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3 **AGENDA**
4 **City of Lynnwood**
5 **Transportation Benefit District (TBD) Board**
6 **Council Chambers, City Hall**
7 **19100 44th Avenue W, Lynnwood, WA, 98036**

8 **Special Meeting**
9 **July 8, 2015**
10 **7:00 P.M.**

- 11
- 12 **10 Call to Order**
- 13
- 14 **20 Roll Call**
- 15
- 16 **30 Approval of Minutes – June 10, 2015 Special Meeting**
- 17
- 18 **40 Executive Session: Potential Litigation**
- 19
- 20 **50 Citizen Comments and Communications**
- 21
- 22 **60 Public Hearing - Transportation Funding Status and Needs, Potential Funding**
23 **Sources and Next Steps for Potential Funding, Including But Not Limited to**
24 **Options for Possible Ballot Measure Including But Not Limited to Imposing a Sales**
25 **and Use Tax and/or Vehicle Registration Fee Funding Options**
- 26
- 27 **70 Presentation, Discussion and Possible Final Action or other Disposition on**
28 **Resolution #7 and Other Various Documents and Procedures Associated With a**
29 **Ballot Proposition to Impose a Sales and Use Tax and/or Vehicle Registration Fee**
30 **Funding Options**
- 31
- 32 **80 Prohibition on Use of Public Facilities to Support or Oppose Ballot Measure**
- 33
- 34 **90 Adjournment**
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**City of Lynnwood
Transportation Benefit District Board**

Item 30

**Special Meeting
July 8, 2015
7:00 P.M.**

TITLE: Approval of Minutes – June 10, 2015 Special Meeting

DEPARTMENT: Public Works

DEPARTMENT CONTACT: David Mach

BACKGROUND: The TBD Board held a special meeting on June 10, 2015.

ACTION: Approve the meeting minutes from the June 10, 2015 special meeting.

ATTACHMENTS: June 10, 2015 special meeting minutes

CITY OF LYNNWOOD
TRANSPORTATION BENEFIT DISTRICT BOARD SPECIAL MEETING MINUTES
June 10, 2015

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2 10. CALL TO ORDER – The June 10, 2015 Special Meeting of the City of Lynnwood
3 Transportation Benefit District (TBD) Board, held in the Council Chambers of Lynnwood
4 City Hall, was called to order by Board President Simmonds at 7:00 p.m.
5

6 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 (absent)

OTHERS ATTENDING

Public Works Director Bill Franz
Deputy PW Director Elekes
Project Manager David Mach
Council Assistant Beth Morris
City Attorney Rosemary Larson

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9 Board President Simmonds read the Introductory Statement reviewing the formation and
10 function of the TBD and the purpose of the meeting.
11

12 30 APPROVAL OF MINUTES – MAY 4, 2015 SPECIAL MEETING; MAY 11, 2015
13 SPECIAL MEETING; AND MAY 26, 2015 SPECIAL MEETING
14

15 *Motion made by Board Member Boyer, seconded by Board Vice President Roberts, to*
16 *approve the minutes of: May 4, 2015 Special Meeting; May 11, 2015 Special Meeting; and*
17 *May 26, 2015 Special Meeting. Motion passed unanimously.*
18

19 40. CITIZEN COMMENTS AND COMMUNICATIONS
20

21 Ted Hikel, 3820 – 191st Place SW, Lynnwood, WA 98036, stated that the suit he brought
22 against the Lynnwood TBD seeking a declaratory judgment did not prevail in court. He was
23 not seeking any monetary judgment or settlement. He asserted the attorney for the Board
24 made personal attacks on both himself and his attorney. His action was brought to achieve
25 two ends: to ensure that the Board President will include Citizen Comments as a regular
26 item on the agenda and that whenever the Board is contemplating final action on any agenda
27 item, the statements, “possible final action,” will be included. His expectation is that the
28 members of the Board will assure the public that these measures will be followed.
29

30 Mr. Hikel then referred to item 50 on the agenda and noted that just eight months ago the
31 citizens of Lynnwood turned down the request on the ballot to extend sales tax. He hopes the
32 Board will take this into consideration. If anything is to be put on the ballot he hopes there
33 will first be a public hearing on it.
34

1 Board President Simmonds asked Mr. Hikel to provide a copy of his statement, but he
2 explained he did not have one available, but it was on the recording.

3
4 Maria Ambalada, 4515 – 176th Street SW, Lynnwood, WA, spoke against levying taxes on
5 the citizens again without giving back to them. She acknowledged that the project is very
6 important, but she recommended alternative funding by getting citizens to organize in order
7 to raise money. This will also help to improve the participation within neighborhoods. She
8 expressed concern about how the Board could pay back the license tab fees that were
9 increased.

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11 50. PRESENTATION, DISCUSSION, AND POSSIBLE FINAL ACTION OR OTHER
12 DISPOSITION: TRANSPORTATION FUNDING STATUS AND NEEDS, POTENTIAL
13 FUNDING SOURCES AND NEXT STEPS FOR POTENTIAL FUNDING, INCLUDING
14 BUT NOT LIMITED TO OPTIONS FOR POSSIBLE BALLOT MEASURE
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- 16 • Possible motion relating to potential ballot measure resolution for increased sales tax
17 and/or increased or decreased vehicle registration fee funding options
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19 Board President Simmonds stated there was a Confidential Client Memo that was submitted
20 by the City Attorney which could only be discussed in an Executive Session. Since there
21 was not one advertised tonight, it would need to be at a future meeting.
22

23 Public Works Director Bill Franz referred to a report in the Board packet which lays out the
24 full range of potential funding options from doing nothing up to the full amounts that are
25 allowed by the legislature for TBDs. It also provides information for potential election dates
26 and action dates.
27

28 Board President Simmonds asked if the Board agrees that additional funding is needed for
29 transportation. There was consensus by the Board that additional funding is needed. Board
30 President Simmonds asked if the Board wished to consider those revenue mechanisms
31 allowed under the TBD understanding that further TBD revenue measures require a public
32 vote. Board Vice President Roberts commented that it was the Board's responsibility to
33 consider all options.
34

35 Board President Simmonds asked when the Board wished to go out for a vote, regardless of
36 what might actually be presented to the people.

