

Ordinance No. 1627

AN ORDINANCE OF THE CITY OF LYNDEN AMENDING CHAPTERS 16 AND 19 OF THE LYNDEN MUNICIPAL CODE REGARDING SEPA THRESHOLDS, SEPA AUTHORITY, AND MINIMUM DENSITY STANDARDS WITHIN THE PEPIN CREEK SUB-AREA

WHEREAS in March of 2020 the City Council adopted the Pepin Creek Sub-Area Plan to establish goals and policies for the future development of this area regarding land use and zoning, environmental protection and restoration, infrastructure development, and finance to ensure the orderly development of this area; and

WHEREAS City staff created a plan for The Project known as ‘Pepin Lite’ which focused on transportation improvements and re-locating portion of Pepin Creek to complete these transportation improvements in association with Sub-area development; and

WHEREAS the financial mechanism of a SEPA mitigation fee or a Transportation Impact Fee showed merit for collecting the developers share of the Pepin Lite project costs while maintaining feasibility of development as described in the Pepin Creek Financial Mitigation Strategies Study by Berk Consulting; and

WHEREAS the City Council passed Resolution 1031 which directed staff to implement code revisions needed to implement the use of a SEPA mitigation fee, later developed fully into a Transportation Impact Fee, and establish minimum density standards; and

WHEREAS the following amendment to Title 16 of the Lynden Municipal Code is intended to reduce the SEPA threshold within the Pepin Creek Area so as to appropriately assess all development rather than provide exemptions to short plat applications. It also recognizes the authority of the Pepin Creek Subarea Plan as a guiding document; and

WHEREAS the following amendment to Title 19 of the Lynden Municipal Code is intended to establish a minimum density requirement for new residential development within the Pepin Creek Sub Area so as to avoid under-collection of fees needed to establish transportation systems improvements; and

WHEREAS the amendment to Title 19 also recognizes the ability of existing homeowners within the Pepin Creek Sub-area to maintain acreages which are exempt from minimum density division until such time they choose to redevelop; and

WHEREAS the City of Lynden issued a SEPA Determination of Non-Significance on February 12, 2021 regarding this non-project action followed by a two-week comment period; and

WHEREAS a public hearing was duly noticed and held before the Planning Commission regarding this amendment on March 25, 2021 and that meeting resulting in the Commission's recommendation for approval; and

WHEREAS a public hearing was duly noticed and opened before the City Council on June 7, 2021 and that hearing was noticed to continue on August 16, 2021 and having been duly heard,

NOW THEREFORE, the City Council of the City of Lynden does ordain as follows:

Section 1. Chapter 16.05.070 Flexible Thresholds for Categorical Exemptions, and Chapter 16.05.160 Substantive Authority are amended to read as follows:

16.05.070 - Flexible thresholds for categorical exemptions.

- A. The city establishes the following exempt levels for minor new construction under WAC 197-11-800(1)(b) based on local conditions.
 - 1. For residential dwelling units in WAC 197-11-800(1)(b)(i):
 - a. Up to 12 dwelling units City-wide except in the Pepin Creek Subarea, or
 - b. In the Pepin Creek Subarea, up to 4 dwelling units.
 - 2. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii): Up to ten thousand square feet and up to twenty-five parking spaces.
 - 3. For parking lots in WAC 197-11-800(1)(b)(iv): Up to forty parking spaces.
 - 4. For landfills and excavations in WAC 197-11-800(1)(b)(v): Up to two hundred fifty cubic yards.
- B. Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800(1)(c).

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.

3. The city adopts by reference the policies in the following city documents, as periodically updated:

a. City of Lynden Comprehensive Land Use Plan;

b. City of Lynden Shoreline Management Program;

c. City of Lynden Critical Areas Ordinance;

d. City of Lynden Subdivision Ordinance;

e. All subarea plans adopted by the City of Lynden, including the Pepin Creek Subarea Plan as adopted by the City Council Ordinance 1600 on March 2, 2020.

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 city council. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the responsible official within ten days of the decision being appealed. Review by the city council shall be on a de novo basis.

Section 2. Chapter 19.11 Districts Established are amended to read as follows:

Chapter 19.11
DISTRICTS ESTABLISHED

Sections:

19.11.010 Zones established -- Purpose.

19.11.020 Zones designated -- Essential use, maximum coverage, and density.

19.11.010 Zones established -- Purpose.

For the purpose of developing a comprehensive arrangement of land uses and related standards, regulations, rules and specifications, the classifications of essential uses, and the declaration of each essential use group establishing the purpose for the zones within each group set forth hereafter adopted.

19.11.015 - Definitions

- A. “Gross acreage” means the total acreage of the entire legal lot or lots of record on which the residential development is proposed, including half of existing street right-of-way around the perimeter of the site, new rights-of-way internal to the site, critical areas, wetlands, and other nondevelopable areas.
- B. “Net acreage” means gross acreage minus dedications exclusively for public use, such as dedications for rights of way, public trails, public stormwater facilities, and other public infrastructure, but not nonexclusive easements outside rights of way or easements for the sole benefit of residents in the development, or privately-owned land, including land owned by a common interest community.

