

WORK SESSION AGENDA

- I. Welcome** *Stephanie T. Reed, Mayor*
- II. Work Session Agenda Overview** *Wynter C. Benda, City Manager*
- III. Work Session Agenda Items** *Wynter C. Benda, City Manager*
 - III.1.** Property Toolkit Update
 - III.2.** Economic Development & Tourism Update
 - III.3.** Downtown Lynchburg Association Report on New Businesses in 2023 and Bright Nights on the Bluffwalk
- IV. Business Item Briefing(s)**
 - IV.4.** Energy Storage Decommissioning Ordinance
- V. Roll Call**
- VI. Closed Session**
 - VI.5.** Consideration of a closed meeting to review a new boards and commissions software program and process where Council appointees and their personal information will be disclosed in the course of training, pursuant to Section § 2.2-3711(A)(1) and Section § 2.2-3711(A)(4) of the Code of Virginia, 1950, as amended.
 - VI.6.** Consideration of a closed meeting to discuss appointments for vacancies to the Lynchburg Redevelopment and Housing Authority Board of Directors, pursuant to Section 2.2-3711(A.) (1) of the Code of Virginia, 1950, as amended.

AGENDA ITEM SUMMARY

MEETING DATE

January 9, 2024

PRESENTED BY

Kevin Henry, Zoning Administrator

AGENDA ITEM # III.1

Property Toolkit Update

RECOMMENDATION

Hear a presentation on the City's Property Toolkit, including the current derelict building program.

SUMMARY

On June 28, 2022, City Council adopted the additional code requirements for derelict buildings. These requirements, along with additional resources, have allowed the City to pilot a more proactive approach to addressing condemned/blighted properties. Staff will provide an overview of these efforts to date, as well as additional strategies to improve neighborhood and housing opportunities.

PRIOR ACTION(S)

June 28, 2022: Council adopted City Code requirements for derelict buildings.

FISCAL IMPACT

The City currently budgets \$100,000 annually to assist with the demolition of derelict buildings.

CONTACT(S)

Kevin Henry - Zoning Administrator
William Martin, Community Development Director

ATTACHMENT(S)

