

ORDINANCE NO. 23-1666

ORDINANCE OF THE CITY OF LYNDEN ESTABLISHING AN EMERGENCY MORATORIUM TO EXTEND AN EXISTING INTERIM ZONING ORDINANCE (SUBSTITUTE ORDINANCE NO. 1661) ON THE LOCATING OF COMMUNITY RESIDENTIAL FACILITIES WITHIN 500 FEET OF ALL COMMUNITY SCHOOLS AND 300 FEET OF OTHER COMMUNITY RESIDENTIAL FACILITIES

WHEREAS, the City of Lynden (“City”) notes that House Bill 1220 (“E2SHB 1220”), passed by the Washington State Legislature in May 2021, compels municipalities to support efforts to provide indoor emergency housing, indoor emergency shelters, transitional housing, and permanent supportive housing consistent with Chapters 35.21 and 35A.21 RCW; and

WHEREAS, for the purposes of this ordinance establishing an emergency moratorium (“Ordinance”), and its extension of previously adopted Substitute Ordinance No. 1661, these four types of facilities identified in E2SHB 1220 are collectively referred to herein as “Community Residential Facilities” or “CRFs”; and

WHEREAS, E2SHB 1220 also states that reasonable occupancy, spacing, and intensity of use requirements may be imposed by ordinance to protect public health and safety as it relates to CRFs; and

WHEREAS, the Lynden City Council (“City Council”) desires to establish reasonable standards for the safe operation and appropriate siting of CRFs and other group living arrangements such as adult family homes and group homes within the City of Lynden so as to protect public health and safety for both facility residents and the broader community; and

WHEREAS, ensuring compliance with existing City code and development standards and promoting a safe, calm, and focused atmosphere on and near the grounds of City schools are important priorities for the City; and

WHEREAS, populations served by CRFs often have higher instances of substance abuse, mental health crises, and criminal histories, which can result in disruptive behavior and emergency response activity in and around facilities which is not compatible with the atmosphere the City seeks promote around City schools; and

WHEREAS, the City’s permanent zoning regulations have not yet been updated to address E2SHB 1220’s emphasis upon municipal support for the establishment of CRFs; and

WHEREAS, the City Council approved Substitute Ordinance No. 1661 on December 5, 2022, and it was signed into law by the Mayor on December 6, 2022, as an interim zoning ordinance to preclude vesting or development of nonconforming status under

existing code before permanent comprehensive zoning regulations governing CRFs could be developed; and

WHEREAS, the City is in the process of developing a new permanent ordinance which will provide comprehensive zoning regulation of CRFs in a manner consistent with E2SHB 1220, along with regulation of adult family homes and group homes (“Proposed Permanent CRF Ordinance”); and

WHEREAS, the City held a public hearing on a Proposed Permanent CRF Ordinance before the Planning Commission on December 15, 2022; and

WHEREAS, the City continues to work on a Proposed Permanent CRF Ordinance and has considered changes at recent Planning and Development Committee meetings of the City Council; and

WHEREAS, additional time is needed to fully consider and finalize a Proposed Permanent CRF Ordinance, including appropriate CRF occupancy, spacing, and intensity of use provisions, in order to protect the public health, safety, welfare, property, and peace in the City; and

WHEREAS, Substitute Ordinance No. 1661 does not prohibit building permit applications for or the locating of CRFs in any zone of the City, but rather imposes limited interim spacing requirements for CRFs pending adoption of comprehensive zoning regulations applicable to CRFs; and

WHEREAS, an emergency interim zoning ordinance adopted pursuant to RCW 36.70A.390 and RCW 35A.63.220 is a means for local governments to rapidly adopt temporary zoning controls during the time in which permanent regulations are being developed and enacted; and

WHEREAS, RCW 36.70A.390 and RCW 35A.63.220 authorize the enactment of an interim zoning ordinance without holding a public hearing as long as a public hearing is held within at least sixty (60) days of its adoption; and

WHEREAS, prior to adoption of Substitute Ordinance 1661, at a special city council meeting on September 15, 2022, an emergency interim zoning ordinance on CRFs was adopted by the City Council under Ordinance No. 1650; and

WHEREAS, the City Council held a public hearing at its regular meeting on October 17, 2022 and adopted Ordinance No. 1658, a substitute ordinance which extended Ordinance No. 1650 and made minor modifications to the findings therein; and

WHEREAS, the City Council then held a public hearing at its regular meeting on December 5, 2022, at which it adopted Substitute Ordinance No. 1661 to modify the findings and provisions of Ordinance No. 1658; and

