

RESOLUTION NO. 23-1067

A RESOLUTION OF THE CITY COUNCIL OF LYNDEN WASHINGTON ESTABLISHING THE POLICY FOR TRANSFER OF UNUSED STORMWATER CAPACITY IN THE CITY'S UTILITY LOCAL IMPROVEMENT DISTRICT (ULID) 2008-1 WEST LYNDEN STORMWATER DRAINAGE FACILITY.

WHEREAS, on March 6, 2006, the City of Lynden passed Ordinance 1256 creating Local Improvement District No. 4 (LID No. 4) to “acquire, construct, and install the West Lynden Storm Drainage Facility and trunk piping for conveying stormwater to that facility;” and

WHEREAS, on August 4, 2008, the City by Ordinance 1325 did subsequently convert LID No.4 to Utility Local Improvement District (ULID) 2008-1 and the City Council, acting as the board of equalization, established the final assessment role for ULID 2008-1 which assigned storage capacity in and conveyance capacity to the West Lynden Stormwater Drainage Facility and a 15-year repayment schedule for the assessed properties; and

WHEREAS, the properties on the final assessment role for ULID 2008-1 will be referred to herein as “ULID 2008-1 Properties;” and

WHEREAS, through the modeling done to determine the benefit area and assessment roll, each individual ULID 2008-1 Property was allotted a certain amount of stormwater capacity in the West Lynden Storm Drainage Facility; and

WHEREAS, certain ULID 2008-1 Properties have paid into the ULID 2008-1 but not used all the capacity allotted to them, and others have deferred payments under RCW 84.34.300 et seq. and also not used any of the capacity that was allotted to them; and

WHEREAS, certain of those ULID 2008-1 Properties with unused allotted capacity are willing to transfer their assessed storage and conveyance capacity; and

WHEREAS, other properties, not included on the final assessment role of ULID 2008-1, but within the same storm drainage watershed, have expressed interest in purchasing the unused capacity in the West Lynden Stormwater Drainage Facility; and

WHEREAS, the City of Lynden has an interest in supporting economic development within the City and transfer of that unused capacity would provide an opportunity for imminent development on those other properties within the basin not included in the original assessment roll;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Lynden, Washington as follows:

Section 1. Stormwater Capacity Entitlement Transfer.

- A. The following policy and procedures shall apply when an owner of a ULID 2008-1 Property wishes to transfer all, or a portion of, the stormwater capacity allotted to that property. This policy addresses the methods that the City will use to facilitate the transfer of capacity included on the final assessment roll to another property not included in assessment roll.
- B. In this policy, the term “Transferor Property” refers to the property from which stormwater capacity is proposed to be transferred and the term “Transferee Property” refers to the property to which the ULID 2008-1 stormwater allotted capacity is proposed to be transferred.
- C. Transferee Proposed Development. Transfer of ULID 2008-1 stormwater capacity allotment is meant to enable development on a Transferee Property that is “imminent”, indicated by the proposed development having already been reviewed by the City’s Technical Review Committee (TRC) and determination that the development is:
 - a. Consistent with the City’s Comprehensive Plan in terms of type and density.
 - b. Is located within the Duffner Stormwater Basin.
- D. Evaluation of Transferor Property’s Stormwater Entitlement and Transferee Property Potential Benefit. Transferor Property owner must submit to the City Public Works Director a written request for transfer which clearly identifies both the Transferor Property and the Transferee Property by map and tax parcel number. The City will validate the amount of stormwater capacity allotted to the Transferor Property using the stormwater model for ULID 2008-1 or similar model, and the point where stormwater was designed to enter the stormwater collection system. This will be done utilizing the same methodology as per the original design for the regional stormwater facility and conveyance system, and the same assumptions of soils and future land use for the Transferor Property. A written engineering technical report will be prepared for City Public Works Director which evaluates the proposed transfer, to include:
 - a. flow control capacity in post developed cubic feet per second and acre feet,
 - b. runoff treatment capacity in acre-ft,
 - c. if stormwater can be legally and physically routed from the Transferee Property to the designed connection point, per original assumptions used to design the conveyance system, and
 - d. other constraints associated with the proposed transfer.