- 37 • Board Member AuBuchon said he thought there were potential transportation
38 funding sources available that don't require a vote such as utilizing revenues flowing
39 into the City's General Fund. Board Member Boyer commented that the TBD (unlike
40 the Council) does not have authority over the General Fund. Board Member
41 AuBuchon acknowledged that, but noted that the City Council could prioritize the
42 City's existing budget to help the TBD meet its needs for transportation funding.
43 Board President Simmonds expressed concern about mixing responsibilities of the
44 Council and the TBD. City Attorney Larson replied that the City Council would have
45 the authority over the General Fund. She clarified that Board Member AuBuchon
46 appeared to be interested in having the Council consider General Fund options as
47 opposed to having the TBD Board go out for a vote, or that both should be

1 considered. Board Member AuBuchon agreed and added that raising taxes was not
2 the only option available to the TBD. Board President Simmonds concurred, but
3 explained that meeting as the TBD Board, they were meeting to discuss the options
4 available to Board. That would not preclude the Council from exploring other
5 options available to them at a Council meeting.

- 6 • Board Vice President Roberts commented that the TBD Board had the ability to ask
7 the Council to discuss options at another time. He stated he was most comfortable
8 tonight talking about the full range of options. He added that he was not interested in
9 raising the tab fees under any circumstances. He clarified that the TBD Board does
10 not have the authority to raise taxes anyway; they just have the authority to put it on
11 the ballot. Regarding the previous ballot measure, he thought that they shouldn't
12 have gone out for 0.2%; if they had asked for less the results might have been
13 different. He stated he would like to discuss all the options in order to determine the
14 next step.
- 15 • Board President Simmonds explained that the Board needed to decide if and when
16 they were interested in going out for a vote because there is a timeline of
17 requirements that have to be met if it is going to be on the ballot in 2015.
- 18 • Board Member Boyer spoke in support of moving forward now. Staff has been very
19 clear that the roads are deteriorating and the longer they wait the more costly it will
20 be to fix them.
- 21 • Board Member Ross spoke in support of asking the public's support for a minimal
22 raise in the sales tax. She thought the result would be better if they also eliminate the
23 \$20 tab fee. That way the people who actually live in Lynnwood would be getting
24 something in return. She reminded the Board that there are many others out there
25 reaching for this same pot of money. If the City isn't careful, Lynnwood's citizens'
26 money will go everywhere else except Lynnwood.
- 27 • Board Vice President Roberts explained that Community Transit is planning to go
28 for 0.3% He thinks it is too much and has let them know that. Additionally, Sound
29 Transit will likely be back at the next main election asking for a sales tax increase.
30 He thinks this is important for the Board to be aware of. He recommended that the
31 transportation funding issue be solved by several methods and not just one, noting
32 that there is no way just one of the options would be enough.

33
34 Board President Simmonds stated that the people of Lynnwood should not carry the burden
35 of all of the road maintenance that this city needs because the overwhelming majority of
36 traffic that goes through Lynnwood is non-residents. He believes this is only going to get
37 worse because Sound Transit is anticipating 20,000 more people a day will be riding to
38 Seattle from Lynnwood. He believes that the City has a responsibility to try to go out for a
39 vote whether it succeeds or not, but noted there is nothing "tax happy" about it. They are just
40 trying to lead the city forward when they do not have all of the resources that are desperately
41 needed.

42
43 Board Member Goodwin asked about possibly waiting until Community Transit has a
44 measure on the ballot and putting one on at the same time. If so, what can be done in the
45 meantime by way of the other options to look at other funding sources? He spoke in support
46 of making a decision tonight rather than putting it off and requiring more meetings.

1 Board Vice President Roberts commented that there would be advantages and disadvantages
2 to watching someone else run. He also expressed concern that since several of the Council
3 members are running for reelection this could easily be used as an issue. He commented on
4 the difference in costs between the February election and the November election with the
5 February election being much more costly.
6

7 Board President Simmonds commented that if there is even a possibility that the Board
8 wants to do it this year they need to have staff start working on the matter. That doesn't
9 mean the Board would necessarily approve it, but they do need to take some action.
10 Additionally, he thought if they wanted the best representation of how the community really
11 feels about an issue, it would be best to put it out at a general election. He recommended
12 moving forward with a vote at the general election, and suggested they discuss what options
13 they want to consider so that no later than August 4 they will have made a decision.
14

15 Board Member Goodwin commented that the further they push it out, the further behind
16 they are going to get. He agreed that the general election would be the best time to put it out
17 for a vote, and noted that it would be up to the citizens to make the final decision.
18

19 Board Vice President Roberts noted that Community Transit has across-the-board legislative
20 support in Olympia for the legislation they are proposing. The legislature has said they don't
21 want Community Transit to go to any special elections, only a general election. Therefore, if
22 Community Transit doesn't get the authority in time, and they miss the deadline to get it on
23 the ballot in November, it wouldn't be on there until the next November.
24

