AGENDA
Lynnwood Planning Commission
Thursday, September 22, 2011 — 7:00 pm

Note Location: Meeting Room at Fire Station 15,
18800 – 44th Ave. W., Lynnwood WA

A. CALL TO ORDER — ROLL CALL

B. APPROVAL OF MINUTES
   Meeting of August 11, 2011

C. PUBLIC COMMENTS – on matters not on tonight’s agenda for a public hearing.

D. PUBLIC HEARINGS
   2. Outdoor Business Activities Code Amendment (2011CAM0009). Amendments to Lynnwood Municipal Code Title 21 (Zoning Code) regarding primary and accessory uses of property that are conducted outside of a building or structure.

E. WORK SESSIONS

F. OTHER BUSINESS

G. COUNCIL LIAISON REPORT

H. DIRECTOR’S REPORT

I. COMMISSIONERS’ COMMENTS

J. ADJOURNMENT

The public is invited to attend and participate in this public meeting. Parking and meeting rooms are accessible to persons with disabilities. Upon reasonable notice to the City Clerk’s office (425) 670-5161, the City will make reasonable effort to accommodate those who need special assistance to attend this meeting.
ACTION
Conduct public hearing. Discuss ordinance following public hearing. Direction to staff following hearing regarding ordinance or possible recommendation to present Ordinance to the City Council

BACKGROUND
At the Planning Commission meeting on July 28th, a preliminary draft ordinance was presented by the staff for review regarding the raising of chickens in the single-family residential zones. A number of comments were received which required additional research by the staff. A revised draft was presented to the Commission at the September 8th meeting. At that work session, staff also discussed the existing authority to address public nuisances under the City’s nuisance regulations; a copy of the definition of “public nuisance” is attached.

RELEVANT LEGAL CITATION
LMC Section 21.42.400(C) (Accessory Structures and Uses – Keeping Small Animals as Pets) provides for the regulations for the raising of chickens on a specified lot size per animal as well as other specification regarding the keeping of livestock.

ANALYSIS AND COMMENT
The draft ordinance proposes a number of deletions and additions, however, attention is drawn to the following code changes in a revised section format to the existing ordinance:

- 2 – Exception made in section on livestock regarding the keeping of chickens.
- 3 - Introduction: chickens kept for personal use with eggs not to be sold.
- 3a – Establishes number of chickens allowed.
- 3(b) – General comment regarding shelters and pens.
• 3(b)(i) – Size of shelter.
• 3(B)(ii) – Details on size of pen.
• 3(b)(iii) – Protection from predators.
• 3(b)(iv) – Setbacks of pens/shelters. Screening.
• 3(b)(v) – Permit required for electricity.
• 3(c) – Disposal of bedding/manure.
• 3(d) – Prohibits the keeping of roosters.
• 3(e) – No processing on site. Removal of infected chickens (response to disease control and disposal of chickens).

As discussed in the work session, staff continues to have concerns about the enforcement or detailed specifications regarding the shelter and pen. Following the work session on September 8th, the draft ordinance was revised, deleting the specific numeric standards in the prior draft ordinance; these specifications will be included in the “best practices” information handout that will be prepared following Council action on the ordinance. In addition, based on Commissioners’ discussion, the ordinance has also been revised to:

• b(iv) – require a solid fence between enclosure/pen and adjacent residences
• e – change “slaughtering” to “processing”

The Commission also discussed the importance of having the fence extend below ground to control predators. That provision would be included in the handout.

Following the public hearing, the Commission will be asked to make any additional changes to the ordinance and/or make a recommendation on the ordinance to the Council.

RECOMMENDATION

Discuss ordinance and finalize language

Recommend adoption of the ordinance to the City Council.