19.11.020 - Zones designated—Essential use, maximum coverage, and density.

There are established the classifications of the essential land uses for all residential, business and industrial zones to be known by the zone symbols shown as follows:

Zone Symbol	Essential Use	Maximum Percent <u>Building</u> Coverage	Maximum Percent Impervious Coverage	Maximum Development Density*	<u>Minimum Development Density* – Pepin Creek Subarea only</u>
A-1	Agricultural	0.10		1 D.U./20	

Zone Symbol	Essential Use	Maximum Percent Building Coverage	Maximum Percent Impervious Coverage	Maximum Development Density*	<u>Minimum Development Density* – Pepin Creek Subarea only</u>
				Acres	
RS-100	Single Family Dwellings	0.35	0.60	4 D.U./Acre	
RS-84	Single Family Dwellings	0.35	0.60	4.5 D.U./Acre	
RS-72	Single Family Dwellings	0.35	0.60	5.0 D.U./Acre	<u>4 DU / Acre</u>
RMD	Residential Mixed Density	0.35	0.80	8.0 D.U./Acre	<u>5 DU / Acre</u>
MH	Mobile and Modular Home	0.40	0.80	8.0 D.U./Acre	
TR	Travel/Recreational Vehicle	0.65			
RM-1	Single Family and two Family Dwellings/bldg.	0.35	0.70	8.0 D.U./Acre	
RM-2	Up to 4 Dwellings/bldg.	0.40	0.70	12 D.U./Acre	
RM-3	Multiple Dwellings	0.40	0.75	16 D.U./Acre	<u>8 DU / Acre</u>
RM-4	Multiple Dwellings	0.45	0.75	24 D.U./Acre	
RM-PC	Detached Single Family Dwellings	0.35	See Open Space Requirements	12 D.U./Acre	<u>6 DU / Acre</u>
	Attached Single Family Attached	0.50			

Zone Symbol	Essential Use	Maximum Percent Building Coverage	Maximum Percent Impervious Coverage	Maximum Development Density*	Minimum Development Density* – Pepin Creek Subarea only
	Multi-family Dwellings	0.40			
SO	Senior Housing Overlay in the Pepin Creek Subarea	0.40— 0.50	See Open Space Requirements	30 D.U./Acre	
HBD	Historic Business District	0.80			
CN	Commercial Neighborhood Overlay in the Pepin Creek Subarea	N/A			
CSL	Local Commercial Services	N/A			
CSR	Regional Commercial Services	N/A			
ID	Industrial District	N/A			
IBZ	Industrial Business Zone	N/A			
PU	Public Use	N/A			

*See Section 19.11.030 regarding calculation of minimum and maximum densities.

LMC 19.11.030 Density calculations.

A. Calculations for Determining Minimum Density. The density minimum standard applies to some residential developments. Net acreage, not gross acreage, shall be used for the purpose of calculating minimum density.

1. Exception for existing homes in the Pepin Creek Subarea. Typically associated with a farmstead, existing homes within the Pepin Creek Subarea and their outbuildings may require larger lots than zoning or minimum density standards anticipate. Subdivisions within the Pepin Creek Subarea may exclude the area of a lot dedicated to preserving an existing home under the following conditions:

- a. Residence must have existed prior to August 1, 2021.
- b. Plats which create an excluded lot must document the existing residence and its date of construction.
- c. Plats which create an excluded lot must address the possibility of additional access and utility needs when / if future subdivision on these lots occur.
- d. No additional dwelling units can be added to the lot excluded from minimum density standards until it is further divided to meet minimum density standards. However, nothing in this section prevents the addition of an accessory dwelling unit or the repair, remodel, or replacement of the original residence.

2. Pepin Creek Subarea Wetland Exception. Within the Pepin Creek Subarea only, the portion of wetland and buffer areas in excess of 25% of the net acreage can be excluded from the minimum density calculation. Wetlands and buffers that cover the first 25% of the net acreage must be included in the minimum density calculation. Calculations of buffer area shall be conducted prior to any buffer reduction methods. For example:

- a. A site has 10 net acres; 4 acres are encumbered by wetlands and their buffers and 6 are not. Wetlands and buffers covering 25% of the net acreage shall be counted, in this case, 2.5 acres. The remaining 1.5 acres of wetlands and buffers will not be counted. The total acres counted for

the purpose of minimum density would be 6 developable acres plus 2.5 wetland acres, or 8.5 acres.

- b. A site has 10 net acres; 1 acre is encumbered by wetlands and their buffers, and the other 9 acres are not. 25% of the site would be 2.5 acres, but as there are less than 2.5 acres of wetlands and buffers, all of the wetlands and buffers are counted for the purpose of determining minimum density.