25 Board President Simmonds asked the Board if they wanted to hold a hearing prior to final
26 deliberations. Board Member Boyer asked if there was time for a public hearing given the
27 tight timeline. Board President Simmonds replied there would be, but they might have to
28 vote on it the same night. Board Member Boyer spoke in support of holding a public
29 hearing.
30

31 Public Works Director Franz proposed that staff prepare a resolution which would
32 ultimately, after being deliberated and passed, set an election date of November 4. In the
33 draft resolution staff could put the parameters of the sales tax. The TBD could hear public
34 comments, deliberate, and make a decision. If it is positive to go forward, there would need
35 to be one more meeting prior to August 4 in order to establish pro and con committees. City
36 Attorney Larson concurred, and added that the resolution would leave open all the options
37 with respect to the amount of any sales tax increase. The Board could decide on that after the
38 public hearing.
39

40 Board President Simmonds solicited additional Board input for staff on the resolution.
41 Board Member Boyer commented that there appeared to be a fair amount of support at the
42 last meeting to ask for 0.15% sales tax increase while doing away with the \$20 tab fee.
43 Board Vice President Robert noted that was before they learned some more information
44 about the way they should proceed with that, but said they could discuss it. Public Works
45 Director Franz added that they could notice an executive session that evening so they could
46 hear from the City Attorney on that issue.
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**City of Lynnwood
Transportation Benefit District Board**

Item 40

**Special Meeting
July 8, 2015
7:00 P.M.**

TITLE: Executive Session: Potential Litigation

DEPARTMENT: Executive

DEPARTMENT CONTACT: Board President Simmonds

BACKGROUND:

ACTION:

ATTACHMENTS:

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City of Lynnwood
Transportation Benefit District Board

Item 60

**Special Meeting
July 8, 2015
7:00 P.M.**

TITLE: Public Hearing - Transportation Funding Status and Needs, Potential Funding Sources and Next Steps for Potential Funding, Including But Not Limited to Options for Possible Ballot Measure Including But Not Limited to Imposing a Sales and Use Tax and/or Vehicle Registration Fee Funding Options

DEPARTMENT: Public Works

DEPARTMENT CONTACT: Bill Franz/Jeff Elekes/David Mach

BACKGROUND: At various TBD meetings over the past six months, the Board discussed transportation needs and potential funding options. At the June 10, 2015 special TBD meeting, the Board directed staff to draft a potential ballot measure resolution for further discussion.

Staff will provide a recap of the presentations provided to the Board at their recent meetings regarding transportation funding status, needs, potential funding sources and next steps relating to the funding options. The TBD Board has the ability to proceed with funding options that include, but are not limited to, the following:

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#	TBD Funding Options	New Annual Revenue
A	Postpone decision or no changes	\$0
B	Increase existing \$20 vehicle tab fee to an amount up to \$100	\$20 to \$40 - \$0.5M \$20 to \$60 - \$1.0M \$20 to \$80 - \$1.5M \$20 to \$100 - \$2.0M
C	0.1% sales tax increase minus \$20 vehicle tab fee	\$1.5M
D	0.1% sales tax increase	\$2.0M
E	0.2% sales tax increase minus \$20 vehicle tab fee	\$3.5M
F	0.2% sales tax increase	\$4.0M

Regarding a potential ballot measure, the following table provides options for upcoming election dates in 2015 and 2016:

1

TABLE 2 – POTENTIAL ELECTION DATES		
#	Election Date	Ballot Measure Due By
A	November 3, 2015	August 4, 2015
B	February 9, 2016	December 24, 2015
C	April 26, 2016	March 11, 2016
D	August 2, 2016	May 13, 2016
E	November 8, 2016	August 2, 2016

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ACTION: Conduct a public hearing.

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ATTACHMENTS: 1) Transportation Funding PowerPoint

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2) Potential transportation funding sources matrix

7

3) Board Members: Please bring the Transportation Binder which was provided by staff at the January 20, 2015 meeting

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9

Public Hearing: Transportation Funding

Presentation to Transportation Benefit District Board

July 8, 2015



City of Lynnwood Vision Statement

“To invest in efficient, integrated, local and regional transportation systems.”



National Citizen Surveys

Citizens' concerns about transportation and traffic are among the highest, if not the highest rated, each year.
(2002, 2006, 2010, 2014)



Statistically

Motor vehicle traffic crashes were the leading cause of death for age 4 and every age 11 through 27 (based on latest available 2009 data), according to the National Highway Traffic Safety Administration.



Lynnwood's Transportation System

- 300 Lane Miles of Streets
- 118 Miles of Sidewalks
- 56 Traffic Signals
- 4350 Traffic Signs
- 160,000 Traffic Buttons
- 95,000 Square Feet of Thermoplastic
- 1000 Gallons of Paint

Total investment in our Transportation System approaches \$500 Million



Street Maintenance

Examples of Responsibilities:

- Potholes
- Signs
- Pavement markings
- Street sweeping

Statistics:

- 295 lane miles
- 4150 Signs
- 1892 Street lights
- 5 Employees



Traffic Signal Operation

Examples of Responsibilities:

- Repair, maintenance and upgrades of traffic signal and interconnect systems
- Full rebuild of old traffic signals
- Operation of Traffic Management Center at City Hall



Statistics:

- 57+ Traffic Signals
- 20 Lighted Pedestrian Crossings
- 4 Employees



Operations and Maintenance

(Street Maintenance & Traffic Signal Operations)