1. Property Toolkit Presentation

REVIEWED BY



William Martin, Community Development Director

Date: December 22, 2023



Kent White, Assistant City Manager

Date: January 04, 2024



Alicia Finney, Clerk of Council

Date: January 04, 2024

PROPERTY TOOLKIT

January 9, 2024



ELEMENTS OF THE PROPERTY TOOLKIT

1- Programs

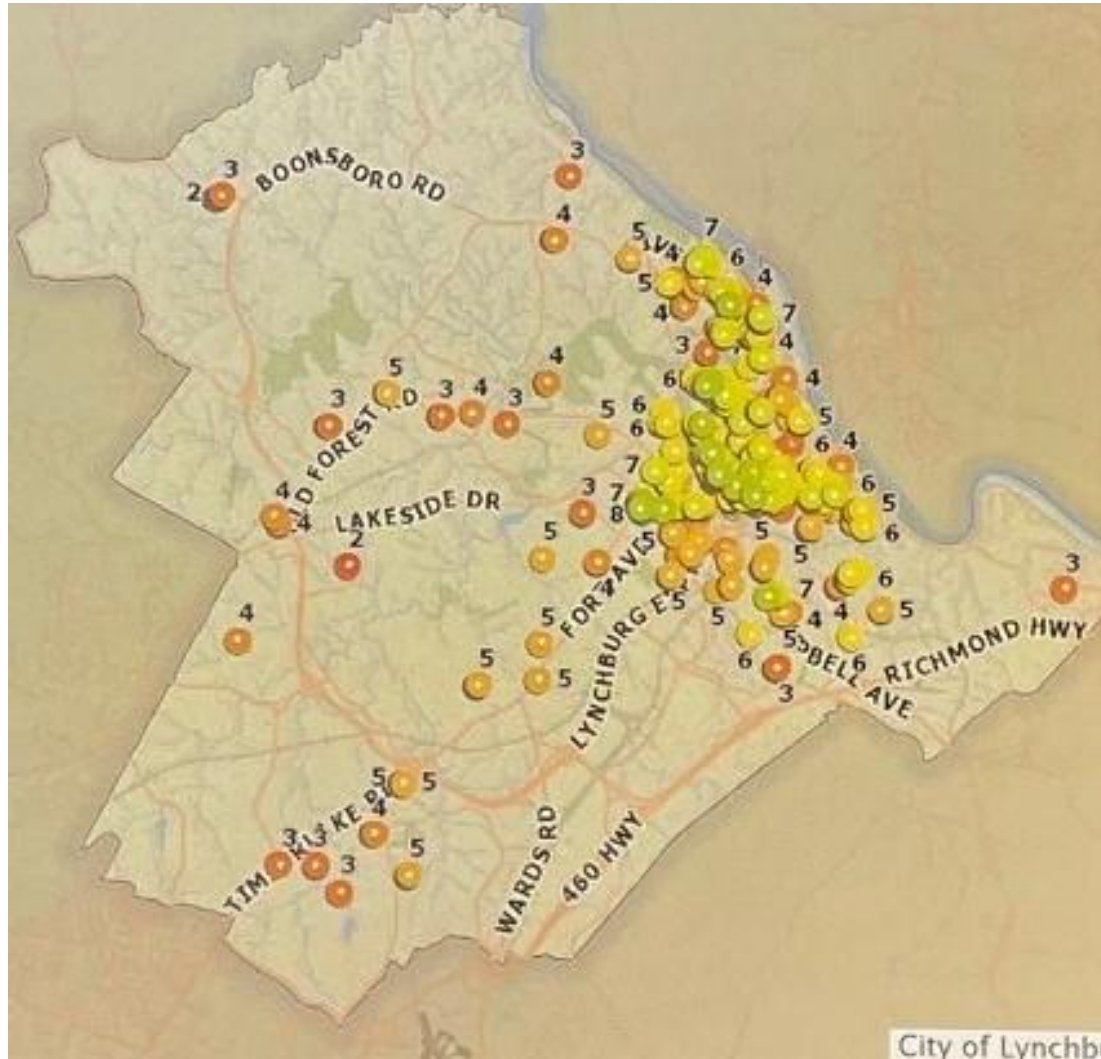
- Property Maintenance
- Rental Inspections
- Vacant Housing
- Derelict Housing
- Demolition

2- Tax Delinquent Sale

3- Housing Trust Fund



CONCENTRATION OF CONDEMNED BUILDINGS



PROGRAM FIGURES

12 buildings were demolished in the past 2 years

17 Blighted Property Pilot Program

Categories	Total
City-funded demo	6
Private-funded demo	5
Partial private/public demo	1
Renovate	5

OWNER DEMOLITION

2109 Tulip Street

03/20/20



12/07/22



11/03/23



06/18/23



10/04/23



REHABILITATION-SOLD

2701 Loraine Street

09/03/19



12/07/22



06/28/23



TARGETED APPROACH- PAYNE ELEMENTARY

1323 Fillmore St.



NEW CONSTRUCTION

08/16/23



12/14/23



DERELICT PROGRAM EXAMPLE

Before



5/19/23, 11:48:38 AM

22014032

After



CURRENT PROGRESS

- Address blight
- 3-4 City-funded demolitions/year
- Create productive residential properties (owner or rental)
- More frequent tax delinquent sales
- Target additional buildings per year.



GOALS TO FULFILL HOUSING TOOLKIT

Approximately 300 condemned buildings. Goal of additional demolitions.

Housing Trust Fund

- Remove barriers for redevelopment and Create opportunities for more affordable housing and market-based housing

Additional Staff



AGENDA ITEM SUMMARY

MEETING DATE

January 9, 2024

PRESENTED BY

Marjette Upshur, Director of Economic
Development & Tourism

AGENDA ITEM # III.2

Economic Development & Tourism Update

RECOMMENDATION

Presentation of highlights from the most recent Economic Development and Tourism Annual Report.

SUMMARY

Staff will provide an overview of the City's economic development and tourism initiatives aimed at promoting, attracting, retaining, growing, and supporting businesses in the City.

