

**LYNNWOOD CITY COUNCIL
Business Meeting
This meeting will be held
electronically via Zoom. See the City
of Lynnwood website for details.**

**Date: Monday, June 8, 2020
Time: 7:00 PM**

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- 10 CALL TO ORDER & FLAG SALUTE
 - 20 ROLL CALL
 - 30 APPROVAL OF MINUTES
 - A Special Work Session ~ May 14, 2020
 - B Work Session ~ May 18, 2020
 - 40 MESSAGES AND PAPERS FROM THE MAYOR
 - 50 CITIZEN COMMENTS AND COMMUNICATIONS
 - 60 PRESENTATIONS AND PROCLAMATIONS
 - A COVID-19 Update
 - B Presentation: Impacts of COVID-19 on Sno-Isle Library Operations
 - C Presentation: Impacts of COVID-19 on Administrative Services Operations
 - 70 WRITTEN COMMUNICATIONS AND PETITIONS
 - 80 COUNCIL COMMENTS AND ANNOUNCEMENTS
 - 90 BUSINESS ITEMS AND OTHER MATTERS
 - 90 .1 UNANIMOUS CONSENT AGENDA
 - A Voucher Approval
 - 90 .2 PUBLIC HEARINGS OR MEETINGS
 - 90 .3 OTHER BUSINESS ITEMS
 - A Ordinance: Interim Floodplain Development Regulations
 - B Resolution: Mayoral Declarations of Emergency
 - C Ordinance: Confirmation of Curfew Order
 - D Discussion: Executive Veto of Ordinance 3358
 - E Executive Session, if needed
 - 100 NEW BUSINESS
 - 110 ADJOURNMENT

THE PUBLIC IS INVITED TO ATTEND

Parking and meeting rooms are accessible for persons with disabilities. Individuals requiring reasonable accommodations may request written materials in alternate formats, sign language interpreters, language interpreters, physical accessibility accommodations, or other reasonable accommodations by contacting 425-670-5023 no later than 3pm on Friday before the meeting. Persons who are deaf or hard of hearing may contact the event sponsor through the Washington Relay Service at 7-1-1.

"El estacionamiento y las salas de junta cuentan con acceso para personas con discapacidad. Las personas que requieran de adaptaciones razonables pueden solicitar materiales impresos en formatos alternativos como intérpretes de lenguaje de señas, intérpretes de idiomas, asistencia física para acceso, así como otros ajustes razonables. Pueden comunicarse al numero 425-670-5023 antes de las 3:00 pm del Viernes antes a la reunión. Las personas con discapacidad auditiva o con problemas de audición pueden comunicarse con el patrocinador del evento a través del Washington Relay Service al 7-1-1."

Regular Business Meetings are held on the second and fourth Mondays of the month. They are videotaped for broadcast on Comcast Channel 21 and FIOS - Frontier Channel 38 on Wednesdays at 7:30p.m. and Sundays at 7:00a.m. and 2:00p.m.

CITY COUNCIL ITEM 30-A

**CITY OF LYNNWOOD
Executive**

TITLE: Special Work Session ~ May 14, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:

[May 14 Minutes](#)

Type:

Backup Material

CITY OF LYNNWOOD
CITY COUNCIL MEETING MINUTES
May 14, 2020

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- 10. CALL TO ORDER - The May 14, 2020 Special Council Meeting of the Lynnwood City Council, held via Zoom, was called to order by Council President Frizzell at 3:00 p.m.
- 20. ROLL CALL

Mayor & Council:
Mayor Nicola Smith (absent)
Council President Christine Frizzell, Chair
Council Vice President Shannon Sessions
Councilmember Ruth Ross
Councilmember Ian Cotton
Councilmember George Hurst
Councilmember Julieta Altamirano-Crosby
Councilmember Jim Smith

Others Attending:
Finance Director Sonja Springer
Budget Supv. Janella Lewis
Strategic Planner Corbitt Loch
Dir. Ec. Devt./Interim CD David Kleitsch
Human Resources Director Evan Chinn

Asst. City Administrator Art Ceniza
Acting City Clerk Karen Fitzthum

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- 1. Discussion of COVID-19 Finance Related Issues
 - a. Survey Results of COVID-19 Financial Preparedness from other cities

Strategic Planner Corbitt Loch presented survey results from other cities related to managing 2020 expenditures in response to financial impacts of COVID. Questions and answers followed.
 - b. Review Budget Message #2 to Employees Sent Friday, May 8

Finance Director Sonja Springer reviewed a memo sent to employees regarding financial impacts of the COVID-19 on the City’s 2020 Budget. Questions and answers followed. Asst. City Administrator Ceniza reported on a Snohomish County Mayors Meeting he attended today on behalf of Mayor Smith.
 - c. Review Other Options for Funding the Remaining \$1.8 Million Gap from COVID-19 Voluntary Separation Agreement Program

Human Resources Director Chinn reviewed the Voluntary Separation Agreement Program which the city is offering in order to mitigate the significant budget shortfall. He gave an overview of the program, reviewed who is eligible to

1 participate, and explained the application and approval process. Councilmembers
2 commented on the proposal and asked clarifying questions.

3
4 d Review Other Options for Funding the Remaining \$1.8 Million Gap from
5 COVID-19

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7 Finance Director Sonja Springer reported on the General Fund Revenue-Expenditure
8 Gap for 2020. She discussed policy revenues for the Council to consider: 1) keeping
9 permit revenues and/or sales tax revenues that are currently transferred into the
10 Economic Development Infrastructure Fund (EDIF) in the General Fund, and/or 2)
11 temporarily dip below the financial policy of maintaining 2 ½ months of operating
12 expenditures in the General Fund reserves with a solid plan to replenish the reserves
13 over the 2021-2022 biennium. Questions and answers followed. Councilmembers
14 commented on the different options.

15
16 *Policy Question #1: Should the funding of the EDIT Fund be temporarily suspended?*

17
18 There was consensus to direct staff to draft two ordinances – one to cap sales tax
19 revenue at the 2019 amount and one to discontinue the transfer of permit fee
20 revenues to EDIT and keep all permit revenues in the General Fund for now.

21
22 *Policy Question #2: Should there be a temporary reduction to General Fund*
23 *Reserves?*

24
25 There was not a consensus to change anything related to the General Fund Reserves.

26
27 110. ADJOURNMENT

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29 The meeting was adjourned at 4:58 p.m.

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Nicola Smith, Mayor

CITY COUNCIL ITEM 30-B

**CITY OF LYNNWOOD
Executive**

TITLE: Work Session ~ May 18, 2020

DEPARTMENT CONTACT: Leah Jensen

DOCUMENT ATTACHMENTS

Description:	Type:
May 18, 2020 Minutes	Backup Material

1 **MINUTES OF THE WORK SESSION OF THE LYNNWOOD CITY COUNCIL**
2 **HELD MONDAY, MAY 18, 2020 AT 7:00pm VIA ZOOM**
3

4 **Attendance:**

5 Mayor Nicola Smith
6 Council President Christine Frizzell
7 Council Vice President Shannon Sessions
8 Council Member Ian Cotton
9 Council Member Ruth Ross
10 Council Member George Hurst
11 Council Member Jim Smith
12 Council Member Julieta Altamirano-Crosby
13
14 Assistant City Administrator Art Ceniza
15 Interim City Clerk Karen Fitzthum
16

Others:

IT Director Will Cena
Interim Planning Manager Ashley Winchell
Dir. Ec. Devt./Interim Comm Devt. David Kleitsch
Commander Chuck Steichen

17
18 **Comments and Questions on Memo Items**

- 19
20 M-1 Contract Supplement for Construction Engineering Services Sanitary Sewer Lift Stations 4 & 8
21 Improvements
22 • Mayor Smith solicited comments. There were no comments on this item.
23
24 M-2 Interagency Agreement Funding Authorization – Wastewater Treatment Plant Odor Control and
25 Building Contracting
26 • Mayor Smith solicited comments. There were no comments on this item.
27

28 **COVID-19 Update**

- 29 • Commander Steichen gave an update on statistics related to COVID-19 and regulations
30 regarding the Governor’s phases for reopening. He reported on a new Healthy Connections
31 program, food bank activities, face covering requirements, court activities, and the CARES
32 Act funding.
33 • Council questions and answers followed. There was discussion about what the City can do to
34 assist local businesses and the importance of reaching out to business owners to find out what
35 they actually need.
36

37 **Briefing: Impacts of COVID-19 on Information Technology Department Operations**

- 38 • IT Director Cena gave the update regarding the impacts of COVID-19 on Lynnwood’s IT
39 Department operations including public Zoom meetings and employees’ ability to work
40 remotely. He also discussed how his department came up with \$300,000 in spending
41 reductions.
42 • Council questions and answers followed.
43

44 **Briefing: Impacts of COVID-19 on Human Resources Department Operations**

- 45 • Human Resources Director Chinn gave the update regarding the impacts of COVID-19 on
46 Lynnwood’s Human Resources Department operations. He reviewed how employees are
47 currently working remotely, the large issue of unemployment fraud they are having to deal
48 with, impacts of implementing the Coronavirus Relief Act which took effect on April 1,
49 employee communications efforts, employee morale and mental health support, education

- 50 efforts, hiring and recruiting challenges, the Voluntary Separation Program, and expenditure
51 reductions.
- 52 • Council questions and answers followed.

53
54 **Ordinance: Funding for Affordable and Supporting Housing Pursuant to SHB 1406**

- 55 • Interim Planning Manager Winchell gave an update on the ordinance related to funding for
56 affordable and supporting housing pursuant to SHB 1406. SHB 1406 allows cities to create a
57 sales tax revenue sharing program so they can access a portion of state sales tax revenues to
58 make local investments in affordable housing. The related required resolution was passed on
59 December 9.
- 60 • Council questions and answers followed. There was consensus to support this ordinance for
61 the benefit of the City, and follow up with discussion later about how to spend the funds.
62 There was clarification about the fact that this is not a new tax, just a redistribution of the
63 current revenue.

64
65 **Discussion: Waiving Tax on Water/Sewer Bill during COVID-19**

- 66 • Councilmember Smith explained his intent was to eliminate the 6% tax on water and sewer,
67 but not just during COVID-19. He spoke in support of eliminating it now because the need so
68 great, and then figuring out how to budget so the City doesn't need this tax. He requested that
69 the appropriate resolution related to this be provided to the Council for next week.
- 70 • Discussion followed. It was noted that this would be on the agenda for next week.
71 Councilmembers were asked to forward a list of questions and items to be considered related
72 to this to Council leadership.

73
74 **Executive Session – if needed**

- 75 • None.

76
77 **Mayor Comments and Questions**

- 78 • Mayor Smith thanked the Council for their grace in her absence due to a family crisis.

79
80 **Council President and Council Comments**

- 81 • Councilmembers shared comments and concerns.

82
83 **Adjourn**

- 84 • Meeting adjourned at 9:11 p.m.

