine will remain applicable until such time as a final determination is made.

Options: After the public hearing, the City Council has four options. The Council may (1) approve, (2) reject, or (3) modify the preliminary assessment reimbursement area, and/or the preliminary assessment for any or all property within the area. The City Council may also (4) remand the matter back to the Public Works Director with specific directions for further review. [RCW 35.91.060\(1\)\(c\)](#); [LMC 13.28.060\(B\)](#).

- Any modification(s) made by the City Council must be consistent with the requirements of [RCW 35.91.060](#) and [LMC 13.28.180](#).

- If the City Council remands the matter back to the Public Works Director, a new public hearing will be scheduled upon completion of review by the Director. [LMC 13.28.060\(B\)](#).

Final Decision and Ordinance: Once the City Council has made a final determination, staff will prepare an ordinance in accordance therewith formally adopting the assessment reimbursement area and assessment rolls. Once adopted, the ordinance will be the final decision of the City, subject to judicial review. [RCW 35.91.060\(2\)](#); [LMC 13.28.060\(B\)](#)