PRIOR ACTION(S)

N/A

FISCAL IMPACT

N/A

CONTACT(S)

Marjette Upshur, Director of Economic Development & Tourism

ATTACHMENT(S)

1. Presentation

REVIEWED BY



Kent White, Assistant City Manager

Date: January 04, 2024



Alicia Finney, Clerk of Council

Date: January 04, 2024

Economic Development & Tourism Report

January 9, 2024

LYH:

**We are a young, diverse,
growing community.**

We are growing and young and diverse

- **79,000** residents – **5% increase** 2010-2020
- **28.5** median age [US: 38.1]
- We have nearly **30,000 college graduates** annually
- **37%** of our residents are people of color
- **4%** are foreign born



LIBERTY UNIVERSITY

LYH

LYNCHBURG VA

LYH's 3 largest employment sectors drive 50% of GDP

#1

- **HEALTHCARE & SOCIAL ASSISTANCE**

#2

- **EDUCATIONAL SERVICES**

#3

- **MANUFACTURING**



CENTRA HEALTH

LYH

LYNCHBURG, VA

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NEW INVESTMENT:
**We are driving investment
into LYH.**

Delta Star Expands

DELTA STAR INVESTS \$30.2 MILLION,
CREATING 149 NEW JOBS WITH AVERAGE SALARY OF \$67,450

- Improvements to existing facility
- **80,000** SF addition
- **460** local jobs remain in LYH



DELTA STAR

LYH

LYNCHBURG, VA

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Framatome Expands

FRAMATOME INVESTS \$49.4 MILLION

CREATING 515 NEW JOBS WITH AVERAGE SALARY OF \$105,000

- One of the LYH's **largest** employers
- Framatome currently supports over **1,300** total jobs



"The city's rich cultural character and growing contemporary energy, along with its robust academic institutions and revitalized downtown, provides our employees a quality of life second to none."

- **Kathy Williams, CEO of Framatome North America**

Through our business support programs in FY 2023, we facilitated:

- **\$600,000** in grant dollars awarded
- **\$9 million** in commercial property investments
- **13** local businesses supported
- **245** new jobs created



AEROFIN

LYH

LYNCHBURG VA

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We are readying new sites for future development:

- **\$450,000** in state grant dollars for the development of the Airport Commerce Park and Ivy Creek Innovation Park
- **\$174.8 million** in commercial construction permits were issued in FY2023 – **10%** increase over FY2022



Pad-Ready Sites: have utility connections to parcel boundary, road access, have been rough graded, and construction permitting documents in hand or identified

