

Ordinance No. 1589

AN ORDINANCE OF THE CITY OF LYNDEN ADOPTING THE CITY OF LYNDEN SHORELINE MANAGEMENT PROGRAM UPDATE AND 2020 PERIODIC REVIEW AND REPEALING AND REPLACING OF LMC 16.08 SHORELINE MANAGEMENT

WHEREAS, the Washington Shoreline Management Act (RCW 90.58, referred to herein as “SMA”) recognizes that shorelines are among the most valuable and fragile resources of the state, and that state and local government must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

WHEREAS, the City of Lynden (“City”) is required to update its Shoreline Master Program (“SMP”) pursuant to the SMA and WAC 173-26; and

WHEREAS, in 2014, after an extensive public review process, multiple public hearings, SEPA review, State agency review, and in consultation with Whatcom Environmental Services, the City approved, by Resolution No. 898, its proposed 2014 comprehensive update to the SMP (“2014 SMP”); and

WHEREAS, the 2014 SMP has not yet been approved by the Department of Ecology (“DOE”) and so, in 2018, the City was encouraged by DOE to combine its finalization of the comprehensive 2014 SMP update with its required 2020 Periodic Review of its SMP according to RCW 90.58.080(4); and

WHEREAS, the City drafted changes to its 2014 SMP to meet the requirements of its comprehensive update and the March 8, 2018 DOE Shoreline Master Program Periodic Review Checklist Guidance document (“2019 SMP Update”); and

WHEREAS, the 2019 SMP Update is the culmination of the City’s comprehensive SMP update started in 2014 and the City’s 2020 Periodic Review; and

WHEREAS, on June 21, 2019, the City issued a determination of non-significance under WAC 197-11 and provided for agency comment as required by law and the City received no comments on the determination; and

WHEREAS, as required by RCW 36.70A.106, the City submitted copies of the 2019 SMP Update with the Intent to Adopt notice to the Department of Commerce for state agency review on June 20, 2019, more than sixty days prior to adoption; and

WHEREAS, the City sought public input on the 2020 Periodic Review changes and other changes through a 30-day public comment period, website publication, an open house and a joint public hearing with the City of Lynden Planning Commission and DOE on July 25, 2019; and

WHEREAS, on July 25, 2019 the City of Lynden Planning Commission unanimously recommended approval of the 2019 SMP Update, on the condition of one minor clarification to address a comment raised in the hearing.

WHEREAS, per WAC 173-26-191(2)(a)(iii)(C), the City may adopt certain administrative provisions of its shoreline management program separate from the 2019 SMP Update so it may expeditiously amend such provisions in the future; and

WHEREAS, on July 30, 2019 the City transferred a final draft of the proposed 2019 SMP Update, including the Planning Commission conditioned clarification, to the DOE to make an initial determination of consistency according to WAC 173-26—104(3)(b); and

WHEREAS, on July 31, 2019 the DOE provided a letter of initial concurrence to the City for the proposed 2019 SMP Update; and

WHEREAS, on September 3, 2019, the Lynden City Council voted ___ to ___ to formally adopt the proposed 2019 SMP Update as presented; and

WHEREAS, the foregoing recitals shall be considered material findings of the City Council in support of this ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Repeal and replace LMC 16.08. Chapter 16.08 Lynden Municipal Code is hereby repealed in its entirety and replaced with the following:

Chapter 16.08-Shoreline Management

16.08.010 Shoreline Master Program-Copy on file.

The City amended its shoreline master program by adoption of Ordinance 1589. A copy of this shoreline master program shall be on file in the office of the city clerk, and all parties desiring to examine said master program may examine the same at the office of the city clerk.

16.08.020 Shoreline Permit Review.

As per 17.03.040 (B) of the LMC, the Planning Commission shall hear, review, and make the final decision of the City on all shoreline permits in accordance with the City's shoreline management program.

16.08.030 Shoreline Permit Revision.

A Planning Commission or Department of Ecology decision on revision to the permit shall be appealed within twenty-one (21) days of such decision, in accordance with RCW 90.58.180 and WAC 173-27-100, as amended.

16.08.040 Shoreline Permit Appeal.

Any appeal of administrative interpretations and approvals, or Planning Commission decisions will be in accordance with Chapter 17.11 LMC.

Section 2. Adoption of Shoreline Master Program. The City of Lynden Shoreline Management Program 2019 Update, is attached hereto as **Exhibit A**. It is adopted by the City and is the shoreline master program for the City of Lynden.

Section 3. Severability. 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 code 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, then the original ordinance or ordinances shall be in full force and effect.

Section 4. Conflict. Any ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 5. Effective Date. This ordinance shall be effective fourteen days from the date of the Department of Ecology's written notice to the City stating its approval of the City's Shoreline Master Program adopted by this ordinance.

PASSED by the City Council this 3rd day of September 2019. Signed by the Mayor on this _____ day of _____, 2019.

MAYOR

ATTEST:

PAM BROWN, CITY CLERK

APPROVED TO AS FORM:

ROBERT CARMICHAEL, CITY ATTORNEY