B. Calculations for Determining Maximum Density.

1. Maximum density for residential zones applies to all development with new residential dwelling units, unless otherwise noted herein.
2. Gross acreage of the lot or lots may be used in the calculation of the maximum allowed residential density.
3. For the purpose of meeting maximum density requirements for subdivisions in applicable zones, final plats must specify the maximum number of dwelling units per lot.

C. How to Calculate Density. Minimum and maximum density for an individual site must be calculated by multiplying the total site acreage based on subsections A and/or B of this section by the minimum and maximum dwelling units per acre for the applicable zone. When calculation results in a fraction, the fraction must be rounded to the nearest whole number; fractions of one-half and above must be rounded up, and fractions below one-half must be rounded down.

D. Prohibited Reduction. Any portion of a lot that was used to calculate minimum compliance with the standards and regulations of this title must not be subsequently subdivided or segregated from such lot unless all portions of the resulting lots continue to meet the code requirements after the subdivision.

Section 3. Chapter 19.18 Pepin Creek Subarea Zones is amended to read as follows:

19.18.010 - Purpose and intent.

- A. Purpose. The purpose of the Pepin Creek Subarea is to meet the goals of the comprehensive plan by ~~allowing~~ promoting residential development averaging ~~approximately about~~ seven dwelling units per net acre and to allow a variety of housing types that will meet the needs of families throughout their lifecycle. Development in the Pepin Creek Subarea should focus on maintaining the aesthetic quality of the city in general and the neighborhood in particular by providing for architectural diversity, adequate landscaping, and open space. Commercial uses are allowed where they serve the neighborhood.
- B. Established. The following zones and overlays are utilized within the Pepin Creek Subarea.

Zone or Overlay	Uses	Development Standards
RS-72	19.15	19.15
RMD	19.16	19.16
RM-PC	19.18.030	19.18.030
<u>RM-3</u>	<u>19.17.020</u>	<u>19.17.060</u>
Senior Overlay	19.18.040	19.18.040
Neighborhood Commercial Overlay	19.18.050	19.18.050
Public Use	19.27	19.27
Airport Overlay	19.55	19.55

C. Minimum Densities within the Pepin Creek Subarea:

- 1. Development must meet the minimum gross density for residential development according to the established zone category.

<u>Zone</u>	<u>Minimum Density*</u>
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<u>RS-72</u>	<u>4 DU / Acre</u>
<u>RMD</u>	<u>5 DU / Acre</u>
<u>RM-PC</u>	<u>6 DU / Acre</u>
<u>RM-3</u>	<u>8 DU / Acre</u>

~~*See Section 19.11.030 regarding calculation of minimum and maximum densities.~~

2. Lots created in conformance with subsection C(1) above which are subsequently bound together with another lot in the Pepin Creek Subarea must continue to adhere to building setbacks as measured from property lines despite the lots being bound.

D. Conflicts. If there are any conflicts between the provisions of this chapter and any other parts of the Lynden Municipal Code, this chapter shall prevail except for where standards necessary to maintain public safety related to the operation of the airport.

(Ord. No. 1575, § A, 3-4-2019)

19.18.020 - Primary permitted uses within the Pepin Creek Subarea.

The primary permitted uses in the Pepin Creek Subarea are as follows. See Figure 19.18.010-1 to reference the location of applicable secondary, accessory, and conditional uses as well as development standards specific to each zoning category.

- A. Single family dwelling units, including detached site built single family dwellings and new manufactured homes. This includes types such as large lot single family, small lot single family and cottages.
- B. Single family attached dwelling units which are ground related, fee simple-ownership units that are attached through shared walls or rooflines. This includes types such as townhomes, units with attached garages, and other innovative types.
- C. Duplex dwelling units.
- D. Multi-family dwelling units typically limited to a maximum of four to eight units per building.
- ~~E. The senior overlay provides the opportunity for development to accommodate a specific user. When activated, the permitted uses within the overlay include senior cottages, attached single family units, senior multi-family dwelling units, developed to standards specific to the overlay. A range of units or rooms per~~

~~building are permitted, however the entire Pepin Creek Subarea is limited to a maximum of three hundred total units within the senior overlay districts. All multi-family dwellings that contain more than four units per building within the Senior Overlay must be age restricted to persons age fifty-five and older.~~

- ~~F. Nursing home and assisted living facilities as defined in RCW 74.39A.009 are considered primary uses in senior overlay;~~
- E. The neighborhood commercial overlay provides an opportunity for a variety of primary permitted uses in key locations. These include personal services, sales of consumer goods, restaurants and cafes, banks and financial institutions, and upper story residential uses as further described in LMC 19.18.050.
 - ~~1. Personal Services. This is to allow for businesses such as barbershops, beauty salons, day spas, laundry facilities, dry cleaning, or others that would serve the subarea.~~
 - ~~2. Sales of General Consumer Goods. This is to allow for retail sales of food, household goods, pet supplies, and other goods to residents in the subarea. The sales of goods geared toward a regional customer base, as determined by the planning director, are not allowed. Such regional uses include fuel sales, auto sales, large format stores, construction and landscaping materials, farm equipment. Outdoor storage associated with the sales of general consumer goods is also not allowed.~~
 - ~~3. Restaurants and cafes.~~
 - ~~4. Banks and financial institutions.~~
 - ~~5. Second story residential uses may be developed in conjunction with first floor commercial uses.~~

(Ord. No. 1575, § A, 3-4-2019)

19.18.030 - Pepin Creek multi-family zone (RM-PC) and uses established.

A. Primary Permitted Uses.

- 1. ~~Multi-family dwelling units, that is multiple dwelling units located on a single lot,~~ Multi-family dwelling units and two-family dwelling units are permitted with the following restrictions:
 - a. Buildings containing two to four units are permitted consistent with Section 19.18.030.F and applicable design standards.
 - b. Buildings containing five to eight units are permitted at a ratio of one for every twenty-five lots created. Lot count may include those used for multi-family dwelling units, attached single family dwellings, or detached single family dwelling. Development must be consistent with Section 19.18.030.E and applicable design standards.
- 2. Single family attached dwelling units which are ground-related, fee simple ownership units that are attached through shared walls or rooflines. This

includes types such as townhomes, units with attached garages, and other innovative types. A maximum of four units may be attached to one another.

3. Single family dwelling units, including detached site-built single family dwellings and new manufactured homes.
- B. Accessory Permitted Uses. Accessory permitted uses in the RM-PC zone is as follows:
1. Private garages for single family or single family attached residences. No detached garage or accessory building shall exceed one thousand square feet of inside floor area or ten percent of the lot area, whichever is greater; provided however, that the floor area of the accessory building does not exceed the floor area of the primary residence or three thousand square feet, whichever is more restrictive;
 2. Single family lots greater than or equal to ten thousand square feet may store up to two recreational vehicles on the lot; provided however, they are not stored in the front yard and meet the requirements of Section 19.31.020.B;
 3. Tool sheds, satellite dishes, outdoor patios and outdoor fireplaces consistent with applicable design standards;
 4. Mobile storage units or shipping containers are permitted for use during construction but must be removed within thirty days of final occupancy of the primary residence. No units greater than eight feet by ten feet are permitted in residential zones, other than during construction or for a period of up to thirty consecutive days within a six-month period to facilitate the moving in or moving out of a residence. Units eight feet by ten feet or smaller may be placed on a lot for not more than six months during any two-year period and must be located in the rear yard;
 5. Private swimming pools, as provided in the International Building Code adopted pursuant to Chapter 15.02 LMC and subject to LMC 19.37.090;
 6. Attached and detached accessory dwelling unit (ADU) consistent with Chapter 19.20 permitted in detached single family homes only.
 7. No more than five, currently licensed and/or operable passenger vehicles may be stored on any single-family residential lot, subject to LMC 19.31.020.A. Inoperable vehicles may not be stored in the front yard (~~refer to Section 19.31.020.A.~~).
 8. Recreation areas for residents.
- C. Secondary Permitted Uses. Secondary permitted uses in the Pepin Creek Subarea zones are as follows:
1. Hobby shops, relating to the hobbies of the occupants of the home and not operated for production and sales purposes;
 2. Greenhouses operated by the occupants, provided the products will not be offered for retail sale on the premises except in the neighborhood commercial overlay;

3. Home occupations. See Chapter 19.57;
 4. Gardening and fruit growing not for commercial sale;
 5. General farming, which does not include the commercial feeding of livestock, if the zoning lot is five acres or more in size and meets the requirements outlined in Chapter 19.39 of this Code;
 6. Family day care centers for up to eight individuals, not including the residents of the dwelling unit;
 7. Parks and playgrounds;
 8. Adult family homes and residential care facilities for up to ~~six~~ eight adults, when approved by the Washington State Department of Social and Health Services (DSHS).
 9. Temporary structures such as portable tents or canopies used by a business for an event or sale in the commercial neighborhood overlay. The event or sale shall be limited to seven days or less and all temporary structures must be removed within seventy-two hours of the sale or event.
- D. Conditional Permitted Uses. The following property uses may be permitted in Pepin Creek Subarea zones by conditional use permit when recommended by the planning commission and approved by the city council consistent with Section 19.49.050.
1. Public buildings and utility sub-stations;
 2. Club facilities that are directly related to the neighborhood such as community swimming pools, privately owned athletic facilities and other similar improvements directly related to residential areas;
 3. Day care facilities for more than eight ~~people~~ individuals with the maximum number of individuals to be determined as part of the conditional use permit process;
 4. Nursing home and assisted living facilities as defined in RCW 74.39A.009 when located in the RS-72, RMD, or RM-PC zones;
 5. Bed and breakfast establishments (see Section 19.49.030);
 6. Churches, provided that the front yard is landscaped and all other parking and landscaping requirements are met; and
 7. Schools.
- E. Front Yard Use for Residential Uses.
1. Front yards shall be used for ornamental purposes only. No storage sheds, portable storage tents, temporary canopies or other similar structures may be located within the front yard; provided however that portable canopies or tent structures may be used during events or yard sales but must be removed within seventy-two hours of the sale or other event.

2. No fences, growth or other obstruction over three feet in height above the curb grade shall be allowed within the clear vision triangle.
3. Front yards setbacks may not be used for the storage of boats, campers, or any recreational vehicle. (Refer to Section 19.31.020.B)

F. RM-PC Development Standards. The development standards for the RM-PC zone are as follows:

1. RM-PC Height, Density, Area, Coverage, and Bulk Requirements.

Zone	Minimum Lot Size	Maximum Density	<u>Minimum Density*</u>	Maximum Lot Coverage	Maximum Height	Maximum Stories
RM-PC Single Family Detached	4000 sf	12 DU/AC	<u>6 DU / AC</u>	35%	32'	2
RM-PC Single Family Attached	3000 sf	12 DU/AC	<u>6 DU / AC</u>	50%	40'	3
RM-PC Multi-family dwelling	1600 sf per unit	12 DU/AC	<u>6 DU / AC</u>	40%	40'	3

~~* Residential densities are based on net land area.~~ *See Section 19.11.030 regarding calculation of minimum and maximum densities.

G. RM-PC Setback Requirements.

Setbacks

	RM-PC Detached	RM-PC Attached	RM-PC Multi Dwelling
Front Setback			
ROW to Porch	8'	8'	15'

ROW to House	10'	10'	20'
ROW to Garage	25'	25'	25'
Green to Porch	4'	4'	10'
Green to House	6'	6'	10'
Side Setback⁺			
Minimum Side	7'	0' on attached sides, 10' on each unattached side	10'
Side Total	14'	20'	20'
Corner Lot	10'	10'	14'
Rear Setback⁺			
Alley Easement to Garage Side	3'	3'	3'
Garage Side to Property Line	5'	5'	5'
Alley to Garage Door	21'	21'	25'
Alley to House	15'	10'	20'
To House	15'	10'	15'

+ On corner lots one of the corners may be considered as a side yard, provided that the yard considered as a side yard shall not be less than ten feet.

1. Additional RM-PC Development Standards:

- a. The height of any building is measured from the approved average grade level as defined in Section 17.01.030 to the highest point of a structure; provided that appurtenances such as television antennas and chimneys are not considered part of the height.
- b. All setbacks are measured from the property line to the foundation. Eaves and cantilever bay windows may encroach into the setback a maximum of two feet. Structures covering decks and patios may encroach into rear setbacks as described in this section. Additional fire protection may be required for structures located within ten feet of each other. It is the property owner's responsibility to have the property lines clearly marked for inspection. Structural permits with setbacks submitted prior to April 1, 2019 are considered conforming and not subject to Section 19.35.030.
- c. Uncovered wood decks and raised concrete patios not over twenty-four inches above grade at any point may be permitted within eighteen feet of the rear property line and five feet of the side property line. Deck privacy screening or fencing shall not be higher than eighty-four inches above the lowest grade.
- d. Structures covering decks or patios are permitted within the rear setback provided that the structure: remains open on three sides; does not come within ten feet of the rear property line for detached homes on lots zoned RM-PC; does not encroach into the side yard setbacks of the underlying zone; and, the addition does not exceed the permitted lot coverage.

H. Standards for Detached Accessory Buildings.

1. To be considered a "detached" structure, the minimum distance between two structures shall be six feet measured from foundation to foundation with no projections greater than eighteen inches.
2. A detached accessory structure may not be built closer than six feet to the side or rear property line, except where a rear property line abuts an alley a structure may not be built closer than three feet to the rear property line. Structures which do not require a building permit per Chapter 15.04 must be setback a minimum of three feet to the side or rear property line.
3. Detached accessory structures on corner lots shall not be permitted nearer than ten feet to the side property line adjacent to the street.
4. The maximum height for all detached accessory structures shall be twelve feet, except for detached garages as noted below.
5. The maximum height of any detached garage shall be eighteen feet, provided there is no living space within the building. Detached garages with living spaces shall be subject to the standards for accessory dwelling units in Chapter 19.20 LMC. The roof pitch and siding on any detached garage shall be consistent with the primary structure on the lot, and the height of the building shall not exceed the height of the primary structure.
6. A secondary garage or shop shall be set behind the rear line of house.

I. Transition Area Standards.

1. A transition area of one hundred feet is applied to the RM-PC zone where the RM-PC zone abuts RS zoning located inside and outside of the Pepin Creek Subarea. ~~The transition area is also applied when the Senior Overlay is activated adjacent to RS zoning located inside and outside of the Pepin Creek Subarea.~~
2. A ten foot wide Type IV landscape buffer and six foot privacy fencing are required on RM-PC properties where abutting RS zones. Alternatively, a buffer is not required if lots are limited to a primary use as a detached single family home or pairs of attached single family homes.
3. Lots developed in the transition zone shall be limited to the maximum height of the abutting RS zone.

