AGENDA
City of Lynnwood
Transportation Benefit District (TBD) Board
Council Chambers, City Hall
19100 44th Avenue W, Lynnwood, WA, 98036

Special Meeting
July 21, 2014
7:00 P.M.

10 Call to Order

20 Roll Call

30 Approval of Minutes – Special Meeting June 30, 2014

40 Voucher Approval

50 Consideration, discussion, and possible action on Resolution #5 and other various
documents and procedures associated with a ballot proposition to impose a sales
and use tax

60 Prohibition on Use of Public Facilities to Support or Oppose Ballot Measure

70 Adjournment
City of Lynnwood
Transportation Benefit District Board

Item 30

Special Meeting
July 21, 2014
7:00 P.M.

TITLE: Approval of Minutes – Special Meeting June 30, 2014

DEPARTMENT: Public Works

DEPARTMENT CONTACT: David Mach

BACKGROUND: At the May 24, 2010 Business Meeting, the Lynnwood City Council approved Ordinance #2837, which amended the Lynnwood Municipal Code enacting a new chapter, Transportation Benefit District (TBD), effectively establishing the district. The governing board of the TBD is the Lynnwood City Council acting in an ex officio and independent capacity per RCW 36.73.020(3).

The June 30, 2014 TBD meeting was the most recent meeting of the TBD Board.

ACTION: Approve the meeting minutes from the June 30, 2014 special meeting.

ATTACHMENTS: June 30, 2014 special meeting minutes
10. CALL TO ORDER – The June 30, 2014 Special Meeting of the City of Lynnwood Transportation Benefit District (TBD) Board, held in the Council Chambers of Lynnwood City Hall, was called to order by Board President Simmonds at 7:44 p.m.

20. ROLL CALL
Board President Loren Simmonds
Board Vice President Sid Roberts
Board Member Van AuBuchon
Board Member Benjamin Goodwin
Board Member M. Christopher Boyer
Board Member Ruth Ross
Board Member Ian Cotton

OTHERS ATTENDING
Public Works Director Franz
Deputy PW Director Elekes
Project Manager Mach
Finance Director Hines
Community Devt. Director Krauss
Council Assistant Morris
Asst. City Admin. Ceneza

PRR Consultants:
Katherine Schomer
Kimbra Wellock

30. APPROVAL OF MINUTES – Special Meeting March 10, 2014

Motion made by Board Member Boyer, seconded by Board Member AuBuchon, to approve the minutes of the March 10, 2014 Meeting as presented. Motion passed unanimously.

40. VOUCHER APPROVAL

Motion made by Board President Simmonds, seconded by Board Member Boyer, to approve claims in the amount of $44,422.30. Motion passed unanimously.

50. PRESENTATION AND DISCUSSION: COMMUNITY EDUCATION /OUTREACH AND PUBLIC SURVEY

Director Franz introduced consultants from PRR, Kimbra Wellock and Katherine Schomer, who helped the City through an education and outreach process and survey. Ms. Wellock gave a PowerPoint presentation as contained in the Board’s packet reviewing the education and outreach portion. Ms. Schomer then completed the PowerPoint presentation and discussed the survey results.

Council Questions and Answers:

Board Member Cotton thanked the consultants for putting this together. He asked them if the 10% response rate was normal. Ms. Schomer replied it is a little low for a mail survey,
but it is not unusual. Project Manager Mach added that the goal was to get a 5% margin of error. They actually exceeded that at 4.6% because they got more people that returned the survey than they expected. Board Member Cotton asked about the purpose of the online survey. Ms. Wellock explained that they chose to offer the separate online survey so that people who weren’t selected as part of the random sample of 5,000 had an opportunity to weigh in as well.

Board Member Boyer commended the consultants on their work.

Board President Simmonds acknowledged that he was shocked to see the #2 project on the survey is 196th. He reviewed options available to the Board for proceeding with the topic at hand and asked for input from the Board.

Board Member Boyer asked about the forecast for revenue if they were successful in getting voter approval of a 0.2 of 1% increase in sales tax. Project Manager Mach said they are currently working with the Finance Department to get more current numbers, but the older numbers were around $4 million annually. If it was enacted, it could only be in place for 10 years and would generate a total of about $40 million with sales tax fluctuation. Board Member Boyer asked if $4 million annually would achieve the goals of the City. Director Franz replied that it would. It would also have a positive impact on the General Fund overall. Board Member Boyer commented that the numbers show a 57% overall support for a ballot measure of some kind in this area and at least a 45% support for no more than 0.2 of 1% sales tax. He commented that potential electoral support seems good. Director Franz commented that after questioning the consultant indicated that the level of support could go even higher depending on how the ballot measure language is crafted. For this reason, it might be necessary for the TBD to meet again to review sample ballot measure language.