Yearly Budget: \$2.1M

Budget Needed: \$2.25M

Yearly Shortfall \$150,000



Capital Infrastructure Reinvestment Programs

- Pavement Overlays
- Traffic Signal Rebuild
- Sidewalks



Pavement Management

Current Annual Funding:

- \$614,000

Annual Funding Needed:

- \$3.5M to \$4.0M

Recent Projects:

- 2008 – Overlay and Chip Seal (Various Roadways)
 - Total Cost: \$1.5M
- 2009 through 2011 – None (no funding)
- 2012 - Alderwood Mall Parkway (Maple Road vicinity) Rebuild and Overlay
 - Total Cost: \$750,000 (\$820/LF)
- 2013/2014 - 44th Avenue W (192nd to 172nd) Overlay
 - Total Cost: \$2.2M (\$325/LF)



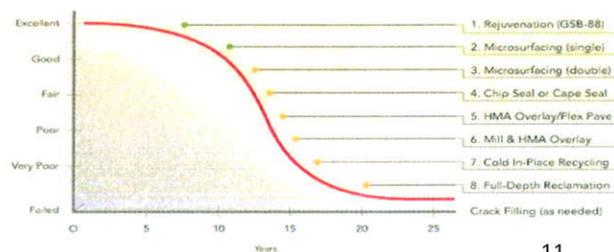
Future Projects:

- Alderwood Mall Parkway (Maple to 184th)
- 184th Street SW (Alderwood Mall Parkway to 36th)
- 36th Ave W (Maple Road to 164th)
- 68th Ave W by Edmonds Community College
- Long list...



Pavement Management

- Crack Repair (inexpensive)
- Chip Seal (moderately expensive)
- Overlay (expensive)
- Full Reconstruction (very expensive) - When pavement maintenance is deferred, costs increase substantially because the roadway base needs to be fully reconstructed instead of just overlaid



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Capital Infrastructure Reinvestment Programs

- Pavement Overlays History
 - 1971 : 1.6 miles
 - 1972 : 2.8 miles
 - 1973 : 2.8 miles
- Current Budget 2015-2016
 - \$614,000/year for overlays
 - Will pave 0.35 miles

Traffic Signal Rebuild Program

- ~60 Traffic Signals
- Components have variable life cycle
- Value of each signal ~\$600,000
- Need \$250,000-\$500,000/year
- Current Budget \$0



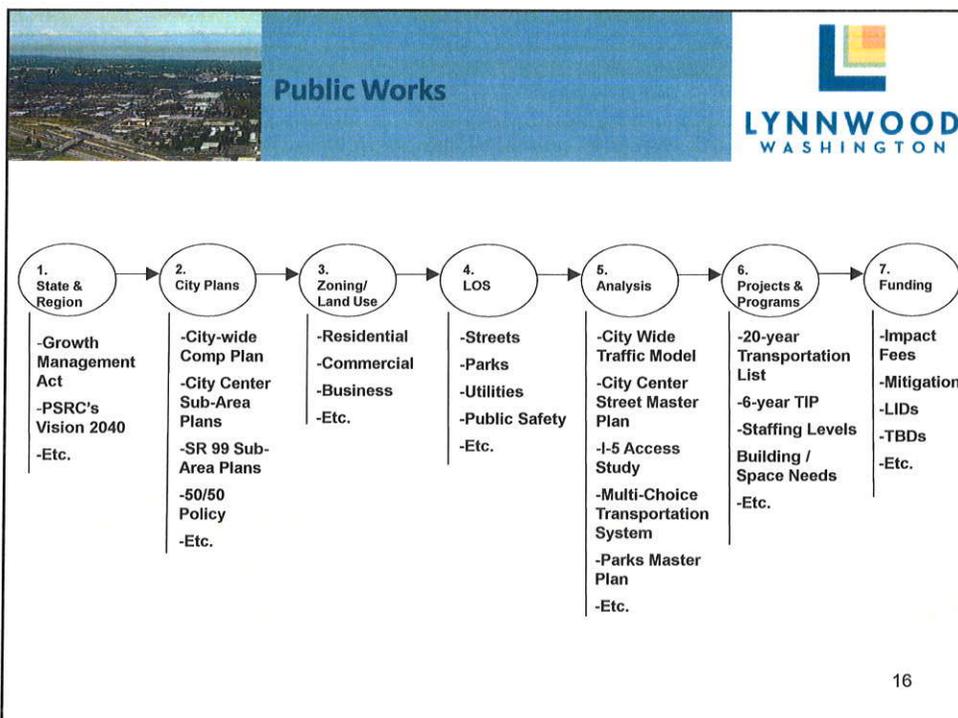
Sidewalk and Bicycle Paths

- 85 miles of sidewalk
- 70 miles of bike lanes/paths
- Need \$300,000/year upkeep
- Current Budget \$0