A

IVY CREEK SITE A

48 Acres. 28 Acres Developable.
600k SF Max. Building Area

B

IVY CREEK SITE B

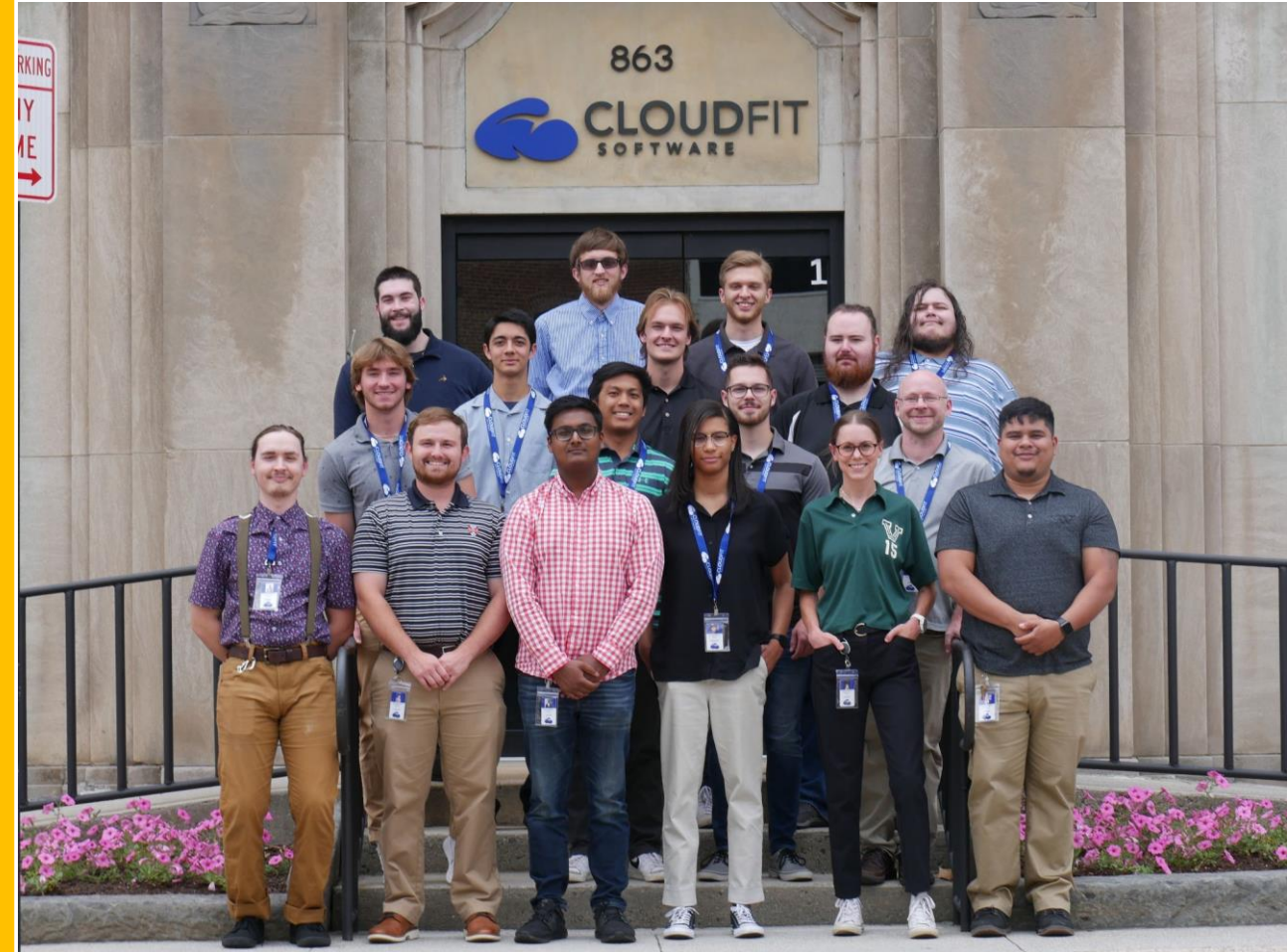
16 Acres. 4.5 Acres Developable.
50K SF Max. Building Area

ACCESS:
FUTURE 1,270 FT ROAD EXTENSION

TALENT:
**We are growing
our workforce.**

We supported:

- **6** local workforce development programs, supporting over **200 LYH residents**
- **IT, Nuclear, Manufacturing, Tourism & Hospitality, and Healthcare**
- Talent attraction through our new website: **LYHLOVESYOU.COM**



JOBFIT INTERNS

LYH Loves You Brand Campaign Supports Talent Attraction



DESTINATION LYH:
**We are promoting and
improving our
community.**

A Record Year for Tourism Impact

- **3,707 jobs** in tourism
- **\$376 million** in visitor spending
- **69** group tours, conferences, and sports-related events generated:
 - **63,385** visitors
 - **19,735** room nights filled
 - **\$8.8 million** in local spending



RIVER RIDGE ICE RINK

LYH Named A Top College Town

- **742,000** visitors traveled to LYH to visit our colleges
- **\$17 million** in economic impact from commencements
- Active partnerships to grow **sports tourism**



RANDOLPH COLLEGE

Sports tourism & special events are drivers

- **45** City permitted Special Events
- **31** sports tourism related events
- **\$10 million** in economic impact in FY2023



LIBERTY UNIVERSITY FOOTBALL

Coming in 2024

LYH Named the Host City for the Professional **Disc Golf** Association World Championships

- **350** athletes
- **20,000** spectators
- **\$6.4 million** in economic impact



TELLING OUR STORY:
We raised LYH's profile
to drive investment.

LYH has gained national attention and brand recognition

- **Southern Living Magazine**
- **Blue Ridge Outdoors – Top Adventure Town Finalist**
- **Travel + Leisure Magazine Top College Town**



ON THE HORIZON:
**We are building a
resilient community**

AGENDA ITEM SUMMARY

MEETING DATE

January 9, 2024

PRESENTED BY

Ashley Kershner

AGENDA ITEM # III.3

Downtown Lynchburg Association Report on New Businesses in 2023 and Bright Nights on the Bluffwalk

RECOMMENDATION

Information Only

SUMMARY

Downtown Lynchburg Association will delve into the dynamic growth of the Downtown Lynchburg storefront economy throughout 2023, offering a comprehensive overview of recently opened businesses and those in progress. DLA will also discuss the economic impact generated by the Bright Nights on the Bluffwalk installation, exploring its role in fostering a thriving local business landscape.