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Nicola Smith, Mayor

CITY COUNCIL ITEM 60-A

CITY OF LYNNWOOD Executive

TITLE: COVID-19 Update

DEPARTMENT CONTACT: Christine Frizzell, Council Vice President

SUMMARY:

The City continues to monitor and respond to the COVID-19 emergency. The Council will receive an update from City staff.

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 60-B

**CITY OF LYNNWOOD
Executive**

TITLE: Presentation: Impacts of COVID-19 on Sno-Isle Library Operations

DEPARTMENT CONTACT: Leah Jensen

SUMMARY:

Sno-Isle Libraries Executive Director Lois Langer Thompson will brief Councilmembers on how the COVID-19 health crisis has impacted library operations.

DOCUMENT ATTACHMENTS

Description:	Type:
060820 Sno-Isle Library Presentation	Backup Material

Sno-Isle Libraries @ work for you

Lois Langer Thompson
Executive Director, Sno-Isle Libraries

Contact-free services

We are in the final stages of preparation to start contact-free services including curbside pickup and accepting returns of library materials. A date has not been set, but we anticipate starting services soon after Snohomish County moves into State Phase 2.

Other contact-free services are in development to further extend our services into the community.

How we're preparing for contact-free services

We have a safe work plan, facial covering guidance, and on-site and self-evaluation checklists for staff in place. We are deep cleaning our libraries and will quarantine materials after they are returned. We are completing the requirements for all of our libraries to meet the guidelines for service in State Phase 2.

We're @ work for you

We have seen our customers take the opportunity to discover, use, and enjoy our online [eBooks and audio books](#), [services](#), and [events](#) including family story times, trivia events, craft clubs, Reading with Rover, and more. Online, you can [book a librarian](#), [ask a question](#), or [get a library card](#). You can discover all of our online services at www.sno-isle.org. We also have Wi-Fi available in all of our library parking lots and you can always give us a call. The good news is that all of these resources and services will continue to be available to you going forward.

Over the past three months, we have reached out by phone to nearly 54,000 Sno-Isle customers. These have been delightful conversations and we enjoyed connecting with customers about library services and hearing what services and assistance they need.

Please continue to connect with us [online](#) or give us a call at 360-651-7000 for the latest news and information on when we will begin offering contact-free customer service.

CITY COUNCIL ITEM 60-C

CITY OF LYNNWOOD Administrative Services

TITLE: Presentation: Impacts of COVID-19 on Administrative Services Operations

DEPARTMENT CONTACT: Sonja Springer, Finance Director

SUMMARY:

Sonja Springer, Finance Director will present information related to the impacts of COVID-19 to the Administrative Services department. This will include how the City is trying to help utility customers with paying their bills during this financially challenging time.

DOCUMENT ATTACHMENTS

Description:	Type:
Adminstrative Services Impact from COVID-19	Backup Material
Utility Bills Reduced Rates Programs Flier	Backup Material

Date: June 8, 2020

To: City Council
Mayor Nicola Smith

From: Finance Director Sonja Springer

Re: Administrative Services COVID-19 Council Briefing

Utility Billing Impacts

To assist our utility billing customers with the financial impacts of COVID-19, the City has not assessed any late penalties, nor have any customers had their water shut off for non-payment since March 23. The customers are appreciative of the City helping them by not applying penalties during this time and allowing them more time to pay their bills.

Due to the extended payment period, there has been an increase to the amounts owed to the City, or, the City's "accounts receivable". Next week we will start sending out friendly payment reminder notices so the balances don't grow to a point where the customers will have difficulty paying them off.

More customers are taking advantage of the City's low-income reduced rates and rebate programs. Beginning on April 30 and through June 25, a new information flyer has been included with the utility bills about the available low-income programs and the new website that offers auto pay, paperless billing as well as Lynnwood Self-Serve. This new flyer has increased interest from utility customers seeking help. There has been an increase of about 20-25% of customers applying for these programs. This flyer is currently being translated into Spanish and Korean. Shortly after March 23, a new shared email inbox was set up for customers to email their discount program questions directly to the utility billing staff: ubdiscounts@lynnwoodwa.gov

Only a few small commercial businesses have called in to close their accounts. To accommodate small and temporarily closed businesses, the City has implemented a process called "Inactive Water Status" when there has been no water consumption within the current bill period by the customer. The commercial customers with no water usage under "Inactive Water Status" do not pay for any water consumption charges, no water base charges nor any taxes on water charges.

Since City Hall has been closed, there have been more payments made though the drop box and the cashiers are receiving more calls. Since March 23, there has been one utility billing staff member at the office, and two utility billing staff telecommuting. Both cashiers/receptionists at City Hall have been at the office throughout the closure of City Hall to assist customers and answer the phones "live", where the customers take comfort in knowing they are being heard instead of leaving a recorded message.

Emergency Operations Center (EOC) Assistance

Our City Treasurer, Cyndie Eddy, is the EOC Logistics Chief and has been responsible for ordering and distributing personal protection equipment (PPE) for all City staff. She has also been responsible for tracking all COVID-19 related expenses.

Impacts on 2021-2022 Budget Process

Due to the time involved with forecasting, the calculations of cost-saving measures, such as the current freeze in hiring, we delayed the kick-off of the official budget season by about a week to May 27. Understanding and adjusting forecasted revenues and expenditures is critical but has reduced the amount of staff time available to work on preparing the 2021-2022 Budget and other priorities. However, this will not affect the existing schedule adopted by Resolution 2020-02 for the development of the Mayor's Preliminary Budget for 2021-2022.

Our work to develop an accurate, streamlined budget is on schedule. This budget will continue our practice of improving and innovating to create a better budget document. However, the societal and economic uncertainty created by COVID-10 has hindered our ability to develop meaningful community outreach for the 2021-2022 budget.

Other Administrative Services Staff Work Impacts due to COVID-19

- The City's annual audit performed by the State Auditor's office kicked off in late March and is being done 100% remotely. This can be accomplished because Information Technology has allowed the auditors remote access to the City's financial files and also to our financial system, Munis.
- Our Grant Accountant, Serena Battulga, has been accounting for all COVID-19 related costs for reimbursement from the Department of Justice Grant, as well as for the CARES Act funding.
- The Accounting staff have been busy working remotely and preparing the City's Comprehensive Annual Financial Report (CAFR) for the past several months. This work has all been done while the staff has been telecommuting.
- Telecommuting for the staff has been very beneficial during the COVID-19 pandemic. The staff has been very efficient and productive, while keeping safe and healthy. The staff appreciate their reduced commute time.
- Out of the staff of 19, 12 staff are routinely working from home. There are only 7 staff that are currently routinely working from the office at City Hall:
 - 1 utility billing staff person
 - 2 front desk receptionists
 - 3 payroll staff
 - 1 accounts payable staff person



City of Lynnwood 19100 44th Ave W 98036

**Questions?
Applications**

**UBdiscounts@lynnwoodwa.gov or 425-670-5164
www.lynnwoodwa.gov**

**PROPERTY TAX EXEMPT? LOW INCOME 61+ OR DISABLED? TANF/SNAP?
FREE OR REDUCED LUNCH?**

The city offers either reduced rates or rebates to qualified occupants of residential properties (only) within the corporate limits of the City of Lynnwood.

REDUCED RATES- The City of Lynnwood provides two types of reduced rates to City of Lynnwood utility customers. Apply any time. Renew each year.

PROPERTY TAX EXEMPT- Special Rates for those who are Property Tax Exempt through Snohomish County. To apply for a property tax exemption contact Snohomish County at 425-388-3540 OR snohomishcountywa.gov/326. Once you are approved for a Snohomish County property tax exemption you can apply for City of Lynnwood reduced utility rates.

TANF/SNAP- Special utility rates for those who are receiving assistance from one of these Washington State assistance programs.

REBATES- *The City of Lynnwood offers three types of rebates to residential occupants with or without a utility account. Select one that fits your circumstances and apply during the time shown below, only. Must reapply each year.*

WHO- Low-Income Lynnwood residents who complete and return their application with required documentation during the dates shown below and who qualify based on their circumstances.

WHAT & WHEN - *To qualify for one of the three rebates you must fit into 1 of these categories:*

1. Have children approved for Free/Reduced Lunch through the Edmonds School District. Applications accepted by the city each year from 9/1 to 10/31 only.
2. Be low income, 61+ or Disabled. *New* applications accepted 7/1 to 8/31. Submit *renewal* application with required documents 6/1-8/31 each year.
3. Be property tax exempt through Snohomish County. Own and occupy a multiple or mobile unit property where the city provides the service, but you are not directly billed by the city. Applications accepted 10/1 to 11/1 each year. (To apply for Property Tax Exemption through Snohomish County call 425-388-3540 OR see their website at snohomishcountywa.gov/326.)

WHERE- Return your completed application with all required documents to City Hall via email to UBdiscounts@lynnwoodwa.gov. You may also put your application in our drive-up drop box across from the main door of City Hall or send your documents through US mail.

WHY- In June of 2007, the City Council adopted ordinances providing for utility rate discounts and rebates for residents inside the City of Lynnwood who meet specific criteria. LMC Ordinance No. 3345

HOW- If you meet the above conditions if you wish to apply for a rate reduction or a rebate. Submit a completed application with all supporting documents within the dates listed. All applications and more details can be found on our website, www.lynnwoodwa.gov.

60-C-4

CITY COUNCIL ITEM 90.1-A

CITY OF LYNNWOOD Executive

TITLE: Voucher Approval

DEPARTMENT CONTACT: Leah Jensen

ACTION:

Approve Claims and Payroll in the amount of \$1,413,862.18 and \$1,070,333.91 respectively.

BACKGROUND:

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available

CITY COUNCIL ITEM 90.3-B

CITY OF LYNNWOOD Public Works

TITLE: Ordinance: Interim Floodplain Development Regulations

DEPARTMENT CONTACT: Derek Fada, Environmental and Surface Water Supervisor

SUMMARY:

The FEMA National Flood Insurance Program (NFIP) was established with the passage of the National Flood Insurance Act of 1968. The NFIP is a federal program enabling property owners in participating communities to purchase flood insurance as protection against flood losses, while requiring state and local governments to enforce floodplain management ordinances that aim to reduce future flood damage. Lynnwood is a participating community and has been for over 30 years.

The City of Lynnwood desires to continue to participate in the NFIP and must update its Flood Hazard Area Regulations for consistency with current federal requirements by June 19th, 2020 in order to continue doing so. Due to COVID-19, public hearings are not being held before the City Council, and therefore these regulations cannot be updated at this time.

RCW 35A.63.220 and RCW 36.70A. 390 authorize the City Council to immediately adopt interim regulations and interim official controls without first holding a public hearing, to be effective for a period of up to six (6) months, so long as the City Council holds a public hearing on the interim regulations within sixty (60) days of the ordinance's adoption.

Unless the City adopts the attached interim regulations to amend the City's Flood Hazard Area code provisions consistent with federal law, the City's ability to participate in NFIP will lapse and property owners in the City will be unable to obtain certain flood insurance.