ATTACHMENTS

A. Ordinance
B. Nuisance Code
CITY OF LYNNWOOD

ORDINANCE NO. ________

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ESTABLISHING REGULATIONS FOR THE KEEPING OF CHICKENS IN SINGLE FAMILY RESIDENTIAL ZONES, AMENDING LMC 21.42.400(C) AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

WHEREAS, the existing Lynnwood Municipal Code treats the keeping of chickens in single family residential zones similar to the keeping of other livestock (e.g. horses, cows) with respect to lot size requirements; and,

WHEREAS, historically, the keeping of livestock had been considered to be inconsistent with residential zoning; and,

WHEREAS, it is desirable to promote sustainability and environmentally friendly practices where practical but in a manner that takes into account the urbanized nature of the city; and,

WHEREAS, allowing chickens to be harbored in the city to take advantage of their food production is a small step towards making Lynnwood more sustainable city and is desirable as long as the potential negative impacts of doing so is mitigated; and,

WHEREAS, trends in local food production and sustainable practices have led to renewed popularity of backyard chickens; and,

WHEREAS, the City wishes to allow the keeping of chickens while balancing this flexibility with protection of the residential environment; and,

WHEREAS, the proposal was transmitted to State agencies for State agency review and received by the Washington State Department of Commerce on ___________, 2011 in accordance with RCW 36.70A.106; and,

WHEREAS, on ____________, 2011, the City of Lynnwood Environmental Review Committee issued a [TBD] on the proposal with ____ public comments having been received during the public comment period and no appeal having been filed; and,
WHEREAS, on __________, 2011, the City of Lynnwood Planning
Commission held a duly noticed public hearing to take testimony on the
proposed ordinance and, following the public hearing, made a recommendation
to the Lynnwood City Council to adopt this ordinance; and,

WHEREAS, on ____________ , 2011 the City of Lynnwood City Council
held a duly noticed public hearing to take testimony on the proposed ordinance;
now therefore

WHEREAS, it is in the public interest for the City Council to adopt new
animal regulations for residential areas which establishes development
regulations for keeping chickens within the City of Lynnwood; now therefore,

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

Section 1. Lynnwood Municipal Code section 21.42.400 is hereby amended as
follows:

"21.42.400 Accessory structures and uses.
A. Solar Energy Systems. The use of solar energy systems (for example,
atached solar greenhouses, attached solar sunspaces, and solar
collectors) can be an effective and efficient method for producing energy
and reducing energy consumption. The majority of residential structures
within Lynnwood were constructed before solar energy systems became a
viable means for producing energy, thus lot yard setbacks and height
restrictions do not take such systems into account. The city of Lynnwood
finds that it is in the best public interest to encourage solar energy
systems. If it is found that a solar energy system would have a positive
impact on energy production and conservation while not having an
adverse environmental impact on the community, but the placement of
such system requires violation of city setback or maximum height
limitations, allowance of such systems may be permitted through the
variance process and shall be encouraged. In viewing such variance
request, the following shall be considered in making a determination:

1. That the solar energy system has a net energy gain;
2. That the solar energy system is designed to minimize glare
towards vehicular traffic and adjacent properties;
3. That the solar energy system not adversely affect solar access to
adjacent properties;
4. That the solar energy system comply with all other city zoning,
engineering, building, and fire regulations; and
5. That the solar energy system is found to not have any adverse
impacts on the area, which impacts shall include, but not be limited
to, the effects of such system upon the views from neighboring properties and public ways.

In order to show that the proposed energy system will conform to the above, the applicant shall be required to submit a site plan and elevations showing the location, size, and dimensions of the solar energy system and its relation to all adjacent properties. Care shall be taken to ensure that the design, materials used and colors architecturally blend in with the existing structure. The city may require that the site plan and elevations and/or energy-saving calculations be prepared by an engineer, architect or builder specializing in solar energy construction.

B. Family Child Care Homes. Family child care homes are permitted as an accessory use to a dwelling.

C. Keeping Small Animals as Pets.

1. The keeping of small animals as pets shall be permitted as an accessory use.

2. Livestock, except chickens. The keeping of livestock (except chickens; See LMC section 21.42.400(C)(3)) shall not be permitted except that an occupant shall be able to keep one animal, i.e., horse, cow or sheep, on a lot having a minimum of 20,000 square feet and an additional animal for each 20,000 square feet additional lot area. The entire square footage of roaming area shall be fenced. Fences must be of such a type and size as to prevent encroachment on adjacent property. Encroachment shall be defined as reaching over, under or through, as well as trespassing or intruding upon, the property of another. Accessory buildings used for housing animals shall be provided, and shall be a minimum of 200 square feet and a maximum of 250 square feet in area per animal, except as allowed by variance, and shall not be closer than 25 feet to a property line, except for those provisions provided for chickens, below. An accessory building for the housing of small animals or fowl (except chickens, see below) shall not exceed 36 square feet in floor area when located on a residential lot and neither the building nor the fenced area for their roaming shall be closer 25 feet to a property.

