ORDINANCE NO. 1607

INTERIM ORDINANCE EXTENDING THE MORATORIUM ON SUBDIVISION AND PLANNED RESIDENTIAL DEVELOPMENT APPLICATIONS AND CERTAIN BUILDING PERMIT APPLICATIONS FOR PROPERTY LOCATED WITHIN THE PEPIN CREEK PROJECT AREA

WHEREAS, on August 19, 2013, the City of Lynden ("City") adopted the April 2009 Amendment to the January 1992 Stormwater Management Plan identifying the "Pepin Creek" project ("Pepin Creek Project" or "Project"); and

WHEREAS, the Pepin Creek Project includes the relocation and combination of surface water flows from Double Ditch and Benson Ditch between Badger Road and Main Street into one "new" watercourse known as Pepin Creek; and

WHEREAS, the general vicinity of the Pepin Creek Project has experienced instances of extreme flooding in recent years, causing hundreds of thousands of dollars in property damage, closing and damaging public roads and infrastructure, cutting residents off from emergency access, and damaging agricultural land; and

WHEREAS, the Pepin Creek Project is designed to implement a new drainage pattern to protect public roads and public road infrastructure, substantially reduce flooding, facilitate improved storm water control, and provide the ancillary benefit of natural fish and wildlife habitat; and

WHEREAS, the City has completed acquisition of several properties necessary to accommodate the new Pepin Creek corridor; and

WHEREAS, the City must continue to undertake numerous complex and detailed planning, funding, design, permitting, construction and other associated issues to complete the Pepin Creek Project ("Pepin Creek Project Issues"); and

WHEREAS, Pepin Creek Project Issues include without limitation:
- corridor design and permitting for the Pepin Creek Project;
- locating and increasing stormwater capacity and coordinating the associated street and utility infrastructure locations;
- design and permitting options associated with necessary downstream bank stabilization associated with the Pepin Creek Project;
- identifying financing and equitable allocation of system construction costs; and

WHEREAS, the Council has adopted, on October 16, 2017, Resolution No. 975, which is a Resolution of Intent outlining the strategies and corresponding timeline to resolve Pepin Creek Project Issues; and

WHEREAS, that area of the city believed to be affected by Pepin Creek Project Issues at this time and for purposes of this Ordinance include without limitation the area shown on Exhibit A ("Pepin Creek Project Area"), which is incorporated herein; and

WHEREAS, Ordinance No. 1509, *An Ordinance of the City of Lynden to provide Annexation to the City of Lynden* adopted on June 6, 2016 ("Ordinance No. 1509"), annexed property in the Pepin Creek Project Area into the City of Lynden; and

WHEREAS, Ordinance No. 1509 included a clause stating that the "City has identified the need for the completion of the Pepin Creek project prior to development" of the property annexed into the City; and

WHEREAS, except as set forth herein, property development within the Pepin Creek Project Area will likely disrupt the City's ability to effectively address Pepin Creek Project Issues; and

WHEREAS, the adoption of land use and zoning regulations is a valid exercise of the City's regulatory authority and is specifically authorized by RCW 35A.63.100; and

WHEREAS, Ordinance No. 1513, *Ordinance Establishing an Emergency Moratorium on Subdivision and Planned Residential Development Applications and Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 19, 2016; and

WHEREAS, Ordinance No. 1514, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 17, 2016; and

WHEREAS, Ordinance No. 1525, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on April 17, 2017; and

WHEREAS, Ordinance No. 1538, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on October 16, 2017; and

WHEREAS, Ordinance No. 1555, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on May 7, 2018; and

WHEREAS, Ordinance No. 1562, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building*

Permit Applications for Property Located Within the Pepin Creek Project Area, was adopted by the City on September 17, 2018; and

WHEREAS, Ordinance No. 1577, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 4, 2019; and

WHEREAS, Ordinance No. 1591, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on September 3, 2019; and

WHEREAS, Ordinance No. 1604, *Interim Ordinance Establishing a 6-month Moratorium on Subdivision and Planned Residential Development Applications and Certain Building Permit Applications for Property Located Within the Pepin Creek Project Area*, was adopted by the City on March 2, 2020; and

WHEREAS, the City held a public hearing on this proposed Ordinance 1607 on the 8th day of September 2020; and

WHEREAS, a continuation of the moratorium on development in the Pepin Creek Project Area is required to allow for proper planning and implementation of the Pepin Creek Project; and

WHEREAS, adoption of this ordinance extending the moratorium to assure that Pepin Creek Project Issues are resolved consistent with the Project addresses a public emergency and shall qualify as a public emergency ordinance; and

WHEREAS, the public emergency ordinance is necessary to protect the public health, safety, and welfare of the community, and public property; and

WHEREAS, this public emergency moratorium ordinance, as provided in RCW 35.A.12.130, when passed by a majority plus one of the whole membership of the council, is effective upon adoption; and

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

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

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

Section 2. Moratorium Established For New Subdivisions. The City shall not accept applications for any new subdivisions (including both short plats and long plats) or for any new planned residential developments for property located in whole or in part in the

Pepin Creek Project Area, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 3. Moratorium Established For Certain Building Permit Applications. The City shall not accept building permit applications in the Pepin Creek Project Area for new structures intended for human occupancy or for additions to existing residential structures of more than fifty percent (50%) in square footage, for a period of one hundred eighty (180) days, or until the City adopts a replacement ordinance, whichever comes first, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 4. Resolution of Pepin Creek Project Issues. During the term of this interim ordinance the City shall work on resolving the following issues.

   A. Corridor Design. The Pepin Creek Project Area has demonstrated stormwater capacity deficiencies. The City must complete an analysis and design of a new stormwater system with adequate capacity to fully accommodate basin flow. This would also include locating the street and utility infrastructure to function with that new system.
   B. Downstream Stabilization. The existing Double Ditch channel downstream from Main Street to the confluence with Fishtrap Creek presently has unstable banks. The City intends to identify corrective options, including necessary design, permitting, and funding, and consider construction implementation of corrective options.
   C. Financial Strategy. The City must develop a financing plan and method for equitable allocation of system construction costs and responsibilities among property owners in the Pepin Creek Project Area.

Section 5. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 6. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR on the _____ day of September 2020,

_____
M A Y O R

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY