TITLE 17
LAND DEVELOPMENT CODE

Chapters:

17.01 INTRODUCTION
17.03 ADMINISTRATION
17.05 CONSOLIDATED APPLICATION PROCESS
17.07 PUBLIC NOTICE REQUIREMENTS
17.09 REVIEW AND APPROVAL PROCESS
17.11 APPEALS
17.13 ENFORCEMENT
17.15 ADEQUATE PUBLIC FACILITY CONCURRENCY
17.17 VARIANCE OF DEVELOPMENT STANDARDS
17.19 SITE SPECIFIC REZONES
17.21 VACATIONS OF PUBLIC RIGHTS-OF-WAY

Approved by City Council Ordinance 1202 on April 5, 2004
CHAPTER 17.01

INTRODUCTION

Sections:

17.01.010 INTENT
17.01.020 RULES OF INTERPRETATION
17.01.030 DEFINITIONS

17.01.010 INTENT

The purpose of this title is to combine and consolidate the application, review, and approval processes for land development in the City of Lynden in a manner that is clear, concise, and understandable. It is further intended to comply with state guidelines for combining and expediting development review and integrating environmental review and land use development plans. Final decision on development proposals shall be made within 120 days of the date of the Letter of Completeness except as provided in Section 17.09.090.

17.01.020 RULES OF INTERPRETATION

A. For the purposes of the Development Code, all words used in the code shall have their normal and customary meanings, unless specifically defined otherwise in this code.

B. Words used in the present tense include the future.

C. The plural includes the singular and vice-versa.

D. The words "will" and "shall" are mandatory.

E. The word "may" indicates that discretion is allowed.

F. The word "used" includes designed, intended, or arranged to be used.

G. The masculine gender includes the feminine and vice-versa.

H. Distances shall be measured horizontally unless otherwise specified.

I. The word "building" includes a portion of a building or a portion of the lot on which it stands.
17.01.030  DEFINITIONS

The following definitions shall apply to Titles 16 through 19; other definitions may be found in individual titles. The definitions set forth in this chapter shall apply to the terms used in this title. Those terms not defined in this chapter, shall be as defined in the 1991 Uniform Zoning Code.

Accessory Building or Accessory Structure.
An "Accessory building" or "accessory structure" is an incidental subordinate building customarily incidental to and located on the same lot or parcel occupied by the main use or structure. This shall specifically include dishes for receiving satellite television and/or radio signals. The building or structure may not exceed one thousand square feet.

Accessory Use.
"Accessory use" means a subordinate use conducted on the same lot as the primary use of the structure to which it is related; a use which is clearly incidental to, and customarily found in connection with, such primary use.

Adult Bookstore.
"Adult bookstore" means an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas or an establishment with a segment or section devoted to the sale or display of such material.

Adult family home.
"Adult family home" means a regular family abode of a person providing personal care, room and board to more than one, but not more than four adults, not related by blood or marriage to the person or persons providing the care. A maximum of six adults may be permitted if the Department of Social and Health Services determines that the home is of adequate size and the home and provider are capable of meeting standards and qualifications as provided for in chapters 70.128 RCW and 388-76 WAC.

Adult Motion Picture Theater.
"Adult motion picture theater" means an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult Stock in Trade.
Adult books, pictures or other printed materials, products or equipment, pre-recorded video tapes, discs, or similar material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas where such material is generally available for rental, purchase, viewing,
or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons.

Alley.
"Alley" means a strip of land dedicated to public use, providing vehicular and pedestrian access to the rear side of properties which abut and are served by a public street and which may also include provisions for public utilities and drainage.

Alteration.
"Alteration" means any change, addition or modification in construction, occupancy or use.

Amusement Center.
"Amusement center" means an establishment offering five or more amusement devices, including, but not limited to, coin-operated electronic games, shooting gallery, table games, and similar recreational diversions within an enclosed building.

Antenna.
A wire or system of wires, rods, poles, or similar devices; or satellite dishes used for the transmission or reception of electromagnetic waves, external to or attached to the exterior of any building.

Applicant.
A person seeking development approval from the City.

Assisted Living Facility.
"Assisted living" means an establishment which provides living quarters and a variety of limited personal care and supportive health care to individuals who are unable to live independently due to infirmity of age, physical or mental disability, but who do not need the full-time skilled nursing care of a convalescent or nursing home. These facilities may consist of individual dwelling units of a barrier free design, with separate bathroom facilities. These facilities may also include some medical services, a communal dining room, recreation area facilities, and laundry facilities. For the purpose of this code, each suite shall be considered a dwelling unit, with or without cooking facilities.

Auto Body Shop.
"Auto body shop" means an enclosed establishment where repairs or maintenance are made to the paint, body and fenders of motor vehicles, trailers, and similar large mechanical equipment.

Automotive Repair.
"Major automotive repairs" means either such repairs or maintenance to motor vehicle or motor vehicles, trailers, and similar large mechanical equipment including major engine and engine part overhaul, brake, muffler, upholstery work, tire repair and change,
lubrication, tune ups and transmission work, or a completely enclosed establishment where such repairs are undertaken.

**Automotive Service Station.**
"Automotive service station" means an establishment, whether open to the public, where flammable or combustible liquids or gases used as fuel are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles. Such an establishment may offer for sale at retail other convenience items as a clearly secondary activity and may also include a car wash.

**Basement.**
"Basement" shall have the definition given in the Uniform Building Code.

**Bed and Breakfast.**
"Bed and Breakfast" is a dwelling unit with rooms to let as transient accommodations, conducted within a single dwelling unit. For the purpose of this section, a transient shall be defined as a person who stays for a period not to exceed two weeks. Accommodations may include limited food service for guests.

**Block.**
A group of continuous lots, tracts or parcels within well defined and fixed boundaries.

**Boardinghouse or Rooming House.**
"Boardinghouse" or "rooming house" means a structure used for the purpose of providing lodging or lodging and meals, for five or more persons other than those under the "family" definition. This term includes dormitories, cooperative housing and similar establishments but does not include hotels, motels, medical care facilities, bed and breakfast facilities, or multi-family units. These facilities do not have cooking facilities in the sleeping rooms.

**Body Painting Studio.**
"Body painting studio" means any premises or part thereof where, directly or indirectly, a fee is paid for any activity involving the application of paint, powder, or similar materials to the body of another person.

**Building.**
"Building" means any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels. When any portion of a structure is completely separated from every other portion thereof by a division wall and floor without openings, then each such portion shall be deemed to be a separate building.
Building, Apartment.
"Apartment building" means a structure composed of three or more dwelling units, one attached to the other, and each designed as a one-family dwelling unit.

Building, Main.
"Main building" means any building occupied by the essential use of the zone in which the building is located.

Building, Public.
"Public building" means a building constructed for public purpose, which shall include, but is not limited to, hospitals, school buildings, police and fire stations, libraries, city hall, community centers, school stadiums.

Building Height.
“Building Height” shall be as defined by the Uniform Building Code except as modified as follows: The vertical distance is measured from a reference datum to the highest elevation of the roof or coping and includes mechanical apparatus to be installed on the building. When the highest grade elevation is the reference datum, that grade must be maintained a minimum of 40% of the building perimeter and five foot minimum horizontal distance from the building, provided the highest grade is not more than eight feet above the lowest grade.

Business Visit.
An individual trip made for the purpose of conducting business or receiving instruction; or for performing services; or for delivering goods or stock in trade.

Carport.
"Carport" means an accessory building lacking exterior walls on two or more sides.

Car Wash.
"Car wash" means either a principal or accessory building equipped with mechanical equipment for washing automobiles.

City Administrator
The City Administrator of the City of Lynden or his designee.

City Council.
The City Council of the City of Lynden.

City.
The City of Lynden.

City Code.
Municipal Code of the City of Lynden.
Clear Vision Triangle.
"Clear Vision Triangle" means the area determined by measuring twenty five feet along both front and side property lines and diagonally connecting the ends of the two lines.

Closed Record Appeal.
An appeal to the City Council based on the existing record established at an open record hearing. In a closed record appeal, no new evidence or information shall be allowed to be submitted. Only a summary of information and issues in the existing record and appeal argument shall be allowed.

Club, Private.
"Private club" means a non-profit social organization whose premises are restricted to its members and their guests.

Comprehensive Plan.
The City of Lynden Comprehensive Plan, adopted by Resolution 545.

Comprehensive Plan Amendment.
An amendment or change to the text or maps of the Comprehensive Plan.

Conditional Use.
"Conditional Use" is a principal or accessory use which would become compatible with neighboring uses through the application and maintenance of qualifying conditions.

Condominium
"Condominium" means a unit in a multiple unit building(s) or structure(s), organized under the Horizontal Regimes Act of the State so as to permit the individual mortgage, sale or transfer of units, suites or apartments and retaining to the purchaser and owner rights in certain common areas and facilities.

Congregate Care Facility.
"Congregate care facility" means those residential development, primarily designed for the active elderly, which are designed with a central kitchen and dining facility in conjunction with attached residential units. Units may or may not include kitchen facilities, which for the purpose of this chapter are defined as an area containing a refrigerator, range, 220 volt electrical or gas oven and a sink which are permanent to the unit. Medical services are incidental to the primary use.

Congregate Residence
"Congregate residence" is any building or portion thereof which contains facilities for living, sleeping and sanitation as required by this code and the Department of Social and Health Services, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging/rooming houses.
Convalescent or Nursing Home.
"Convalescent home" or "nursing home" is a facility which is publicly or privately operated and intended for long term patient care due to human illness or infirmity, including the elderly and developmentally disabled, normally employing the services of skilled and licensed practitioners, excluding hospitals. Paid services are to be administered only to the four or more resident occupants of the facility.

Council.
"Council" means the city council of the city.

County auditor.
"County auditor" shall be as defined in RCW Chapter 36.22.

County treasurer.
"County treasurer" shall be as defined in RCW Chapter 36.29.

Coverage.
"Coverage" means the percent of the land area of a lot or parcel covered by buildings or structures. This percentage is the land area of the lot covered by the buildings or structures (excluding eaves and other extensions of all building or structures) divided by the lot area of the zoning lot.

Critical Areas.
Areas of environmental sensitivity, which include the following areas and ecosystems: a) wetlands; b) fish and wildlife habitat conservation areas; c) frequently flooded areas; and d) geologically hazardous areas.

Cul-de-sac.
"Cul-de-sac" means a street closed at one end by a circular drive of sufficient size for turning automotive vehicles around.

Curb Grade.
"Curb grade" means the elevation of the top of the face of the curb, as fixed by the city council.

Date of Decision.
The date on which final action occurs and from which the appeal period is calculated.

Day Care Facility.
"Day care facility" means a building, or portion thereof, for the keeping for part-time care and/or instruction, whether or not for compensation, of individuals. This establishment is a primary use, and residential uses are generally secondary to the primary use. Child nurseries and preschool facilities may be included in this definition.
Day Care, Family.
"Family day care" means the keeping for part-time care and/or instruction, whether or not for compensation, of individuals within a dwelling. This use is secondary to the primary use, which is generally a single family dwelling unit.

Dedication.
"Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentation for filing of a final plat or short plat showing the dedication thereon, and the acceptance by the public shall be evidenced by the adoption of an ordinance indicating approval of such plat for filing with the county auditor and the city engineer.

Density.
"Density" is the number of dwelling units which are allowed on a gross acre of land. This calculation is made by dividing the number of dwelling units by the gross acreage of the parcel.

Developer.
Any person who proposes a development, action, and/or seeks a permit regulated by Titles 16 through 19, LMC, inclusive.

Development.
Any activity or use requiring or involving a land use permit, approval, or action regulated by Titles 16 through 19, LMC, including but not limited to subdivisions, short subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments, conditional use permits, special use permits, variances, design review approvals, building permits, shoreline substantial development permits, site plan review, approvals required by the critical areas ordinance, or site-specific rezones, but excluding the adoption or amendment of the comprehensive plan, subarea plan, or development regulations.

Development Code.

Development Permit.
The permit required prior to commencement of work on any development.

Director.
Director of Planning or “Planning Director” for the City of Lynden.

Development Permit Application.
Any application for a proposed activity or use requiring or involving a land use permit, approval, or action regulated by Titles 16 through 19, LMC, including but not limited to
subdivisions, short subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments, conditional use permits, special use permits, variances, design review approvals, building permits, shoreline substantial development permits, approvals required by the critical areas ordinance, or site-specific rezones, but excluding proposals for the adoption or amendment of the comprehensive plan, subarea plan, or development regulations.

**Development Proposal**
Any proposed activity or use requiring or involving a land use permit, approval, or action regulated by Titles 16 through 19, LMC, including but not limited to subdivisions, short subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments, conditional use permits, special use permits, variances, design review approvals, building permits, shoreline substantial development permits, approvals required by the critical areas ordinance, or site-specific rezones, but excluding proposals for the adoption or amendment of the comprehensive plan, subarea plan, or development regulations.

**Development Regulation**
Any controls established by City ordinance or amendment to City ordinance placed on development or land use activities, including without limitation, zoning ordinances, official controls, ordinances on subdivision and short subdivision, planned unit development ordinances, planned residential or planned commercial development ordinances, binding site plan ordinances, ordinances authorizing conditional use permits, special use permits, or variances, shoreline ordinances including the shoreline master program, critical areas ordinances, flood plain management ordinances, design review ordinances, resource area ordinances, ordinances on development standards, and building code ordinances.

**Driving Surface.**
That portion of a street intended for vehicular travel or parking.

**Dusts.**
"Dusts" means minute solid particles small enough to pass through a 200 mesh screen (74 μ) released into the air by natural forces or by mechanical processes such as crushing, grinding, bagging, sweeping, etc.

**Dwelling Unit.**
"Dwelling unit" means a single unit providing complete, independent living facilities for not more than one family, or a congregate residence for six or less persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. A mobile or manufactured home, apartment, condominium, townhouse, single family detached home or accessory dwelling unit is considered to be a dwelling unit.
Dwelling Unit, Multiple.
"Multiple dwelling unit" means a structure containing three or more dwelling units, each of which provides a complement of necessary facilities to accommodate one family.

Dwelling Unit, Two-Family or Duplex.
"Two-family dwelling unit" or "Duplex" means a structure accommodating two dwelling units, each of which is equipped with a complement of the facilities necessary for the living accommodations of one family.

Easement.
"Easement" is that portion of a lot or lots reserved for the present or future use by a person or agency other than the legal fee owner(s) of the property. The easement may be for use under, on, or above said lot or lots.

Effective Date.
The date a final decision becomes effective.

Escort Service.
"Escort service" means any business or agency which, for pecuniary compensation for any consideration, furnishes, or offers to furnish, escorts or persons who accompany others to, from, or about social affairs, entertainment, places of public assembly, or places of amusement, or who consort with others, for hire or reward, about any place of public resort or within any private quarters.

Family.
"Family" means an individual or two or more persons related by blood, marriage, or adoption, or a group not to exceed six unrelated persons living together as a single housekeeping unit.

Fence.
“Fence” is a structure or partition, erected for the purpose of enclosing a piece of land, or to divide a piece of land into distinct portions, or to separate two contiguous estates and intended to prevent intrusion from without or straying from within. For the purposes of the Lynden Municipal Code, the definition of a fence is not intended to include wire structures enclosing less than one hundred twenty square feet intended for the keeping of animals, nor does it include wire enclosures for the purposes of sport fields.

Final Decision.
The final action by the Staff, City Board, or City Council.

Final Decision of the City.
The final decision of the City which is subject to review under Chapter 36.70C RCW (“Land Use Petition Act”).
Final Plat.
"Final plat" means the final drawing of the subdivision and dedication, prepared for filing for record with the county auditor and containing all elements and requirements set forth in Chapter 271, Laws of 1969, RCW 58.16, and in this title, adopted pursuant thereto.

Floor Area, Gross.
"Gross floor area" is the sum of the horizontal areas of floors of a building measured from the exterior face of exterior walls or, if appropriate, from the center line of dividing walls; this includes courts and decks or porches when covered by a roof.

Floor Area, Net.
"Net floor area" is the gross floor area exclusive of vents, shafts, courts, elevators, stairways, exterior walls and similar facilities.

Foster Home.
A home licensed and regulated by the state and classified by the state as a foster home, providing care and guidance for not more than three unrelated juveniles.

Garage, Commercial.
"Commercial garage" means a building in which the primary function is the repair of motor vehicles. See "Automotive Repair."

Garage, Private.
"Private garage" is a building or portion of a building not more than 1000 square feet in area, in which only private or pleasure-type motor vehicles used by the tenants of the building on the premises are stored or kept. A detached private garage is an accessory building.

Garage, Public.
"Public garage" means any building or portion thereof used for the care, repair, equipping or storage of motor vehicles.

Gasoline Service Station.
"Gasoline service station" means a building used primarily for the retail sale of fuels, lubricants and other operating commodities for motor vehicles.

Gross Leaseable Area.
"Gross leaseable area" is the total floor area of a commercial building designed for tenant occupancy and exclusive use, including basements, mezzanines and upper floors, expressed in square feet as measured from the center line of joint partitions and from outside wall faces.

Group Care Facility.
"Group care facility" is a residential facility, required to be licensed by the state, which provides training, care, supervision, treatment and/or rehabilitation to the aged, disabled,
those convicted of crimes or those suffering the effects of drugs or alcohol; this does not include day-care centers, family day-care homes, foster homes, schools, hospitals, jails or prisons.

**Hazardous Materials.**
"Hazardous Materials" means those materials defined as such in the most recent Uniform Fire Code.

**Hazardous Waste.**
"Hazardous Waste" means all dangerous and extremely hazardous waste as defined in R.C.W. 70.105.010(15) or its successor, except for moderate risk waste as set forth in R.C.W. 70.105.010(17), or its successor.

**Hazardous Waste Storage.**
"Hazardous Waste Storage" means the holding of hazardous waste for a temporary period, as regulated by the State Dangerous Waste Regulations, Chapter 173-303 WAC or its successor.

**Hazardous Waste Treatment.**
"Hazardous Waste Treatment" means the physical, chemical or biological processing of hazardous waste for the purpose of rendering these wastes non-dangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage or reduced in volume, as regulated by the State Dangerous Waste Regulations, Chapter 173-303 WAC or its successor.

**Hazardous Waste Treatment and Storage Facilities, On Site.**
"Hazardous waste treatment and storage facilities, on site" means facilities that store and/or treat hazardous wastes generated upon the same property whereupon the storage and/or treatment of the waste occurs.

**Hazardous Waste Treatment and Storage Facilities, Off Site.**
"Hazardous waste treatment and storage facilities, off site" means facilities that store and/or treat hazardous wastes generated upon property other than the property whereupon the storage and/or treatment of the waste occurs.

**Hedge.**
"Hedge" means a row of closely planted shrubs or low growing trees forming a fence or a boundary line.

**Home Occupation.**
"Home occupation" is the partial use of a dwelling unit or accessory building for commercial or nonresidential uses by a resident thereof which is subordinate and incidental to the use of the dwelling for residential purposes.
Hospital.
"Hospital" is an institution designed for the diagnosis, treatment and care of human illness or infirmity and providing health services, primarily for inpatients, and including as related facilities, laboratories, outpatient departments, training facilities and staff offices. This definition may also include clinics, and any other place duly licensed and established for the diagnosis, treatment and care of human ailments.

Hotel or Motel.
"Hotel" or "Motel" means a structure or any part of a building which contains living and sleeping accommodations for the occupancy of six or more transient guests and has a common entrance or entrances, except a bed and breakfast.

Inoperable Motor Vehicle
“Inoperable motor vehicle” means any motor vehicle that is not currently registered and licensed with the State of Washington, or another appropriate governmental agency recognized by the state of Washington.

Irregular Lot.
A lot which is shaped so that application of setback requirements is difficult. Examples include a lot with a shape which is not close to rectangular, or a lot with no readily identifiable rear lot line.

Junkyard.
"Junkyard" means the use of land, with or without structures, for the storage or keeping of junk, scrap metal or materials an/or for dismantling or demolishing vehicles, machinery or parts thereof.

Kennel.
A structure or lot on which four or more domestic animals at least four months of age are kept.

17.01.030 L

Landscaping.
"Landscaping" is the finishing and adornment of unpaved yard areas. Materials and treatment generally include naturally growing elements such as grass, trees, shrubs and flowers. This treatment may also include the use of logs, rocks, fountains, water features and contouring of the earth.

Loading and Unloading Space.
"Loading and unloading space" means any space along the periphery of a commercial building, except the front, and on the same property with the main building, designed and intended for unloading or loading goods destined from or to the place of business.

Lot Area,
"Lot area" means the total horizontal area included within the lot lines of a zoning lot.

Lot, Corner.
"Corner lot" means a zoning lot which adjoins the point of intersection of two or more street lines, and in which the interior angle formed is one hundred thirty-five degrees or less.

Lot, Interior.
"Interior lot" means any zoning lot which is not a corner lot or a through lot.

Lot Line Adjustment
"Lot line adjustment" includes the adjustment of a legal lot line provided that it does not create a new lot; does not leave any building on the affected lot in violation of the zoning ordinance after the adjustment; and does not create a lot of substandard size nor a lot which would otherwise violate the zoning ordinance.

Lot Line, Front.
"Front lot line" means the street line of an interior lot or either street line of a corner or through lot, as may be selected by the applicant for a building permit.

Lot Line, Rear.
"Rear lot line" means the line opposite to the street line, which is parallel to, or within forty-five degrees of being parallel to the front lot line.

Lot Line, Side.
"Side lot line" means any lot line which is not a front lot line or a rear lot line.

Lot of Record.
"Lot of record" means any lot established by a duly approved and recorded plat in which the lot is located.

Lot, Through.
"Through lot" means any zoning lot which has two street lines which are parallel to, or within forty-five degrees of being parallel to each other, and which are not corner lots.

Lot Zoning.
"Zoning lot" means a single tract of land, located within a single block, which, at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control, and assigned to the particular use for which the building permit and occupancy permit are issued. The term shall include tracts or parcels.

Major repairs.
Major repairs" means such repairs to motor vehicles as disassembling and assembling of the motor, differential and transmission, and grinding valves and body repair.
Manufactured Home.
"Manufactured home" is a transportable home in one or more section, which is built on a permanent frame or base and is designed for use with or without a permanent foundation when connected to the required utilities.

Massage Parlor.
"Massage parlor" means any premises or part thereof where massage, including the manipulating, touching or stimulating, by any means, of a person's body or part thereof, but not including medical, therapeutic or cosmetic massage treatment given by a person duly licensed or registered under any statute of the state governing such activities, is performed, offered or solicited.

Minor Repairs.
"Minor repairs" means such repairs to motor vehicles or motors as adjusting headlights, changing spark plugs and other repairs not including major repairs.

Mitigation Contribution.
A cash donation or other valuable consideration offered by the applicant in lieu of: 1) a required dedication of land for public park, recreation, open space, public facilities, or schools; or 2) road improvements needed to maintaining adopted levels of service or to ameliorate identified impacts and accepted on the public's behalf as a condition of approval of a subdivision, plat or binding site plan. Voluntary contributions may be accepted by the City.

Modular Home.
"Modular home" is a home built in a factory in modules that is then transported and set up on a parcel of land.

Mobile Home.
"Mobile home" is a vehicle or structure, other than a motor vehicle, greater than 320 square feet in gross floor area designed with attached axles and wheels, which may be used for permanent or semi-permanent housing or human occupancy, and which is designed to be drawn by a motor vehicle. The term shall also include any vehicle meeting the above description which is used for an office, a classroom, a laboratory, processing, manufacturing retail sales or other use.

Mobile Home Awning.
"Mobile home awning" means a stationary structure, permanent or de-mountable, used in conjunction with a mobile home, other than a window awning, for the purpose of providing shelter from the sun and rain, and having a roof with supports and not more than one wall or storage cabinet substituted for a wall.

Mobile Home Park.
"Mobile home park" means a plot or tract of land divided into lots, under the ownership or management of one person, firm or corporation for the purpose of locating two or more
mobile homes to be used for human occupancy. Individual lots may be sold within the mobile home park, but the mobile home park must still have a mobile home manager.

Model Studio.
"Model studio" means any premises or part thereof where, directly or indirectly, a fee is paid for the furnishing of persons as models who pose in the nude on the premises for the purpose of being sketched, painted, drawn, sculpted, photographed, or otherwise depicted, but does not include any studio which functions as an educational institution authorized under any legislation of the state governing educational institutions.

Motor Vehicle Sales
For the purposes of the Lynden Municipal Code, “Motor Vehicle Sales” means the sale or display for sale of more than five vehicles per year in a single location. Any person or property owner selling or allowing the display for sale of five or more motor vehicles will be required to obtain a dealer’s license under RCW 46.70.021.

Net Land Area
"Net Land Area" means the land available for building or open space minus development requirements such as road rights-of-way.

Non-Conforming Building.
"Non-conforming building" is a building or structure or portion thereof lawfully existing at the time this code became effective, which was designed, erected or structurally altered for a use that does not conform to the zoning regulations of the district in which it is located.

Non-Conforming Lot.
A lawfully established lot which does not conform to the provisions of the Development Code.

Non-Conforming Use.
"Non-conforming use" is a use which lawfully occupied a building or land at the time this code became effective, which has been lawfully continued and which does not now conform with the use and zoning regulations,

Nude Disco Parlor.
"Nude disco parlor" means any premises at which specified anatomical areas of employees of the operator of the business are exposed to the view of patrons of the business.

Nursery, Day.
"Day nursery" means a building operated for the primary purpose of care for pay of three or more children of ages less than that admitted to kindergarten.
Office.
A building or separately defined space within a building used for business. The use of an office does not include on-premises sales or manufacture of goods.

Off-Street Parking Space.
"Off-street parking space" means any space, not on a highway or street, where one passenger vehicle or truck not exceeding a three-fourth-ton truck may park, having a net minimum width of nine feet and length of twenty-one feet, and the gross area of which shall include area for service alleys, exits and accesses.

Open Record Hearing.
A hearing, conducted by a single hearing body or officer authorized to conduct such hearings that creates the City’s record through testimony and submission of evidence and information. An open record hearing may be held prior to the City’s decision on a development permit application; or may be held on an appeal if no open record hearing has already been held on the development permit application. A hearing body conducting an open record hearing (e.g., Planning Commission) need not be the decision making body, but may make findings and forward a recommendation to the decision making body (e.g., City Council), all in accordance with City ordinance.

Open Space.
"Open space" means land areas not covered by buildings, parking structures, or accessory structures, except recreational structures. It includes land which is accessible and available to all occupants of dwelling areas for whose use the space is intended. It does not include private yards.

Parking Facility -- Retail.
"Retail parking facility" means land area or structure devoted to the temporary parking or storage of motor vehicles for which a fee may be charged, but where no service or repairs of any kind are furnished. Lots included for sale or rental of cars shall not be included in this definition.

Particulate Matter.
"Particulate matter" means material which is suspended in or discharged into the atmosphere in finely divided form as a liquid or solid at atmospheric temperature and pressure.

Party of Record.
Any person who has testified at a hearing or has submitted a written statement related to a development proposal or action and who provides the City with a complete address. A petition or petitions signed by more than five (5) persons shall not qualify as a written statement of the signatories. Signing such a petition shall not by itself qualify a person as a party of record.
Performance Standards.
"Performance Standards" deal with the effects a use may have on the surrounding area. Measurable minimum standards are established for such effects as smoke, noise, toxic emissions, water pollutants, glare, vibration, shade, radioactivity, electrical disturbances, heat, odors, traffic generation, and others for each zoning district.

Permitted Use.
"Permitted use" means the specific purpose for which land and/or a building is designed, arranged and intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any non conforming use.

Person.
Any person, firm, business, corporation, partnership of other associations or organization, marital community corporation, or government agency.

Personal Service.
Businesses engaged in providing care of the corporeal person or his apparel, not including health care.

Planned Action.
A significant development proposal as defined in RCW 43.21C.031 as amended, and set forth in LMC 17.05.080 B.

Planned Residential Development.
"Planned Residential Development" means a residential development guided by a master plan and developed as a coordinated unit to allow a greater flexibility and creativity in site design. This plan may include the provision for increased density and reduced setback requirements to provide open space for general use by the residents of the development and the public in general.

Planned Unit Development.
"Planned Unit Development" is a mixed use development guided by a master plan in which one or more of the zoning or subdivision regulations, other than use regulations, may be waived or varied to allow flexibility and creativity in site and building design and location, in accordance with general guidelines.

Planning Commission.
Planning commission" means the city planning commission as established by ordinance.

Plat.
"Plat' means a map or representation of a subdivision showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys, or other divisions and dedications.
Plat, Final.
A precise drawing of a subdivision and dedications which conforms to the approved preliminary plat, meets all the conditions of preliminary approval and meets the requirements of the Whatcom County Auditor for recording.

Plat, Long.
Any plat including more than four lots.

Plat, Final Short.
A precise drawing of a short subdivision and dedications which conforms to the approved preliminary short plat, meets all the conditions of approval and meets the requirements of the Whatcom County Auditor for recording.

Plat, Preliminary.
A neat and approximate scale drawing of a proposed subdivision, showing the existing conditions and the proposed layout of the streets, lots, blocks and other information needed to properly review the proposal.

Plat, Preliminary Short.
A neat and approximate scale drawing of a proposed short subdivision, showing the existing conditions and the proposed layout of streets, lots, blocks and other information needed to properly review the proposal.

Plat, Short.
"Short plat" means a map or representation of a short subdivision of a parcel or tract of land into four or fewer lots.

Plot Plan.
"Plot plan" is a plot of a lot, drawn to scale, showing the actual measurements, the size and location of any existing buildings or buildings to be erected, the location of the lot in relation to abutting streets and other such information as required by a building or development permit application.

Primary or Principal Use.
The predominant use of the land or building to which all other uses are secondary.

Private Parking.
Parking facilities for the non-commercial use of the occupant and guests of the occupant.

Private Parking Lot.
"Private parking lot" means private property designated for parking motor vehicles.

Private Swimming Pool.
Private Swimming Pool” means a structure or container either above or below grade, located either in part or wholly outside of a permanently enclosed and roofed building,
designed to hold water to a depth of greater than two feet when filled to capacity, intended for immersion of human body, whether for swimming or wading or both, which is not open to the public, that is not publicly owned, or not otherwise regulated by the State of Washington, either by statute, or by rules or regulations of one of its administrative bodies.

**Project.**
A proposal for development.

**Public Facilities and Utilities.**
Land or structures owned by or operated for the benefit of the public use and necessity, including but not limited to public facilities defined in the RCW 36.701.030, as amended.

**Public Hearing.**
An open record hearing at which evidence is presented and testimony is taken.

**Public Improvement.**
Any structure, utility, roadway or sidewalk for use by the public, required as a condition of development approval.

**Recreational Facilities.**
Facilities for recreational use such as swimming pools, athletic clubs, tennis courts, ball fields, play fields, and the like.

**Recreational Vehicle.**
"Recreational vehicle" is a vehicular unit, other than a mobile home, which is designed as a temporary dwelling for travel, recreational and vacation use, and which is either self-propelled, mounted on or pulled by another vehicle. Examples include, but are not limited to, a travel trailer, camping trailer, truck camper, motor home, fifth wheel trailer or van.

**Recreation, Indoor.**
"Indoor recreation" is an establishment providing completely enclosed recreation activities. Accessory uses may include the preparation and serving of food and/or the sale or rental of equipment related to the enclosed uses. This definition includes, but is not limited to, bowling, roller skating, billiards, pool, motion picture theaters, and related amusements.

**Recreation, Outdoor.**
"Outdoor recreation" is an area free of buildings, except for restrooms, dressing rooms, equipment storage, maintenance buildings, open-air pavilions, and similar structures, used primarily for recreational activities. Accessory uses may include the sale or rental of equipment related to the use.
Renovation.
"Renovation" is interior or exterior remodeling of a structure, other than an ordinary repair.

Residential Care Home.
"Residential care home" means any state or federally approved dwelling, other than a clinic, used as a residence for the care or rehabilitation of dependent children, the elderly, and the physically and/or mentally disabled.

Rezone.
A change in classification from one zoning district to another.

Roadway Buffer/Cutting Preserve.
A greenbelt lying outside and adjacent to the right-of-way line of all collector and arterial roadways. Roadway Buffer/Cutting Preserves shall be separate, designated tracts and depicted on the face of a plat or binding site plan.

School, Specialty.
"Specialty school" means any public or privately operated school having specialty training and not offering a general curriculum.

Screen, Screening.
A continuous fence, hedge or combination of both which obscures vision through eighty percent or more of the screen area, not including drives or walkways.

Secondary Use, Building and/or Structure -- Defined.
"Secondary use, building, and/or structure" means one customarily related to the essential or permitted use, building and/or structure which may support the function of the essential use, but which is not requisite to its existence and efficient operation, and which may or may not have a direct relationship to the essential or permitted uses.

SEPA.
"SEPA" refers to the State Environmental Policy Act. This Act applies to actions by every governmental unit in the state including state agencies, counties, cities and special purpose districts.

Setback Lines.
A line which is parallel to a lot line or access easement located at the distance required by the setback.

Setback Area.
The lot area between the lot lines and the setback lines.
Sign.
"Sign" means any structure, or part thereof, or any device attached, painted or represented on a structure, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of, an announcement, direction or advertisement. A "sign" includes any billboard, but does not include flags, pennants, insignias of nations, states or political units, or political, educational, charitable, philanthropic, civic, professional or religious organizations, or campaigns of a similar nature, movement, drive or event. Definition of specific types of signs are included in Chapter 19.33 of the LMC.

Sign, Advertising.
"Advertising sign" means a sign which directs attention to a business, commodity, service or entertainment, or other services, materials or subject matter conducted, sold or offered elsewhere than upon the same zoning lot with such sign.

Sign Area.
The area of the smallest rectangle that can be drawn around all parts of the sign from the viewpoint exposing the largest surface area, excluding simple support structures. Sign supporting structures which are part of the sign display shall be included in the area of the rectangle.

Sign, Attached.
A sign permanently attached to or mounted on a building.

Sign, Business.
"Business sign" means a nonilluminated sign which directs attention to a business or profession conducted or related to products sold upon the same zoning lot on which, or in which, the sign is located. A "For Sale" sign, or "Sold" sign, or sign "To Let", "To Lease" or "To Rent" shall be deemed to be business sign.

Sign Face.
Any sign permanently attached to or mounted on a building.

Sign, Free-Standing.
Any sign not attached to a building.

Sign, Illuminated.
"Illuminated sign" means either a business sign or an advertising sign designed to give forth an artificial light, or designed to reflect such light deriving from any source which is intended to cause such light or reflection. A flashing sign, when in use, is an illuminated sign on which the artificial light is not maintained stationary and constant in intensity and color at all times.

Sign, Off-site.
A permanent sign not located on the same lot as the business or use it is intended to serve.
Sign, Permanent.
Sign nailed, glued, screwed or similarly fastened to foundation systems capable of holding it in position under an imposed wind load of 25 pounds per square foot or the design requirements of Chapter 23 of the Building Code.

Sign, Temporary.
A sign or advertising display intended to be displayed for a limited period of time or for a fixed event and not permanently affixed to a structure or the ground.

Single-Family Dwelling.
A building containing only one dwelling unit.

Site Plan.
A scale drawing which shows the areas and locations of all buildings, streets, roads, improvements, easements, utilities, open spaces and other principal development features for a specific parcel of property.

Site Specific Rezone.
A rezone only for a specifically identified lot or parcel or adjoining lots or parcels, usually initiated by the property owner or his or her agent.

Specified Anatomical Areas.
"Specified anatomical areas" are human genitals, human pubic region, human buttock, and the human female breast below a point immediately above the top of the areola.

Specified Sexual Activities.
"Specified sexual activities" means human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; and human male genitals in a discernible turgid state, even if completely and opaquely covered.

Story
"Story" shall have the definition given in the Uniform Building Code.

Street.
"Street" means a public right-of-way which is intended to provide or which provides a roadway for vehicular circulation or principal means of access to abutting properties, and which may also include provision for public utilities, pedestrian walkways and drainage.

Street Line.
"Street line" means the legal line of demarcation between a street and abutting land.

Street Lot Line.
The lot line or lines along the edge of a street.
Street Setback.
The minimum distance required for buildings to be set back from the street lot line.

Structure.
"Structure" means anything constructed or erected, which requires location on the ground or attachment to something having a location on the ground.

Subdivider.
"Subdivider means a person, firm or corporation that undertakes to create a subdivision.

Subdivision, Short.
"Short subdivision" means the division of land into four or less lots, tracts, parcels, sites or divisions for the purpose of sale or lease, and includes resubdivision of previously platted land, and properties divided for purposes of sale of townhouse units.

Subdivision.
"Subdivision" means the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease, and shall include all resubdivisions or previously platted land and properties divided for purposes of sale of townhouse units.

Subdivision Code.
Title 18, City of Lynden Municipal Code.

Temporary Building or Structure.
A building or structure not having or requiring permanent attachment to the ground to other structures which have no required attachment to the ground.

Threshold Determination.
The decision by the City’s responsible SEPA official made pursuant to Chapter 43.21 C RCW, Chapter 197-11 WAC and Chapter 16.05 of the City Code on whether or not an Environmental Impact Statement ("EIS") is required for a proposal or action that is not categorically exempt.

Townhouse.
"Townhouse" means a building containing a single dwelling unit that occupies space from the ground to the roof and attached to one or more other townhouse dwellings by common walls which may be located on side lot lines.

Tract or Parcel.
A portion of a subdivision having fixed boundaries, not including lots.

Transient
"Transient" means a person who stays in an accommodation for a period not to exceed two weeks.
Use.
The purpose which lands or structures now serve or for which it is currently occupied, maintained, arranged, designed or intended.

Utilities.
"Utilities" means and includes water, sewers, drainage and gas lines, and overhead and underground electric, telephone and cable TV facilities.

Variance.
A permissible modification of the application of Title 19, LMC, to a particular property, subject to approval of the Board of Adjustments.

Vehicle.
"Vehicle" means all instrumentalities capable of movement, by means of circular wheels, skids or runners of any kind, along roadways or paths or other ways of any kind, specifically including, but not limited to, all forms of automotive vehicles, boats, buses, trucks, cars and vans, all forms of trailers or mobile homes of any size whether capable of supplying their own motive power or not, without regard to whether the primary purpose of which instrumentality is or is not the conveyance of persons or objects, and specifically including all such automobiles, buses, trucks, cars, vans, trailers and mobile homes even though they may be at any time immobilized in any way and for any period of time of whatever duration.

Wetlands.
"Wetland" or "wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including but not limited to irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities. However, wetlands include those artificial wetlands intentionally created to mitigate conversion of wetlands.

Yard, Front.
"Front yard" means an open space extending the full width of the lot between a main building and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the nearest part of the front of a main building.
Yard, Interior Side.
"Interior side yard" means any side yard not on the street side of a corner lot. The required width of side yards shall be measured horizontally from the nearest point of the side lot line to the nearest part of the main building.

Yard, Rear.
"Rear yard" means an open space extending the full width of a lot between the rearmost main building and the rear lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the rear lot line and the nearest portion of the main building. The required width of the rear yards shall be measured horizontally form the nearest point of the rear lot line to the to the nearest part of the main building.
CHAPTER 17.03
ADMINISTRATION

Sections:

17.03.010 ROLES AND RESPONSIBILITIES
17.03.020 PLANNING DIRECTOR
17.03.030 CITY COUNCIL
17.03.040 PLANNING COMMISSION
17.03.050 BOARD OF ADJUSTMENT
17.03.060 DESIGN REVIEW BOARD

17.03.010 ROLES AND RESPONSIBILITIES

A. The regulation of land development is a cooperative activity including many different elected and appointed boards and City staff. The specific responsibilities of these bodies is set forth below.

B. A developer and/or property owner is expected to read and understand the City Development Code and be prepared to fulfill the obligations placed on development by Titles 16 through 19.

17.03.020 PLANNING DIRECTOR

The Planning Director shall review and act on the following:

A. Authority: The Planning Director, “the Director,” is responsible for the administration of Titles 16, 17, 18 and 19 of the LMC, except for Chapter 16.12.

B. Administrative Interpretation: Upon request or as determined necessary, the Director shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation within 30 days. All requests for interpretation shall be written and shall concisely identify the issue and desired interpretation. Appeals of an administrative interpretation shall be filed in conformance with Section 17.11.020.

C. Administrative Approvals: Administrative approvals as set forth in Sections 17.09.010A. and 17.09.020.

17.03.030 CITY COUNCIL

In addition to its legislative responsibility, the City Council shall:
A. Review and make the final decision of the City on development permit applications and open record appeals that were heard, reviewed, and had recommendations entered thereon by the Planning Commission. A nonexclusive listing of the development permit applications and appeals on which the Planning Commission will conduct open record hearings and make recommendation to the City Council is set forth in Section 17.03.040A. The final decision of the City in such matters shall be made by the City Council without conducting an additional hearing or considering additional evidence.

B. Conduct the hearing(s), review, and make the final decision of the City on the following:

1. Open record hearings on requests for variances from development standards identified in LMC 17.17.010 when such requests do not include another development permit application as described in LMC 17.17.020.2.
3. Open record hearing on petitions for the vacation of right-of-way.
4. Open record hearings on the revocation or modification of existing permits or approvals, as provided in Section 17.13.070.
5. Open record hearing on appeals from civil regulatory orders or fines, as provided in Chapter 17.13 LMC.
6. Open record hearing on appeals from determinations made under city impact fee ordinances, unless the appellant elects in conformance with LMC 17.11.020 to have the impact fee open record appeal hearing conducted by the Planning Commission in conjunction with another open record hearing on the same project.
7. All other matters as are required or authorized by the Lynden Municipal Code or state law.

17.03.040 PLANNING COMMISSION

A. Planning Commission Open Record Hearings and Recommendation to City Council.

The Planning Commission shall conduct an open record hearing, review, enter findings, and make recommendations to the City Council on the following development permit applications and open record appeals:

1. Subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments;
2. Conditional use permits;
3. Site-specific rezones, including site specific Comprehensive Plan map amendments;
4. Variance requests from development standards identified in 17.17.010 when such requests are accompanied by another development permit application as described in 17.17.020.1.
5. Open record appeal of SEPA threshold determination made by SEPA official;
6. Open record appeal of Director’s final decision on short plat application;
7. Open record appeal of Director’s final critical area determinations;
8. Open record appeal of Director’s final decision on concurrency requirements under Chapter 17.15 LMC.
9. Open record appeal of administrative interpretations made by the Director pursuant to Section 17.09.020 B;
10. Open record appeal of administrative approval made pursuant to Section 17.09.010 and 17.09.020;
11. Open record appeal from a determination made under any city impact fee ordinance if so elected by the appellant in conformance with LMC 17.11.020.
12. Other actions requested or remanded by the City Council or as required by the Lynden Municipal Code.

B. Planning Commission as Final Decision maker. 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.

17.03.050 BOARD OF ADJUSTMENT

The Board of Adjustment shall review and act on the following subjects:
A. Variances from the standards and dimensional regulations of the Zoning Code, Title 19, such as height, width, size, setback and yard restrictions.
B. Amortization periods for non conforming signs.
The review criteria and procedures for the Board of Adjustment are contained in Chapter 19.47 LMC. The decision of the Board of Adjustment is the final decision of the City. Any appeal from a final decision of the Board of Adjustment shall be governed by Chapter 36.70C RCW and as hereafter amended.

17.03.060 DESIGN REVIEW BOARD

The Design Review Board shall review and act on the following subjects:
A. All building permits for commercial buildings and multi-family buildings of two (2) or more units.
B. Landscape plans.
C. Signs.
The review criteria for the Design Review Board have been adopted by the City Council as part of the Design Review Guidebook. An appeal of a final decision of the Design Review Board shall be filed in accordance with Section 17.11.020 and shall be heard by the City Council as a closed record appeal.
CHAPTER 17.05

CONSOLIDATED APPLICATION PROCESS

Sections:

17.05.010 APPLICATION
17.05.020 PRE-APPLICATION MEETINGS
17.05.030 CONTENTS OF APPLICATIONS
17.05.040 LETTER OF COMPLETENESS
17.05.050 TECHNICAL REVIEW
17.05.060 ENVIRONMENTAL REVIEW
17.05.070 JOINT PUBLIC HEARINGS
17.05.080 CATEGORICALLY EXEMPT AND PLANNED ACTIONS

17.05.010 APPLICATION

A. The City shall consolidate development application and review in order to integrate the development permit and environmental review process, while avoiding duplication of the review processes.

B. All applications for development permits, design review approvals, variances and other City approvals under the Development Code shall be submitted on forms provided by the Planning Department. All applications shall be acknowledged by the property owner.

17.05.020 PRE-APPLICATION MEETINGS

A. Informal Applicants for development are encouraged to participate in an informal meeting prior to the formal pre-application meeting. The purpose of the meeting is to discuss, in general terms, the proposed development, City design standards, design alternatives, and required permits and approval process.

B. Formal Every person proposing a development in the City, with exception of building permits, shall attend a pre-application meeting. The purpose of the meeting is to discuss the nature of the proposed development, application and permit requirements, fees, review process and schedule, applicable plans, policies and regulations. In order to expedite development review, the City shall invite all affected jurisdictions, agencies and/or special districts to the pre-application meeting.
17.05.030  CONTENT OF APPLICATIONS

A. All applications for approval under Titles 16 through 19 shall include the information specified in the applicable title. The Director may require such additional information as reasonably necessary to fully and properly evaluate the proposal.
B. The applicant shall apply for all permits identified in the pre-application meeting.

17.05.040  LETTER OF COMPLETENESS

A. Within twenty-eight (28) days of receiving a date stamped application, the City shall review the application and as set forth below, shall mail or provide to the applicant in person a written determination that the application is complete or incomplete.
B. A project application shall be declared complete only when it contains all of the following materials:
   1. A fully completed, signed, and acknowledged development application and all applicable review fees.
   2. A fully completed, signed, and acknowledged environmental checklist for projects subject to review under the State Environmental Policy Act.
   3. The information specified for the desired project in the appropriate chapters of the LMC and as identified in Section 17.05.030.
   4. Any supplemental information or special studies identified by the Director.
C. For applications determined to be incomplete, the City shall identify, in writing, the specific requirements or information necessary to constitute a complete application. No vested rights shall accrue to until a complete application is received. Upon submittal of the additional information, the City shall, within fourteen (14) days, issue a letter of completeness or identify what additional information is required.
D. The City's determination of completeness shall not preclude the City from requesting additional information or studies either at the time of the notice of completeness or at some later time, if new information is required or where there are substantial changes in the proposed action. [RCW 36.70B. 070(2).]
E. If the applicant receives a determination from the City that an application is not complete, the applicant shall have 90 days to submit the necessary information to the City. Within fourteen (14) days after an applicant has submitted the requested additional information, the City shall make the determination as described in 17.05.040A above, and notify the applicant in the same manner. If the applicant either refuses in writing to submit additional information or does not submit the required information within the 90 day period, the application shall lapse.
17.05.050 TECHNICAL REVIEW COMMITTEE

A. Immediately following the issuance of a letter of completeness, the City shall schedule a meeting of the Technical Review Committee (TRC). The TRC may be composed of representatives of all affected City departments, the fire department, and any other entities or agencies with jurisdiction.

B. The TRC shall review the development application for compliance with City plans and regulations, coordinate necessary permit reviews, and identify the development's environmental impacts.

C. The report of the TRC shall be provided to the proponent and all affected agencies for comment prior to the public hearing, and shall be submitted to the Planning Commission and City Council as part of the record for the hearing.

17.05.060 ENVIRONMENTAL REVIEW

A. Developments and planned actions subject to the provisions of the State Environmental Policy Act (SEPA) shall be reviewed in accordance with the policies and procedures contained in Chapter 16.05 LMC.

B. SEPA review shall be conducted concurrently with development project review. The following are exempt from concurrent review:

1. Projects categorically exempt from SEPA.
2. Components of previously completed planned actions, to the extent permitted by law and consistent with the EIS for the planned action.

17.05.070 JOINT PUBLIC HEARINGS

A. Planning Director's Decision to Hold a Joint Hearing. The Director may combine any public hearing on a project permit application with any hearing that may be held by another local, state, federal, or other agency, on the proposed action, as long as: (1) the hearing is held within the city limits; and (2) the requirements of subsection C below are met.

B. Applicant's Request for a Joint Hearing. The applicant may request that the public hearing on a permit application be combined as long as the joint hearing can be held within the time periods set forth in this Title. In the alternative, the applicant may agree to a particular schedule if that additional time is needed in order to complete the hearings.

C. Prerequisites to a Joint Public Hearing. A joint public hearing may be held with another local, state, regional, federal or other agency and the City, as long as:
1. the other agency is not expressly prohibited by statute from doing so and/or the agency has standing in the matter;

2. sufficient notice of the hearing is given to meet each of the agencies' adopted notice requirements as set forth in statute, ordinance, or rule;

3. the agency has received the necessary information about the proposed project from the applicant in enough time to hold its hearing at the same time as the local government hearing; and

4. the hearing is held within the geographic boundary of the local government.

17.05.080 CATEGORICALLY EXEMPT AND PLANNED ACTIONS

A. Categorically Exempt. Actions categorically exempt under chapter 43.21C.110(1)(a) RCW do not require environmental review or the preparation of an environmental impact statement. An action that is categorically exempt under the rules adopted by the Department of Ecology (Chapter 197-11 WAC) may not be conditioned or denied under SEPA. [RCW 43.21C.031.]

B. Planned Actions.

1. A Planned Action does not require a threshold determination or the preparation of an environmental impact statement under SEPA, but is subject to environmental review and mitigation under SEPA.

2. A "Planned Action" means one or more types of project action that:
   a. are designated planned actions by an ordinance or resolution adopted by the City; and
   b. have had the significant impacts adequately addressed in an environmental impact statement prepared in conjunction with:
      1) a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or
      2) a fully contained community, a master planned resort, a master planned development or a phased project; and
   c. are subsequent or implementing projects for the proposals listed in 2(b) of this subsection; and
   d. are located within an urban growth area, as defined in RCW 36.70A.030; and
   e. are not essential public facilities, as defined in RCW 36.70A.200; and
   f. are consistent with the City's comprehensive plan adopted under chapter 36.70A RCW. [RCW 43.21C.031.]

C. Limitations on Planned Actions. The City shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the
jurisdictional boundaries of the City, and may limit a planned action to a time period identified in the environmental impact statement or in the ordinance or resolution designating the planned action under RCW 36.70A.040. [RCW 43.21C.031.]

D. Limitations on SEPA Review.  Project review for a Planned Action shall be used to identify specific project design and conditions relating to the character of development, such as the details of site plans, curb cuts, drainage swales, the payment of impact fees, or other measures to mitigate a proposal's probable adverse environmental impacts.  [RCW 36.70B.030(3).]

17.05.090 CONSOLIDATED PROCESSING OF DEVELOPMENT APPLICATIONS AND APPEALS.

A. Consolidated Processing Required.  Except as otherwise authorized or required by provisions in city code, the City shall provide for consolidated processing of development permit applications and appeals so that there is not more than one open record hearing and one closed record hearing for the same development proposal or project, as required by Chapter 36.70B RCW.

B. Exclusions From Consolidation Requirements.

1. Determinations by Board of Adjustment.  Zoning variances and amortization periods for nonconforming signs shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the Board of Adjustment in conformance with Chapter 19.47 LMC.  Aside from zoning variance requests and determining amortization periods for nonconforming signs, the Board of Adjustment shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

2. Grounds for Excluding Zoning Variance Requests by Board of Adjustment from Consolidation Requirements.  The sole function and purpose of the Board of Adjustment is to review and make decisions on requests for zoning variances.  Said decisions are not subject to additional administrative appeals.  The Board of Adjustment has longstanding exclusive special expertise in the City in reviewing and deciding upon zoning variance requests.  Such expertise is not possessed by or readily transferred to any other hearing body in the City.  Special circumstances under RCW 36.70B.140 (1) are therefore presented warranting exclusion of zoning variance requests from consolidated processing requirements.  In addition, zoning variances are administrative approvals which are exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140 (2).
3. **Determinations by Design Review Board.** Design review, landscape plan, and signage issues shall be excluded from consolidated processing requirements for development permit applications and shall be heard and decided upon by the Design Review Board in conformance with Chapter 19.45 LMC. Aside from design review, landscape plan, and sign issues, the Design Review Board shall not have any other development permit applications or appeals to review or decide upon, even where this will result in a development proposal being subject to more than one open record hearing and one closed record appeal.

4. **Grounds for Excluding Design Review by Design Review Board from Consolidation Requirements.** The sole function and purpose of the Design Review Board is to review and make decisions on design, landscape plan, and signage aspects of development proposals for multi-family dwellings and commercial buildings. The Design Review Board has longstanding exclusive special expertise in the City in reviewing and deciding upon design review, landscape plan, and signage issues. Such expertise is not possessed by or readily transferred to any other hearing body in the City. Special circumstances under RCW 36.70B.140 (1) are therefore presented warranting exclusion of design, landscape plan, and sign review as conducted by the Design Review Board from consolidated processing requirements. In addition, design review may take place for development proposals involving only the issuance of building permits exempt from Chapter 43.21C RCW and may therefore be excluded from consolidated processing requirements pursuant to RCW 36.70B.140 (2).

5. **Administrative Approvals.** Administrative approvals identified in Sections 17.09.010 and 17.09.020 which are categorically exempt from environmental review under chapter 43.21C RCW shall be exempt from the consolidation requirements in this chapter and chapter 36.70B RCW. Nothing in this section shall prevent consolidation of such administrative approvals with related development proposals, in the discretion of the Director.

6. **Grounds for Excluding Administrative Approvals from Consolidation Requirements.** The City has authority to exclude the administrative approvals which are categorically exempt from environmental review from consolidation requirements pursuant to RCW 36.70B.140 (2).
CHAPTER 17.07
PUBLIC NOTICE REQUIREMENTS

Sections:

17.07.010 NOTICE OF DEVELOPMENT APPLICATION
17.07.020 NOTICE OF ADMINISTRATIVE APPROVALS
17.07.030 NOTICE OF PUBLIC HEARING
17.07.040 NOTICE OF COUNCIL REVIEW OF PLANNING COMMISSION RECOMMENDATION
17.07.050 NOTICE OF DECISION

17.07.010 NOTICE OF DEVELOPMENT APPLICATION

A. Within fourteen (14) days of issuing a letter of completeness under Chapter 17.05, the City shall issue Notice of Development Application. The notice shall include but not be limited to the following:

1. The name of the applicant.
2. Date of application.
3. The date of the letter of completeness.
4. The location of the project.
5. A project description.
6. The requested development permits, approvals, actions, and/or required studies.
7. Identification of other permits not included in the application to the extent known by the City.
8. Statement of the location where the application and any studies can be reviewed.
9. A statement of the dates of the public comment period, which shall not be less than fourteen (14) nor more than thirty (30) days.
10. Identification of existing environmental documents.
11. A City staff contact and phone number.
12. The date, time, and place of a public hearing if one has been scheduled.
13. Statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights.
14. A statement of the City’s preliminary determination, if one has been made at the time of the notice, of those development regulations that will be used for project mitigation and of consistency as provided in RCW 36.70B.040.
15. A statement that the decision on the application will be made within 120 days of the date of the letter of completeness.
B. The Notice of Development Application shall be posted on the subject property and published once in a newspaper of general circulation.

C. The Notice of Development Application shall be issued prior to or concurrently with the required notice of a public hearing. The required notice of a public hearing may be combined in the same document with a Notice of Development Application; provided that, all requirements governing a Notice of Development Application and notice of a public hearing must still be met.

D. Except for a threshold determination of significance under SEPA and except as otherwise expressly allowed under RCW 36.70B.110, and as hereafter amended, a decision or a recommendation may not be issued on a development proposal until the expiration of the public comment period on the Notice of Application.

E. If the City has made a threshold determination of significance under chapter 43.21C RCW concurrently with the Notice of Development Application, the Notice of Development Application shall be combined with the determination of significance and scoping notice. Nothing in this section or chapter prevents a determination of significance and scoping notice from being issued prior to the Notice of Development Application. Nothing in this section of chapter prevents the City as lead agency, when it is a development proponent or is funding a development, from conducting its review under chapter 43.21C RCW or from allowing appeals of procedural determinations prior to submitting a development permit application.

F. A Notice of Application is not required for the following applications, when they are categorically exempt from SEPA or environmental review has been completed, and when no timely appeal therefrom has been filed:

1. Application for building or fire code permits.
2. Application for lot line adjustments.
3. Application for administrative approvals.

G. Notice of application for shoreline projects must be published twice, thirty days prior to the public hearing date.

17.07.020 NOTICE OF ADMINISTRATIVE APPROVALS

Notice of administrative approvals subject to notice under Section 17.09.020 shall be made as follows:

A. Notification of Preliminary Approval: The applicant shall notify property owners within 300 feet of the subject property of the City's intent to grant approval and provide the Planning Director with a signed and notarized affidavit of notification. Notification shall be made by certified mail only. The notice shall include:

1. A description of the preliminary approval granted, including any conditions of approval.
2. A place where further information may be obtained.
3. A statement that final approval will be granted unless an appeal requesting a public hearing is filed with the Director within fourteen (14) days of the date of the notice.

17.07.030 NOTICE OF PUBLIC HEARING

Notice of a public hearing (which shall be open record) for all development permit applications and all open record appeals shall be given as follows:

A. Time of Notices: Except as otherwise required, public notification of meetings, hearings, and pending actions under Titles 16 through 19, LMC, shall be made by:

1. Publication at least ten (10) days before the date of a public meeting, hearing, or pending action in the official newspaper if one has been designated or a newspaper of general circulation in the City; and
2. Mailing at least ten (10) days before the date of a public meeting, hearing, or pending action to all property owners as shown on the records of the County Assessor and to all street addresses of properties within 300 feet, not including street rights-of-way, of the boundaries of the property which is the subject of the meeting or pending action. Notification shall be certified mail or registered mail, and satisfactory evidence of such notice must be provided prior to the hearing date by the applicant; and
3. Posting at least ten (10) days before the meeting, hearing, or pending action in three public places where ordinances are posted and, in addition, at least one notice on the subject property.
4. In addition to the above notification requirements, the notification requirements for a site-specific rezone resulting in a density of five or more residential units per acre, or the rezone of residential land to commercial or industrial zoning, include a sign, to be installed by the proponent with the following specifications:
   a. the sign must be a minimum of 4 x 8 feet in size,
   b. the sign must be centrally located on each lot line that fronts a public street,
   c. the sign must be placed on the lot minimum of ten days prior to the public hearing and must be removed within ten days after final approval or denial,
   d. the sign must include a map illustrating the area to be rezoned, the project number assigned by the Planning Department, brief project description, the developer or agent’s phone number, and the phone number of the Public Works Department,
   e. the sign must have black lettering a minimum of two inches in height on a white background.

B. Threshold Determination and Timing of Open Record Hearing: If the City’s threshold determination requires notice under Chapter 43.21C RCW, the City shall issue its threshold determination at least fifteen (15) days prior to the open record hearing on the development proposal.
C. Content of Notice: The public notice shall include a general description of the development proposal and/or action to be taken, a non-legal description of the property or a vicinity map or sketch, the time, date and place of the public hearing, the name of the body conducting the hearing, and the place where further information may be obtained.

D. Continuations: If for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.

17.07.040 NOTICE OF PLANNING COMMISSION RECOMMENDATION

Notice of Planning Commission recommendations identified in Section 17.03.040A shall be provided by mail to all parties of record in the proceeding. Said mailing shall follow written issuance of the Planning Commission recommendation within five (5) days.

17.07.050 NOTICE OF DECISION

A written notice for all final decisions of the City shall be sent to the applicant and all parties of record. For development applications requiring Planning Commission review and City Council approval, the notice shall include the minutes, or the signed ordinance or resolution. For shoreline permits, notice of decision must also be sent to the Department of Ecology and the Washington State Attorney General.
CHAPTER 17.09
REVIEW AND APPROVAL PROCESS

Sections:
17.09.010 ADMINISTRATIVE APPROVALS WITHOUT NOTICE
17.09.020 ADMINISTRATIVE APPROVALS SUBJECT TO NOTICE
17.09.030 LEGISLATIVE DECISIONS
17.09.040 PLANNING COMMISSION REVIEW AND RECOMMENDATION
17.09.050 CITY COUNCIL ACTION
17.09.060 PROCEDURES FOR PUBLIC HEARINGS
17.09.070 PROCEDURES FOR CLOSED RECORD APPEALS
17.09.080 RECONSIDERATION
17.09.090 REMAND
17.09.100 FINAL DECISION

17.09.010 ADMINISTRATIVE APPROVALS WITHOUT NOTICE

A. The Director may approve, approve with conditions, or deny the following without notice:
   1. Lot line adjustments.
   2. Extension of time for approval.
   3. Minor amendments or modifications to approved developments or permits. Minor amendments are those which may affect the precise dimensions or location of buildings, accessory structures and driveways, but do not affect: (i) overall project character, (ii) increase the number of lots, dwelling units, or density or (iii) decrease the quality or amount of open space.

B. The Public Works Director may approve, approve with conditions, or deny the following without notice:
   1. Fill and Grade Permits.
   2. Floodplain Development Permits.

C. Decisions under this section shall be deemed made on the date issued. Appeals therefrom shall be governed by Chapter 17.11 LMC. Upon receipt of any such appeal, a Notice of Development Application shall be prepared substantially in conformance with the requirements of 17.07.010 and shall be combined with notice of the open record appeal hearing substantially in conformance with 17.07.030. Following the open record hearing the Planning Commission shall enter findings and forward its recommendations to the City Council. The City Council shall make the final decision of the City on the appeal.
17.09.020 ADMINISTRATIVE APPROVALS SUBJECT TO NOTICE

A. The Director may grant preliminary approval or approval with conditions, or may deny the following actions subject to the notice and appeal requirements of this section:
   1. Home Occupations.
   2. Short Plats.

B. Final Administrative Approvals: Preliminary approvals under this section shall become final subject to the following:
   1. If no appeal is submitted, the preliminary approval becomes the final decision of the City at the expiration of the 14-day notice period established in 17.07.020.
   2. If a written notice of appeal is received within the specified time the matter will be referred to the Planning Commission for an open record hearing, except as otherwise noted in Titles 16-19. Upon receipt of any such appeal, the Notice of Application shall be combined with notice of the open record appeal hearing substantially in conformance with 17.07.030. Following the open record hearing the Planning Commission shall enter findings and forward its recommendations to the City Council. The City Council shall make the final decision of the City on the appeal.

17.09.030 LEGISLATIVE DECISIONS

A. Decisions. The following decisions are legislative, and are subject to the procedures in this section, unless otherwise specified:
   1. Zoning Code Text and zoning district amendments;
   2. Adoption of Development Regulations and amendments;
   3. Area-wide rezones to implement new City policies.

B. Planning Commission. The Planning Commission shall hold a public hearing and make recommendations to the City Council on the decisions listed in (A) above. The public hearing shall be held in accordance with the requirements of Chapter 17.09.060.

C. City Council. The City Council may hold its own public hearing following the Planning Commission’s public hearing for decisions on legislative matters identified in subsection 17.09.030A, so long as its hearing on such matters is not combined with a second open record hearing on a development permit application or appeal. If the City Council holds a public hearing concerning one of the legislative matters identified in subsection 17.09.030A, it shall consider the Planning Commission’s recommendation in accordance with the requirements set forth in Chapter 17.09.060. For the adoption of the Comprehensive Plan or any Plan amendments, the City Council shall, within sixty (60) days from its receipt of the recommendation from the
Planning Commission, convene a public meeting or public hearing to consider and the recommendation. City Council action on said recommendation shall be in accordance with RCW 35A.63.072, and as may hereafter be amended.

D. Public Notice. Notice of the public hearing or a public meeting solely concerned with legislative decisions identified in subsection 17.09.030A shall be provided to the public substantially as set forth in Chapter 17.07.030; except that, subsections 17.07.030A.2., and 17.07.030A.4 shall not apply unless the Council must also act on a related development permit application or appeal at the same meeting.

E. Implementation. The City Council's decision shall become effective by passage of an ordinance.

17.09.040 PLANNING COMMISSION REVIEW AND RECOMMENDATION

A. Staff Report. The Director shall prepare a staff report on the development proposal or action summarizing the comments and recommendations of City departments, affected agencies and special districts, and evaluating the development proposal's consistency with the City's Development Code, adopted plans and regulations. The staff report shall include findings, conclusions and proposed recommendations for disposition of the development application.

B. Hearing. The Planning Commission shall conduct a public hearing on development proposals for the purpose of taking testimony, hearing evidence, considering the facts germane to the proposal, and evaluating the proposal for consistency with the City's Development Code, adopted plans and regulations. Notice of the Planning Commission hearing shall be in accordance with Section 17.07.030.

C. Required Findings: The Planning Commission shall not approve or recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The development is consistent with the Comprehensive Plan and meets the applicable requirements and intent of the Lynden Municipal Code.
2. The development makes adequate provisions for open space, drainage ways, streets and other public ways, transit stops, water supply, sanitary wastes, parks and recreation facilities, playgrounds, sites for schools and school grounds.
3. The development adequately mitigates impacts identified under Titles 16-19.
4. The development is beneficial to the public health, safety and welfare and is in the public interest.
5. The development does not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the Comprehensive Plan, and fully complies with Chapter 17.15 of the City Code. If the development results in a level of service lower than those set forth in the Comprehensive Plan, the development may be approved if improvements
or strategies to raise the level of service above the minimum standard are made concurrent with the development, and in conformance with all requirements in Chapter 17.15 of the City Code. For the purpose of this section, "concurrent with the development" is defined as the required improvements or strategies in place at the time of occupancy, or a financial commitment is in place to complete the improvements or strategies within six (6) years of approval of the development.

6. The area, location and features of land proposed for dedication are a direct result of the development proposal, are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

D. Recommendation. For those matters with which it is charged with making recommendation to the City Council, upon completing its review of a development proposal, open record appeal, or legislative proposal, the Planning Commission shall prepare and adopt a resolution setting forth its findings, conclusions and recommendations and following expiration of any time period allowed for seeking reconsideration or a decision on reconsideration, promptly forward it to the City Council for consideration.

E. Reconsideration. A party of record to a proceeding before the Planning Commission identified in 17.03.040A may seek reconsideration of the Planning Commission recommendation before it is forwarded to the City Council by filing such a request in conformance with 17.09.080.

17.09.050 CITY COUNCIL ACTIONS

A. Actions. Following receipt of a recommendation from the Planning Commission, a final decision from the Design Review Board as part of a closed record appeal, completion of an open record hearing before the Council itself, or notice of any other matter requiring the Council's attention, the Council shall enter the final decision of City on the matter in writing.

B. Decisions. The City Council shall make its final decision by motion, resolution, or ordinance as appropriate, and its decision shall be supported by written findings.

1. A Council decision on a Planning Commission recommendation or following any open record public hearing shall include one of the following actions:
   a. Approve as recommended.
   b. Approve with additional conditions.
   c. Modify, with or without the applicant's concurrence, provided that the modifications do not:
      i) Enlarge the area or scope of the project.
      ii) Increase the density or proposed building size.
      iii) Significantly increase adverse environmental impacts as determined by the responsible official.
   d. Deny (reapplication or resubmittal is permitted).
e. Deny with prejudice (reapplication or resubmittal is not allowed for one year).
f. Remand for further proceedings and/or evidentiary hearing in accordance with Section 17.09.090.

2. A Council decision following a closed record appeal hearing shall include one of the following actions:
   a. Grant the appeal in whole or in part.
   b. Deny the appeal in whole or in part.
   c. Remand for further proceedings and/or evidentiary hearing in accordance with Section 17.09.090.

17.09.060 PROCEDURES FOR PUBLIC HEARINGS

Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. Before the Planning Commission, the Chair shall open the public hearing. Before the City Council, the Mayor shall open the public hearing. In general, the following sequence of events shall be observed:

A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.
B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.
C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed and/or allowed by the Chair or Mayor at his or her discretion.
D. Rebuttal, response or clarifying statements by the staff and the applicant.
E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.

17.09.070 PROCEDURES FOR CLOSED RECORD APPEALS

Closed record appeals shall be conducted in accordance with the hearing body's rules of procedure and shall serve to provide argument and guidance for the body's decision. Closed record appeals shall be conducted generally in the sequence provided in 17.09.060; except that, any comments, argument, or presentation must be based strictly on the existing record. Except as provided in Section 17.09.080, no new evidence or testimony shall be given or received. The parties to the appeal may submit timely written statements or arguments, based on the record of the evidentiary hearing.

17.09.080 RECONSIDERATION

A party of record to an open record hearing or closed record appeal may seek reconsideration of a final decision or a Planning Commission recommendation on a matter identified in 17.03.040 A., by filing a written request for reconsideration with the
Director within five (5) days of the date of issuance of the final decision or mailing of the Planning Commission recommendation, as applicable. The request shall comply with the content requirements listed in LMC 17.11.020(B). The Council, Planning Commission, or other hearing body shall consider the request at its next regularly scheduled meeting which follows the request by five (5) or more days, without public comment or argument by the party filing the request. If the request is denied, said denial must be in writing and issued in the same form as the original final decision or recommendation. The date of written denial of a timely filed written request for reconsideration shall be considered the new date of issuance of the final written decision by the City, or recommendation of the Planning Commission, as applicable. If the request is granted, the Council, Planning Commission or other hearing body may immediately revise and reissue its decision or recommendation or may call for argument in accordance with the procedures for closed record appeals. Reconsideration should be granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

17.09.090 REMAND

In the event the City Council determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the Council may remand the matter back to the hearing body to correct the deficiencies. The Council shall specify the items or issues to be considered and the time frame for completing the additional review and work.

17.09.100 FINAL DECISION

A. Time. The final decision of the City on a development proposal shall be made within 120 days from the date of the letter of completeness. Exceptions to this include:

1. Amendments to the Comprehensive Plan or Development Code.
2. Any time required to correct plans, perform studies or provide additional information, provided that within 14 days of receiving the requested additional information, the Director shall determine whether the information is adequate to resume the project review.
3. Substantial project revisions made or requested by an applicant, in which case the 120 days will be calculated from the time that the City determines the revised application to be complete.
4. All time required for the preparation and review of an environmental impact statement.
5. Projects involving the siting of an essential public facility.
6. An extension of time mutually agreed upon by the City and the applicant.
7. All time required to obtain a variance.
8. Any remand to the hearing body.
9. All time required for the administrative appeal of a Determination of Significance.
B. Effective Date. The final decision of the City made by the City Council or applicable hearing body shall be effective on the date of issuance of the decision, motion, resolution, or ordinance, or subsequent decision in response to a timely filed motion for reconsideration. For purposes of this Chapter, the date of issuance of the decision is:

1. Three (3) days after a written decision is mailed by the City or, if not mailed, the “date of notice” listed in the decision which shall be the date on which the City provides notice that a written decision is publicly available;

2. If the final decision is made by ordinance or resolution by the City Council sitting in a quasi-judicial capacity, the date the Council passes the ordinance or resolution;

3. If neither (1) or (2) of this subsection applies, the date the decision is entered into the public record.
CHAPTER 17.11

APPEALS

Sections:

17.11.010 APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND APPROVALS
17.11.020 APPEALS
17.11.030 JUDICIAL APPEAL
17.11.040 APPEAL TO THE SHORELINE HEARINGS BOARD

17.11.010 APPEAL OF ADMINISTRATIVE INTERPRETATIONS AND APPROVALS

Administrative interpretations made pursuant to 17.03.020B and administrative approvals made pursuant to 17.09.010 and 17.09.020 may be appealed, by applicants or parties of record in accordance with the provisions of this Chapter.

17.11.020 APPEALS

A. Filing. Appeals authorized by this Title shall be filed with the Director within fourteen (14) days after the date of the decision of the matter being appealed, including appeals of administrative approvals subject to notice pursuant to 17.09.020. These deadlines are jurisdictional. Appeals untimely or improperly filed shall not be considered.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellant and his interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
4. The desired outcome or changes to the decision.
5. The appeals fee.

Notwithstanding any other provision in city code, for an open record appeal of an impact fee determination, the appellant may elect to have said appeal consolidated with another open record hearing before the Planning Commission on the same project. Such election shall be clearly stated on the notice of appeal at the time of filing. Failure to so state this election on the notice of appeal at the time of filing shall result in the impact fee open record appeal hearing being conducted by the City Council.
C. Appeal Process. Appeals shall be reviewed and processed, depending on the nature of the appeal, in conformance with Chapter 17.03 of the City Code. Consolidation, notice, and other procedural requirements governing appeals are set forth in Chapters 17.05, 17.07, and 17.09 of the City Code.

D. Burden of Proof and Standards for Granting Relief on Appeal. In any open record or closed record appeal, the burden of proof shall be on the appellant. Except where a different standard of review is specified for a particular type of appeal elsewhere in city code, the decision on an appeal shall be upheld unless it is shown to be:

1. Clearly erroneous under the law; or
2. Not supported by substantial evidence; or
3. Arbitrary and capricious.

17.11.030 JUDICIAL APPEAL

A. Appeals from the final decision of the City Council, Board of Adjustment, or other City board or body involving Titles 16 to 19, LMC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to Whatcom County Superior Court pursuant to the time limits and process established in Chapter 36.70C RCW (“Land Use Petition Act”).

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by Chapter 36.70C RCW. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant, as prescribed in Chapter 36.70C RCW. The appellant shall post with the City Clerk prior to the preparation of any records an advance fee deposit in the amount specified by the City Clerk. Any overage will be promptly returned to the appellant.

17.11.040 APPEAL TO THE SHORELINE HEARINGS BOARD

Final decisions of the City on shoreline substantial development permits, shoreline conditional use permits and shoreline variance requests are made by the Planning Commission pursuant to the City’s shoreline management program. Appeals of such Planning Commission decisions may be taken to the Shoreline Hearings Board as provided in the Shorelines Management Act of 1971 and implementing regulations.
CHAPTER 17.13

ENFORCEMENT

Sections:

17.13.010   ENFORCING OFFICIAL; AUTHORITY
17.13.020   GENERAL PENALTY
17.13.030   APPLICATION
17.13.040   CIVIL REGULATORY ORDER
17.13.050   CIVIL FINES
17.13.060   REVIEW OF APPROVED PERMITS
17.13.070   REVOCATION OR MODIFICATION OF PERMITS AND APPROVALS
17.13.080   ADDITIONAL ENFORCEMENT

17.13.010   ENFORCING OFFICIAL; AUTHORITY

The Director shall be responsible for enforcing Titles 16 through 19, LMC, and may adopt administrative rules to meet that responsibility. The Director may delegate enforcement responsibility to the City Engineer, Director of Public Works, Building Official, Fire Chief, or Chief of Police as appropriate.

17.13.020   GENERAL PENALTY

Compliance with the requirements of Titles 16 through 19, LMC, shall be mandatory. The general penalties and remedies established at Chapter 1.24, Lynden Municipal Code, for such violations shall apply to any violation of those titles. The enforcement actions authorized under this chapter shall be supplemental to those general penalties and remedies.

17.13.030   APPLICATION

A. Actions under this chapter may be taken in any order deemed necessary or desirable by the Director to achieve the purpose of this chapter or of the Development Code.

B. Proof of a violation of a development permit or approval shall constitute prima facie evidence that the violation is that of the applicant and/or owner of the property upon which the violation exists. An enforcement action under this chapter shall not relieve or prevent enforcement against any other responsible person.
17.13.040  CIVIL REGULATORY ORDER

A. Authority. A civil regulatory order may be issued and served upon a person if any activity by or at the direction of that person is, has been, or may be taken in violation of the Development Code.

B. Notice. A civil regulatory order shall be deemed served and shall be effective when posted at the location of the violation and/or delivered to any suitable person at the location and/or delivered by registered mail or otherwise to the owner or other person having responsibility for the location.

C. Content. A civil regulatory order shall set forth:

1. The name and address of the person to whom it is directed.
2. The location and specific description of the violation.
3. A notice that the order is effective immediately upon posting at the site and/or receipt by the person to whom it is directed.
4. An order that the violation immediately cease, or that the potential violation be avoided.
5. An order that the person stop work until correction and/or remediation of the violation as specified in the order.
6. A specific description of the actions required to correct, remedy, or avoid the violation, including a time limit to complete such actions.
7. A notice that failure to comply with the regulatory order may result in further enforcement actions, including civil fines and criminal penalties.

D. Remedial Action. The Director may require any action reasonably calculated to correct or avoid the violation, including but not limited to replacement, repair, supplementation, revegetation, or restoration.

E. Appeal: A civil regulatory order may be appealed in an open record appeal to the City Council in accordance with Chapter 17.11 LMC.

17.13.050  CIVIL FINES

A. Authority. A person who violates any provision of the Development Code, or who fails to obtain any necessary permit, or who fails to comply with a civil regulatory order shall be subject to a civil fine.

B. Amount. The civil fine assessed shall not exceed one thousand dollars ($1,000.00) for each violation. Each separate day, event, action or occurrence shall constitute a separate violation.

C. Notice. A civil fine shall be imposed by a written notice, and shall be effective when served or posted as set forth in 17.13.030(B). The notice shall describe the date, nature, location, and act(s) comprising the violation, the amount of the fine, and the authority under which the fine has been issued.
D. Collection. Civil fines shall be immediately due and payable upon issuance and receipt of the notice. The Director may issue a regulatory order stopping work until such fine is paid. If remission or appeal of the fine is sought, the fine shall be due and payable upon issuance of a final decision. If a fine remains unpaid 30 days after it becomes due and payable, the Director may take actions necessary to recover the fine. Civil fines shall be paid into the City's general fund.

E. Application for Remission. Any person incurring a civil fine may, within ten days of receipt of the notice, apply in writing to the Director for remission of the fine. The Director shall issue a decision on the application within ten days. A fine may be remitted only upon a demonstration of extraordinary circumstances.

F. Appeal. Following the Director’s final determination on a timely application for remission, the civil fine imposed may be appealed to the City Council in an open record hearing as set forth in Chapter 17.11 LMC.

17.13.060 REVIEW OF APPROVED PERMITS

A. Review: Any approval or permit issued under the authority of the Development Code may be reviewed for compliance with the requirements of the Development Code, or to determine if the action is creating a nuisance or hazard, has been abandoned, or the approval or permit was obtained by fraud or deception.

B. Initiation of Review: The review of an approval or permit may be initiated by the Director, City Manager, City Council or by petition to the Director by three property owners or three residents of separate dwelling units in the City, stating their belief as to the noncompliance, nuisance or hazard of the permitted activity.

C. Planner's Investigation: Upon receipt of information indicating the need for, or upon receiving a request for review of permit or approval, the Director shall investigate the matter and take one or more of the following actions:

1. Notify the property owner or permit holder of the investigation; and/or
2. Issue a civil regulatory order and/or civil fine and/or recommend revocation or modification of the permit or approval; and/or
3. Refer the matter to the City Attorney; and/or
4. Refer the matter to the City Council with a recommendation for action.

17.13.070 REVOCATION OR MODIFICATION OF PERMITS AND APPROVALS

A. Upon receiving the Director's recommendation for revocation or modification of a permit or approval, the City Council shall review the matter at an open record hearing. Upon a finding that the activity does not comply with the conditions of approval or the provisions of the Development Code, or creates a nuisance or hazard, the City Council may delete, modify or impose such conditions on the permit or approval it deems sufficient to remedy the deficiencies. If the Council finds no
reasonable conditions which would remedy the deficiencies, the permit or approval shall be revoked and the activity allowed by the permit or approval shall cease.

B. Reapplication. If a permit or approval is revoked for fraud or deception, no similar application shall be accepted for a period of one year from the date of final action and appeal, if any. If a permit or approval is revoked for any other reason, another application may be submitted subject to all of the requirements of the Development Code.

17.13.080 ADDITIONAL ENFORCEMENT

The City shall retain the right and discretion to enforce the provisions of Titles 16 through 19 through initiation of any legal action in court which shall include the right to obtain an injunction, abatement, specific performance, and all other remedies available in law and equity. Should such legal action be necessary, the City shall be entitled to recovery of its reasonable costs and attorneys fees in pursuit of said cause.
CHAPTER 17.15

ADEQUATE PUBLIC FACILITY CONCURRENcy

Sections:

17.15.010 PURPOSE AND INTENT
17.15.020 DEFINITIONS
17.15.030 ADMINISTRATION AND APPLICATION
17.15.040 EXEMPTIONS
17.15.050 ADEQUATE PUBLIC FACILITY CONCURRENcy
17.15.060 APPLICATION–PROCEDURES
17.15.070 APPLICATION–CAPITAL FACILITIES LOS STANDARDS
17.15.080 MITIGATION FOR TRANSPORTATION FACILITIES
17.15.090 ACCOUNTING AND APPEALS.

17.15.010 PURPOSE AND INTENT.

The purpose of this chapter is to set forth specific standards providing for City compliance with the concurrency requirements of the State Growth Management Act (GMA). The provisions of this chapter insure consistency between city and countywide planning policies under the GMA.

This chapter is intended to ensure that applicable public improvements or strategies to accommodate the impacts of development are made concurrent with the development. In short, the City must require that adequate facilities are available to meet the needs of persons who will work or reside where new development occurs, prior to occupation or use of the development.

The City of Lynden chose level of service standards for public facilities and services that are reflective of the high quality of life that members of the community have expressed a desire to establish and maintain. This concurrency management system was developed to assist the City in securing the needed capital facilities and/or capital improvements to maintain those minimum level of service standards.

Concurrency must exist simultaneous to, or within a reasonable time after, development occupancy or use. Goals, policies and implementation strategies for concurrency facilities are provided in the Capital Facilities Plan Element of the Lynden Comprehensive Plan, the City’s Capital Facilities Management Plan, the Transportation Plan Element, and other related Plans as may be hereafter adopted. Public facilities and services that require concurrency with development are water, sewer, stormwater, public safety, parks, transportation and other general government facilities. If concurrency cannot be achieved, mitigation by developers and/or reduction of the project scope may be required prior to development approval.
17.15.020 DEFINITIONS.

Adequate Public Facilities.
“Adequate public facilities” means public facilities that meet or exceed the adopted level of service standard set forth in the City’s Comprehensive Plan.

Application.
“Application” means any development proposal, accompanying traffic analysis or other documentation as required in this chapter to determine the impact on each facility and/or intersection affected.

Available Public Facilities.
“Available public facilities” means that facilities or services are in place or that a financial commitment is in place to provide the facilities or services within a specified time.

Capital Facility.
“Capital facility” means a structure, improvement, piece of equipment or other major asset including land that has a useful life of at least 10 years. Capital facilities are provided by or for public purposes and services including but not limited to the following: Airport, Fire and rescue, Government offices, Police, Libraries, Parks, Sanitary Sewer, Sidewalks, Stormwater facilities, Streets, Street lighting systems, Traffic signals and Transit. The capital facilities listed above include necessary ancillary and support facilities. (CP)

Capital Facilities Management Plan.
“Capital Facilities Management Plan” (CFMP). The 6-year plan (current year plus 5 years) for capital improvements that supports the City’s current and future population and employment growth. It contains level of service standards for each public facility, a financing plan for necessary facilities, and requires that new development is served by adequate facilities for which concurrency is required under this chapter. The CFMP also contains broad goals and specific policies for all public facilities. City departments are required to submit documentation for services rendered and/or provided in the form of invoices as specified in Policy F–2, the Purchasing Policy.

Capital Improvement.
“Capital improvement” means a project to create, expand or modify a capital facility. The project may include design, permitting, environmental analysis, land acquisition, construction, landscaping, site improvements, initial furnishings and equipment. The project cost must exceed $15,000. (CP)

Comprehensive Plan.
“Comprehensive Plan” means the City of Lynden Comprehensive Plan and any element or subplan thereof, as now exist or as may hereafter be adopted or amended.
Concurrency or Concurrent.
“Concurrency” or “Concurrent” means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years. The City may not permit development approval if a development would cause level of service to fall below the City’s adopted standard, unless improvements or strategies to accommodate the impacts of development are made concurrent with the development. This definition includes the two concepts of “adequate public facilities” and “available public facilities” as defined above.

Concurrency Determination.
“Concurrency Determination” means a non-binding determination of what public facilities and services are available on the date of a concurrency inquiry by an individual to the City.

Concurrency Management System.
“Concurrency management system” means the procedures and processes utilized by the City to determine that development approvals, when issued, will not result in the reduction of the level of service standards set forth in the Comprehensive Plan.

Concurrency Test.
“Concurrency test” means the comparison of an applicant’s impact on concurrency facilities to the capacity, including available and planned capacity, of the concurrency facilities.

Development.
“Development” means any activity or use requiring or involving a land use permit, approval, or action regulated by Titles 16 through 19, LMC, including but not limited to subdivisions, short subdivisions, binding site plans, planned unit developments, planned residential developments or planned commercial developments, conditional use permits, special use permits, variances, design review approvals, building permits, shoreline substantial development permits, site plan review, approvals required by the critical areas ordinance, or site-specific rezones, but excluding the adoption or amendment of the comprehensive plan, subarea plan, or development regulations.

Development Permit or Approval.
“Development permit or approval” means the permit required prior to commencement of work on any development. (T17)

Financial Commitment.
“Financial commitment” means revenue sources forecast to be available and designated for public facilities or expansion strategies in the Comprehensive Plan or in the transportation element of the Comprehensive Plan, other unanticipated revenue from federal or state grants, or other sources for which the City has received a notice of commitment, and/or revenue that is assured by an applicant in a form approved by the City.
Finding of Concurrency.
“Finding of concurrency” means the finding that is a part of the permit approval issued by the City indicating that public facilities have adequate unused or uncommitted capacity, or will have adequate capacity, to accommodate the traffic and persons generated by the proposed development, without causing the level of service to decline below the adopted standards, at the time of development or within six years.

Funded Project.
“Funded project” means a project in the most recently adopted Capital Facilities Management Plan (CFMP) for the City or similar capital program of another jurisdiction which has sufficient revenues secured for construction, or which meets the facility concurrency requirements of Section 17.15.050.

Impact Fees.
“Impact fees” means a payment of money imposed pursuant to City ordinance or resolution upon development as a condition of development approval to pay for public facilities needed to serve new growth and development. (RCW 82.02.090)

Level of Service Standard.
“Level of Service (LOS) Standard” means a quantifiable measure of the amount of public facility that is provided. Typically, measures of levels of service are expressed as ratios of facility capacity to demand (i.e., actual or potential users). (CP)

Mitigation.
“Mitigation” means transportation demand management strategies and/or facility improvements constructed or financed by a developer which returns a degraded level of service to the standard established for that area. If an area is already exceeding the standard prior to the development proposal, mitigation shall mean transportation demand management strategies and/or facility improvements constructed or financed by a developer to return the degraded area-average level of service to at least the level-of-service established for that area.

Mitigation Contribution.
“Mitigation contribution” means a cash donation or other valuable consideration offered by the applicant in lieu of: (1) a required dedication of land for public park, recreation, open space, public facilities, or schools; or (2) road improvements needed to maintain adopted level of service or to ameliorate identified impacts and accepted on the public’s behalf as a condition of approval of a subdivision, plat, planned development, or binding site plan. Voluntary contributions may be accepted by the City. (T17)

Phased Development.
“Phased development” means any development involving multiple buildings or improvements where issuance of development permits would not occur at the same time, but phased over a period of time.
Planned Capacity.
“Planned capacity” means concurrency facility capacity that does not exist, but for which the necessary facility construction, expansion or modification project is contained in the Comprehensive Plan (e.g., Capital Facilities Element) and scheduled to be completed within six years.

Planned Capacity, Transportation Facilities.
“Planned capacity, transportation facilities,” means capacity that does not exist for transportation facilities, but for which the necessary facility construction expansion or modification project is contained in the Comprehensive Plan (e.g., Capital Facilities Management Plan) and financial commitment is in place to complete the improvements within six years.

Public Facilities.
“Public facilities and utilities” means land or structures owned by or operated for the benefit of the public use and necessity, including but not limited to storm and sanitary sewers, domestic water systems, streets and roads, street cleaning services, street lights, traffic signals, curbs, gutters and sidewalks, fire and police protection services, public transit, airport, government buildings, and other public utilities associated with urban areas.

Service Area.
“Service area” means a geographic area defined by the City in which a fixed set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

Traffic Impact Analysis.
“Traffic Impact Analysis” means a specialized study of the impacts that a certain type and size of development in a specific location will have on the surrounding transportation system. The scope of work for the study will be determined by the City.

Transportation Demand Management.
“Transportation Demand Management (TDM)” means public and/or private programs designed to increase the efficiency of existing capital transportation facilities, including, but not limited to, transit and ride sharing incentives, flexible working hours, parking management, and supporting non-motorized enhancements, and related systems and site specific improvements.

Transportation Facility Capacity.
“Transportation Facility Capacity” means the maximum traffic volume that can be accommodated at an intersection within the City while maintaining the level of service prescribed in the Comprehensive Plan (Transportation Element). Capacity will be calculated according to the methodology used in the most current Highway Capacity Manual. An alternative methodology may be used only if it is preapproved by the Planning Director or his/her designee.
Under Construction.
“Under construction” means that a construction contract for a project has been awarded or actual physical alteration or improvement has occurred on the site.

17.15.030 ADMINISTRATION AND APPLICATION.

A. Administration. The Planning Director shall be responsible for the administration of all activities relating to this chapter and shall coordinate with other departments, as appropriate, in implementation of the provisions of this chapter. Where there are technical matters concerning the calculation of available facilities and the terms for providing facilities, the decisions of the Planning Director shall be with the concurrence of the Public Works Director and other members of the Technical Review Committee. The Planning Director may, with the approval of the City Council, implement administrative policies deemed necessary and/or appropriate to implement the provisions of this chapter.

B. General Application. This chapter applies to all land use development applications including, but not limited to, the following types of development activities.

1. Building permits for constructions which will result in 10 or more peak hour trips.
2. Subdivisions. Any subdivision resulting in more than four units.
3. Phased Development. The requirements of this chapter shall be applied at the time of approval of the initial phase and shall be adjusted for each subsequent phase based on the cumulative impact of all the phases.
4. Change in Occupancy. This chapter will apply to applications for tenant improvements if a proposed new use or an expanded existing use will affect the LOS at public facilities and/or intersections of the City.
5. Site Specific-Rezones. The City may approve a proposed site-specific rezone only if the full facility impacts of site development are disclosed at the time of application assuming full development of the property under the proposed zoning classification using the highest trip generating permitted uses. Lack of concurrency will not be a basis for denial of a site-specific rezone; however, any subsequent development is subject to the concurrency requirements of this chapter. Specific requirements for public facility improvements to mitigate the impacts of a proposed site-specific rezone and assure compliance with this chapter may be imposed as a condition of said rezone.
6. Reconstruction of Destroyed Buildings. If a building to which this chapter did not apply at time of construction is destroyed by fire, explosion or Act of God or war, and is reconstructed in accordance with city code, it will not be required to comply with this chapter unless the reconstructed building produces public facility impacts in excess of those produced by the destroyed building.
C. SEPA. This chapter is not intended to limit the application of the State Environmental Policy Act to specific proposals. Each proposal shall be reviewed and may be conditioned or denied under the authority of the State Environmental Policy Act and/or this chapter.

D. Traffic Impact Analysis. As part of the land use development application, the applicant may be required to submit a traffic impact analysis to identify all traffic impacts upon roadways, intersections and nonmotorized facilities within the affected service area.

17.15.040 EXEMPTIONS.

The portion of any facility used for any of the following purposes is exempt only from the concurrency requirements and not from the application and processing requirements of Title 17 or for the requirement to do site specific improvements. Impact fees required by City Code are not exempt from the requirements of this chapter.

A. No Impact. Development permits for development which creates no additional impacts on any concurrency facility are exempt from the requirements of this chapter. Such development includes, but is not limited to:
   1. Any addition, renovation or modification to the interior or exterior of a structure, residence or public facility that results in no change or increase in use, intensity of use, or number of dwelling units.
   2. Replacement structure with no change or increase in use or number of dwelling units;
   3. Temporary structures;
   4. Driveway resurfacing or parking lot paving;
   5. Landscaping, lighting or fencing;
   6. Signs;
   7. Demolitions;
   8. Conditional Use Permits or variances which do not allow an increase in use or number of new dwelling units above the intensity of use or number of dwelling units allowed by the existing zoning of the property;

B. Privately operated not for profit social service facilities recognized by the Internal Revenue Service under the Internal Revenue Code;

C. Low income housing, which is defined as housing which is affordable to persons whose income is below fifty percent of the median income for persons residing in the City of Lynden. Only the proportion of units designated for low income residents shall be exempt under this subsection;

D. Any development creating less than 10 peak hour trips as defined in this chapter.

E. Any project that is a component of another proposed development and that was included in a prior application for a finding of concurrency.
F. Exempt Permits. The following development permits are exempt from the requirements of this chapter:
1. Lot line adjustment;
2. Administrative waiver;
3. Permits for construction of single family homes, duplexes, and accessory dwelling units, as defined in LMC Title 17; and,
4. Permits for development that had complete applications submitted before the effective date of this chapter.

Notwithstanding the exemptions provided herein, the traffic impacts on public facilities resulting from an exempt use shall nonetheless be included in computing available capacity.

17.15.050 ADEQUATE PUBLIC FACILITY CONCURRENCY.

The issuance of development permits shall be conditioned on a Finding of Concurrency to be determined in accordance with Section 17.15.060 and the following:

A. Adequate capacity shall exist concurrent with issuance of a development permit or approval; or

B. The City shall have in place binding financial commitments to complete the necessary public facilities or strategies within six years, provided that:
   1. The capital facilities plan as defined in the Lynden Comprehensive Plan must be financially feasible; and
   2. The City uses a realistic, financially feasible funding system based on revenue sources available according to laws adopted at the time the Capital Facilities Plan is adopted; and
   3. The Lynden Comprehensive Plan (Capital Facilities Element) must demonstrate that the actual construction of the roads, nonmotorized and transit facilities are scheduled to commence during or before the sixth year of the Capital Facilities Plan; and
   4. The Capital Facilities Management Plan must include facilities necessary to eliminate existing level of service deficiencies as well as those necessary to maintain adopted level of service standards to serve new development.

17.15.060 APPLICATION—PROCEDURES

The review of the application for concurrency shall be integrated with the development permit and environmental review process, to avoid duplication of the review processes, as required by Chapter 17.05 Consolidated Application Process. The following provisions pertain only to the portion of the review process addressing the project’s ability to meet the requirements for concurrency.

A. Pre Application Meetings. In accordance with Section 17.05.020, all persons proposing development, with the exception of building permits, shall attend a
preapplication meeting to discuss the development process and requirements. The proponent shall at this time request a non-binding concurrency determination (see subsection (C)(1) below) to learn whether adequate public facilities are available to serve new development.

B. Application. Any application, accompanying traffic impact analysis and other documentation which is subject to this chapter shall be reviewed by the Planning Director and used to determine its impact on each public facility affected. A proposal shall not be approved under this chapter if there is no concurrency with public facilities as required in this chapter. Additionally, the Planning Director shall determine if mitigation is required and appropriate under this chapter due to lack of concurrency and, if required, whether any transportation mitigation proposed by the developer meets the requirements of Section 17.15.080.

C. Processing of Applications–Approval/Denial. Issuance of final development permits shall be subject to the following concurrency requirements.

1. **Concurrency Inquiry.** An applicant may inquire whether or not facility capacity exists without an accompanying request for a development permit; but available capacity cannot be reserved at that time. A fee as established by resolution of the City Council may be charged for such “Concurrency Determination”.

2. **Concurrency Test.** Development applications that would result in a reduction of a level of service below the minimum level of service standard for public facility(ies) concurrent with their approval must be denied. For conducting the concurrency test, the level of service standards for water, sewer, stormwater, fire, parks, transportation and other public facilities shall be as provided in the Comprehensive Plan and in Section 17.15.070. If the Planning Director determines that revisions to the proposed development may create additional impacts, the application may be required to undergo an additional concurrency test. The test shall be completed by the City within 30 days of receipt of a complete application as set forth in Subsection (A) above. A “Finding of Concurrency” will be rendered only in conjunction with a complete development/concurrency application.
   a) If existing or planned capacity of concurrency facilities is equal to or greater than capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is passed.
   b) Transportation facilities: If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for intersections impacted by development application, the concurrency test is not passed. The applicant may:
      I. Accept the City’s denial of approval for lack of concurrency regarding transportation facilities, as required by RCW 36.70A.070(6)(e).
ii. Accept Mitigation for Transportation Facilities as provided in Section 17.15.080 of this Chapter.

iii. Appeal the results of the concurrency test in accordance with Chapter 17.11 of the LMC.

c) Other public facilities: If the capacity of concurrency facilities is less than the capacity required to maintain the level of service standard for the impact from the development application, the concurrency test is not passed. The applicant may:

i. Accept a 90-day reservation of the available, existing capacity and modify the application to reduce the need for facility capacity that does not exist.

ii. Accept a 90-day reservation of the available, existing capacity and demonstrate to the City’s satisfaction that the proposed development will have a lower need for facility capacity than usual and therefore, capacity is adequate.

iii. Accept a 90-day reservation of available facilities that exist and arrange with the appropriate facility and service provider for the provision of the additional capacity required; or

iv. Accept the City’s denial of the development permit. Denial of the permit for lack of concurrency with public facilities is an emergency measure taken by the City to investigate whether there is just cause or ability to amend or revise the Comprehensive Plan.

iv. Appeal the results of the concurrency test in accordance with Chapter 17.11 of the LMC.

3. **Finding of Concurrency.** The determination that facility capacity is available shall be based on information provided by the applicant to the satisfaction and approval of the Planning Director. The finding of concurrency shall be binding on the City at such time as the City determines that adequate capacity is available or the applicant provides mitigation or assurances, as set forth in Section 17.15.080.

4. **Term of Capacity.** A Finding of Concurrency shall be valid at final approval and will remain valid so long as satisfactory development progress is made. The Planning Director may at his/her discretion require the applicant to submit proof of such progress. If the development is not under construction one year after the date of final approval, or construction has ceased for a period of one year, the Finding of Concurrency shall expire. The unused capacity shall then be returned to the pool of available capacity, and the applicant shall be required to undergo an additional concurrency test prior to commencement of construction.

5. **Unused Capacity.** Any capacity that is not used because the developer decides not to develop, or the accompanying development permit expires, shall be returned to the pool of available capacity.
6. **Level of Service Areas.** The standards for levels of service of transportation facilities shall be applied to the issuance of development permits.

7. **Funded Projects.** The developer may rely on capacity provided by funded projects, including projects in the current Capital Facilities Plan (CFP) and by street improvements under contract as part of other approved development proposals. The approval is subject to the requirements that the applicant must fully fund or mitigate any impacts as required herein. If the list of funded projects is modified after the time the proposal vests, the applicant may elect to rely on the new capacity provided by the modified list of funded projects provided that such election must be made prior to issuance of a development permit.

D. **Development Approval.** No final development permit shall be issued by the City unless there is sufficient capacity of public facilities available to meet the standards for levels of service after existing development and for the proposed development as required in this chapter.

E. **Non-Assignability of Determination.** The determination that facility capacity is available runs with the land and is not personal to the applicant. The determination is not assignable or transferable to another lot or parcel.

17.15.070 **APPLICATION—CAPITAL FACILITIES LOS STANDARDS.**

A. Whenever the Planning Director is asked to consider the approval of any of the development activities specified under section 17.15.030 (B), he or she shall make a written Finding of Concurrency (see Section 17.15.060(C)(3)) in connection with facilities proposed or available for the project.

B. With respect to each of the public facilities identified in section 17.15.010, and the City’s Comprehensive Plan (Capital Facilities Management Plan (CFMP)), a concurrency test shall be conducted as specified in section 17.15.060(C)(2), and concurrency shall be established and determined according to the following level of service standards:

1. **Wastewater System Utility (Sewer):**
   a) The project is within an area approved for wastewater system utility pursuant to the adopted Comprehensive Wastewater Plan for the City of Lynden.
   b) The required developer improvements to provide facilities and services consistent with City standards are present, or are approved and funded, to assure availability in time to meet the needs of the development project. Standards for development of public utilities are provided in Title 13 of the Lynden Municipal Code and the City of Lynden Project Manual for Engineering Design and Development Standards.

2. **Water System Utility:**
a) The project is within an area approved for municipal water service pursuant to the Comprehensive Water Plan for the City.
b) The required developer improvements to provide facilities and services consistent with City standards are present, or are approved and funded, to assure availability in time to meet the needs of the development project. Standards for development of public utilities are provided in Title 13 of the Lynden Municipal Code and the City of Lynden Project Manual for Engineering Design and Development Standards.

3. Stormwater Management Utility (Storm Drainage):
a) The project is within an area approved for stormwater system utilities pursuant to the Stormwater Management Plan for the City.
b) The required developer improvements to provide facilities and services consistent with City standards are present, or are approved and funded, to assure availability in time to meet the needs of the development project. Standards for development of public utilities are provided in Title 13 of the Lynden Municipal Code and the City of Lynden Project Manual for Engineering Design and Development Standards.

4. Parks
The project meets the requirements of LMC Chapter 3.40, the Parks, Recreation and Open Space Mitigation Fund. Standards for dedication of properties for public parks, recreation facilities and open space, and formulas for use in mitigating the impacts of property development on public parks, and recreation facilities and open spaces are established by Ordinance 1197, and as may be hereafter amended.

5. General Government
a) Library: Development is not currently required to achieve concurrency for library facilities
b) City Hall: Development is not required to achieve concurrency for expansion or new construction of City Hall.

6. Public Safety
a) Police Department. Currently there are no concurrency requirements for police facilities.
b) Fire Facilities. The project meets the requirements of LMC Chapter 3.44, Fire Facilities Mitigation Fund. Standards for fire service facilities and formulas for use in mitigating the impacts of property development on fire facilities are established by ordinance 960.

7. Transportation
a) The project makes on-site and frontage improvements, consistent with City standards for utilities, curbs, gutters, sidewalks, bicycle lanes where appropriate, and roads necessary to serve the proposed project consistent with safety and public interest. Standards for streets, sidewalks and public places are provided in Title 12 of the

b) The project makes such off-site facility improvements, not listed on the capital facilities plan, as are necessary to meet City level of service standard for the safe movement of traffic and pedestrians attributable to the project. Where a developer is required to oversize an off-site facility by more than 10% of the need generated by the proposed project, the City may consider a developer reimbursement contract as authorized by state law.

c) The project makes a contribution to the off-site facilities identified in the Transportation Element of the Comprehensive Plan. Contributions required by SEPA mitigation and Developer Contributions will be based upon the list of projects specified to be constructed within the next six years. The project developer may, with the approval of the code administrator, elect to construct a portion of the six-year facility as partial credit against such charge, in which case a credit shall be given for the reasonable cost incurred therein, but not to exceed the extent of potential savings to the City.

d) A development proposal will not be approved which causes congestion that exceeds the level of service standard of LOS C for peak-hour traffic conditions on City streets, and LOS D for intersections of SR 539 and SR 546, and not mitigated by:
   i. the existing street network;
   ii. fully funded projects;
   iii. street improvements under contract as part of other approved development proposals which are fully funded and/or;
   iv. developer mitigation in accordance with Section 17.15.080.

e) Transit Services
Standards for transit service within the City of Lynden are determined by Whatcom Transportation Authority (WTA). The City can only indirectly promote transit ridership by encouraging participation in Whatcom County trip reduction programs, TDM programs and development of supportive land use policies. No mitigation contributions will be required for maintaining adequate transit facilities and services for the City.

17.15.080 MITIGATION FOR TRANSPORTATION FACILITIES.

A. General. If mitigation is required to meet the intersection level of service standard, the applicant may instead choose to:
   1. reduce the size of the development until the standard is met,
   2. delay development schedule until City and/or others provide needed improvements, or
3. provide the mitigation as provided for in this chapter. Mitigation must be acceptable to the City in form and amount, to guarantee the applicant’s pro rata share of the financial obligation for capital improvements for the benefit of the subject property.

B. Fees. Determination of transportation mitigation fees shall be as follows:
1. Transportation mitigation fees shall be based on the per peak hour trip rate.
2. City Standards shall include:
   a) Trip generation rates set forth in the latest edition of the Institute of Transportation Engineers, Information Report – Trip Generation. The presumption is that rates used by the City are accurate unless proven otherwise.
   b) For projects with nontraditional peak hour impacts or different from standard projects, a special report, based on generally accepted traffic engineering principles may be submitted and considered.
3. Credits shall be given to reflect the projected impact on the community system such as, traffic decreases where an existing facility on site is removed or replaced, and traffic reduction systems which are binding and likely to remain effective for the life of the project.
4. Credits may also be given for projects which create a significant economic benefit to the community, including industrial or manufacturing uses with an excess of 500 trips per day. The size of the credit shall be measured at an appropriate percentage of the anticipated annual tax revenue increase to the community and available for capital contribution to transportation facilities on the approved plan as a result of the project.

C. Mitigation approval. If concurrency does not exist as required by this chapter, to obtain concurrency, the applicant may submit proposed mitigation measures to the Planning Director for Council approval as follows:
1. Payment for and Timing of Improvements.
   Payment for developer-funded transportation improvements affecting streets and intersections within the City’s direct operational control necessary to meet the requirements for concurrency must be made as follows:
   a) For projects involving the division of land for sale or lease—upon the issuance of building permit for construction of each lot of record, for the traffic attributable to that lot.
   b) For projects approved through site plan review—upon the issuance of the building permit authorizing the construction of any phase, for the traffic associated with that phase.
   c) For any project over 100 peak hour trips per day—the fee may be paid in installments, at the municipal rate of interest in effect on the day of building permit issuance, with 50% being paid at the
issuance of the building permit and the balance paid within 24 months.

d) Any such improvements required to be constructed by a developer to meet the requirements for concurrency must be under construction within six months after issuance of a certificate of occupancy, final plat approval or such other approval for the proposed development.

e) All improvements shall comply with construction standards provided in Title 12 of the LMC, and the City’s Project Manual for Engineering Design and Development Standards.

f) Furthermore, the City Administrator or his/her designee shall require an assurance device to guarantee completion of such improvements in accordance with said construction standards.

g) The finance director shall be responsible for maintaining all mitigation funds received under this chapter.

h) Payment for or the requirement of the developer to construct any transportation improvement necessary to meet the requirements of concurrency which is partially or wholly outside the City’s direct operational control must be submitted for approval by the appropriate agency(ies) which have control. Should the appropriate agency(ies) elect to postpone the proposed improvements, or refuse to accept the proposed mitigation, the Planning Director or his/her designee shall collect and hold the amount estimated for mitigation until the improvement is made as required in this chapter. An assurance device satisfactory to the City Administrator may substitute for the payment required in this subsection.

i) The project proponent may provide funding in an amount equal to the cost estimate of the City Administrator or his/her designee, for necessary traffic improvements. The City Administrator may require actual construction rather than provision of funding. Funds, or other commitments, for projects to be constructed by the City must be paid in full by the project proponent to the City prior to issuance of a development permit, final plat approval or such other approval for the project.

2. Transportation Demand Management. As a mitigation measure, the project proponent may establish Transportation Demand Management (TDM) strategies to reduce single occupant vehicle trips generated by the project. The project proponent shall document the specific measures to be implemented and the number of trips to be reduced by each measure. The TDM program may be denied based on the criteria of subsection 3 below. The Planning Director or his/her designee must approve the strategies and shall monitor and enforce the performance of agreed upon TDM measures. The Planning Director will determine if performance measuring devices shall be imposed, and may require annual documentation of the continued
effectiveness of such measures. The Planning Director may require that additional measures be implemented if the agreed upon measures fail to result in the reduction of the stated number of trips.

3. Decision Criteria-Acceptable Mitigation. Acceptable mitigation requires a finding by the Planning Director that:
   a) The mitigation is consistent with the Comprehensive Plan.
   b) The mitigation contributes to system performance.
   c) Improvements to an intersection or roadway may not shift traffic to a residential area.
   d) Improvements to an intersection or roadway may not shift traffic to other intersections for which there is no acceptable mitigation available.
   e) Improvements to an intersection or roadway may not shift traffic to intersections within another jurisdiction which would violate that jurisdiction’s policies and regulations.
   f) Improvements to an intersection or roadway may not shift traffic to an arterial or state highway and violate the LOS prescribed for intersections on such.
   g) The effect of the improvement would not result in a reduction of the loss of another transportation objective, including but not limited to maintaining turning lanes, sidewalks, or bicycle lanes.
   h) The adverse environmental impacts of the facilities improvement can be reasonably alleviated.
   i) The improvement will not violate accepted engineering standards and practices.

   Notwithstanding the foregoing, the Planning Director may require correction of a documented safety-related deficiency.

4. Mitigation denial-appeal process. If the Planning Director determines that the proposed mitigation does not meet the requirements of this chapter, the Planning Director may deny the proposed improvements and determine the project is inconsistent with this chapter. The Planning Director’s decision may be appealed by the applicant to the City Council pursuant to the provisions of Chapter 17.11.

17.15.090 ACCOUNTING AND APPEALS.

A. All fees collected under this chapter shall be placed in separate accounts for the dedicated purpose for which collected. Such funds may only be expended for identified facilities on an approved plan, and must be spent within six years absent a specific situation where the City can justify a longer period.

B. Any person aggrieved by the action of the Planning Director based on a determination of capacity issued under this chapter, or the calculation or assessment of any fee, shall have the right to appeal such action. A disputed fee shall be paid under protest and the permit may be issued. Any such appeal shall
be processed pursuant to the Appeals procedures set forth in Chapter 17.11 of the LMC.

C. Any such appeal shall consider the issues raised, the proper fee to be assessed, and the necessity to find concurrency as a precondition to any project approval. The proper fee to be charged on appeal is determined (1) by compliance with the terms of this ordinance, and (2) if for any reason the terms of this ordinance are found inappropriate, such fee as necessary to assure concurrence for all facilities identified herein, but not to exceed the fee collected pursuant to this ordinance.
CHAPTER 17.17

VARIANCE OF DEVELOPMENT STANDARDS

Sections:
17.17.010 APPLICABILITY
17.17.020 REVIEW AND APPROVAL PROCESS
17.17.030 PUBLIC NOTICE REQUIRED
17.17.040 STANDARDS AND CRITERIA FOR GRANTING A VARIANCE
17.17.050 DECISION.

17.17.010 Applicability

The provisions of this chapter apply to variances from the requirements of the following chapters of the Lynden Municipal Code and standards otherwise adopted by the City, but not codified within the Lynden Municipal Code (collectively referred to in this chapter as “development standards”):

1. Engineering Design and Development Standards
2. Title 18 – Subdivisions
3. Title 13 – Public Utilities, except where prohibited by law

17.17.020 Review and Approval Process

1. When a request for a variance from development standards listed in Section 17.17.010 above is consolidated with a development application, the variance request shall be considered concurrently with the development application. Such a variance application shall be heard in accordance with the provisions of Section 17.09.040 and Section 17.09.050 of the Lynden Municipal Code.

2. When a request for a variance to any provisions, standards or requirements listed in Section 17.17.010 above does not include an application for additional development permits, or the proposed action does not require an open record public hearing, the application will be reviewed in accordance with the provisions of Chapter 17.05 of the Lynden Municipal Code. Said variance request will be heard by the City Council in an open record public hearing consistent with the provisions of Section 17.09.060 of the Lynden Municipal Code.

17.17.030 Public Notice required

All variance applications considered under this chapter are subject to the public notice provisions of Chapter 17.07 of the Lynden Municipal Code; provided however, that the public notices may be combined when a variance request is accompanied by another development application.
17.17.040 Standards and Criteria for Granting a Variance

Where there are unnecessary hardships and practical difficulties which render it difficult to carry out the provisions of the development standards of the City of Lynden as listed in Section 17.17.010, the City Council shall have power to grant a variance in harmony with the general purpose and intent of the provisions contained therein. Such variances may vary the rules, regulations or provisions of the development standards so that the spirit of those standards will be observed; public safety secured; and substantial justice done. However, the City Council shall not vary any of the rules, regulations or provisions of those development standards unless it shall approve findings that all of the following conditions exist in each case:

A. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity in which the property on behalf of which the application was filed is located;

B. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with rights and privileges permitted to other properties in the vicinity in which the subject property is located;

C. That the granting of such a variance will not be materially detrimental to the public health, safety and general welfare; and

D. That the granting of such a variance will not be injurious to the property or improvements in the vicinity and zone in which the subject property is located.

E. That the variance request is based on sound engineering judgement and includes additional mitigation sufficient to offset adverse impacts to the public interest likely to result from granting the variance.

Findings shall include a report which may contain pertinent information regarding any existing conditions relating to topography, geology, utilization of property, and such conditions set forth by the official plans, development plans, and the comprehensive plans.

17.17.050 Decision.

The City Council shall make a decision on the request for a variance from the development standards within 120 days from the time an application is determined to be complete as required by Section 17.09.100. In making its decision, the City Council shall act as described in Section 17.09.050.
CHAPTER 17.19
SITE-SPECIFIC REZONE APPLICATION PROCESS

Sections:

17.19.010 Contents of Application.
17.19.020 Environmental Review
17.19.030 Planning Commission - Notice; Public Hearing(s); Review; Recommendation.
17.19.040 City Council Review and Decision
17.19.050 Criteria for Approval of Site-Specific Rezone
17.19.060 Quasi-Judicial Proceeding; Burden of Proof; Written Findings
17.19.070 Consolidation of Other Development Applications with Site-Specific Rezone Proposal

17.19.010 Contents of Application.

A complete application for a site-specific rezone must be acknowledged by the property owner and shall include the following information:

A. A completed application form provided by the Planning Department and all applicable fees;

B. The legal description of the boundaries of the area proposed for rezoning;

C. A statement regarding the background, the reason for seeking the proposed rezone, and the effect of the proposal on adjacent areas;

D. A statement explaining changed circumstances in the area since adoption of the current zoning or a mistake in the current zoning;

E. A statement explaining how the proposed rezone is consistent with the City’s comprehensive plan, applicable sub-area plans, and with protecting the public health, safety, and welfare;

F. A reproducible vicinity map, designating the area of the proposed rezone, together with all significant geographic features, including bodies of water, major streets and highways and boundaries of all units of government in the area as they presently exist.

G. A reproducible map showing the area of the proposed rezone together with the zoning of all adjacent parcels.

H. A development proposal showing the following information: a) all proposed streets and right-of-ways, b) topography, and c) development concept illustrating the proposed density and type of development.

I. An environmental checklist;
17.19.020 Environmental Review.
The Planning Director shall provide an environmental review in accordance with RCW 43.21C and WAC 197-11 prior to any Planning Commission review. Environmental review shall be performed concurrently on all consolidated applications described in LMC 17.19.070.

17.19.030 Planning Commission - Notice; Public Hearing(s); Review; Recommendation.
A. Upon receipt of an application for a site-specific rezone the Planning Department shall fix the date for public hearing on the proposed rezone before the Planning Commission. Notice of the hearing shall be given in accordance with notice requirements for development applications under Chapter 17.07 of the Lynden Municipal Code (“LMC”).

B. For rezone proposals seeking a density of five (5) or more residential units per acre, or for proposals to rezone residential property to commercial or industrial zoning, an additional sign must be posted in conformance with the following:
   1. The sign must be a minimum of four (4) feet by eight (8) feet; and
   2. The sign must be centrally located on each lot line that fronts a public street; and
   3. The sign must be placed on the lot a minimum of ten (10) days prior to the public hearing and must be removed within ten (10) days of final approval or denial; and
   4. The sign must include a map illustrating the area to be rezoned, the project number assigned by the Planning Department, a brief project description, the developer or agent’s phone number, and the phone number of the Planning Department; and
   5. The sign must have black lettering a minimum of two (2) inches in height on a white background.

C. For a site-specific rezone application, the Planning Commission shall review, conduct public hearing(s), and make recommendation(s) to the City Council in accordance with requirements for development proposals as set forth in LMC 17.09.040, 17.09.060 and in this Chapter.

17.19.040 City Council Review and Decision
The City Council shall conduct its review and render its decision on any site-specific rezone proposal in accordance with applicable provisions set forth in Chapter 17.09 LMC.
17.19.050 Criteria for Approval of Site-Specific Rezone

Site-specific rezone requests must satisfy the requirements established for development proposals in LMC 17.09.040C. In addition, no application for a site-specific rezone shall be approved unless the applicant demonstrates that each of the following criteria is satisfied:

A. The current zoning was either approved in error or that a significant change in circumstances since approval of the current zoning warrants reclassification of the subject property as proposed; and

B. The proposed site-specific rezone is consistent with the City’s comprehensive plan and applicable sub-area plan(s); and

C. The project proposal is consistent with the City’s development codes and regulations for the zoning proposed for the project.

D. The proposed site-specific rezone is compatible with existing uses and zoning in the surrounding area; and

E. The proposed site-specific rezone will promote the health, safety, and general welfare of the community.

17.19.060 Quasi-Judicial Proceeding; Burden of Proof; Written Findings

A. Site-specific rezone proceedings are quasi-judicial in nature and shall be conducted as such by the Planning Commission and City Council.

B. The burden shall be on the applicant to demonstrate by clear, cogent, and convincing evidence that the application satisfies all of the criteria set forth in LMC 17.09.040C and 17.19.050.

C. The Planning Commission shall support its recommendation to the City Council with written findings; and the City Council shall support its final decision with written findings.

17.19.070 Consolidation of Other Development Applications with Site-Specific Rezone Proposal

Where a complete site-specific rezone application is filed within seven (7) calendar days of the date of filing other complete development applications for the same property, all such applications shall be consolidated with the site-specific rezone application (“consolidated applications”) for review and processing; except for those applications excluded from such consolidation requirements pursuant to RCW 36.70B.140. The consolidated applications shall have no more than one open record hearing and one closed record hearing. The open record hearing for all such consolidated applications shall be conducted before the Planning Commission as described in LMC 17.09.040 and
17.09.060. Review by the City Council on the consolidated applications shall occur as a closed record hearing. The review and decision by the City Council shall conform to the applicable procedures described in Chapter 17.09 LMC which are consistent herewith. In the event another city ordinance requires that a particular development application be decided by a different hearing body or be processed in a different manner than as required herein, this ordinance shall govern so long as said development application is consolidated with a site-specific rezone application in accordance with this section; provided that, nothing herein is intended to supplant the criteria or substantive requirements applicable to such other development permits or approvals.
CHAPTER 17.21
VACATIONS OF PUBLIC RIGHT-OF-WAY

Sections:
17.21.010 Petition by Owners
17.21.020 Contents of Petition
17.21.025 Review Required
17.21.030 Hearing Required
17.21.040 Ordinance of Vacation
17.21.050 Disposition of Revenue
17.21.060 Title to vacated street or alley
17.21.070 Vacation by Resolution of City Council

17.21.010 Petition by Owners

A. The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley or any part thereof may petition the City Council to make the vacation. The petition shall be filed with the Planning Director and shall include the information listed in section 17.21.020 below.

B. The petition shall be signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated.

17.21.020 Contents of Petition.

A complete petition shall include the following information:

A. A completed petition form as provided by the Planning Department and all applicable fees

B. A statement regarding the general background and the reason for seeking, the proposed action and the effect of the proposal on adjacent areas,

C. The legal description of the boundaries of the area proposed for vacation.

D. A vicinity map, designating the area of the proposed action, together with all significant geographic features, including bodies of water, major streets and highways and boundaries of all units of government in the area as they presently exist,

E. The names and addresses of all property owners abutting upon any portion of the street or alley proposed for vacation, as shown on the rolls of the county treasurer.
17.21.025 Review Required

All petitions for vacation of public rights-of-way shall be reviewed by the Technical Review Committee as required in Section 17.05.050 LMC.

17.21.030 Hearings – Notice Required.

A. Following receipt of a complete petition for a street or alley vacation and payment of any required fees, the City Council shall by resolution fix the date it will convene a public hearing on the petition, which date shall not be more than sixty (60) days nor less than twenty (20) days after the date of passage of such resolution.

B. Upon passage of the resolution the City shall give twenty (20) days notice of the pendency of the petition by a written notice posted in three (3) public places in the City and a like notice in a conspicuous place on the street or alley sought to be vacated. The notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed for the hearing of the petition. In addition to the above required notice, there shall be given by mail at least fifteen (15) days before the date fixed for the public hearing, a similar notice to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address shown thereon.

17.21.040 Ordinance of vacation

A. If the City Council, after holding the required public hearing, determines to grant the petition or any part thereof, the applicants shall complete an appraisal of said property to be vacated. The appraisal shall be conducted by a certified appraiser and provide a minimum of three comparable properties.

B. If the appraisal is found to be acceptable by the City Council, the City Council shall adopt an ordinance to vacate the street or alley; provided however, that said ordinance shall not be effective until the owners of property abutting upon the street or alley to be vacated have compensated the City in an amount not to exceed the full appraised value of the area vacated.

C. The ordinance shall provide that the City shall retain easements for the installation, repair and maintenance of public utilities and services.

D. A certified copy of said ordinance shall be recorded in the office of the County Auditor.

17.21.050 Disposition of revenue

One half of the revenue received by the City as compensation for the area vacated must be dedicated to the acquisition, improvement, development and related maintenance of public open space or transportation capital projects within the City.
17.21.060 Title to vacated street or alley
If the Council vacates any street or alley within the City, the property within the limits so vacated shall belong to the abutting property owners, one-half to each. All vacated property shall attach itself to the abutting parcel and shall not be considered as a separate legal lot of record.

17.21.070 Vacation by Resolution of the Council
The City Council may initiate the vacation of any street or alley within the City by adopting a resolution fixing the time and date of a public hearing, and by providing notice in conformance with 17.21.030.B; provided that, if fifty (50) percent of the abutting property owners file written objection to the proposed vacation with the City Clerk, prior to the time of hearing, the City shall be prohibited from proceeding with the vacation. If no such objection is filed, and the City Council determines after the public hearing that such vacation of a street or alley is in the public interest, the City Council may approve an ordinance enacting the vacation. For vacations initiated by the City Council, conformance with the compensation and easement requirements of 17.21.040 shall be within the Council’s discretion; except that, a certified copy of said ordinance shall be recorded in the office of the County Auditor.

17.21.080 Limitations on Vacations of Streets Abutting Bodies of Water
The City shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh water except in conformance with the requirements of RCW 35.79.035, and as hereafter amended.

17.21.090 Exclusion from Hearing Requirements of Chapter 36.70B RCW
Pursuant to the authority granted in RCW 36.70B.140(1), all street and alley vacations shall be excluded from the provisions of RCW 36.70B.060 through 36.70B.090 and 36.70B.110 through 36.70B.130.