3. Chickens. The keeping of chickens for personal use of the household (eggs shall not be sold) shall be permitted subject to the following:

   a. A maximum of three (3) chickens may be kept per lot associated with a single-family residential dwelling unit.
b. A suitable structure to provide shelter from the elements and an outdoor pen shall be provided. The shelter and pen shall be built and maintained to prevent the chickens from breaking through, out, over, or under the same. The shelter and pen shall be kept in good working condition, shall not cause odor or noise nuisances, and must be kept in a clean and well maintained condition at all times.
   i. The enclosed shelter shall provide a floor, walls, and roof and shall be a minimum of four (4) square feet per chicken.
   ii. The outdoor pen (a ground level roaming area) shall be a minimum of eight (8) square feet per chicken.
   iii. Pens and shelters shall be constructed so as to discourage predators.
   iv. The outer edge of the shelter or pen shall be set back a minimum of 15 feet from side and rear property lines. Pens and shelters are not permitted in the area between the primary dwelling unit and the front property line. The side of the pen facing an adjacent residence shall be sight obscuring through the use of a solid fence.
   v. Electricity provided to the shelter will require an electrical building permit.

c. Bedding/manure shall be composted or bagged and tied and placed within garbage dumpsters.

d. Roosters shall be prohibited.

e. Chickens shall not be processed on premise. Infected chickens with diseases harmful to humans shall be removed.

4. The keeping of mink, goats, foxes, or hogs is prohibited."

D. Carnivals, Circuses, and Other Temporary Special Events. These uses are permitted if accessory to a school, church, park, or other facility of a similar nature. Such activities shall not be subject to regulation by Chapter 5.30 LMC.

Section 2. 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 3. 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 ____________,
2011.

APPROVED:

______________________________
Don Gough, Mayor

ATTEST/AUTHENTICATED:

______________________________
Lorenzo Hines
Finance Director

APPROVED AS TO FORM:

______________________________
Rosemary Larson
10.08.200 Public nuisance defined.
A. Every act unlawfully done and every omission to perform a duty, which act or omission does any of the following, shall constitute a public nuisance:

1. Injures, endangers or unreasonably annoys the safety, health, comfort, or reposes of the citizens of the city; or

2. Offends public decency; or

3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, a public park, street, alley, highway, stream, canal, or basin; or

4. In any way renders any citizens of the city insecure in life or use of property.

B. The following acts, omissions or conditions, in addition to any others in violation of subsection (A) of this section, shall constitute a public nuisance:

1. Throwing, depositions, exposing, or causing to be disposed of, in any street or other public place within the city, any garbage, waste, refuse, litter, debris, or other offensive material, unless the disposal of such items in such place is specifically authorized by law;

2. Causing or allowing garbage, waste, refuse, litter, debris, or other offensive materials to be collected or deposited, or to remain in any place in the city, to the annoyance of any person, unless otherwise permitted by law;

3. Erecting, continuing, or using any building, room, property, or other place in the city for the exercise of any trade, employment, or manufacture which results in offensive odors or other annoyances being released, and which annoys, injures, or is offensive or detrimental to the health of the individuals there employed or residing, or the public;

4. Burning of refuse or other material in such a manner as to cause or permit the smoke, ashes, or gases arising from such burning to become discomforting or annoying, or to injure or endanger the health of any person or neighborhood;

5. All houses, rooms, booths, or other structures used as a place of resort where disorderly persons are allowed to congregate, or in which drunkenness is carried on or permitted;

6. Any pit, basin, hole, or other excavation which is unguarded and dangerous to life, or has been abandoned, or is no longer used for the purpose for which it was constructed, or is maintained contrary to law;

7. All obstructions to streets, rights-of-way, or other public ways in the city, and all excavations in or under the same, which are by ordinance prohibited, or which may be made without lawful permission, or which, having been made by lawful permission, are kept and maintained after the purpose thereof has been
accomplished, or for an unreasonable length of time;