Board Member Roberts asked Director Franz if the revenue would go for roads only or if it would go towards other things too. Director Franz explained that is one of the things they are working on. Based on what they heard in the survey he would recommend the bulk of it go to pavement overlay, but that some also go to other street maintenance. However, all of the money would go towards roads. Board Member Roberts asked Finance Director Hines if there are other sales tax measures that are due to sunset during the next 5 to 10 years. Director Hines said he wasn’t aware of any. Board Member Roberts asked what would happen at the end of 10 years. Director Franz replied that it would just go away and would need to be revoked.

Board Member AuBuchon spoke in support of Director Franz’ recommendation to bring this back as a proper ballot measure.

Board President Simmonds summarized that it appeared the Board was in support of moving forward with this.

Motion made by Board Member Boyer, seconded by Board Member Cotton, to instruct staff to move ahead with the writing of a potential ballot measure to be presented to the public at the earliest opportunity to institute a 0.2 of 1% increase in sales tax for the purpose of street maintenance and repair. Motion passed unanimously.
Director Franz commented that it might be wise to have City Attorney Larson give the Board a brief review of the process at the next TBD meeting.

60. ADJOURNMENT

Motion made by Board Member Boyer, seconded by Board Member Ross, to adjourn the meeting. Motion passed unanimously.

There was discussion about the need for a Special TBD Meeting in the near future. The meeting was adjourned at 8:23 p.m.

Loren Simmonds, TBD Board President

Lorenzo Hines, Jr.
Finance Director, acting as Board Treasurer
City of Lynnwood
Transportation Benefit District Board

Item 40

Special Meeting
July 21, 2014
7:00 P.M.

TITLE: Voucher Approval

DEPARTMENT: Finance/Public Works

DEPARTMENT CONTACT: Lorenzo Hines, Jr./David Mach

BACKGROUND: Due to the close proximity between the June 30, 2014 and July 21, 2014 special meetings, there will be no voucher approval at this time. Voucher approval will be brought to the TBD Board at a future meeting.

ACTION: No action needed at this time.

ATTACHMENTS: None
City of Lynnwood
Transportation Benefit District Board

Item 50

Special Meeting
July 21, 2014
7:00 P.M.

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TITLE: Consideration, discussion, and possible action on Resolution #5 and other various documents and procedures associated with a ballot proposition to impose a sales and use tax

DEPARTMENT: Public Works

DEPARTMENT CONTACT: Bill Franz/Jeff Elekes/David Mach

BACKGROUND: At the June 30, 2014 meeting, the TBD Board authorized staff to prepare various documents providing for a ballot proposition for the November 4, 2014 general election for a 0.2% sales and use tax increase to be used on various transportation improvements. Staff and the Board Attorney have reviewed similar documents from other Snohomish County TBD’s and have drafted Resolution #5 and an explanatory statement for the Boards review and potential action.

ACTION: Consider, discuss, and possibly adopt Resolution #5 and associated explanatory statement.

ATTACHMENTS:
1) Resolution #5
2) Explanatory Statement
LYNNWOOD TRANSPORTATION BENEFIT DISTRICT

RESOLUTION NO. 5

A RESOLUTION OF THE CITY OF LYNNWOOD, WASHINGTON, TRANSPORTATION BENEFIT DISTRICT BOARD, PROVIDING FOR A BALLOT PROPOSITION TO BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE DISTRICT ON NOVEMBER 4, 2014, TO IMPOSE A SALES AND USE TAX IN THE AMOUNT OF TWO-TENTHS OF ONE PERCENT (0.2%) WITHIN THE BOUNDARIES OF THE DISTRICT FOR A PERIOD OF TEN YEARS TO FUND OR FINANCE SPECIFIED TRANSPORTATION IMPROVEMENTS.