ACTION:

Adopt the proposed interim ordinance, updating the City's Floodplain Development Regulations (LMC 16.46), and establish a date for a public hearing on the interim regulations for July 27th, if not before.

FUNDING:

There are no budgetary impacts associated with this action.

ADMINISTRATION RECOMMENDATION:

Adopt the interim ordinance, and continue to participate in the FEMA Flood Insurance Program.

DOCUMENT ATTACHMENTS

Description:	Type:
Interim Ordinance Floodplain Regulations	Backup Material



ORDINANCE NO. XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, ESTABLISHING INTERIM FLOOD HAZARD AREA REGULATIONS; AMENDING CHAPTER 16.46 OF THE LYNNWOOD MUNICIPAL CODE; SETTING A DATE FOR A HEARING ON THE INTERIM REGULATIONS; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND SUMMARY PUBLICATION.

WHEREAS, the City of Lynnwood has areas designated by the Federal Emergency Management Agency (FEMA) as Special Flood Hazard Areas inundated by a 100-year flood; and

WHEREAS, FEMA requires the City to adopt flood plain management measures and regulations that are consistent with 44 Code of Federal Regulations (CFR) Section 60.3 of the National Flood Insurance Program regulations; and

WHEREAS, consistent with federal requirements at the time, the City adopted Flood Hazard Area regulations, codified at Chapter 16.46 of the Lynnwood Municipal Code, which in part regulate the development of land within the areas designated as Special Flood Hazard Areas; and

WHEREAS, the City of Lynnwood participates in the National Flood Insurance Program (NFIP), allowing those within the City to purchase flood insurance, should they wish; and

WHEREAS, the City of Lynnwood desires to continue to participate in the NFIP, and must update its Flood Hazard Area Regulations for consistency with current federal requirements by June 19th, 2020 in order to do so; and

WHEREAS, adoption of amendments to development regulations are subject to a public hearing process, among other procedural requirements; and

WHEREAS, on March 23, 2020, Governor Inslee issued the “Stay Home, Stay Healthy” proclamation (Proclamation 20-25) prohibiting all people in Washington State from leaving their homes and participating in gatherings of any kind, except for limited activities; and

WHEREAS, the Governor has extended Proclamation 20-25, and has established a four phase re-opening plan, but the four phase plan is not expected to be fully implemented until mid-July at the earliest; and

45 WHEREAS, consistent with Proclamation 20-25, Governor Inslee issued Proclamation 20-
46 28, as amended and extended, which prohibits in-person meetings that are subject to the Open
47 Public Meetings Act and places restrictions on the conduct of Open Public Meetings Act
48 meetings for so long as Proclamation 20-28 is in effect; and

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50 WHEREAS, the City needs additional time to complete the procedures, including a public
51 hearing, necessary for the adoption of the permanent amendments to the City’s Flood Hazard
52 Area regulations as required by FEMA for participation in the NFIP; and

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54 WHEREAS, RCW 35A.63.220 and RCW 36.70A. 390 authorize the City Council to
55 immediately adopt interim regulations and interim official controls without first holding a
56 public hearing, to be effective for a period of up to six (6) months, so long as the City Council
57 holds a public hearing on the interim regulations within sixty (60) days of the ordinance’s
58 adoption; and

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60 WHEREAS, unless the City adopts interim regulations to amend the City’s Flood Hazard
61 Area code provisions consistent with federal law, the City’s ability to participate in NFIP will
62 lapse and property owners in the City will be unable to obtain certain flood insurance; and

63
64 WHEREAS, the City Council adopts the foregoing recitals as its findings of fact justifying
65 the adoption of these interim regulations to protect the public health, safety and welfare of the
66 residents and property owners of the City; and

67
68 WHEREAS, the City Council finds that due to COVID-19, an emergency exists and this
69 interim ordinance is necessary for continued participation in the FEMA NFIP until such time as a
70 public hearing can be held; and

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72 WHEREAS, the City Council after due consideration has determined that the interim
73 regulations stated in this Ordinance are in the best interests of the public and necessary for the
74 protection of the public health, safety, and general welfare; now, therefore

75
76 NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO
77 ORDAIN AS FOLLOWS:

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79 Section 1: Findings. The recitals set forth above are hereby adopted as the City Council’s
80 findings in support of the interim regulations stated in this Ordinance. The City Council may, in
81 its discretion, adopt additional or revised findings at the conclusion of the public hearing
82 referenced in Section 4 below.

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84 Section 2: Amendments. Chapter 16.46 of the Lynnwood Municipal Code is hereby amended
85 to read:

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Chapter 16.46
FLOOD HAZARD AREA REGULATIONS

Sections:

- 16.46.010 Statement of purpose.**
- 16.46.020 Definitions.**
- 16.46.030 General provisions.**
- 16.46.040 Administration.**
- 16.46.050 Provisions for flood hazard protection.**
- 16.46.060 Severability.**

16.46.010 Statement of purpose.

A. It is the purpose of this legislation to promote the public health, safety, and general welfare, and to avoid or abate public nuisances, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money and costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
7. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
8. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

B. Methods of Reducing Flood Losses. In order to accomplish its purposes, this legislation includes methods and provisions for:

1. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
4. Controlling filling, grading, dredging, and other development which may increase flood damage; and
5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

16.46.020 Definitions.

130 Unless specifically defined below, words or phrases used shall be interpreted so as to give them
131 the meaning they have in common usage and to give this legislation its most reasonable
132 application.

133 “Alteration of watercourse” means any action that will change the location of the channel
134 occupied by water within the banks of any portion of a riverine waterbody.

135 “Appeal” means a request for a review of the director of public work’s interpretation of any
136 provision in this chapter or a request for a variance.

137 “Appeal board” means a three-member board appointed by the mayor to hear and determine
138 appeals.

139 “Area of shallow flooding” means a designated AO or AH zone on the Flood Insurance Rate Map
140 (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not
141 exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be
142 evident. AO is characterized as sheet flow, and AH indicates ponding.

143 “Area of special flood hazard” means the land in the flood plain within a community subject to
144 a one percent or greater chance of flooding in any given year. Designation on maps always
145 includes the letters “A” or “V”.

146 “Base flood” means the flood having a one percent chance of being equaled or exceeded in any
147 given year (also referred to as the “100-year flood”). ~~Designated on flood insurance rate maps~~
148 ~~by letters A or V.~~

149 “Basement” means any area of the building having its floor subgrade (below ground level) on all
150 sides.

151 “Coastal high hazard area” means an area of special flood hazard extending from offshore to
152 the inland limit of a primary frontal dune along an open coast and any other area subject to
153 high velocity wave action from storms or seismic sources.

154 “Critical facility” means a facility for which even a slight chance of flooding might be too great.
155 Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire
156 and emergency response installations, installations which produce, use, or store hazardous
157 materials or hazardous waste.

158 “Development” means any manmade change to improved or unimproved real estate, including
159 but not limited to buildings or other structures, mining, dredging, filling, grading, paving,
160 excavation or drilling operations, or storage of equipment or materials located within the area
161 of special flood hazard.

162 “Elevated building” means for insurance purposes, a non-basement building which has its
163 lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers,
164 pilings, or columns.

165 “Existing manufactured home park or subdivision” means a manufactured home park or
166 subdivision for which the construction of facilities for servicing the lots on which the
167 manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the
168 construction of streets, and either final site grading or the pouring of concrete pads) is
169 completed before the effective date of the adopted flood plain management regulations.

170 “Expansion to an existing manufactured home park or subdivision” means the preparation of
171 additional sites by the construction of facilities for servicing the lots on which the manufactured
172 homes are to be affixed (including the installation of utilities, the construction of streets, and
173 either final site grading or the pouring of concrete pads).

174 “Flood” or “flooding” means:
175 1. A general and temporary condition of partial or complete inundation of normally dry
176 land areas from:
177 a. The overflow of inland or tidal waters; ~~and/or~~
178 b. The unusual and rapid accumulation of runoff of surface waters from any
179 source; and/or
180 c. Mudslides (i.e., mudflows) which are proximately caused by flooding as
181 defined in paragraph (1)(b) of this definition and are akin to a river of liquid and
182 flowing mud on the surfaces of normally dry land areas, as when earth is carried
183 by a current of water and deposited along the path of the current.
184 2. The collapse or subsidence of land along the shore of a lake or other body of water as
185 a result of erosion or undermining caused by waves or currents of water exceeding
186 anticipated cyclical levels or suddenly caused by an unusually high water level in a
187 natural body of water, accompanied by a severe storm, or by an unanticipated force of
188 nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and
189 unforeseeable event which results in flooding as defined in paragraph (1)(a) of this
190 definition.
191 “Flood ~~insurance~~ elevation study” ~~(FIS) means the official report provided by the Federal~~
192 ~~Insurance Administration that includes flood profile, the flood insurance rate maps, and the~~
193 ~~water surface elevation of the base flood and~~ means the examination, evaluation and
194 determination of flood hazards and, if appropriate, corresponding water surface elevations, or
195 an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related
196 erosion hazards. Also known as Flood Insurance Study (FIS).
197 “Flood insurance rate map (FIRM)” means the official map on which the Federal Insurance
198 ~~Administration~~ Administrator has delineated both the areas of special flood hazards and the
199 risk premium zones applicable to the community.
200 “Floodplain or flood prone area” means any land area susceptible to being inundated by water
201 from any source. See “Flood or flooding.”
202 “Floodplain administrator” the community official designated by title to administer and enforce
203 the floodplain management regulations.
204 “Flood proofing” means any combination of structural and nonstructural additions, changes, or
205 adjustments to structures which reduce or eliminate risk of flood damage to real estate or
206 improved real property, water and sanitary facilities, structures, and their contents. Flood
207 proofed structures are those that have the structural integrity and design to be impervious to
208 floodwater below the Base Flood Elevation.
209 “Floodway” means the channel of a river or other watercourse and the adjacent land areas that
210 must be reserved in order to discharge the base flood without cumulatively increasing the
211 water surface elevation more than a designated height.
212 “Functionally dependent use” means a use which cannot perform its intended purpose unless it
213 is located or carried out in close proximity to water. The term includes only docking facilities,
214 port facilities that are necessary for the loading and unloading of cargo or passengers, and ship
215 building and ship repair facilities, and does not include long term storage or related
216 manufacturing facilities.

217 “Highest adjacent grade” means the highest natural elevation of the ground surface prior to
218 construction next to the proposed walls of a structure.

219 “Historic structure” means any structure that is:

220 1. Listed individually in the National Register of Historic Places (a listing maintained by
221 the Department of Interior) or preliminarily determined by the Secretary of the Interior
222 as meeting the requirements for individual listing on the National Register;

223 2. Certified or preliminarily determined by the Secretary of the Interior as contributing
224 to the historical significance of a registered historic district or a district preliminarily
225 determined by the Secretary to qualify as a registered historic district;

226 3. Individually listed on a state inventory of historic places in states with historic
227 preservation programs which have been approved by the Secretary of Interior; or

228 4. Individually listed on a local inventory of historic places in communities with historic
229 preservation programs that have been certified either:

230 a. By an approved state program as determined by the Secretary of the Interior,

231 or

232 b. Directly by the Secretary of the Interior in states without approved programs.