8. Erecting, maintaining, using, placing, depositing, leaving, or permitting to be or remain in or upon any private lot, building, structure, or premises, or in or upon any street, alley, sidewalk, park, parkway, or other public or private place in the city, any one or more of, but not limited to, the following conditions or things:

   a. Any unsound, putrid, or unwholesome bone, meat, hides, skin, or the whole or parts of any dead animal or fish, or any unsound, putrid, or unwholesome substance; or the offal, garbage, or other offensive parts of any animals; or any noxious, offensive, dangerous or otherwise injurious chemicals or other materials such as oil, grease, poisons, explosives, radioactive materials, and other similar substances in such a manner as to be offensive or injurious to public health, or unpleasant or disagreeable to the adjacent residences or persons;

   b. Any cellar, vault, drain, sewer, or septic tank to become, from any cause, noxious, foul, offensive, or injurious to public health, or unpleasant or disagreeable to the adjacent residences or persons;

   c. Any noxious, foul, or putrid liquid or substances, or any liquid or substance likely to become noxious, foul, offensive, or putrid, to be discharged, placed or thrown upon or to flow from or out of any premises into, or upon, any adjacent premises, or any public street or alley, or to stand, remain, or be upon any premises;

9. All vacant, unused, or unoccupied buildings and structures within the city, which are allowed to become or remain open to entrance by unauthorized persons or the general public, because of broken, missing, or open doors, windows, or other openings, so that the same may be used by vagrants or other persons in a manner detrimental to the health and welfare of the inhabitants of the city;

10. Any refrigerator, icebox or deep-freeze locker having a capacity of one and one-half cubic feet or more or any other container manufactured, custom-made or homemade designed for storage which is discarded, abandoned or left in any place accessible to children and which has not had the door or latching mechanism removed to prevent the latching or locking of the door;

11. The depositing or allowing of irrigation or other water to run by any street, alley, or other public place, or to cause annoyance, damage, or hazard to any user of the street, alley, or other public place;

12. Vegetation left uncut and/or in an unkempt condition to the extent it creates safety or fire hazards, and/or pest harborages, or otherwise interferes with, annoys, injures or endangers the comfort, repose, health or safety of others, or obstructs or tends to obstruct, or renders dangerous for passage, any sidewalk, street or highway; or in any way renders other persons insecure in life, or in the use and enjoyment of property, shall constitute a public nuisance. The following conditions shall also constitute a public nuisance and are prohibited:
a. Trees, plants, bushes, shrubs, vines, other vegetation or parts thereof which overhang any sidewalk, street, alley or other public way which are growing in such a manner as to cause a sight distance hazard or to obstruct or impair the full use of the sidewalk, street, alley or other public way are declared to be a public nuisance;

b. Trees, plants, bushes, shrubs, grasses, vines, other vegetation or parts thereof that are growing and/or grown and died and are now causing a fire hazard or menace to public health and safety, or are degrading or causing a decline of the character of the neighborhood are also declared to be a public nuisance;

c. Grasses (lawn) within the yards of residential properties which are not maintained at a height of eight inches or less are also declared to be a public nuisance. The intent of this provision is to provide guidance and support for enforcement activities in cases where the city has determined there to be an egregious lack of yard maintenance;

13. The keeping, using, maintaining of any pen, stable, lot, place of premises in which any hog, cattle, or fowl may be confined or kept, in such manner as to be nauseous, foul, or offensive;

14. The keeping or harboring of any animal which by frequent or habitual howling, yelping, barking, or the making of other noises, or the keeping or harboring of any fowl which by frequent or habitual crowing or the making of other noises shall annoy or disturb a neighborhood or any considerable number of persons;

15. To own or occupy any premises upon which there shall be any trees or shrubbery which have become infested by caterpillars. It shall be the duty of every person owning or occupying any premises in the city of Lynnwood on which there shall be growing any fruit, shade or forest trees, or shrubbery of any kind, to keep the same free from caterpillars, and in the event that it is found that any fruit, shade or forest trees, or shrubbery have become infested with caterpillars, it is unlawful for the owner or occupant of any such premises on which there shall be growing any such trees or shrubbery to fail or neglect to promptly take and use such methods as may be necessary to effectually destroy such caterpillars, or to in lieu thereof destroy such trees or shrubbery;