WHEREAS, the City of Lynnwood (the “City”) approved Ordinance No. 2837 on May 24, 2010, creating the Lynnwood Transportation Benefit District (“TBD”) of the City of Lynnwood, Washington (the “District”) pursuant to Chapter 36.73 RCW; and

WHEREAS, the City has identified the sales and use tax as an authorized source of revenue identified in Chapter 36.73 RCW to finance various transportation improvements and operation, preservation, and maintenance of transportation facilities within the City; and

WHEREAS, the District is authorized pursuant to RCW 36.73.040(3)(a) to impose a sales and use tax in accordance with RCW 82.14.0455 in the amount of two-tenths of one percent (0.2%) for a period of ten years upon a favorable vote of the qualified electors within the District for the purpose of funding or financing certain transportation improvements; and

WHEREAS, with voter approval, the District may impose a sales and use tax upon the occurrence of any taxable event within the boundaries of the District to fund or finance transportation improvements; and

WHEREAS, if approved by the voters, the sales and use tax will apply to persons who shop and thereby use the roads in the City and not just to City residents; and

WHEREAS, the sales and use tax is estimated to generate an average of $4,000,000 of additional revenue per year, which will be used entirely to fund the shortfall in funding for the projects included in the City’s Transportation Plan, and as allowed by State law; now, therefore

THE BOARD OF THE CITY OF LYNNWOOD, WASHINGTON, TRANSPORTATION BENEFIT DISTRICT, DO RESOLVE AS FOLLOWS:

Section 1. Current Purpose and Need.

The Governing Board of the District (the “Board”) hereby finds that the best interests of the inhabitants of the District require the District to impose a sales and use tax through this
Resolution in the amount of two-tenths of one percent (0.2%) pursuant to RCW 36.73.040(3)(a) and RCW 82.14.0455 for the purpose of providing a portion of the funds necessary to finance transportation improvements.

The following items are identified as transportation improvements:

1) Preventative and routine pavement maintenance and reconstruction which extends the life cycle of the street pavement section, including but not limited to pavement repair, sub-base reconstruction, overlay, chip seal, and patching;

2) Street and traffic maintenance and operations, including but not limited to signing, striping, sidewalks, and traffic signals; and

3) Other projects as identified in the City’s Transportation Plan

The cost of all necessary design, engineering, financial, legal and other consulting services, inspection and testing, administrative and relocation expenses, and other costs incurred in connection with the foregoing TBD improvements shall be deemed a part of the costs of the TBD improvements.

The Board shall determine the application of moneys available for the TBD improvements so as to accomplish, as nearly as may be practical, all of the TBD improvements. In the event that the proceeds of sales and use taxes authorized herein, plus any other money of the District legally available therefore, are insufficient to accomplish all of the TBD improvements, the Board shall use the available funds for paying the cost of those portions of the TBD improvements deemed by the Board most necessary and in the best interests of the District.

The Board shall determine the exact locations and specifications for the elements of the TBD improvements as well as the timing, order, and manner of implementing or completing the TBD improvements. The Board may alter, make substitutions to, and amend the TBD improvement descriptions as it determines is in the best interests of the District consistent with the general descriptions provided above and in accordance with the material change policy adopted by the Board and the notice, hearing, and other procedures described in Chapter 36.73 RCW, including RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.

If the Board shall determine that it has become impractical to acquire, construct, or implement all or any portion of the TBD improvements by reason of changed conditions, incompatible development, costs substantially in excess of the amount of sales and use tax proceeds estimated to be available, or acquisition by a superior governmental authority, the Board shall not be required to acquire, construct, or implement such portions. If all of the TBD improvements have been acquired, constructed, implemented or duly provided for, or found to be impractical, the Board may apply the sales and use tax proceeds (including earnings thereon) or any portion thereof to other transportation improvements then identified in the City’s Transportation Improvement Program in accordance with the material change policy adopted by the Board and the notice, hearing, and other procedures described in Chapter 36.73 RCW, including RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.
Section 2. Findings of Fact.

1. The Lynnwood Transportation Benefit District is permitted to place a ballot measure before the voters and is so authorized pursuant to RCW 36.73.040(3)(a) to impose a sales and use tax in accordance with RCW 82.14.0455.

2. The provisions of Ordinance No. 2837 still adequately state the purpose and need for the Transportation Benefit District Governing Board.

Section 3. Ballot Measure.

It is hereby found and declared that the best interests of the District require the submission to the qualified electors of the District a proposition whether the District shall impose a sales and use tax within the limitations established in RCW 82.14.0455 for their ratification or rejection at a general election to be held on November 4, 2014 for the purpose of providing funds necessary to pay or finance a portion of the costs of the improvements. The Snohomish County Auditor, as ex officio supervisor of elections in Snohomish County, Washington, is hereby requested to call and conduct such election to be held within the District on such day and to submit to the qualified electors of the District for their approval or rejection, a proposition to impose a sales and use tax in the amount of two-tenths of one percent (0.2%) of the selling price in the case of a sales tax, or value of the article used in the case of the use tax. The sales and use tax authorized by this section is in addition to any other taxes authorized by law, shall be collected from those persons who are taxable by the State of Washington under Chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the District, and shall be imposed for a period of ten years from its first date of collection. Upon approval of the voters of the proposition hereinafter set forth, the District may use proceeds of such sales and use tax for the purpose of paying or financing a portion of the costs of TBD improvements. The Treasurer of the Board is hereby authorized and directed to certify said proposition to said official in the following form:

LYNNWOOD TRANSPORTATION BENEFIT DISTRICT
LYNNWOOD, WASHINGTON
SALES AND USE TAX FOR TRANSPORTATION IMPROVEMENTS

The Board of the Lynnwood Transportation Benefit District, Lynnwood, Washington, adopted Resolution 5 concerning a sales and use tax to fund transportation improvements. This proposition would authorize a sales and use tax of two-tenths of one percent (0.2%) to be collected within the District in accordance with RCW 82.14.0455 for a term of ten years. Such revenues would be used for the purpose of funding the following transportation improvements: preventative and routine pavement maintenance and reconstruction, street and traffic maintenance and operations, and other capital projects as identified in the City’s Transportation Plan. Should this proposition be:

Approved..............☐

Rejected................☐
Section 4. Corrections.

The Treasurer of the District and the codifiers of this resolution are authorized by the Lynnwood Transportation Benefit District Governing Board to make necessary clerical corrections to this resolution including, but not limited to, the correction of scrivener’s/ clerical errors, references, resolution numbering, section/subsection numbers and any references thereto, and to make corrections or revisions consistent with the requirements of the Snohomish County Prosecutor’s office which do not change the substantive meaning of this resolution.

Section 5. Severability.

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

Section 6. Effective Date.

This Resolution shall be in full force and effect from and after its adoption and approval.

PASSED BY THE LYNNWOOD TRANSPORTATION BENEFIT DISTRICT BOARD, the ___________ day of ___________________, 2014.

APPROVED:

__________________________________  
Loren Simmonds, TBD Board President

ATTEST/AUTHENTICATED:

__________________________________  
Lorenzo Hines  
Finance Director, acting as Board Treasurer

APPROVED AS TO FORM:

__________________________________  
Rosemary Larson  
City Attorney, acting as Board Attorney

FILED WITH ADMINISTRATIVE SERVICES: __________
PASSED BY THE TRANSPORTATION BENEFIT DISTRICT BOARD: ______________________
EFFECTIVE DATE: __________
RESOLUTION NUMBER: ______________
Explanatory Statement

The City of Lynnwood formed a Transportation Benefit District (District) by ordinance on May 24, 2010. The purpose of the District is to fund construction, maintenance and operation of the City’s street and traffic system, as allowed by state law. The District is authorized to impose a sales and use tax in the amount of two-tenths of one percent (0.2%) for a period of up to ten years upon approval by voters within the District. This tax is estimated to generate an average of $4,000,000 of additional revenue per year, which will fund the following transportation improvements: preventative and routine pavement maintenance and reconstruction, such as pavement repair, overlay, chip seal, and patching; street and traffic maintenance and operations, such as signing, striping, sidewalks, and traffic signals; and other capital projects identified in the City’s Transportation Plan. More information about the improvements is available at Lynnwood City Hall and on the District’s website at www.ci.lynnwood.wa.us/tbd. The proposed sales and use tax would impose a new tax in the amount of two-tenths of one percent (0.2%) for a period of ten years, the proceeds of which will be dedicated to and used solely to fund the above transportation improvements.
City of Lynnwood
Transportation Benefit District Board

Item 60

Special Meeting
July 21, 2014
7:00 P.M.

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**TITLE:** Prohibition on Use of Public Facilities to Support or Oppose Ballot Measure

**DEPARTMENT:** Public Works

**DEPARTMENT CONTACT:** Bill Franz/Jeff Elekes/David Mach

**BACKGROUND:** State and Local Government Agencies are prohibited from certain campaign activities. Our legal staff will provide a brief presentation about the do’s and don’ts during an election season.