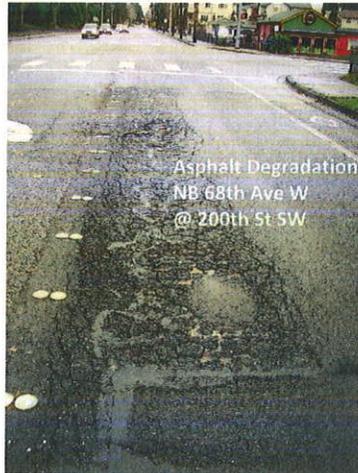


New Projects

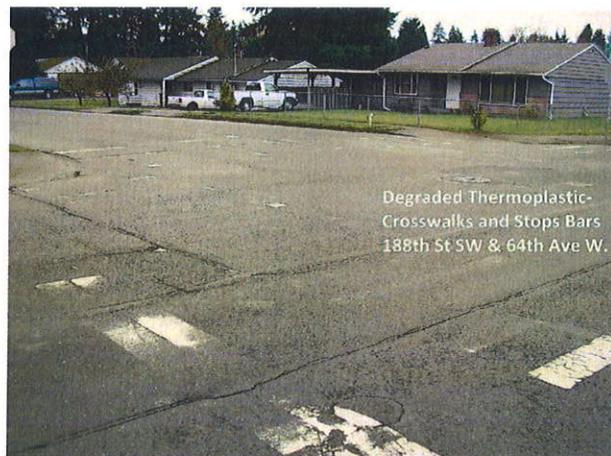
- 6 Year TIP 37 Projects - \$160M
 - 196th Street SW Widening (City Center)
 - Poplar Overpass
 - 36th Avenue West
 - Overlay Program
 - Pedestrian Signal SR99/180th
- 20 Year List of Major Projects (6 Year TIP plus additional 100 projects)
- What these Support?
 - Growth
 - Vision
 - City Center
 - Sound Transit
- Funding Needed \$10M/year ave.
- Current Available Funding \$~2M/year



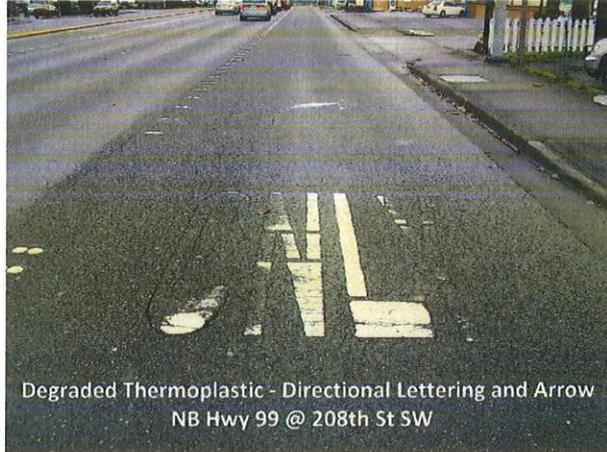
How Are We Doing?



How Are We Doing?



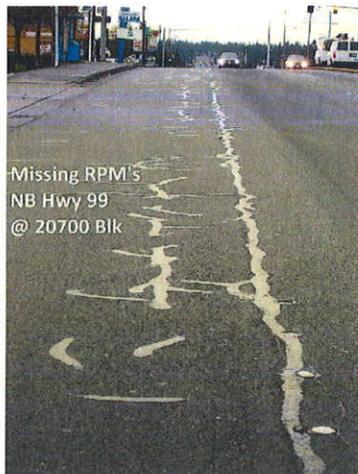
How Are We Doing?



Degraded Thermoplastic - Directional Lettering and Arrow
NB Hwy 99 @ 208th St SW



How Are We Doing?



Missing RPM's
NB Hwy 99
@ 20700 BIK



Adding it all up

Total Annual Shortfalls

Operation and Maintenance	\$150,000
Capital Infrastructure Reinvestment	\$3,400,000
Capital Projects	<u>\$8,000,000</u>
	\$11,550,000



What Does This Mean?

- We are falling dangerously behind with implications to:
 - Safety
 - Long-term Financial Sustainability
 - Aesthetics
 - Economic Development
 - Not being able to realize Goals and Vision



Potential Transportation Funding Sources

Item	Description	Issues/Status	Range Yearly Amount \$	Notes:
Transportation Benefit District (TBD)	License tab fees (0-\$100)	* TBD can increase existing tab up to \$100 * Requires public vote if >\$20	\$0.5M - \$2.5M	Low range based on \$20 veh. fee High range based on \$100 vehicle fee.
Transportation Benefit District (TBD)	Sales tax increase up to 0.2%	* Lynnwood Sales Tax is already 9.5%. *Requires public vote	Up to \$4 million	



Potential Transportation Funding Sources				
Item	Description	Issues/Status	Range Yearly Amount \$	Notes:
1	Transportation Benefit District (TBD)	* TBD can increase existing tab up to \$100 * Requires public vote if >\$20	\$0.5M - \$2.5M	Low range based on \$20 veh. fee. High range based on \$100 vehicle fee.
2	Transportation Benefit District (TBD)	* Lynnwood Sales Tax is already 9.5%. * Requires public vote	Up to \$4 million	
3	Levy LID Lift	* Done by several other cities * City can define specific need and cost and timeline and put before voters	varies	
4	Local Improvement Districts (LIDs)	* Good for specific Capital Projects * Used many times in past	\$1M - \$3M	Many of the roads around the mall were originally financed with LIDs.
5	General Utility Taxes	* Lynnwood has assessed very few * Most other cities use	\$ 700,000	Based on 1% across the board
6	Business & Occupation Taxes (B&O)	* Some cities use	\$1.9 million	Based on 0.05%
7	Business License Revenue	* Balance needs of the city (fire, police, streets, parks...)	varies	
8	General Fund	* Not yet legal	varies	
9	Street Utility		\$0.3M - \$1.5M	Low range based on Corvallis OR (actual). High range based on Kent's WA (projection)

Potential Transportation Funding Sources (continued)