16. On property residentially zoned, or property occupied by a single-family residence or duplex, the parking, storing or allowing to be parked or stored or kept:
   a. Any commercial vehicles, as that term is defined in this section; or
   b. More than four motor vehicles, but not including any recreational vehicles, trailers, unmounted camper or canopy shells, motor homes, or boats over 14 feet in length; provided, it is an affirmative defense to this section for the total to exceed four motor vehicles by the number of licensed drivers who reside at the residence and whose driver's licenses are the same as the residence; or
c. A total of not more than three combined number of recreational vehicles, motor homes, trailers, unmounted camper or canopy shells, boats over 14 feet in length; and further provided, that subsections (B)(16)(a) through (c) of this section are subject to the following:

i. One commercial vehicle up to 16,500 pounds gross vehicle weight may be parked on property residentially zoned or property occupied by a single-family residence or duplex; and

ii. Any number of the total allowed may be parked, stored, or located upon a designated driveway as defined in this subsection; and

iii. A total of not more than two of the total allowed may be parked, stored, or located anywhere else on the property within the side or rear yards, subject to requirements of the zoning, building, and fire codes; and

iv. A total of not more than two of the total allowed, and only if they are motor vehicles (not including recreational vehicles, motor homes, trailers, unmounted camper or canopy shells, boats over 14 feet in length), may be parked on private property adjacent to and within 20 feet of the right-of-way so long as:

(A) The area is surfaced by asphalt, concrete, gravel or similar material; and

(B) The parking area is immediately accessible to the traveled portion of the roadway without intervening sidewalk; and

v. Any vehicle, recreational vehicle, trailer, boat, camper, or motor home must be currently licensed and in operable condition;

d. This subsection does not apply to the following:

i. Any vehicle, including recreational vehicles, motor vehicles, trailers, camper shells, or boats, when they are kept or located in or under any lawfully permitted and constructed building;

ii. Temporary parking for a duration not to exceed 12 hours, for example, for temporary repairs, cleaning, or guests, excluding temporary parking of commercial vehicles except as otherwise provided in this section;

iii. Any property or situation where a development regulation applies. For example, the limitation on number of vehicles would not apply at an apartment constructed pursuant to an approved building plan and permit with approved parking plans. For further example, parking would not be allowed in an approved landscaped area;

iv. To allow parking in or on the right-of-way, city-owned property, or fire lanes;
v. To allow the parking of any junk vehicles;

vi. Parking of motorcycles is exempt from this section;

e. "Designated driveway" means the clearly defined roadway leading from the street which is surfaced by asphalt, concrete, gravel or similar material not to exceed 24 feet in width, or otherwise as shown on city-approved building or site plans approved by the public works department. Where there is curb and gutter at the street, the driveway must have an approved curb cut. Where a property has more than one driveway, the vehicles may only be parked in one driveway in the area between the front of the residence or principal structure and the lot front line;

f. "Vehicle" or "motor vehicle" means a currently licensed motorized or nonmotorized conveyance that includes, but is not limited to, an automobile, car, truck, trailer, camper, motorcycle, or watercraft, in operable condition;

g. "Recreational vehicle" means a currently licensed motorized or nonmotorized conveyance that includes, but is not limited to, motor homes, travel trailers, folding tent trailers, truck campers removed from a truck or pickup, horse trailers, boat trailers with or without boats, utility trailers, and similar vehicles;

h. "Commercial vehicle" means any motor vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, vehicles, animals, passengers for hire, or which is used primarily in construction or farming, including but not limited to bulldozers, backhoes, tractors and cranes. Parking of commercial vehicles on property residentially zoned, or property occupied by a single-family residence or duplex, shall constitute a nuisance and is prohibited. It shall be a defense to a violation of this section that during the entire time that the commercial vehicle was parked in the residential neighborhood, the operator of the vehicle was actively engaged in making a delivery or providing services to residents in the immediate vicinity of where the vehicle was parked;

17. On any privately owned property, keeping, storing or allowing to be kept or stored any junk that is not wholly enclosed by a sight-obscuring fence (except for gates, which shall remain closed) so as to render the junk not visible to public rights-of-way or to adjacent properties. This section does not apply to any property or situation where a development regulation applies;

18. Using property as a junk yard, or dumping ground, or for the wrecking or disassembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked, or abandoned automobiles, trucks or other machinery of any kind, or of any of the parts thereof unless lawfully licensed to do so;