**ACTION:** Discussion

**ATTACHMENTS:** Memorandum
MEMORANDUM

TO: David Mach, Project Manager and Transportation Benefit District Board Liaison

FROM: Rosemary A. Larson, District Attorney

DATE: July 15, 2014

RE: Lynnwood Transportation Benefit District – Prohibition on Use of Public Facilities to Support or Oppose Ballot Measure

I. ISSUE

The Lynnwood Transportation Benefit District (TBD) is considering a resolution that would provide for a ballot proposition authorizing a sales and use tax to be submitted to the voters of the District at the general election on November 4, 2014. You requested that I provide information regarding actions that the TBD Board Members may or may not take in connection with the ballot measure, assuming that the Board passes the resolution authorizing the election.

II. DISCUSSION

State law prohibits public officials and employees from using, or allowing the use of, public facilities to assist in campaigns for election to any public office, or to support or oppose any ballot proposition. RCW 42.17A.555 (formerly RCW 42.17.130) states in part:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. ...

The statute has three specific exceptions: (1) an elected legislative body may vote on a motion, resolution, or ordinance to express support of or opposition to a ballot proposition if certain procedural steps are followed, which include providing notice of the meeting at which the matter will be considered and allowing equal opportunity for members of the legislative body and the public to express opposing views; (2) elected officials may make a statement in support of or in opposition to a ballot proposition at a press conference or in response to a specific inquiry; and (3) activities that are part of the normal and regular conduct of the local government are allowed. RCW 42.17A.555.
Thus, in general, TBD Board Members (and City staff, regardless of whether they are providing services for the TBD or acting as City employees) must not use any public facilities, as broadly defined in the statute, to either support or oppose the ballot proposition. However, under the first two statutory exceptions, the TBD Board may vote on a motion or resolution to express support of or opposition to the ballot proposition after following the proper procedures (as a practical matter, this exception would not apply, as the Board would already have passed the resolution authorizing the ballot measure), and Board Members may make statements in support of or in opposition to the ballot proposition at a press conference or in response to a specific inquiry.

Regarding the third exception, the Public Disclosure Commission (the state agency authorized to enforce violations of RCW 42.17A.555) defines the phrase “normal and regular conduct” of a public agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate’s campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.” WAC 390-05-273. PDC regulations state that RCW 42.17A.555 does not prevent a public agency from making facilities available on a non-discriminatory equal access basis for political uses, or from making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the agency’s normal and regular conduct. WAC 390-05-271(2).

Under this exception, the PDC presumes that an agency may distribute throughout its jurisdiction one objective and fair presentation of the facts for each ballot measure. See PDC Interpretation No. 04-02, “Guidelines for Local Government Agencies in Election Campaigns,” p. 4 (Amended May 22, 2013). If an agency distributes more than one publication, the agency must be able to demonstrate that this conduct is normal and regular for the agency. Id. at p. 4. However, the PDC expressly cautions: “Agencies need to be aware, however, that in no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct.” Id., at p. 5. There is a fine line between merely presenting the facts and making a “sales effort” with respect to a ballot measure, and care must be taken to do no more than state facts. For example, the written materials should not speculate as to the impact on the agency if a ballot proposition fails.

Also, the PDC has opined that the third exception does not authorize the use of a normal public comment period during an open public meeting to express support or opposition to candidates or ballot measures; rather, the PDC deems the public comment period to be a “public facility” that cannot be used to support or oppose election issues. Therefore, if the Board holds a meeting before the election on the ballot measure, and allows public comment as part of the meeting, the Board should not allow persons speaking during the public comment period to use their time to express support or opposition of the ballot measure.

Finally, the PDC regulations expressly state that RCW 42.17A.555 does not restrict the right of any individual to express his or her personal views concerning a candidate or ballot proposition, if such expression does not involve the use of the facilities of the public agency. WAC 390-05-271(1). Thus, TBD Board Members may campaign or express their own views on their own time, so long as no public equipment, vehicles, supplies, employee time (during work hours) or other facilities or resources are used or involved in any way. See PDC Interpretation No. 04-02, p. 3-4.
cc:  Transportation Benefit District Board Members
     Nicola Smith, Mayor
     Bill Franz, Director of Public Works