233 “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An
234 unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or
235 storage, in an area other than a basement area, is not considered a building’s lowest floor;
236 provided, that such enclosure is not built so as to render the structure in violation of the
237 applicable non-elevation design requirements of this chapter found at LMC 16.46.050(B)(1)(b).

238 “Manufactured home” means a structure, transportable in one or more sections, which is built
239 on a permanent chassis and is designed for use with or without a permanent foundation when
240 connected to the required utilities. For flood plain management purposes, the term
241 “manufactured home” also includes park trailers, travel trailers, and other similar vehicles
242 placed on a site for greater than 180 consecutive days. For insurance purposes the term
243 “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.
244 The term “manufactured home” does not include a recreational vehicle.

245 “Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land
246 divided into two or more manufactured home lots for rent or sale.

247 “Mean sea level” for purposes of the National Flood Insurance Program, the vertical datum to
248 which Base Flood Elevations shown on a community's Flood Insurance Rate Map are
249 referenced.

250 “New construction” means for the purpose of determining insurance rates, structures for which
251 the start of construction commenced on or after the effective date of an initial Flood Insurance
252 Rate Map or after December 31, 1974, whichever is later, and includes any subsequent
253 improvements to such structures. For floodplain management purposes, new construction
254 means structures for which the start of construction commenced on or after the effective date
255 of a floodplain management regulation adopted by a community and includes any subsequent
256 improvements to such structures. ~~the ordinance codified in this chapter.~~

257 “New manufactured home park or subdivision” means a manufactured home park or
258 subdivision for which the construction of facilities for servicing the lots on which the
259 manufactured homes are to be affixed (including at a minimum, the installation of utilities, the

260 construction of streets, and either final site grading or the pouring of concrete pads) is
261 completed on or after the effective date of adopted flood plain management regulations.

262 “Recreational vehicle” means a vehicle which is:

- 263 1. Built on a single chassis;
- 264 2. Four hundred square feet or less when measured at the largest horizontal projection;
- 265 3. Designed to be self-propelled or permanently towable by a light duty truck; and
- 266 4. Designed primarily not for use as a permanent dwelling but as temporary living
267 quarters for recreational, camping, travel, or seasonal use.

268 “Start of construction” includes substantial improvement, and means the date the building
269 permit was issued, provided the actual start of construction, repair, reconstruction, placement
270 or other improvement was within 180 days of the permit date. The actual start means either
271 the first placement of permanent construction of a structure on a site, such as the pouring of
272 slab or footings, the installation of piles, the construction of columns, or any work beyond the
273 stage of excavation; or the placement of a manufactured home on a foundation. Permanent
274 construction does not include land preparation, such as clearing, grading, and filling; nor does it
275 include the installation of streets and/or walkways; nor does it include excavation for a
276 basement, footings, piers, or foundations, or the erection of temporary forms; nor does it
277 include the installation on the property of accessory buildings, such as garages or sheds not
278 occupied as dwelling units or not as part of the main structure. For a substantial improvement,
279 the actual start of construction means the first alteration or any wall, ceiling, floor, or other
280 structural part of a building, whether or not that alteration affects the external dimensions of
281 the building.

282 “Structure” means a walled and roofed building or manufactured home including a gas or liquid
283 storage tank that is principally above ground.

284 “Substantial damage” means damage of any origin sustained by a structure whereby the cost of
285 restoring the structure to its before-damaged condition would equal or exceed 50 percent of
286 the market value of the structure before the damage occurred.

287 “Substantial improvement” means any ~~repair~~ reconstruction, rehabilitation, addition or
288 improvement of a structure, the cost of which equals or exceeds 50 percent of the market value
289 of the structure before the start of construction of the improvement. This term includes
290 structures which have incurred substantial damage, regardless of the actual repair work
291 performed. The term does not, however, include, either:

- 292 ~~1. Before the improvement or repair is started; or~~
- 293 ~~2. If the structure has been damaged and is being restored, before the damage~~
294 ~~occurred. For the purposes of this definition, “substantial improvement” is~~
295 ~~considered to occur when the first alteration of any wall, ceiling, floor, or other~~
296 ~~structural part of the building commences, whether or not that alteration affects the~~
297 ~~external dimensions of the structure.~~

298 ~~The term does not, however include either:~~

- 299 1. Any project for improvement of a structure to ~~comply~~ correct existing violations of
300 state or local health, sanitary, or safety code specifications that have been previously
301 identified by the local code enforcement official and which are ~~solely~~ the minimum
302 necessary to assure safe living conditions; or

303 2. Any alteration of a historic structure ~~listed on the National Register of Historic Places~~
304 ~~or a State Inventory of Historic Places.~~ provided that the alteration will not preclude the
305 structure's continued designation as a historic structure.

306 "Variance" means a grant of relief from the requirements of this legislation which permits
307 construction in a manner that would otherwise be prohibited by this chapter.

308 "Water dependent" means a structure for commerce or industry which cannot exist in any
309 other location and is dependent on the water by reason of the intrinsic nature of its operations.

310

311 **16.46.030 General provisions.**

312 A. Lands to Which This Chapter Applies. This legislation shall apply to all areas of special flood
313 hazards within the jurisdiction of the city of Lynnwood.

314 B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard
315 identified by the Federal Insurance ~~Administration~~ Administrator in a scientific and engineering
316 report entitled "The Flood Insurance Study for Snohomish County, Washington and
317 Incorporated Areas," dated ~~November 9, 1999~~ June 19, 2020, as amended, with accompanying
318 flood insurance rate maps as amended, are hereby adopted by reference and declared to be
319 part of this chapter. The flood insurance study and the flood insurance rate map are on file at
320 the city of Lynnwood public works department. The best available information for flood hazard
321 area identification as outlined in LMC 16.46.040(C)(2) shall be the basis for regulation until a
322 new FIRM is issued which incorporates the data utilized under LMC 16.46.040(C)(2).

323 C. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located,
324 extended, converted, or altered without full compliance with the terms of this chapter and
325 other applicable regulations. Violation of the provisions of this chapter by failure to comply
326 with any of its requirements (including violations of conditions and safeguards established in
327 connection with conditions) shall constitute a misdemeanor. Any person who violates this
328 chapter or fails to comply with any of its requirements shall upon conviction thereof be fined
329 not more than \$500.00 or imprisoned for not more than 90 days, or both, for each violation,
330 and in addition shall pay all costs and expenses involved in the case. Nothing herein contained
331 shall prevent the city of Lynnwood from taking such lawful action as is necessary to prevent or
332 remedy any violation.

333 D. Abrogation and Greater Restrictions. This legislation is not intended to repeal, abrogate, or
334 impair any existing easements, covenants, or deed restrictions. However, where this chapter
335 and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever
336 imposes the more stringent restrictions shall prevail.

337 E. Interpretation. In the interpretation and application of this legislation, all provisions shall be:

- 338 1. Considered as minimum requirements;
- 339 2. Liberally construed in favor of the governing body; and
- 340 3. Deemed neither to limit nor repeal any other powers granted under law.

341 F. Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is
342 considered reasonable for regulatory purposes and is based on scientific and engineering
343 considerations. Larger floods can and will occur on rare occasions. Flood heights may be
344 increased by manmade or natural causes. This legislation does not imply that land outside the
345 areas of special flood hazards or uses permitted within such areas will be free from flooding or
346 flood damages. This legislation shall not create liability on the part of the city of Lynnwood, any

347 officer or employee thereof, or the Federal Insurance Administration, for any flood damages
348 that result from the reliance on this legislation or any administrative decision lawfully made
349 thereunder.

350

351 **16.46.040 Administration.**

352 A. Establishment of Development Permit.

353 1. Development Permit Required. A development permit shall be obtained before
354 construction or development begins within any area of special flood hazard established
355 in LMC 16.46.030 (B). The permit shall be for all structures including manufactured
356 homes, as set forth in LMC 16.46.020, Definitions, and for all development including fill
357 and other activities, also as set forth in LMC 16.46.020, Definitions.

358 2. Application for Development Permit. Application for a development permit shall be
359 made on forms furnished by the city of Lynnwood and may include but not be limited
360 to: plans in duplicate drawn to scale showing the nature, location, dimensions, and
361 elevations of the area in question; existing or proposed structures, fill, storage or
362 materials, drainage facilities, and the location of the foregoing. Specifically, the
363 following information is required:

364 a. Proposed elevation in relation to mean sea level, of the lowest floor (including
365 basement) of all structures;

366 b. Proposed elevation in relation to mean sea level to which any structure will be
367 floodproofed;

368 c. Certification by a registered professional engineer or architect that the
369 floodproofing methods for any nonresidential structure meet the floodproofing
370 criteria in LMC 16.46.050(B)(2); and

371 d. Description of the extent to which a watercourse will be altered or relocated
372 as a result of proposed development.

373 3. No development permit will be issued for construction or development in Zones V or
374 VE.

375 B. Designation of the Public Works Director. The city director of public works or his designee is
376 hereby appointed to administer, ~~and~~ implement and enforce this legislation by granting or
377 denying development permit applications in accordance with its provisions.

378 C. Duties and Responsibilities of the Public Works Director. Duties of the director of public
379 works shall include, but not be limited to:

380 1. Permit Review.

381 a. Review all development permits to determine that the permit requirements of
382 this chapter have been satisfied;

383 b. Review all development permits to determine that all necessary permits have
384 been obtained from those federal, state, or local governmental agencies from
385 which prior approval is required;

386 c. Review all development permits to determine the site is reasonably safe from
387 flooding; and

388 d. Review all development permits to determine if the proposed development is
389 located in the floodway. If located in the floodway, assure that the
390 encroachment provisions of LMC 16.46.050(C)(1) are met.

391 2. Use of Other Base Flood Data. When base flood elevation data has not been provided
392 in accordance with LMC 16.46.030(B), Basis for Establishing the Areas of Special Flood
393 Hazard, the public works director shall obtain, review, and reasonably utilize any base
394 flood elevation and floodway data available from a federal, state, or other source, in
395 order to administer LMC 16.46.050(B), Specific Standards, and 16.46.050 (C), Floodways.

396 3. Information to be Obtained and Maintained.

- 397 a. ~~Where base flood elevation data is provided through the Flood Insurance~~
398 ~~Study or required as in subsection (C)(2) of this section, O~~Obtain and ~~record~~
399 maintain the actual (as-built) elevation ~~(in relation to mean sea level)~~ of the
400 lowest floor, including basement, of all new or substantially improved structures,
401 and whether or not the structure contains a basement;
- 402 b. For all new or substantially improved floodproofed structures:
- 403 i. Verify and record the actual elevation ~~(in relation to mean sea level)~~ to
404 which the structure was floodproofed; and
- 405 ii. Maintain the floodproofing certifications required in subsection
406 (A)(2)(c) of this section; and
- 407 c. Maintain for public inspection all records pertaining to the provisions of this
408 legislation.