19. Allowing, retaining or otherwise permitting a building or structure to remain on any lot, site, tract or parcel of land in any zone of the city, if that building or structure meets each of the following four criteria:
a. For one year or more the building or structure has not been legally occupied by a permitted use within the land use zone where it is located; and

b. The building or structure does not meet minimum occupancy standards for a use permitted in the applicable zone; and

c. The value of the improvements needed to bring the building or structure into compliance with the minimum occupancy standards for a use permitted in the applicable zone would exceed 25 percent of the assessed or appraised value, as determined by the community development director or designee; and

d. The building or structure has any exterior openings closed by extrinsic devices, giving the building or structure the appearance that it is not occupied or used for any use allowed by the zoning code at the particular location.

This provision shall not apply to a building or structure listed on the National Register of Historic Places, Washington State Register of Historic Places, Washington State Cultural Resource Inventory, or Snohomish County Cultural Resource Inventory;

20. Allowing, retaining or otherwise permitting a nonconforming building or structure, as defined in LMC Title 21, to remain on any lot, site, tract or parcel of land in any zone of the city if that building or structure cannot, under the requirements of the zoning code, be restored or repaired to allow occupancy by a use conforming to the zoning code.

This provision shall not apply to a building or structure listed on the National Register of Historic Places, Washington State Register of Historic Places, Washington State Cultural Resource Inventory, or Snohomish County Cultural Resource Inventory.

C. The following acts, in addition to any others in violation of subsection (A) or (B) of this section, constitute a public nuisance:

1. Conditions which are determined by the department director or department head responsible for enforcing an ordinance or chapter of the Lynnwood Municipal Code to be violations of the standards and requirements of the ordinance or code and unreasonably detrimental to the public health and safety, or welfare, so as to constitute a public nuisance. The criteria for determining whether a nuisance exists shall be based on the criteria in subsection (A) of this section and Chapter 7.48 RCW.

D. Any determination of or with respect to a public nuisance is subject to review in accordance with Phase II Process, LMC 1.35.200.
ACTION

Hold public hearing and then make a recommendation on the code amendment to the City Council.

BACKGROUND

The Zoning Code addresses business activities that are conducted outside of a building or structure in only limited cases. The lack of regulations in the Zoning Code, on the one hand, prohibits activities that otherwise would be desirable (outdoor dining) and, other the other hand, limits staff’s ability to address the undesirable impacts of such activities.

RELEVANT LEGAL CITATIONS

A summary of current regulations for outdoor activities was distributed for the July 18 work session; contact staff if you need another copy.

Definitions in the Zoning Code:

21.02.010 Accessory

“Accessory” means a use, a building or structure, part of a building or other structure, which is subordinate to and the use of which is incidental to that of the main building, structure or use on the same lot, including a private garage. If an accessory building is attached to the main building by common wall or roof, such accessory building shall be considered a part of the main building.

21.02.580 Principal use

“Principal use” means the primary or predominant use to which the property is or may be devoted, and to which all other uses on the premises are accessory.

ANALYSIS AND COMMENT

With greater interest in mixed use zones and pedestrian-oriented areas, which are intended to encourage both outdoor dining and outdoor sales and display of some merchandise (grocer or store), adopting regulations for outdoor activities would make the expectations and limitations more clear. Some of the major issues that new regulations should address include:

- Outdoor activities that should be permitted in Commercial and other zones;
• Encroachment on public sidewalks;
• Noise, dust, lighting and other potential nuisances;
• Use of shipping containers for storage; and
• Compatibility with other uses allowed in the zone or at adjoining properties;

Earlier versions of this code amendment were distributed to the Planning Commission and were discussed at a work session on July 28, 2011. Following further review by staff, the draft amendment has been revised to:

• Recommend a limit on the number of outdoor seats of 50 percent of the indoor seating capacity, except in mixed use zones (page 1, line 27);
• Prohibit encroachment of an outdoor dining area on required ADA access and exiting routes (page 1, line 32);
• Clarify allowance for “Commodities Requiring Outdoor Storage” (page 2, line 44); and
• Allow temporary use of shipping containers for storage during construction in all zones (page 1, line 21).

The attached draft code amendments include these changes.

RECOMMENDATION

Following completion of the public hearing, recommend that the City Council approve the Outdoor Business Activity Code Amendment.