This engineering report will be provided to both property owners to use to decide whether to proceed with the transfer.
- E. Payment of ULID assessment. The City will work with the ULID 2008-1 Administrator, Public Finance, to determine if the entire ULID assessment for the Transferor Property has been paid, and if not, how much remains to be paid. If the full ULID 2008-1

assessment has not been paid, the City will require that the full payment be made to the City prior to the transfer.

- F. Transfer Approval. If the proposed sale of private stormwater capacity meets the standards identified in section C through E above, the Public Works Director may approve a transfer of ULID 2008-1 allotted stormwater capacity by issuing a written approval letter to both Transferor and Transferee Properties, which approval shall not be unreasonably withheld. This transfer approval or a memorandum thereof will be executed by all parties and the City and recorded on both properties. Once recorded, the transfer will be deemed complete and the Transferee Property shall retain all rights to the West Lynden Storm Drainage Facility afforded to other properties with unused allocated stormwater capacity. Once the Transferee Property connects into the West Lynden Storm Drainage Facility, such rights shall vest and shall not be revoked or terminated. The Transferor Property shall no longer have access to the transferred capacity. Any subsequent transfer of the capacity, including back to the original Transferor Property, will require repeating these steps with a new transfer request.
- G. Valuation of ULID 2008-1 Capacity Transfer. The transfer of capacity will be considered by the City to be a private business transaction between a willing buyer and a willing seller at a value determined solely by the free market.
- H. Stormwater Drainage Design Approval. The transfer of capacity does not eliminate the need for a regular stormwater report by Transferee Property. That report should demonstrate that the proposed stormwater system for the development meets current City stormwater regulations using the transferred stormwater capacity, and that stormwater can be effectively conveyed to the designed connection point using existing piping or additional piping to be constructed with their development. Only the transferred capacity will be routed to the West Lynden Stormwater Drainage Facility. With City approval of the Transferee Property's stormwater drainage design the development will be considered vested into ULID 2008-1 until expiration of the associated City permit. Future development on the Transferor Property will need to provide stormwater runoff treatment and flow control consistent with the stormwater regulations at time of development. The City reserves the right to reject any proposed stormwater system that does not in its determination meet the requirements of this subsection.

Section 2. City Reservation of Right to Purchase Unused ULID Stormwater Capacity.

The City reserves the right to purchase unused capacity from ULID 2008-1 benefiting properties as identified on the final assessment roll in the future by mutual agreement.

Section 3. City Reservation of Right to Close West Lynden Storm Drainage Facility.

The City reserves the right to close the West Lynden Storm Drainage Facility to new stormwater discharges at any time, including from properties with allotted but unused ULID2008-1 capacity. This reservation would be predicated on a determination that due to changes in State Department of Ecology (DOE) regulations, permit requirements, or through

other legal determination, or due to damage to or failure of the facility, that there is no longer adequate capacity in the West Lynden Storm Drainage Facility to accept additional stormwater. A closure would restrict the use of the West Lynden Storm Drainage Facility for future substantial redevelopment of previously developed ULID 2008-1 Properties that triggers the application of new DOE stormwater regulations. Notwithstanding the foregoing, any such closure shall not apply to existing development on ULID 2008-1 Properties which have vested by virtue of physical connection to the West Lynden Storm Drainage Facility.

Section 4. Indemnification, Release, and Hold Harmless.

On the recorded transfer approval, the owners of Transferee and Transferor Properties shall indemnify, release, and hold harmless the City from any damages or liability arising out of any action taken by the City consistent with the provisions of Section 3 above.

Section 5. Severability.

If any section, sentence, clause, or phrase of this resolution should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution. The City Council hereby declares that it would have passed this resolution 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.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN BY AN AFFIRMATIVE VOTE _____ IN FAVOR _____ AGAINST, AND SIGNED BY THE MAYOR THIS _____ DAY OF _____ 2023.

MAYOR SCOTT KORTHUIS

ATTEST:

CITY CLERK PAMELA D. BROWN

APPROVED AS TO FORM:

CITY ATTORNEY ROBERT A. CARMICHAEL