J. Open Space Requirements.

1. Each lot must maintain a minimum of seven and one-half percent in open space.
2. RM-PC developments which meet or exceed six units to the acre in net density must also provide common open space equal to ten percent of the developable parcel size. Common open space may be designed as a pocket park, common green, or access easement. Perpetual maintenance of the common open space must be addressed at the time of plat or development if a plat is not required.
3. Common open space must meet the following requirements:
 - a. One two inch caliper canopy tree is required for every one thousand square feet.
 - b. Spaces must be accessible to residents and suitable for passive or active recreational use. Play structures or pet friendly areas are encouraged.
 - c. Sidewalks or paths accessing the area must be a minimum of four feet wide.
 - d. The minimum lawn coverage of a common green area shall be seventy percent.

K. Residential Design Requirements. All residential dwelling units must meet the following design criteria unless varied by the design review board as provided under LMC 19.45.035:

1. All dwellings must be placed on a permanent foundation and the space between the foundation and the bottom of the home must be enclosed by concrete or approved concrete products.
2. All dwellings shall be oriented on the lot, so that the primary pedestrian entrance faces the street or access easement. The primary roof line must have a minimum of a 4:12 pitch. This is not applicable to re-roofing or additions to existing structures.

3. Roofing materials shall be wood shingle or shake, composition, asphalt laminate, clay or architectural metal. Exposed fastener corrugated metal or corrugated fiberglass roofing is not permitted.
 4. Eaves and gable ends must be a minimum of twelve inches. This is not applicable to re-roofing or additions to existing structures.
 5. The exterior of the home must be finished with a minimum of two types of materials. Exposed fastener metal siding is prohibited on residential buildings.
 6. All units other than a detached single family residence shall be subject to review and approval by the Design Review Board.
 7. No more than fifty percent of the lineal frontage of the building elevation may be occupied by garage doors. For the purposes of this section, a set of garage doors serves one dwelling unit and means one double garage door or two single garage doors separated by less than five feet.
 8. Only one set of garage doors may face the street unless the garage doors are setback from the living area a minimum of ten feet.
 9. All parking requirements of Section 19.51.040 must be met on site.
- L. RM-PC Landscape Requirements: In addition to the landscaping requirements of Chapter 19.61 LMC, all proposed multi-family and attached single family development consisting of two or more attached units in this zone shall comply with LMC 19.17.110.

(Ord. No. 1575, § A, 3-4-2019)

~~19.18.040 – Pepin Creek Senior Overlay and Uses Established.~~

- ~~A. The senior overlay provides the opportunity for development to accommodate a specific user and developed to standards specific to the overlay.~~
- ~~1. A range of units or rooms per building are permitted, however the entire Pepin Creek Subarea is limited to a maximum of three hundred total units.~~
 - ~~2. Utilization of the senior overlay standards requires the creation and recording of an associated plat or planned residential development (PRD). The use of the senior overlay must be indicated on the face of the plat.~~
 - ~~3. All multi-family dwellings that contain more than four units per building within the senior overlay must be age restricted to persons age fifty-five and older through a recorded covenant.~~
 - ~~4. Any development within the senior overlay that is developed at densities above the maximum density allowed in the underlying zoning must be restricted, on the face of the plat, to persons age fifty-five and older.~~
- ~~B. Senior Overlay Primary Uses.~~
- ~~1. Multi-family dwelling units, that is multiple dwelling units located on a single lot, are permitted.~~

- ~~2. Single family attached dwelling units which are ground related, fee simple ownership units that are attached through shared walls or rooflines. This includes types such as townhomes, units with attached garages, and other innovative types. A maximum of four units may be attached to one another.~~
- ~~3. Single family dwelling units, including detached site built single family dwellings and new manufactured homes.~~
- ~~4. Care Facilities. Nursing home and assisted living facilities as defined in RCW 74.39A.009.~~

~~C. Senior Overlay Accessory Permitted Uses.~~

- ~~1. Private garages for single family or single family attached residences. No detached garage or accessory building shall exceed one thousand square feet of inside floor area or ten percent of the lot area, whichever is greater; provided however, that the floor area of the accessory building does not exceed the floor area of the primary residence or three thousand square feet, whichever is more restrictive;~~
- ~~2. Single family lots greater than or equal to ten thousand square feet may store up to two recreational vehicles on the lot; provided however, they are not stored in the front yard and meet the requirements of Section 19.31.020.B;~~
- ~~3. Tool shed, satellite dish, outdoor patios and outdoor fireplaces consistent with applicable design standards;~~
- ~~4. Mobile storage units or shipping containers are permitted for use during construction but must be removed within thirty days of final occupancy of the primary residence. No units greater than eight feet by ten feet are permitted in residential zones, other than during construction or for a period of up to thirty consecutive days within a six month period to facilitate the moving in or moving out of a residence. Units eight feet by ten feet or smaller may be placed on a lot for not more than six months during any two year period and must be located in the rear yard;~~
- ~~5. Private swimming pools, as provided in the International Building Code adopted pursuant to Chapter 15.02 of this Code and subject to Section 19.37.090;~~
- ~~6. Accessory dwelling unit (ADU) consistent with Chapter 19.20 permitted in detached single family homes only;~~
- ~~7. No more than three, currently licensed and/or operable passenger vehicles may be stored on any single family residential lot. Inoperable vehicles may not be stored in the front yard (refer to Section 19.31.020.A);~~
- ~~8. Recreation areas for residents;~~
- ~~9. Club facilities that are directly related to the neighborhood such as community swimming pools, privately owned athletic facilities and other similar improvements directly related to residential areas.~~