ATTACHMENTS

• Outdoor Business Activities Code Amendment, showing proposed amendments
Outdoor Business Activities
Code Amendment

General Provisions

21.04.440 Outdoor Business Activities
Regulations for zones may allow business activities to be conducted outside of a building or structure as an accessory use to the primary use of the property (which must be located in a building or structure); see regulations for specific zones. The following regulations apply in all zones, except as noted.

A. Shipping Containers. In no case may a shipping container or similar be located outside of a building in any non-residential zone, except:
   1. In a service/storage yard at a property located in an industrial zone (see LMC 21.50.210.F); or
   2. As part of a temporary special event (see LMC 5.30); or
   3. As part of a truck trailer (see LMC 21.18.450 for parking of trucks and truck trailers).

B. Shipping containers may be used for storage in support of construction activity for which a permit has been issued by the City of Lynnwood or other governmental agency.

C. Outdoor Dining. Where a zone allows restaurant, coffee shop or café (or similar use), outdoor dining is permitted as an accessory use, provided:
   1. The seating capacity of the outdoor dining area shall not exceed 50% of the seating capacity of the indoor dining area (this provision does not apply in the City Center West End, Core and North End, Highway 99 Mixed Use, College District Mixed Use, Mixed Use/Business, or Planned Regional Shopping Center zones);
   2. The outdoor dining area shall not encroach on: the required ADA access path, the required egress path, required parking, or required landscaping areas;
   3. The requirements of LMC 21.46.210.A shall not apply; and
   4. No additional off-street parking is required.

D. Play yard or playground. Where a zone allows a school or day care facility for children, the play area required by State or other regulations may be located outdoor.

Commercial Zones and PRC Zone

Note: For conditional uses, review as part of conditional use permit application.
21.46.110 & 21.48.110 Limitations on Uses – General
B. Outdoor Uses. All business uses and activities shall be located within an entirely enclosed building, except as indicated below:

1. General Regulations. Any uses and activities which are permitted to occur outdoors by LMC 21.46.100, or by other provisions of this title, subject to the following:
   a. The use or activity shall not encroach on site-screening or landscaping as currently required by this title or other city ordinances;
   b. The use or activity shall not block pedestrian traffic or fire lanes;
   c. The use or activity shall observe the same minimum front, side, and rear yards as apply to buildings, on sides adjoining public streets, except that such yards may be used for outdoor customer parking and for other uses and activities which are permitted outdoors;
   d. The highest point of any item displayed within that area shall be not more than six feet in height from an even grade and at least 10 feet from the right-of-way line; and
   e. Items which, in the opinion of the fire chief, present a potential fire hazard shall be located 15 feet from any interior property line and shall be arranged to provide 20-foot fire lanes no more than 300 feet apart.

2. Incidental Outdoor Displays. For uses not included in the foregoing subsection (B)(1) of this section, incidental outdoor displays are permitted in conjunction with the indoor sales of similar merchandise conducted by the same business (such as sale of potting soil (or similar) where gardening supplies are sold) or the sale of merchandise that should not be stored indoors. Such displays shall be displayed on racks, pallets, or in neat stacks and shall be located in areas underneath marquees, canopies, or overhanging roofs. If no marquees, canopies, or overhanging roofs exist, such displays shall be not more than eight feet from the walls of buildings. All limitations specified in subsection (B)(1) of this section shall apply. See LMC 21.46.210 for site screening requirements. Area for displays under this subsection is not included in the calculation of off-street parking.

3. Business Serving Customers in Automobiles. Automobile-service stations, drive-in restaurants, and other businesses which primarily provide service to customers in automobiles as an inherent trait of the business shall not be permitted to store or display merchandise outdoors, except as specified herein and in subsections (B)(1) and (B)(2) of this section.

4. Commodities Requiring Outdoor Storage. Commodities which would be damaged if required to be kept indoors; (including but not limited to growing stock in connection with horticultural nurseries, whether the stock is in open ground, pots or containers; open air sales areas for firewood, trees, shrubs, plants, and home gardening supplies and equipment); and public utility facilities (see LMC 21.46.118(B)); and, commodities that cannot be stored indoors as a practical matter due to size or other characteristic or which would pose a safety hazard indoors (including but not limited to propane tanks and filling
stations) are allowed outdoors subject to the provisions of subsection (B)(1) of this
section.