Item	Description	Issues/Status	Range Yearly Amount \$	Notes:
Real Estate Excise Tax (REET)	0.5% tax on sales of properties in the City	There are some limitations on use for street O&M	\$1 million	Varies on house prices and number of sales
Grants	Various grant funding programs (federal, state, and local)	Significant fluctuations in availability	\$4 million	Value based on past 5 year annual average
Traffic Impact Fees	Paid by new developments to account for the cost of transportation improvements reasonably related to the demand created by the development	Can only be used for capacity improvements. Can not be used for existing deficiencies or O&M.	\$ 400,000	Varies depending on development cycles
Public Works Trust Fund (Loans)	A State sponsored loan program requiring repayment using local funds for a specific project	Need a dedicated funding source to pay back loan	varies	
General Obligation Bonds	Bonds supported by the City's general fund for repayment		varies	
WSDOT	WSDOT is responsible for the maintenance of State facilities within the City limits. They may also be a funding partner for major improvements to state facilities.		varies	WSDOT is responsible to maintain pavement on state routes in the city (196th Street SW and Hwy99)
Economic Development Infrastructure Policy	The City participates in the funding of public infrastructure that implement the City's economic development policies. Funded through sales tax, property sales, REET, and other sources		varies	Recently implemented by Council; Sales tax generated by the new Lynnwood Costco to pay back general fund loan used to pay for adjacent road improvements

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3 **City of Lynnwood**
4 **Transportation Benefit District Board**

5 **Item 70**

6
7 **Special Meeting**
8 **July 8, 2015**
9 **7:00 P.M.**

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12 **TITLE:** Presentation, Discussion and Possible Final Action or other Disposition on
13 Resolution #7 and Other Various Documents and Procedures Associated With a Ballot
14 Proposition to Impose a Sales and Use Tax and/or Vehicle Registration Fee Funding Options
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16 **DEPARTMENT:** Public Works
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18 **DEPARTMENT CONTACT:** Bill Franz/Jeff Elekes/David Mach
19

20 **BACKGROUND:** At the June 10, 2015 meeting, the TBD Board authorized staff to prepare
21 for discussion purposes various documents providing for a ballot proposition for a yet to be
22 determined upcoming election for a yet to be determined sales and use tax increase (by itself
23 or in combination with other funding options) to be used on various transportation
24 improvements. Staff and the Board Attorney have reviewed similar documents from other
25 Snohomish County TBD's and have drafted Resolution #7 and an explanatory statement for
26 the Boards review, discussion and possible action.
27

28 **ACTION:** Consider, discuss, and possibly adopt Resolution #7 and associated explanatory
29 statement.
30

31 **ATTACHMENTS:**

- 32 1) Resolution #7
33 2) Explanatory Statement
34
35

47
48 The Governing Board of the District (the "Board") hereby finds that the best interests of the
49 inhabitants of the District require the District to impose a sales and use tax through this
50 Resolution in the amount of <choose one: two-tenths of one percent (0.2%), one-tenth of one
51 percent (0.1%), or other> pursuant to RCW 36.73.040(3)(a) and RCW 82.14.0455 for the
52 purpose of providing a portion of the funds necessary to finance transportation improvements.
53

54 The following items are identified as transportation improvements:
55

- 56 1) Preventative and routine pavement maintenance and reconstruction which extends the life
57 cycle of the street pavement section, including but not limited to pavement repair, sub-
58 base reconstruction, overlay, chip seal, and patching;
- 59 2) Street and traffic maintenance and operations, including but not limited to signing,
60 striping, sidewalks, and traffic signals; and
- 61 3) Other projects as identified in the City's Transportation Plan
62

63 The cost of all necessary design, engineering, financial, legal and other consulting services,
64 inspection and testing, administrative and relocation expenses, and other costs incurred in
65 connection with the foregoing TBD improvements shall be deemed a part of the costs of the
66 TBD improvements.
67

68 The Board shall determine the application of moneys available for the TBD improvements so as
69 to accomplish, as nearly as may be practical, all of the TBD improvements. In the event that the
70 proceeds of sales and use taxes authorized herein, plus any other money of the District legally
71 available therefore, are insufficient to accomplish all of the TBD improvements, the Board shall
72 use the available funds for paying the cost of those portions of the TBD improvements deemed
73 by the Board most necessary and in the best interests of the District.
74

75 The Board shall determine the exact locations and specifications for the elements of the TBD
76 improvements as well as the timing, order, and manner of implementing or completing the TBD
77 improvements. The Board may alter, make substitutions to, and amend the TBD improvement
78 descriptions as it determines is in the best interests of the District consistent with the general
79 descriptions provided above and in accordance with the material change policy adopted by the
80 Board and the notice, hearing, and other procedures described in Chapter 36.73 RCW, including
81 RCW 36.73.050(2)(b), in each case as the same may be amended from time to time.
82

83 If the Board shall determine that it has become impractical to acquire, construct, or implement all
84 or any portion of the TBD improvements by reason of changed conditions, incompatible
85 development, costs substantially in excess of the amount of sales and use tax proceeds estimated
86 to be available, or acquisition by a superior governmental authority, the Board shall not be
87 required to acquire, construct, or implement such portions. If all of the TBD improvements have
88 been acquired, constructed, implemented or duly provided for, or found to be impractical, the
89 Board may apply the sales and use tax proceeds (including earnings thereon) or any portion
90 thereof to other transportation improvements then identified in the City's Transportation
91 Improvement Program in accordance with the material change policy adopted by the Board and
92 the notice, hearing, and other procedures described in Chapter 36.73 RCW, including RCW

93 36.73.050(2)(b), in each case as the same may be amended from time to time.

94
95 **Section 2. Findings of Fact.**

- 96
97 1. The Lynnwood Transportation Benefit District is permitted to place a ballot measure
98 before the voters and is so authorized pursuant to RCW 36.73.040(3)(a) to impose a sales
99 and use tax in accordance with RCW 82.14.0455.
100
101 2. The provisions of Ordinance No. 2837 still adequately state the purpose and need for the
102 Transportation Benefit District Governing Board.
103

104 **Section 3. Ballot Measure.**

105
106 It is hereby found and declared that the best interests of the District require the submission to the
107 qualified electors of the District a proposition whether the District shall impose a sales and use
108 tax within the limitations established in RCW 82.14.0455 for their ratification or rejection at a
109 **<choose one: general or special>** election to be held on **<choose one: November 3, 2015, other or**
110 **none>** for the purpose of providing funds necessary to pay or finance a portion of the costs of the
111 improvements. The Snohomish County Auditor, as *ex officio* supervisor of elections in
112 Snohomish County, Washington, is hereby requested to call and conduct such election to be held
113 within the District on such day and to submit to the qualified electors of the District for their
114 approval or rejection, a proposition to impose a sales and use tax in the amount of **<choose one:**
115 **two-tenths of one percent (0.2%), one-tenth of one percent (0.1%), or other>** of the selling price
116 in the case of a sales tax, or value of the article used in the case of the use tax. The sales and use
117 tax authorized by this section is in addition to any other taxes authorized by law, shall be
118 collected from those persons who are taxable by the State of Washington under Chapters 82.08
119 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the District,
120 and shall be imposed for a period of ten years from its first date of collection. Upon approval of
121 the voters of the proposition hereinafter set forth, the District may use proceeds of such sales and
122 use tax for the purpose of paying or financing a portion of the costs of TBD improvements. The
123 Treasurer of the Board is hereby authorized and directed to certify said proposition to said
124 official in the following form:
125
126

127 **LYNNWOOD TRANSPORTATION BENEFIT DISTRICT**
128 **LYNNWOOD, WASHINGTON**
129 **SALES AND USE TAX FOR TRANSPORTATION IMPROVEMENTS**
130

131 The Board of the Lynnwood Transportation Benefit District, Lynnwood,
132 Washington, adopted Resolution 7 concerning a sales and use tax to fund
133 transportation improvements. This proposition would authorize a sales and use tax
134 of <choose one: two-tenths of one percent (0.2%), one-tenth of one percent (0.1%),
135 or other> to be collected within the District in accordance with RCW 82.14.0455
136 for a term of ten years. Such revenues would be used for the purpose of funding the
137 following transportation improvements: preventative and routine pavement
138 maintenance and reconstruction, street and traffic maintenance and operations, and
139 other capital projects as identified in the City's Transportation Plan. Should this
140 proposition be:

141 Approved.....

142 Rejected.....

143
144
145
146 **Section 4. Corrections.**

147
148 The Treasurer of the District and the codifiers of this resolution are authorized by the Lynnwood
149 Transportation Benefit District Governing Board to make necessary clerical corrections to this
150 resolution including, but not limited to, the correction of scrivener's/ clerical errors, references,
151 resolution numbering, section/subsection numbers and any references thereto, and to make
152 corrections or revisions consistent with the requirements of the Snohomish County Prosecutor's
153 Office which do not change the substantive meaning of this resolution.
154

155 **Section 5. Severability.**

156
157 If any section, sentence, clause, or phrase of this resolution should be held to be invalid or
158 unconstitutional by a court of competent jurisdiction, such invalidity or constitutionality shall not
159 affect the validity or constitutionality of any other section, sentence, clause, or phrase of this
160 resolution.
161

162 **Section 6. Effective Date.**

163
164 This Resolution shall be in full force and effect from and after its adoption and approval.
165
166

167 PASSED BY THE LYNNWOOD TRANSPORTATION BENEFIT DISTRICT
168 BOARD, the _____ day of _____, 2015.

169
170

APPROVED:

171
172
173

Loren Simmonds, TBD Board President

174
175

176 ATTEST/AUTHENTICATED:

177
178

Sonja Springer
Finance Director, acting as Board Treasurer

181
182

APPROVED AS TO FORM:

183
184

Rosemary Larson
City Attorney, acting as Board Attorney

187
188

FILED WITH ADMINISTRATIVE SERVICES: _____

189
190

PASSED BY THE TRANSPORTATION BENEFIT DISTRICT BOARD: _____

EFFECTIVE DATE: _____

191

RESOLUTION NUMBER: _____

1 **Explanatory Statement**

2 The City of Lynnwood formed a Transportation Benefit District (District) by ordinance on May
3 24, 2010. The purpose of the District is to fund construction, maintenance and operation of the
4 City's street and traffic system, as allowed by state law. The District is authorized to and
5 proposes to impose a new sales and use tax in the amount of <choose one: two-tenths of one
6 percent (0.2%), one-tenth of one percent (0.1%), or other> for a period of up to ten years upon
7 approval by voters within the District. This tax is estimated to generate an average of
8 <\$4,000,000 (for 0.2%), \$2,000,000 (for 0.1%), or other> of revenue per year, the proceeds of
9 which will be dedicated to and used solely to fund the following transportation improvements:
10 preventative and routine pavement maintenance and reconstruction, such as pavement repair,
11 overlay, chip seal, and patching; street and traffic maintenance and operations, such as signing,
12 striping, sidewalks, and traffic signals; and other capital projects identified in the City's
13 Transportation Plan (for example, 36th Avenue W from Maple Road to 164th Street SW and 196th
14 Street SW from 48th Avenue W to 36th Avenue W). More information is available at Lynnwood
15 City Hall and on the District's website at www.ci.lynnwood.wa.us/tbd.