~~D. Senior Overlay Secondary Permitted Uses.~~

1. ~~Hobby shops, relating to the hobbies of the occupants of the home and not operated for production and sales purposes;~~
2. ~~Greenhouses operated by the occupants, provided the products will not be offered for retail sale on the premises except in the Neighborhood Commercial Overlay;~~
3. ~~Home occupations. See Chapter 19.57;~~
4. ~~Gardening and fruit growing not for commercial sale;~~
5. ~~General farming, which does not include the commercial feeding of livestock, if the zoning lot is five acres or more in size and meets the requirements outlined in Chapter 19.39 of this Code;~~
6. ~~Adult day care centers for up to eight individuals, not including the residents of the dwelling unit;~~
7. ~~Parks and playgrounds;~~
8. ~~Adult family homes and residential care facilities, up to six adults, when approved by the Washington State Department of Social and Health Services (DSHS).~~
9. ~~Temporary structures such as portable tents or canopies used by a business for an event or sale in the commercial neighborhood overlay. The event or sale shall be limited to seven days or less and all temporary structures must be removed within seventy-two hours of the sale or event.~~

E. ~~Conditional Permitted Uses in the Pepin Creek Senior Overlay Zones. The following property uses may be permitted in Pepin Creek Subarea zones by conditional use permit when recommended by the planning commission and approved by the city council consistent with Section 19.49.050.~~

1. ~~Public buildings and utility sub-stations.~~

F. ~~Senior Overlay Development Standards. The development standards for developments utilizing the senior overlay are as follows:~~

1. ~~Senior Overlay Height, Density, Area, Coverage, and Bulk Requirements.~~

Zone	Minimum Lot Size	Maximum Density*	Maximum Lot Coverage	Maximum Height**	Maximum Stories
Senior Overlay Detached Single Family Homes	4000 sf	12 DU/AC	40%	32'	2
Senior Overlay Attached Single	3000 sf	12 DU/AC	50%	32'	2

Family Homes					
Senior Overlay Multi-family dwelling	1600 sf per unit	12 DU/AC	40%	40'	3
Senior Overlay Care Facilities	1 acre	30 DU/AC	40%	40'	3

* Residential densities are based on net land area.

** Any development within the senior overlay that is developed at densities above the maximum density allowed in the underlying zoning must be restricted, on the face of the plat, to persons age fifty-five and older.

Senior Overlay Setback Requirements

Setbacks	Senior Overlay Detached Single Family	Senior Overlay Attached Single Family	Senior Overlay Multi-Family Dwelling	Senior Overlay Care Facility
Front Setback				
— ROW to Porch (or Porte-cochere for Care Facilities)	8'	8'	15'	25'
— ROW to House or Facility	10'	10'	20'	30'
— ROW to Garage	25'	25'	25'	25'
— Green to Porch	4'	4'	10'	10'
— Green to House	6'	6'	10'	10'
Side Setback[†]				
— Minimum Side	7'	0' on attached sides, 10' on each	10'	50% of building height specific to

		unattached side		each side
— Side Total	14'	20'	20'	50'
— Corner Lot	10'	10'	14'	
Rear Setback*				
— Alley Easement to Garage Side	3'	3'	3'	NA
Garage Side to Property Line	5'	5'	5'	NA
Alley to Garage Door	21'	21'	21'	NA
— Alley to House	15'	10'	20'	NA
— To House	15'	10'	15'	30'

+ On corner lots one of the corners may be considered as a side yard, provided that the yard considered as a side yard shall not be less than ten feet.