PRIOR ACTION(S)

N/A

FISCAL IMPACT

N/A

CONTACT(S)

Gregory Patrick, Deputy City Manager

ATTACHMENT(S)

1. DLA Council Presentation

REVIEWED BY



Alicia Finney, Clerk of Council

Date: January 04, 2024



2023 DOWNTOWN STOREFRONT ECONOMY HIGHLIGHTS

DOWNTOWN LYNCHBURG ASSOCIATION

SNAPSHOT:

2023 STOREFRONT BUSINESSES

- 16 New & Expanded Businesses
 - 5 Restaurant
 - 4 Service
 - 5 Retail
 - 2 Restaurant & Retail (Combo)



NEW BUSINESSES

RESTAURANTS/FOOD

- The Glass House
- El Mariachi Restaurant & Cafe
- Inka Grill
- Holy Heaven Cookie Company
- 7 Hills Pizza



RESTAURANT/RETAIL COMBO

- Trading Post by Traber Ranch
- Beau's Cheese & Charcuterie Boards



* LAUNCH PROGRAM PARTICIPANT

NEW BUSINESSES

RETAIL

- PREAM*
- City View Market
- GhostStop
- Flutes Wine Shop
- Mosaic Collective & Threaded (expansion)*

SERVICE

- Felicione Interiors
- Downtown Storage LYH
- The Diamond Room
- The Haven



ON THE HORIZON

ENTERTAINMENT

- Easy Speak Dance Hall & Events *
- Super Rad!*
- Wolfbane Productions*

RETAIL & SERVICE

- Better Menswear VA
- Cuts by Grace

* LAUNCH LYH PROGRAM PARTICIPANT



A young child with blonde hair, wearing a blue and white striped sweater, stands in the foreground looking up at a display of colorful, illuminated, plant-like structures. The structures have green stems and leaves, with some leaves and canopies glowing in green, yellow, and blue. In the background, other people are visible, including a person pushing a stroller, all under a dark night sky. The overall scene is festive and brightly lit by the artificial lights.

BRIGHT NIGHTS ON THE BLUFFWALK

ECONOMIC IMPACT REPORT

BRIGHT NIGHTS FESTIVAL

November 19, 2023

Est. attendance: 5,500

Participating vendors: 65

Top attendees by zip code:

- 24502 (16.7%)
- 24551 (12.1%)
- 24503 (11.3%)
- 24501 (10.2%)
- 24504 (9.2%)



BRIGHT NIGHTS ON THE BLUFFWALK

November 19 - December 31

LOCATION: BLUFFWALK				
	2022	2023	# CHANGE	% CHANGE
VISITS	2,900	10,400	+7,500	+259%
UNIQUE VISITORS	2,300	8,600	+6,300	+273%
LOCATION: CENTRAL BUSINESS DISTRICT				
	2022	2023	# CHANGE	% CHANGE
VISITS	282,400	331,400	+49,000	+17.5%
UNIQUE VISITORS	147,600	171,400	+23,800	+16%

BRIGHT NIGHTS ON THE BLUFFWALK

Location: Bluffwalk // Visitor Origin - Top Locations within 100 miles

ZIP CODE	CITY	VISITS (% OF TOTAL)
24502	Lynchburg, VA	1,000 (14%)
24503	Lynchburg, VA	913 (12.6%)
24501	Lynchburg, VA	789 (10.9%)
24572	Madison Heights, VA	692 (9.6%)
24551	Lynchburg, VA	607 (8.4%)
24504	Lynchburg, VA	593 (8.2%)
24588	Rustburg, VA	256 (3.5%)
24538	Concord, VA	216 (3%)