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**City of Lynnwood
Transportation Benefit District Board**

Item 80

**Special Meeting
July 8, 2015
7:00 P.M.**

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

1
2
3 **MEMORANDUM**

4 TO: David Mach, Project Manager and Transportation Benefit District Board Liaison
5 FROM: Rosemary A. Larson, District Attorney
6
7 DATE: July 15, 2014
8
9 RE: Lynnwood Transportation Benefit District -- Prohibition on Use of Public Facilities to
10 Support or Oppose Ballot Measure
11

12
13
14 **I. ISSUE**

15
16 The Lynnwood Transportation Benefit District (TBD) is considering a resolution that would
17 provide for a ballot proposition authorizing a sales and use tax to be submitted to the voters of the
18 District at the general election on November 4, 2014. You requested that I provide information
19 regarding actions that the TBD Board Members may or may not take in connection with the ballot
20 measure, assuming that the Board passes the resolution authorizing the election.
21

22 **II. DISCUSSION**

23
24 State law prohibits public officials and employees from using, or allowing the use of, public
25 facilities to assist in campaigns for election to any public office, or to support or oppose any ballot
26 proposition. RCW 42.17A.555 (formerly RCW 42.17.130) states in part:
27

28 No elective official nor any employee of his or her office nor any person appointed to
29 or employed by any public office or agency may use or authorize the use of any of the
30 facilities of a public office or agency, directly or indirectly, for the purpose of assisting
31 a campaign for election of any person to any office or for the promotion of or
32 opposition to any ballot proposition. Facilities of a public office or agency include, but
33 are not limited to, use of stationery, postage, machines, and equipment, use of
34 employees of the office or agency during working hours, vehicles, office space,
35 publications of the office or agency, and clientele lists of persons served by the office
36 or agency. ...
37

38 The statute has three specific exceptions: (1) an elected legislative body may vote on a motion,
39 resolution, or ordinance to express support of or opposition to a ballot proposition if certain
40 procedural steps are followed, which include providing notice of the meeting at which the matter will
41 be considered and allowing equal opportunity for members of the legislative body and the public to
42 express opposing views; (2) elected officials may make a statement in support of or in opposition to
43 a ballot proposition at a press conference or in response to a specific inquiry; and (3) activities that
44 are part of the normal and regular conduct of the local government are allowed. RCW 42.17A.555.
45

46 Thus, in general, TBD Board Members (and City staff, regardless of whether they are
47 providing services for the TBD or acting as City employees) must not use any public facilities, as
48 broadly defined in the statute, to either support or oppose the ballot proposition. However, under the
49 first two statutory exceptions, the TBD Board may vote on a motion or resolution to express support
50 of or opposition to the ballot proposition after following the proper procedures (as a practical matter,
51 this exception would not apply, as the Board would already have passed the resolution authorizing
52 the ballot measure), and Board Members may make statements in support of or in opposition to the
53 ballot proposition at a press conference or **in response** to a specific inquiry.
54

55 Regarding the third exception, the Public Disclosure Commission (the state agency
56 authorized to enforce violations of RCW 42.17A.555) defines the phrase “normal and regular
57 conduct” of a public agency as “conduct which is (1) lawful, i.e., specifically authorized, either
58 expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or
59 authorized in or by some extraordinary means or manner. No local office or agency may authorize a
60 use of public facilities for the purpose of assisting a candidate’s campaign or promoting or opposing
61 a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately
62 authorizing such use.” WAC 390-05-273. PDC regulations state that RCW 42.17A.555 does not
63 prevent a public agency from making facilities available on a non-discriminatory equal access basis
64 for political uses, or from making an objective and fair presentation of facts relevant to a ballot
65 proposition, if such action is part of the agency’s normal and regular conduct. WAC 390-05-271(2).
66

67 Under this exception, the PDC presumes that an agency may distribute throughout its jurisdiction
68 one objective and fair presentation of the facts for each ballot measure. See PDC Interpretation No.
69 04-02, “Guidelines for Local Government Agencies in Election Campaigns,” p. 4 (Amended May 22,
70 2013). If an agency distributes more than one publication, the agency must be able to demonstrate
71 that this conduct is normal and regular for the agency. *Id.* at p. 4. However, the PDC expressly
72 cautions: “Agencies need to be aware, however, that in no case will the PDC view a marketing or
73 sales effort related to a campaign or election as normal and regular conduct.” *Id.*, at p. 5. There is a
74 fine line between merely presenting the facts and making a “sales effort” with respect to a ballot
75 measure, and care must be taken to do no more than state facts. For example, the written materials
76 should not speculate as to the impact on the agency if a ballot proposition fails.

77 Also, the PDC has opined that the third exception does not authorize the use of a normal
78 public comment period during an open public meeting to express support or opposition to candidates
79 or ballot measures; rather, the PDC deems the public comment period to be a “public facility” that
80 cannot be used to support or oppose election issues. Therefore, if the Board holds a meeting before
81 the election on the ballot measure, and allows public comment as part of the meeting, the Board
82 should not allow persons speaking during the public comment period to use their time to express
83 support or opposition of the ballot measure.
84

85 Finally, the PDC regulations expressly state that RCW 42.17A.555 does not restrict the right
86 of any individual to express his or her personal views concerning a candidate or ballot proposition, if
87 such expression does not involve the use of the facilities of the public agency. WAC 390-05-271(1).
88

89 Thus, TBD Board Members may campaign or express their own views on their own time, so long as
90 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.

91
92
93 cc: Transportation Benefit District Board Members
94 Nicola Smith, Mayor
95 Bill Franz, Director of Public Works