2. ~~Additional Senior Overlay Development Standards Provisions:~~

- a. ~~The height of any building is measured from the approved average grade level as defined in Section 17.01.030 to the highest point of a structure; provided that appurtenances such as television antennas and chimneys are not considered part of the height.~~
- b. ~~All setbacks are measured from the property line to the foundation. Eaves and cantilever bay windows may encroach into the setback a maximum of two feet. Structures covering decks and patios may encroach into rear setbacks as described in Section 19.16.070 or, for care facilities, half of the rear setback. Additional fire protection may be required for structures located within ten feet of each other. It is the property owner's responsibility to have the property lines clearly marked for inspection. Structural permits with setbacks submitted prior to April 1, 2019 are considered conforming and not subject to Section 19.35.030.~~
- c. ~~Uncovered wood decks and raised concrete patios not over twenty four inches above grade at any point may be permitted within eighteen feet of the rear property line and five feet of the side property line. Deck privacy screening or fencing shall not be higher than eighty four inches above the lowest grade.~~

- d. ~~Structures covering decks or patios are permitted within the rear setback provided that the structure: remains open on three sides; does not come within ten feet of the rear property line for detached homes within the senior overlay; does not encroach into the side yard setbacks of the underlying zone; and, the addition does not exceed the permitted lot coverage.~~

~~G. Standards for Detached Accessory Buildings.~~

1. ~~To be considered a "detached" structure, the minimum distance between two structures shall be six feet measured from foundation to foundation with no projections greater than eighteen inches.~~
2. ~~A detached accessory structure may not be built closer than six feet to the side or rear property line, except where a rear property line abuts an alley a structure may not be built closer than three feet to the rear property line. Structures which do not require a building permit per Chapter 15.04 must be setback a minimum of three feet to the side or rear property line.~~
3. ~~Detached accessory structures on corner lots shall not be permitted nearer than ten feet to the side property line adjacent to the street.~~
4. ~~The maximum height for all detached accessory structures shall be twelve feet, except for detached garages as noted below.~~
5. ~~The maximum height of any detached garage shall be eighteen feet, provided there is no living space within the building. Detached garages with living spaces shall be subject to the standards for accessory dwelling units in Chapter 19.20. The roof pitch and siding on any detached garage shall be consistent with the primary structure on the lot, and the height of the building shall not exceed the height of the primary structure.~~
6. ~~A secondary garage or shop shall be set behind the rear line of the house.~~

~~H. Senior Overlay Open Space Requirements.~~

1. ~~Each lot must maintain a minimum of seven and one-half percent in open space.~~
2. ~~Senior Overlay developments which exceed six units to the acre in net density must also provide common open space equal to ten percent of the developable parcel size. Common open space may be designed as a pocket park, courtyards, common green or access easement.~~
3. ~~Common open space must meet the following requirements:~~
 - a. ~~One two-inch caliper canopy tree is required for every one thousand square feet.~~
 - b. ~~Spaces must be accessible to residents and suitable for passive or active recreational use.~~
 - c. ~~Sidewalks or paths accessing the area must be a minimum of four feet wide.~~
 - d. ~~The minimum lawn coverage of a common green area shall be seventy percent.~~
- l. ~~Senior Overlay Landscape Requirements: In addition to the landscaping requirements of Chapter 19.61 of this title, proposed multi-family development~~

~~totaling more than two multi-family or attached single family units in this zone shall comply with Section 19.17.110.~~

(Ord. No. 1575, § A, 3-4-2019)

19.18.050 - Pepin Creek Neighborhood Commercial Overlay and Uses Established
Described.

- A. The neighborhood commercial overlay provides opportunities for a variety of primary permitted uses in key locations. Commercial uses may be established under the following conditions:
1. Uses are subject to the development and setback standards for the underlying zoning.
 2. Parking standards per Chapter 19.51 LMC must be met; however, up to fifty percent of the required surface parking may be shared between commercial and residential uses which occupy the same structure if commercial uses are not considered nighttime uses per LMC 19.51.090.
 3. Commercial structures are subject to applicable design standards and the approval of the design review board.
- B. The neighborhood commercial overlay provides opportunities for a variety of primary permitted uses in key locations. These include:
1. Personal Services. This is to allow for businesses such as barbershops, beauty salons, day spas, laundry facilities, dry-cleaning, child or adult daycare, or others that would serve the subarea.
 2. Sales of General Consumer Goods. This is to allow for retail sales of food, household goods, pet supplies, and other goods to residents in the subarea. The sales of goods geared toward a regional customer base, as determined by the planning director, are not allowed. Such regional uses include fuel sales, auto sales, large format stores, construction and landscaping materials, and farm equipment. Outdoor storage associated with the sales of general consumer goods is also not allowed.
 3. Restaurants and Cafes. Single lane drive-thrus which are screened and oriented away from the street are permitted.
 4. Professional offices, banks and financial institutions.
 5. Second and upper story residential uses may be developed in conjunction with first floor commercial uses.

(Ord. No. 1575, § A, 3-4-2019)

Section 4: Any ordinance or parts of ordinance in conflict herewith are hereby repealed insofar as they conflict with the provisions of this ordinance.

Section 5: 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, 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 6: This Ordinance shall be in full force and effect on October 1, 2021.

~~Section 4 of this Ordinance shall be in full force and effect on January 1, 2022.~~

PASSED by the City Council of the City of Lynden, Whatcom County, Washington on the _____ day of _____, 2021. Signed by the Mayor on this _____ day of _____, 2021.

SCOTT KORTHUIS, MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY