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 herafter 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.