5. Vehicles and Boats Offered for Sale. Where a zone permits the sale of vehicles and/or
boats, the vehicles and boats offered for sale may be displayed outdoors, except as
provided in LMC 21.46.111.A. See LMC 21.46.210 for site screening requirements.

§6. At Properties Zoned to the Community Business Zone. The on-site parking and
storage of rental automobiles and light trucks (rated at one ton capacity or less) is
allowed; however, such parking and storage shall be restricted to:

a. A staging area for a maximum of five vehicles. This area may be located
within existing parking lots, but shall not utilize parking stalls required by LMC
21.18.800 for the uses on the site. The staging area shall be paved and striped to
the standards of Chapter 21.18 LMC and shall be designated for use by rental
vehicles only.

b. A storage area for a maximum of 15 vehicles. This area shall be located no
closer to a public street than a point equal to the closest part of any building on
the site to the street and shall be screened with landscaped area at least five feet
wide containing evergreen conifer trees with a minimum height of six feet and
spaced no more than 15 feet on center, backed by a six-foot fence which forms an
effective barrier to sight; the remainder of the planting strip shall be planted with
low evergreen plantings which will mature to a total groundcover within five
years.

c. No service or sales of rental vehicles shall be allowed.

6. Cross Reference. See also LMC 2.16.100.

21.46.210 & 21.48.110 Additional Development Standards

A. Site-Screening Standards for Outdoor Displays and Outdoor Storage Areas.
Any outdoor displays or outdoor storage which are permitted in commercial zones, and
which are not affected by the standards of LMC 21.46.220, shall be enclosed within a
site-screening fence of sufficient height to effectively screen the outdoor display or
storage from view, and not less than six feet high in any case, set back five feet from the
property line. The outer five feet shall be landscaped with evergreen conifer trees with a
minimum height of six feet (when planted) spaced a maximum of 15 feet on center and
low evergreen plantings which will mature to a total groundcover within five years.
Provided, however, that where the Director (or designee) determines that these
requirements do not apply because the principal use of a property involves the display of
merchandise for view from the streets, the display area shall be improved as a parking lot
(except for paving where the nature of the merchandise makes paving impractical) with a
10-foot planting strip along the entire street frontage, as per subsection (B)(2) of this
section. Display areas shall be segregated from the required customer parking so that
there is always sufficient customer parking to meet the minimum parking requirements of
this code.
Industrial Zones

Note: For conditional uses, reviewed as part of conditional use permit application.

21.50.210.F. Screening of Service Yards

F. Screening of Service Yards. Service yards shall be site-screened so that a visual barrier is established between the storage yard and local streets and arterials. Screening shall be installed on side yard setbacks between street right-of-way and service buildings or storage yards (except for driveways). It shall consist of either:

1. One row of evergreen conifer trees, spaced a maximum of 10 feet on center. Minimum tree height at planting shall be six feet. The remainder of the planting strip shall be promptly planted with low evergreen plantings which will mature to a total groundcover within five years; or

2. A site-screening evergreen hedge that provides a sight, sound, and psychological barrier between zones with some degree of incompatibility. The spacing of plants shall be such that they will form a dense hedge within five years. Minimum plant height at planting shall be four feet.

21.50.150.H. Open Storage in Light Industrial Zone

H. Open Storage. All storage shall be located within an area no closer to the street right-of-way line than designated in LMC 21.50.200 and shall be enclosed with a heavy wire fence or of a similar type, with the top of the fence not to be less than six feet above the adjoining street level, or by an attractive hedge or board fence at least six feet high.

In case of the open storage of lumber, coal or other combustible material, a roadway shall be provided, graded, surfaced, and maintained from the street to the rear of the storage area to permit free access of fire trucks at any time, as required by the Fire Marshall.

Mixed Use Zones

No changes to regulations in the Mixed Use – Business or College District zones.

For conditional uses, reviewed as part of conditional use permit application.

Otherwise, considered an accessory use – no regulations.

City Center Zones

In-process amendments address outdoor activities
Commercial-Residential Zone

Separate amendments to regulations for this zone (associated with proposed redevelopment of the site of the Lynnwood Athletic Complex and the former Lynnwood High School) will address outdoor activities.