409 4. Alteration of Watercourses.

- 410 a. Notify adjacent communities and the Washington State Department of
411 Ecology prior to any alteration or relocation of a watercourse, and submit
412 evidence of such notification to the Federal Insurance ~~Administration~~
413 Administrator; and
- 414 b. ~~Require~~ Assure that the ~~that maintenance is provided within the altered or~~
415 ~~relocated portion of said watercourse so that the~~ flood-carrying capacity ~~is not~~
416 ~~diminished~~ of the altered or relocated portion of said watercourse is maintained.

417 5. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact
418 location of the boundaries of the areas of special flood hazards (for example, where
419 there appears to be a conflict between a mapped boundary and actual field conditions).
420 The person contesting the location of the boundary shall be given a reasonable
421 opportunity to appeal the interpretation as provided in subsection (D) of this section.

422 6. Base Flood Elevations may increase or decrease resulting from physical changes
423 affecting flooding conditions. As soon as practicable, but not later than six months after
424 the date such information becomes available, the Floodplain Administrator shall notify
425 the Federal Insurance Administrator of the changes by submitting technical or scientific
426 data in accordance with Volume 44 Code of Federal Regulations Section 65.3. Such a
427 submission is necessary so that upon confirmation of those physical changes affecting
428 flooding conditions, risk premium rates and floodplain management requirements will
429 be based upon current data.

430 7. Notify the Federal Insurance Administrator in writing of acquisition by means of
431 annexation, incorporation or otherwise, of additional areas of jurisdiction

432 D. Variance Procedure.

433 1. Appeal Board. The mayor shall appoint members to the three-member appeal board
434 as needed. Members shall have the educational and mechanical background and
435 experience to hear and determine appeals arising from this legislation.

- 436 a. The appeal board shall hear and decide appeals and requests for variances
437 from the requirements of this legislation;
- 438 b. The appeal board shall hear and decide appeals when it is alleged there is an
439 error in any requirement, decision or determination made by the director of
440 public works in the enforcement of this legislation;
- 441 c. Those aggrieved by the decision of the appeal board may appeal such decision
442 to the Snohomish County superior court as provided by law;
- 443 d. In passing upon such applications, the appeal board shall consider all technical
444 evaluations, all relevant factors, standards specified in other sections of this
445 legislation; and
 - 446 i. The danger that materials may be swept onto other lands to the injury
447 of others;
 - 448 ii. The danger to life and property due to flooding or erosion damage;
 - 449 iii. The susceptibility of the proposed facility and its contents to flood
450 damage and the effect of such damage on the individual owner;
 - 451 iv. The importance of the services provided by the proposed facility to
452 the community;
 - 453 v. The necessity to the facility of a waterfront location, where applicable;
 - 454 vi. The availability of alternative locations for the proposed use which are
455 not subject to flooding or erosion damage;
 - 456 vii. The compatibility of the proposed use with existing and anticipated
457 development;
 - 458 viii. The relationship of the proposed use to the comprehensive plan and
459 flood plain management program for that area;
 - 460 ix. The safety of access to the property in times of flood for ordinary and
461 emergency vehicles;
 - 462 x. The expected heights, velocity, duration, rate of rise, and sediment
463 transport of the flood waters and the effects of wave action, if applicable,
464 expected at the site;
 - 465 xi. The costs of providing governmental services during and after flood
466 conditions, including maintenance and repair of public utilities and
467 facilities such as sewer, gas, electrical, and water systems, and streets
468 and bridges;
- 469 e. Generally, the only condition under which a variance may be issued is for new
470 construction and substantial improvements to be erected on a lot of one-half
471 acre or less in size contiguous to and surrounded by lots with existing structures
472 constructed below the base flood level, providing items (i) through (xi) in
473 subsection (D)(1)(d) of this section have been fully considered. As the lot size
474 increases beyond the one-half acre, the technical justification required for
475 issuing the variance increases;

476 f. Upon consideration of the factors of subsection (D)(1)(d) of this section and
477 the purposes of this legislation, the appeal board may attach such conditions to
478 the granting of variances as it deems necessary to further the purposes of this
479 legislation;
480 g. The director of public works shall maintain the records of the appeal actions
481 and report any variances to the Federal Insurance Administration upon request.

482 2. Conditions for Variances.

483 a. Generally, the only condition under which a variance from the elevation
484 standard may be issued is for new construction and substantial improvements to
485 be erected on a lot of one-half acre or less in size contiguous to and surrounded
486 by lots with existing structures constructed below the base flood level, providing
487 items (1) through (11) in subsection (D)(1)(d) of this section have been fully
488 considered. As the lot size increases, the technical justification required for
489 issuing the variance increases;

490 b. Variances may be issued for the repair reconstruction, rehabilitation, or
491 restoration of historic structures ~~listed on the National Register of Historic Places~~
492 ~~or the state Inventory of Historic Places,~~ upon a determination that the
493 proposed repair or rehabilitation will not preclude the structure's continued
494 designation as a historic structure and the variance is the minimum necessary to
495 preserve the historic character and design of the structure;

496 c. Variances shall not be issued within a designated floodway if any increase in
497 flood levels during the base flood discharge would result;

498 d. Variances shall only be issued upon a determination that the variance is the
499 minimum necessary, considering the flood hazard, to afford relief;

500 e. Variance shall only be issued upon:

501 i. A showing of good and sufficient cause;

502 ii. A determination that failure to grant the variance would result in
503 exceptional hardship to the applicant;

504 iii. A determination that the granting of a variance will not result in
505 increased flood heights, additional threats to public safety, extraordinary
506 public expense, create nuisances, cause fraud on or victimization of the
507 public or conflict with existing local laws or ordinances;

508 f. Variances as interpreted in the National Flood Insurance Program are based on
509 the general zoning law principle that they pertain to a physical piece of property;
510 they are not personal in nature and do not pertain to the structure, its
511 inhabitants, economic or financial circumstances. They primarily address small
512 lots in densely populated residential neighborhoods. As such, variances from the
513 flood elevations should be quite rare;

514 g. Variances may be issued for nonresidential buildings in very limited
515 circumstances to allow a lesser degree of floodproofing than watertight or dry-
516 floodproofing, where it can be determined that such action will have low
517 damage potential, complies with all other variance criteria except subsection
518 (D)(2)(a) of this section, and otherwise complies with LMC 16.46.050(A) and (B);

519 h. Any applicant to whom a variance is granted shall be given written notice over
520 the signature of a community official that the issuance of a variance to construct
521 a structure ~~will be permitted to be built~~ with a lowest floor elevation below the
522 base flood elevation will result in increased premium rates for flood insurance up
523 to amounts as high as \$25 for \$100 of insurance coverage and that such
524 construction below the BFE increases risks to life and property. ~~and that the cost~~
525 ~~of flood insurance will be commensurate with the increased risk resulting from~~
526 ~~the reduced floor elevation~~
527

528 **16.46.050 Provisions for flood hazard protection.**

529 A. General Standards. In all areas of special flood hazards, the following standards are required:

530 1. Anchoring.

531 a. All new construction and substantial improvements shall be anchored to
532 prevent flotation, collapse, or lateral movement of the structure resulting from
533 hydrodynamic and hydrostatic loads, including the effects of buoyancy.

534 b. All manufactured homes must likewise be anchored to prevent flotation,
535 collapse, or lateral movement, and shall be installed using methods and practices
536 that minimize flood damage. Anchoring methods may include, but are not
537 limited to, use of over-the-top or frame ties to ground anchors. (Reference
538 FEMA’s “Manufactured Home Installation in Flood Hazard Areas” guidebook for
539 additional techniques.)

540 2. Construction Materials and Methods.

541 a. All new construction and substantial improvements shall be constructed with
542 materials and utility equipment resistant to flood damage.

543 b. All new construction and substantial improvements shall be constructed using
544 methods and practices that minimize flood damage.

545 c. Electrical, heating, ventilation, plumbing, and air conditioning equipment and
546 other service facilities shall be designed and/or otherwise elevated or located so
547 as to prevent water from entering or accumulating within the components
548 during conditions of flooding.

549 3. Utilities.

550 a. All new and replacement water supply systems shall be designed to minimize
551 or eliminate infiltration of flood waters into the system;

552 b. Water wells shall be located on high ground that is not in the floodway;

553 c. New and replacement sanitary sewage systems shall be designed to minimize
554 or eliminate infiltration of flood waters into the systems and discharge from the
555 systems into flood waters; and

556 d. On-site waste disposal systems shall be located to avoid impairment to them
557 or contamination from them during flooding.

558 4. ~~Subdivision~~ Development Proposals.

559 a. All ~~subdivision~~ development proposals, including subdivisions and
560 manufactured home parks, shall be consistent with the need to minimize flood
561 damage;

- 562 b. All ~~subdivision~~ development proposals, including subdivisions and
563 manufactured home parks, shall have public utilities and facilities such as sewer,
564 gas, electrical, and water systems located and constructed to minimize flood
565 damage;
- 566 c. All ~~subdivision~~ development proposals, including subdivisions and
567 manufactured home parks, shall have adequate drainage provided to reduce
568 exposure to flood damage; and
- 569 d. Where base flood elevation data has not been provided or is not available
570 from another authoritative source, it shall be generated for all development
571 ~~subdivision~~ proposals, including subdivisions and manufactured home parks, ~~and~~
572 ~~other proposed developments which contain at least~~ greater than 50 lots or five
573 acres (whichever is the lesser).

574 5. Review of Building Permits. Where elevation data is not available, either through the
575 Flood Insurance Study or from another authoritative source, LMC 16.46.040(C)(2),
576 applications for building permits shall be reviewed to assure that proposed construction
577 will be reasonably safe from flooding. The test of reasonableness is a local judgment and
578 includes historical data, high water marks, photographs of past flooding, etc., where
579 available. Failure to elevate at least two feet above the highest adjacent grade in these
580 zones may result in higher insurance rates.

581 B. Specific Standards. In all areas of special flood hazards where base flood elevation data has
582 been provided as set forth in LMC 16.46.030(B), Basis for Establishing the Areas of Special Flood
583 Hazard or LMC 16.46.040(C)(2), Use of Other Base Flood Data, the following provisions are
584 required:

585 1. Residential Construction.

586 a. New construction and substantial improvement of any residential structure
587 shall have the lowest floor, including basement, elevated to or one foot or more
588 above base flood elevation.

589 b. Fully enclosed areas below the lowest floor that are subject to flooding are
590 prohibited, or if used solely for parking, access or storage, shall be designed to
591 automatically equalize hydrostatic flood forces on exterior walls by allowing for
592 the entry and exit of floodwaters. Designs for meeting this requirement must
593 either be certified by a registered professional engineer or architect or must
594 meet or exceed the following minimum criteria:

595 i. A minimum of two openings having a total net area of not less than one square
596 inch for every square foot of enclosed area subject to flooding shall be provided.

597 ii. The bottom of all openings shall be no higher than one foot above grade.

598 iii. Openings may be equipped with screens, louvers, or other coverings or
599 devices; provided, that they permit the automatic entry and exit of floodwaters.

600 2. Nonresidential Construction. New construction and substantial improvement of any
601 commercial, industrial or other nonresidential structure shall either have the lowest
602 floor, including basement, elevated to the level of one foot or more above the base
603 flood elevation; or, together with attendant utility and sanitary facilities, shall:

- 604 a. Be floodproofed so that below one foot above the base flood level the
605 structure is watertight with walls substantially impermeable to the passage of
606 water;
- 607 b. Have structural components capable of resisting hydrostatic and
608 hydrodynamic loads and effects of buoyancy;
- 609 c. Be certified by a registered professional engineer or architect that the design
610 and methods of construction are in conformance with accepted standards of
611 practice for meeting provisions of this subsection based on their development
612 and/or review of the structural design, specifications and plans. Such
613 certifications shall be provided to the official as set forth in LMC 16.46.040
614 (C)(3)(b);
- 615 d. Nonresidential structures that are elevated, not floodproofed, must meet the
616 same standards for space below the lowest floor as described in subsection
617 (B)(1)(b) of this section;
- 618 e. Applicants floodproofing nonresidential buildings shall be notified that flood
619 insurance premiums will be based on rates that are one foot below the
620 floodproofed level (e.g., a building floodproofed to one foot above the base
621 flood level will be rated as at the base flood level).

622 3. Critical Facility. Construction of new critical facilities shall be, to the extent possible,
623 located outside the limits of the base flood plain. Construction of new critical facilities
624 shall be permissible within the base flood plain if no feasible alternative site is available.
625 Critical facilities constructed within the base flood plain shall have the lowest floor
626 elevated to three feet or more above the level of the base flood elevation at the site.
627 Floodproofing and sealing measures must be taken to ensure that toxic substances will
628 not be displaced by or released into flood waters. Access routes elevated to or above
629 the level of the base flood plain shall be provided to all critical facilities to the extent
630 possible.

631 4. Manufactured Homes. All manufactured homes to be placed or substantially
632 improved on sites shall be elevated on a permanent foundation such that the lowest
633 floor of the manufactured home is elevated one foot or more above the base flood
634 elevation and be securely anchored to an adequately anchored foundation system to
635 resist flotation, collapse and lateral movement.

- 636 a. All manufactured homes to be placed or substantially improved on sites:
- 637 i. Outside of a manufactured home park or subdivision;
 - 638 ii. In a new manufactured home park or subdivision;
 - 639 iii. In an expansion to an existing manufactured home park or subdivision;
- 640 or
- 641 iv. In an existing manufactured home park or subdivision on which a
642 manufactured home has incurred “substantial damage” as the result of a
643 flood;
- 644 shall be elevated on a permanent foundation such that the lowest floor
645 of the manufactured home is elevated one foot or more above the base
646 flood elevation and be securely anchored to an adequately designed
647 foundation system to resist flotation, collapse and lateral movement.

648 b. Manufactured homes to be placed or substantially improved on sites in an
649 existing manufactured home park or subdivision that are not subject to the
650 above manufactured home provisions be elevated so that either:
651 i. The lowest floor of the manufactured home is elevated one foot or
652 more above the base flood elevation; or
653 ii. The manufactured home chassis is supported by reinforced piers or
654 other foundation elements of at least equivalent strength that are no less
655 than 36 inches in height above grade and be securely anchored to an
656 adequately designed foundation system to resist flotation, collapse, and
657 lateral movement.

658 5. Recreation Vehicles. Recreational vehicles placed on sites are required to either:
659 a. Be on the site for fewer than 180 consecutive days;
660 b. Be fully licensed and ready for highway use, on their wheels or jacking system,
661 be attached to the site only by quick disconnect type utilities and security
662 devices, and have no permanently attached additions; or
663 c. Meet the requirements of subsection (B)(4) of this section and the elevation
664 and anchoring requirements for manufactured homes.

665 C. Floodways. Located within areas of special flood hazard established in LMC 16.46.030(B) are
666 areas designed as floodways. Since the floodway is an extremely hazardous area due to the
667 velocity of flood waters which carry debris, potential projectiles, and erosion potential, the
668 following provisions apply:

669 1. Prohibit encroachments, including fill, new construction, substantial improvements,
670 and other development unless certification by a registered professional engineer is
671 provided demonstrating through hydrologic and hydraulic analyses performed in
672 accordance with standard engineering practice that the proposed encroachments shall
673 not result in any increase in flood levels during the occurrence of the base flood
674 discharge.

675 2. Construction or reconstruction of residential structures is prohibited within
676 designated floodways, except for:

677 a. Repairs, reconstruction, or improvements to a structure which do not increase
678 the ground floor area; and

679 b. Repairs, reconstruction or improvements to a structure, the cost of which
680 does not exceed 50 percent of the market value of the structure either:

681 i. Before the repair, or reconstruction, is started; or

682 ii. If the structure has been damaged, and is being restored, before the
683 damage occurred.

684 Any project for improvement of a structure to correct existing violations
685 of state or local health, sanitary, or safety code specifications which have
686 been identified by the local code enforcement official and which are the
687 minimum necessary to assure safe living conditions or to structures
688 identified as historic places shall not be included in the 50 percent.

689 3. If subsection (C)(1) of this section is satisfied, all new construction and substantial
690 improvements shall comply with all applicable flood hazard reduction provisions of this
691 section, Provisions for Flood Hazard Reduction.

692 D. Wetlands Management. To the maximum extent possible, avoid the short- and long-term
693 adverse impacts associated with the destruction or modification of wetlands, especially those
694 activities which limit or disrupt the ability of the wetland to alleviate flooding impacts. The
695 following process should be implemented:

- 696 1. Review proposals for development within base flood plains for their possible impacts
697 on wetlands located within the flood plain.
- 698 2. Ensure that development activities in or around wetlands do not negatively affect
699 public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and
700 storm drainage.
- 701 3. Request technical assistance from the Department of Ecology in identifying wetland
702 areas. Existing wetland map information from the National Wetlands Inventory (NWI)
703 can be used in conjunction with the community's FIRM to prepare an overlay zone
704 indicating critical wetland areas deserving special attention

705 E. AE ~~and A1-30~~ Zones with Base Flood Elevations but no Floodways. In areas with base flood
706 elevations (but a regulatory floodway has not been designated), no new construction,
707 substantial improvements, or other development (including fill) shall be permitted within Zones
708 ~~A1-30 and~~ AE on the community's FIRM, unless it is demonstrated that the cumulative effect of
709 the proposed development, when combined with all other existing and anticipated
710 development, will not increase the water surface elevation of the base flood more than one
711 foot at any point within the community.

712 F. Zone VE Restrictions. ~~V, VE, and V1-30 Restrictions.~~ New structures, substantial
713 improvements, and recreational vehicles are prohibited in the VE zone. Man-made alteration of
714 sand dunes ~~are~~ is prohibited ~~within Zones V1-30, VE, and V~~ in Zone VE on the community's
715 FIRM, which would increase potential flood damage.

716
717 **16.46.060 Severability.**

718 If any section, clause, sentence, or phrase of this Chapter is held to be invalid or
719 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect
720 the validity of the remaining portions of this Chapter.

721
722
723 Section 3: Duration of Interim Regulations. The interim regulations established in Section 2
724 above shall be in effect for a period of six (6) months from the date of this Ordinance is adopted
725 (to and through December 8, 2020), and shall automatically expire on that date unless
726 repealed, modified, or extended after subsequent public hearing and entry of appropriate
727 findings of fact as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless a final ordinance
728 is adopted before that date amending the Lynnwood Municipal Code and rescinding this
729 interim Ordinance.

730
731 Section 4: Public Hearing. Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City
732 Council shall hold a public hearing on this interim ordinance within sixty (60) days of its
733 adoption. In order to comply, a public hearing shall be set no later than July 27th, 2020.

734

735 Section 5: Severability. If any section, sentence, clause or phrase of this ordinance should
736 be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
737 unconstitutionality shall not affect the validity or constitutionality of any other section,
738 sentence, clause or phrase or word of this ordinance.
739

740 Section 6: Effective Date: This Ordinance or an approved summary thereof consisting of its
741 title shall be published in the City’s official newspaper of record and shall take effect and
742 be in full force five days following its publication.
743

744 PASSED BY THE CITY COUNCIL THIS 8th day of June, 2020, and signed in authentication
745 of its passage this 8th day of June, 2020.
746

747
748 APPROVED:

749
750
751 _____
752 Nicola Smith, Mayor
753

754 ATTEST/AUTHENTICATED:

755 APPROVED AS TO FORM:

756
757 _____
758 Karen Fitzthum, City Clerk
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757 _____
758 Rosemary Larson, City Attorney
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765 ADOPTED BY THE CITY COUNCIL:
766 PASSED BY THE CITY COUNCIL:
767 PUBLISHED:
768 EFFECTIVE DATE:
769 ORDINANCE NUMBER:

CITY COUNCIL ITEM 90.3-B

CITY OF LYNNWOOD Executive

TITLE: Resolution: Mayoral Declarations of Emergency

DEPARTMENT CONTACT: Leah Jensen

SUMMARY:

Pursuant to LMC 7.20.070A, in the event that the Mayor has issued a declaration of emergency under LMC 7.20.060A, the Mayor has the authority to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster," provided, that such rules or regulations must be confirmed by the City Council at the earliest practicable time. The City's attorney, Rosemary Larson has prepared the attached resolution for your consideration.

DOCUMENT ATTACHMENTS

Description:	Type:
Resolution Confirming COVID Rules	Backup Material



CITY OF LYNNWOOD

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON, RATIFYING, CONFIRMING AND ADOPTING RULES AND REGULATIONS STATED IN THE MAYOR’S DECLARATIONS OF EMERGENCY – CITY OF LYNNWOOD COVID-19 RESPONSE DATED MARCH 4, 2020 AND MARCH 17, 2020.