WHEREAS, Substitute Ordinance No. 1661 by its own terms is set to expire on March 15, 2023, if it is not extended; and

WHEREAS, if Substitute Ordinance No. 1661 is allowed to expire prior to adoption of a New Proposed Permanent CRF Ordinance, there would be no ordinance in place to preclude vesting or development of nonconforming status of CRF's in the City of Lynden; and

WHEREAS, based on the foregoing findings and reasons, the City Council finds that adoption of this Ordinance establishing an emergency moratorium to extend existing interim zoning Substitute Ordinance No.1661 is in the best interest of the City and necessary to protect public health and safety; and

WHEREAS, the adoption of this emergency moratorium to extend existing interim Substitute Ordinance No. 1661 will provide the City with the time necessary to develop and finalize comprehensive zoning regulations applicable to CRFs while simultaneously addressing immediate public concerns as to the proximity of CRFs to community schools; and

WHEREAS, Substitute Ordinance No. 1661 is set forth herein in its entirety except for Section 9 which is updated based on this Ordinance; and

WHEREAS, the City Council concludes that it has the authority to adopt this emergency moratorium to extend existing Substitute Ordinance No. 1661; 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 City Council reserves the right to adopt additional findings in the event that additional evidence is presented.

Section 2. CRF Defined. "Community Residential Facilities" or "CRFs" is a collective term for the housing categories regulated under this Ordinance, namely Emergency Housing, Indoor; Emergency Housing, Outdoor; Emergency Shelter; Transitional Housing; and Permanent Supportive Housing. All CRFs regulated under this Ordinance are forms of supportive housing intended to address the needs of persons who are or were experiencing homelessness or who are or were at risk of imminent homelessness. For the purposes of this Ordinance, facilities primarily intended to serve persons with disabilities as defined in the Fair Housing Act, 42 U.S.C. §§ 3601-3631, including without limitation homes for non-using persons recovering from a substance use disorder, are not considered CRFs and are not regulated under this Ordinance.

Section 3. Community School Defined. “Community School” as used herein shall refer to any elementary school, middle school, or high school located within the City of Lynden.

Section 4. CRF Minimum Spacing Requirements Established. No proposed Community Residential Facility shall be located within 500 feet of a Community School or within 300 feet of another approved Community Residential Facility.

Section 5. Measurement Standard. For the purposes of the spacing requirement established herein, distance shall be measured in a straight line between the closest property line of the proposed Community Residential Facility and the closest property line of the Community School or other approved Community Residential Facility.

Section 6. Reasonable Accommodations. The Fair Housing Act (“FHA”), 42 U.S.C. 3604(f)(3)(B), requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling. The Planning Director is therefore authorized to make accommodations in the provisions of this Ordinance as applied to CRFs occupied or to be occupied by persons with disabilities as defined in the FHA, when the Planning Director determines that such accommodations reasonably may be necessary in order to comply with the requirements of the FHA.

Section 7. Washington Housing Policy Act. Nothing in this Ordinance shall be applied in violation of the Washington Housing Policy Act’s requirement under RCW 35A.63.240 to treat a residence occupied by individuals with disabilities no differently than a similarly situated residence occupied by a family or other unrelated individuals.

Section 8. Religious Organizations. Nothing in this Ordinance shall be applied to the extent it would infringe upon a religious organization’s ability to serve the homeless consistent with a sincere religious belief as protected under the First Amendment of the United States Constitution, Article I § 11 of the Washington State Constitution, the Religious Land Use and Institutionalized Persons Act (42 U.S.C. 2000cc et seq.), and RCW 35.21.915 (Hosting the homeless by religious organizations).

Section 9. Duration. This Ordinance shall be in effect for six (6) months from its date of adoption so long as a public hearing hereon is held within sixty (60) days, and may be renewed for one or more successive six-month periods, pursuant to RCW 36.70A.390 and RCW 35A.63.220.

Section 10. Conflict with Other LMC Provisions. If the provisions of this Ordinance are found to be inconsistent with other provisions of the Lynden Municipal Code, this Ordinance shall control.

Section 11. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, subsection, clause, or phrase of this Ordinance.

Section 12. Effective Date. This Ordinance shall take effect immediately.

PASSED BY THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON, AND APPROVED BY THE MAYOR ON THIS ____ DAY OF MARCH, 2023.

Scott Korthuis, Mayor

ATTEST:

Pamela Brown, City Clerk

APPROVED AS TO FORM:

ROBERT CARMICHAEL, City Attorney