WHEREAS, Art. XI, Sec. 11 of the Washington State Constitution grants the City broad police powers to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”, including during public health emergencies and disasters; and

WHEREAS, RCW 38.52.070 establishes emergency and disaster response powers, and authorizes the City to, among other things, protect the health and safety of persons and property, and provide emergency assistance to the victims of such emergencies or disasters; and

WHEREAS, pursuant to LMC 7.20.060A, the Mayor has the authority to declare that an emergency exists, in accordance with the provisions of that code section; and

WHEREAS, pursuant to LMC 7.20.070A, in the event that the Mayor has issued a declaration of emergency under LMC 7.20.060A, the Mayor has the authority to “make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster,” provided, that such rules or regulations must be confirmed by the City Council at the earliest practicable time; and

WHEREASE, on January 31, 2020, the United States Department of Health and Human Services declared a public health emergency based on COVID-19, which is a respiratory disease that can result in serious illness or death, which can easily spread from person to person, and which is caused by a new strain of coronavirus that was not previously identified in humans; and

WHEREAS, on February 29, the Governor of the State of Washington declared that a state of emergency exists due to COVID-19, and Snohomish County and other counties state-wide have issued similar declarations of emergency; and

1
2 WHEREAS, on March 4, 2020, the Snohomish County Health District issued a declaration
3 of emergency regarding the COVID-19 pandemic, and other local health districts have done the
4 same throughout the State; and
5

6 WHEREAS, in the exercise of the authority granted under Chapter 7.20 of the City code,
7 including LMC 7.20.060A, on March 4, 2020, the Mayor of the City of Lynnwood determined that
8 the threat to public health necessitates the use of emergency powers granted under RCW
9 38.52.070 and Chapters 7.20 and 2.92 of the City code, and therefore to protect the health, safety
10 and welfare of the people of the City, the Mayor issued the Mayoral Declaration of Emergency –
11 City of Lynnwood COVID-19 Response; and
12

13 WHEREAS, on March 17, 2020, the Mayor issued the second Mayoral Declaration of
14 Emergency – City of Lynnwood COVID-19 Response, confirming the continued existence of an
15 emergency; and
16

17 WHEREAS, pursuant to the authority granted in LMC 7.20.070A, (1) in the March 4, 2020
18 Mayoral Declaration of Emergency, the Mayor declared and ordered that the response to COVID-
19 19 by City staff may require emergency purchases and that public procurement processes may
20 be waived where competitive processes are not practicable, pursuant to Chapter 2.92 LMC, RCW
21 38.52.070 and RCW 39.04.280, and (2) in the March 17, 2020 Mayoral Declaration of Emergency,
22 the Mayor confirmed that that the response to COVID-19 by City staff may require emergency
23 purchases and that public procurement processes may be waived where competitive processes
24 are not practicable, pursuant to Chapter 2.92 LMC, RCW 38.52.070 and RCW 39.04.280; and
25

26 WHEREAS, pursuant to the authority granted in LMC 7.20.070A, in the March 17, 2020
27 Mayoral Declaration of Emergency, the Mayor declared and ordered that the response to COVID-
28 19 may require the waiver of water service discontinuation otherwise required under LMC
29 13.34.070A; and
30

31 WHEREAS, the Governor of the State of Washington has issued Proclamations that
32 prohibit all water utilities in the State from disconnecting water service customers until the
33 termination of the COVID-19 state of emergency, or until July 28, 2020; and
34

35 WHEREAS, based on the circumstances described in the recitals above and in the Mayor’s
36 March 4, 2020 and March 17, 2020 Declarations of Emergency – City of Lynnwood COVID-19
37 Response, the City Council wishes to ratify and confirm the rules or regulations stated in those
38 Declarations of Emergency, and any and all acts of City departments and staff that have been
39 taken pursuant to those rules or regulations; now, therefore
40

41 THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO RESOLVE AS
42 FOLLOWS:
43

CITY COUNCIL ITEM 90.3-C

CITY OF LYNNWOOD Executive

TITLE: Ordinance: Confirmation of Curfew Order

DEPARTMENT CONTACT: Leah Jensen

SUMMARY:

Pursuant to LMC 7.20.070A, in the event that the Mayor has issued a declaration of emergency under LMC 7.20.060A, the Mayor has the authority to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster," provided, that such rules or regulations must be confirmed by the City Council at the earliest practicable time. The City's attorney Rosemary Larson has prepared the attached ordinance for your consideration.

DOCUMENT ATTACHMENTS

Description:

[Ordinance and Attachment A](#)

Type:

Backup Material



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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, RATIFYING, CONFIRMING AND ADOPTING THE MAYOR’S CIVIL EMERGENCY ORDER IMPOSING CURFEW; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, Art. XI, Sec. 11 of the Washington State Constitution grants the City broad police powers to “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”, including during public health emergencies and disasters; and

WHEREAS, RCW 38.52.070 establishes emergency and disaster response powers, and authorizes the City to, among other things, protect the health and safety of persons and property, and provide emergency assistance to the victims of such emergencies or disasters; and

WHEREAS, pursuant to LMC 7.20.060A, the Mayor has the authority to declare that an emergency exists, in accordance with the provisions of that code section; and

WHEREAS, pursuant to LMC 7.20.070A, in the event that the Mayor has issued a declaration of emergency under LMC 7.20.060A, the Mayor has the authority to “make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster,” provided, that such rules or regulations must be confirmed by the City Council at the earliest practicable time; and

WHEREAS, the killing of George Floyd by a police officer in Minneapolis, Minnesota on May 25, 2020 has generated anger, outrage, protests, and demonstrations across the United States, including in the Puget Sound region; and

WHEREAS, during the days following May 25, 2020, in cities across the country, including cities in King County and Snohomish County, demonstrations have turned violent and some individuals have committed intentional property destruction, injuries, and looting, which necessitated the mobilization of the National Guard; and

1 WHEREAS, in the days following May 25, 2020, local cities in the region, including
2 Seattle, Bellevue, Renton, Tukwila, Redmond, Mercer Island, Kenmore and others, declared
3 states of civil emergency and established mandatory curfews; and
4

5 WHEREAS, on or about June 1, 2020, the Lynnwood Police Department was made aware
6 of credible threats to local businesses through a coordinated looting effort, to occur on June 1,
7 2020, and events evolved rapidly throughout the day in the City and the police response was
8 escalating; and
9

10 WHEREAS, pursuant to the authority granted in Chapter 7.20 of the City code, including
11 LMC 7.20.060A, on June 1, 2020, the Mayor of the City of Lynnwood determined that
12 extraordinary measures were required to protect the public health, safety and welfare of the
13 City's residents, and issued the "Proclamation of Civil Emergency" declaring that a civil
14 emergency exists based on the circumstances described above and in the Proclamation; and
15

16 WHEREAS, pursuant to the authority granted in LMC 7.20.070A, also on June 1, 2020,
17 the Mayor issued and executed the "Civil Emergency Order Imposing Curfew" attached hereto
18 as Attachment A and incorporated by this reference, imposing a curfew in the City commencing
19 at 5:00 p.m. on June 1, 2020 until 5:00 a.m. on June 2, 2020, and providing for enforcement of
20 the Order in accordance with LMC 7.20.150; and
21

22 WHEREAS, based on the events described above and in the Mayor's Proclamation of
23 Civil Emergency and Civil Emergency Order Imposing Curfew, which events constituted a civil
24 emergency and which posed a threat to the public health, safety and welfare requiring
25 extraordinary measures, the City Council wishes to ratify and confirm the Mayor's Civil
26 Emergency Order Imposing Curfew and each of the Order's provisions, and any and all acts of
27 City departments and staff that have been taken pursuant to the Order; now, therefore
28

29 THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS
30 FOLLOWS:
31

32 Section 1. Findings. The recitals stated above and stated in the City of Lynnwood Mayor's
33 Proclamation of Civil Emergency dated June 1, 2020 and Civil Emergency Order Imposing
34 Curfew dated June 1, 2020, are incorporated by reference as support for this Ordinance.
35

36 Section 2. Ratification, Confirmation and Adoption.
37

- 38 A. The City Council hereby ratifies, confirms and adopts the City of Lynnwood Mayor's Civil
39 Emergency Order Imposing Curfew dated June 1, 2020, attached hereto as Attachment
40 A and incorporated herein by this reference, and each provision of said Civil Emergency
41 Order, including but not limited to Section 3 of the Order, relating to the penalty for
42 violation of the Order.
- 43 B. Any and all acts taken by City departments and staff consistent with or pursuant to the
44 Civil Emergency Order Imposing Curfew are ratified, confirmed and authorized.

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Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Effective Date. This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL, the _____ day of June 2020.

APPROVED:

Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

Karen Fitzthum, City Clerk

APPROVED AS TO FORM:

Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NUMBER: _____



June 1, 2020

CIVIL EMERGENCY ORDER IMPOSING CURFEW

WHEREAS, in my capacity as Mayor of the City of Lynnwood, I proclaimed a civil emergency exists in the City of Lynnwood in a Proclamation of Civil Emergency dated June 1, 2020; and

WHEREAS, the facts stated in my Proclamation of Civil Emergency still exist as this Order is being issued; and

WHEREAS, it is necessary to use extraordinary measures to protect the public health, safety and welfare; and

WHEREAS, the civil emergency necessitates the utilization of emergency powers granted to the Mayor pursuant to Lynnwood Municipal Code, Chapter 7.20.070 (A) 1 and RCW 38.52 and enforcement of this curfew in accordance with Lynnwood Municipal Code, Chapter 7.20.150; and

WHEREAS, a curfew is necessary to ensure public safety and to protect property.

NOW, THEREFORE, the undersigned Mayor of the City of Lynnwood, Washington hereby orders:

1. A general curfew is imposed in the City of Lynnwood commencing at 5:00 pm on June 1, 2020, until 5:00am on June 2, 2020. No person shall enter or remain in the public right-of-way, or in the public parks, or at any other public place within Lynnwood City limits. The general Curfew shall continue until 5:00 am on June 2, 2020, and shall be enforced by the Lynnwood Police Department, other law enforcement agencies and the military.



2. The general curfew shall not apply to law enforcement personnel who are actively engaged in carrying out their duties; military personnel who are actively engaged in providing assistance to the City pursuant to the Proclamation of the Mayor; emergency personnel and other City and government personnel who are actively engaged in carrying out their duties; City and governmental officials with valid identification; representatives of the media authorized in advance by the Executive Office or the Chief of the Lynnwood Police Department or his designee. For purposes of this Order, the phrase "actively engaged in carrying out their duties" includes traveling to and from the location of those duties to begin or end a work shift.
3. Any person found to have willfully obstructed, hindered, or delayed any member of the Lynnwood Police Department or other emergency management organizations in enforcement of this Civil Emergency Order, or in the performance of any duty imposed upon such member by virtue of this emergency order, is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00, or by imprisonment for not more than 90 days, or both such fine and imprisonment.
4. This Civil Emergency Order shall, at the earliest practicable time, be presented to the City Council for ratification and confirmation, and if not so ratified and confirmed shall be void.

Dated: 6/1/2020

DocuSigned by:
Nicola Smith, Mayor
281B3CE79E884DA
Nicola Smith, Mayor
City of Lynnwood

CITY COUNCIL ITEM 90.3-D

CITY OF LYNNWOOD City Council

TITLE: Discussion: Executive Veto of Ordinance 3358

DEPARTMENT CONTACT: Council President Christine Frizzell

SUMMARY:

On May 28, Mayor Smith exercised her authority under Chapter 35A.12 RCW to veto Ordinance 3358 as adopted by City Council on May 26, 2020.

POLICY QUESTION(S) FOR COUNCIL CONSIDERATION:

This agenda item provides time for Council to comment on the veto and determine any next steps.

ACTION:

Possible actions include the following:

Do nothing and the Veto remains intact.

To override the Veto, Council would need a majority plus one (5) votes to implement the ordinance.

DOCUMENT ATTACHMENTS

Description:	Type:
Written Justification of Veto	Backup Material
Ordinance 3358	Backup Material

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DATE: May 28, 2020

TO: Lynnwood City Council

FROM: Mayor Nicola Smith

RE: VETO OF ORDINANCE 3358

Honorable Councilmembers:

As Mayor of Lynnwood, I am exercising my authority under Chapter 35A.12 RCW to veto Ordinance 3358 as adopted by City Council on May 26, 2020. This ordinance relates to the City’s tax on water, sewer, and stormwater utility rates. In accordance with RCW 35A.12.130, I am returning this vetoed ordinance to the City Council with the objections outlined below.

The City Council, City staff, and I all support the Lynnwood community during this unprecedented COVID-19 pandemic. As discussed during the staff presentation provided on Tuesday, May 26, 2020 (City Council Meeting Agenda Item 90.3-C), staff is developing plans to use CARES Act funds to provide financial assistance to struggling businesses and residents. I anticipate that this program will harness Federal funds to accomplish what was identified initially as the basis for Ordinance 3358. As Mayor, I want to offer community support through the best means possible. CARES Act funds can accomplish this without severely impacting the City’s finances.

Repeal of the City’s 6% utility tax on the City’s utilities was introduced as a way to offer financial relief to the community during this pandemic. Lacking any strategy to offset the serious impacts to the City’s finances during 2020, the City Council chose to delay the effective date of the Ordinance to January 1, 2021, which is outside of the COVID-19 emergency response timeframe. Ordinance 3358 permanently repeals the utility tax on City utilities. It is inaccurate to portray this anti-tax measure as COVID-19 relief.

Ordinance 3358 was introduced to the City Council by email just one hour prior to the May 11, 2020 meeting and subsequently forwarded to the May 26, 2020 meeting for potential action. No written explanation or analysis was offered by the legislation’s sponsor (Meeting Agenda Item 90.3-D). This legislative process was inconsistent with established procedures for Council meeting agenda items, specifically Council Rule 15.D. In the absence of supporting information from the legislation’s sponsor, finance director Sonja Springer prepared detailed analysis that was provided in writing and an oral presentation.

The adoption of Ordinance 3358 is inconsistent with the State Attorney General’s Guidance on the COVID-19 Emergency Open Public Meeting Act. Because COVID-19 and Governor Inslee’s Order precludes public attendance at meetings of the City Council,

1 as required by law, the Attorney General has instructed public agencies to limit its
2 business to matters related to COVID-19 or “routine and necessary”. As adopted,
3 Ordinance 3358 is neither, and violates the spirit of Washington’s Open Public Meetings
4 Act as the Council’s action did not include an open and transparent public process.
5

6 As explained by finance director Springer, Ordinance 3358 creates a new and severe
7 revenue shortfall for 2021 and all years thereafter--without consideration and
8 identification of the offsetting measures that will be needed. Prior to adoption of
9 Ordinance 3358, finance director Springer confirmed that revenue sources such as sales
10 tax are already underperforming. On April 13, 2020, I called for departments to curtail
11 all non-essential spending. Now, Ordinance 3358 exacerbates our financial hardship by
12 eliminating nearly \$1.5 million in annual revenue. It is improper to create a new revenue
13 shortfall without also offering clear direction on how to address its impacts. The
14 community deserves to witness and participate in Council discussions regarding how City
15 services will be impacted or how new sources of revenue will be created.
16

17 Ordinance 3358 eliminates an important source of revenue as of January 1, 2021, which
18 is also the first day of the City’s 2021-2022 budget biennium. Repeal of the utility tax is
19 a significant budget decision made outside of the adopted calendar and process for
20 developing our 2021-2022 Budget. Resolution 2020-02, adopted by the City Council on
21 January 21, 2020, sets forth the calendar for this budget process. The budget calendar
22 includes community outreach, two public hearings, and scheduled discussions during
23 several open public meetings. Chapter 35A.34 RCW calls for two or more public
24 hearings before budget decisions are made. Councilmembers stress having as much
25 public engagement and as many hearings as feasible during the development of the
26 budget; this ordinance sidesteps the process to make an important decision on revenues at
27 a time when virtual Council meetings offer only a modicum of public comment. This
28 falls short of our stated goal of being a responsive government with engaged citizens.
29

30 For each of these reasons, I veto Ordinance 3358.
31
32

33 Attachment: Ordinance 3358 (unsigned)
34

35 CC: Department directors
36 City attorney Rosemary Larson
37 Interim city clerk Karen Fitzthum
38 Records for the 2021-2022 Budget



ORDINANCE NO. 3358

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ELIMINATING THE CITY’S UTILITY TAX ON WATER DISTRIBUTION AND SEWERAGE UTILITIES; AMENDING SECTION 3.41.030 OF THE LYNNWOOD MUNICIPAL CODE; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, Chapter 35.21 RCW and RCW 35A.82.020 authorize the City to impose and collect excise taxes from persons conducting business within the City, including utilities; and

WHEREAS, pursuant to this authority, in Chapter 3.41 of the Lynnwood Municipal Code, the City Council has established a utility tax on certain utilities, including water distribution utilities and sewerage utilities (which includes certain surface water facilities); and

WHEREAS, COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that was not previously identified in humans, and can easily spread from person to person; and

WHEREASE, on January 31, 2020, the United States Department of Health and Human Services declared a public health emergency based on COVID-19; and

WHEREAS, on February 29, the Governor of the State of Washington declared that a state of emergency exists due to COVID-19, and Snohomish County and other counties state-wide have issued similar declarations of emergency; and

WHEREAS, on March 4, 2020, the Snohomish County Health District issued a declaration of emergency regarding the COVID-19 pandemic, and other local health districts have done the same; also on March 4, 2020, the Mayor of the City of Lynnwood issued an emergency proclamation due to the serious threat to public health and safety caused by COVID-19, and mayors of cities throughout the State have done the same; and

WHEREAS, on March 23, 2020, Governor Inslee issued Proclamation 20-25, “Stay Home – Stay Healthy,” prohibiting all people in Washington State from leaving their homes or participating in gatherings of any kind regardless of the number of participants, and all non-essential businesses in the State were closed to the general public; and

1 WHEREAS, on May 4, 2020 Governor Inslee issued a Proclamation modifying the “Stay
2 Home – Stay Healthy” order, establishing a phased approach to re-opening the State, but the
3 phased re-opening is anticipated to require several months to be completely implemented; and
4

5 WHEREAS, the COVID-19 pandemic has severely impacted the local economy, resulting
6 in the temporary or permanent closure of a significant number of local businesses, and also in a
7 substantial number of employees working from home, the cancellation of public events,
8 significant reduction in demand at restaurants and other local businesses, increased employee
9 lay-offs, and reduction in work hours; and
10

11 WHEREAS, the social distancing and self-isolation measures needed to slow the spread
12 of COVID-19 have caused numerous residents and businesses in Lynnwood to suffer significant
13 financial loss, including loss of business income, lay-offs, and reduced hours and/or salary
14 reductions for a significant segment of the workforce; and
15

16 WHEREAS, it is recognized that while the City’s utility tax is imposed on and collected
17 from the entities engaged in the operation of the utility business, the amount of the tax is
18 passed on to utility rate payers; and
19

20 WHEREAS, as one means of addressing the financial hardships currently faced by
21 persons residing in and businesses located in Lynnwood, the City Council has determined that
22 the public interest is best served by eliminating the City’s utility tax on persons engaged in the
23 business of sewerage operations (which includes surface water drains and outfalls) and in the
24 business of water distribution operations; now therefore
25

26 THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, DO ORDAIN AS
27 FOLLOWS:
28

29 Section 1. Section 3.41.030 of the Lynnwood Municipal Code is hereby amended as follows:
30

31 **3.41.030 Businesses subject to tax.**

32 There is hereby levied upon all persons engaged in business activities taxable under this
33 chapter a tax in the amounts to be determined by the application of the respective rates
34 against gross income of such taxpayer. Taxpayers engaged in or carrying on the business
35 shall be charged with collection of the tax as a condition of doing business, and the tax
36 shall be levied thereafter upon their subscribers at the rate set forth below.
37

38 A. Upon every person engaged in or carrying on a telephone business, as defined in RCW
39 82.04.065, as said statute presently exists or is hereafter amended, a tax equal to six
40 percent of the total gross income, including revenues for intrastate toll, derived from
41 the operation of such business within the city. To the extent permitted by applicable
42 federal and Washington State law, any telecommunications services provided by a cable
43 operator (as defined in 47 U.S.C. Section 522(5)) or other persons over cable television
44 facilities owned or controlled by a cable operator shall be taxable hereunder.

1 B. Upon every person engaged in or carrying on the sale of cellular telephone service, a
2 tax equal to six percent of the total gross income derived from the operation of such
3 business within the city.

4 C. Upon every person engaged in the business of operating or providing pager service, a
5 tax equal to six percent of the total gross income derived from the operation of such
6 business within the city.

7 D. Upon every person engaged in or carrying on the business of cable television service,
8 a tax equal to six percent of the total gross income derived from the operation of such
9 business within the city.

10 E. Upon every person engaged in or carrying on the business of solid waste collection, a
11 tax equal to six percent of the total gross income derived from the operation of such
12 business within the city.

13 F. Upon every person engaged in or carrying on the business of electricity service, a tax
14 equal to six percent of the total gross income derived from the operation of such
15 business within the city.

16 G. Upon every person engaged in or carrying on the business of gas distribution, a tax
17 equal to six percent of the total gross income derived from the operation of such
18 business within the city.

19 ~~H. Commencing on January 1, 2015, upon every person engaged in or carrying on the~~
20 ~~business of sewerage operation (which includes surface water drains and outfalls), a tax~~
21 ~~equal to six percent of the total gross income derived from the operation of such~~
22 ~~business within the city.~~

23 ~~I. Commencing on January 1, 2015, upon every person engaged in or carrying on the~~
24 ~~business of water distribution operation, a tax equal to six percent of the total gross~~
25 ~~income derived from the operation of such business within the city.~~

26
27
28 Section 2. Pursuant to LMC 3.41.150, the change in rate of tax on persons engaging in or
29 carrying on the business of sewerage operations or the business of water distribution
30 operations, as stated in Section 1 of this Ordinance, shall not take effect until 60 days following
31 the enactment of this Ordinance.

32
33 Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be
34 held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or
35 unconstitutionality shall not affect the validity or constitutionality of any other section,
36 sentence, clause or phrase of this Ordinance.

37
38 Section 4. Effective Date. This Ordinance or a summary thereof consisting of the title shall be
39 published in the official newspaper of the City and shall take effect January 1, 2021.

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42 PASSED BY THE CITY COUNCIL, the 26th day of May, 2020.
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APPROVED:

Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

Karen Fitzthum, City Clerk

APPROVED AS TO FORM:

Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES: _____
PASSED BY THE CITY COUNCIL: _____
PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NUMBER: _____

CITY COUNCIL ITEM 90.3-E

**CITY OF LYNNWOOD
City Council**

TITLE: Executive Session, if needed

DEPARTMENT CONTACT: Nicola Smith, Mayor

DOCUMENT ATTACHMENTS

Description:

Type:

No Attachments Available