BRIGHT NIGHTS ON THE BLUFFWALK

LOCAL ECONOMIC IMPACT

ESTIMATED LOCAL ECONOMIC IMPACT: **\$417,603**

INDIVIDUAL BUSINESS IMPACT - FROM 11/19/23 - 12/31/24

- **Fratelli Italian Grill:** 65% increase in sales
- **The Water Dog:** 195% increase in sales
- **No. 7 Rooftop Bar:** 38% increase in sales
- **Bootleggers:**
 - 40% increase in sales
 - 22% increase in new customers (Dec. 2023 vs Dec. 2022)
- **El Jefe:**
 - 30% increase in sales
 - 56% increase in new customers (Dec. 2023 vs Dec. 2022)
- **Depot Grille:** 26% increase in sales
- **The Virginian:** Guest rooms and F&B revenue up est. +\$9k-\$11k



AGENDA ITEM SUMMARY

MEETING DATE

January 9, 2024

PRESENTED BY

Rachel Frischeisen, Senior Planner

AGENDA ITEM # IV.4

Energy Storage Decommissioning Ordinance

RECOMMENDATION

This item will appear for City Council vote on the January 23, 2024 Public Hearing agenda. Adoption of Section 35.2-74, Decommissioning surety for energy storage facilities

SUMMARY

The purpose of this Zoning Ordinance amendment is to ensure that energy storage projects within the City have a signed agreement and surety in place to decommission all equipment, facilities, and/or devices of the energy storage facility or solar facility. The Ordinance would ensure the proper removal of equipment when operations at the facility cease. This amendment was initiated by staff as a result of siting agreement discussions related to a proposed energy storage facility within the City.

The terms of these agreements would be determined on a project-by-project basis and approved by the City Attorney's office prior to execution of the agreements.

PRIOR ACTION(S)

December 13, 2023: The Planning Commission recommended approval (7-0) of the Ordinance.

December 13, 2023: The Planning Division recommended approval of the Ordinance.

FISCAL IMPACT

N/A

CONTACT(S)

Rachel Frischeisen, Senior Planner
Matthew Freedman, City Attorney

ATTACHMENT(S)

1. Ordinance
2. Planning Commission Minutes, Report, and Attachments

REVIEWED BY



William Martin, Community Development Director

Date: December 21, 2023



Kent White, Assistant City Manager

Date: January 03, 2024



Alicia Finney, Clerk of Council

Date: January 04, 2024

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO A NEW SECTION 35.2-74 OF ARTICLE VII OF CHAPTER 35.2; SUCH NEW SECTION PROVIDING FOR SURETY REQUIREMENTS SPECIFIC TO THE DECOMMISSIONING OF ENERGY STORAGE FACILITIES

ORDINANCE:

#O-24-_____

WHEREAS, the Lynchburg City Council held a public hearing to consider and address the proposed Zoning Ordinance amendments described herein and to receive public comment on January 23, 2024; and

WHEREAS, the Lynchburg City Council finds that these proposed Zoning Ordinance amendments should be adopted in order to promote the public necessity, convenience, welfare, and good zoning practice.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be amended and reenacted by adding thereto a new Section 35.2-74 of Article VII of Chapter 35.2 as follows:

Sec. 35.2-74. Decommissioning surety for energy storage facilities.

(a) Definitions.

Decommission means the removal and proper disposal.

Energy storage facility means the energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored.

Project means a solar facility or an energy storage facility of any kind, either or both.

Solar facility means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

(b) Surety Requirements.

As a condition of approval of a site plan for any project, the owner, lessee, or developer of the project, as determined by the City Planner, shall enter into a written agreement with the City to decommission all the equipment, facilities, and/or devices of the energy storage facility or solar facility upon the following terms and conditions:

- (i) if the owner, lessee, or developer defaults in its obligation to decommission a project in accordance with a written agreement provided by this section, the City may enter the real property without further consent and engage in the decommissioning at the sole cost of the owner, lessee, or developer; and
- (ii) the owner, lessee, or developer must provide financial assurance of such performance to the City in the form of certified funds, cash escrow, surety bond, letter of credit, or

parent guaranty, based upon an estimate of a professional engineer licensed in the Commonwealth of Virginia, acceptable to the City, who is engaged by the applicant, who has experience in preparing decommissioning estimates. The estimate shall not exceed the total of the projected costs of decommissioning, which may include the net salvage value of such equipment, facilities, and/or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.

The City Manager, or his/her designee, shall execute such written agreements on behalf of the City.

(c) Approval as to Form.

All written agreements entered into pursuant to this section shall contain provisions related to the form and quality of the surety or guaranty, and shall be in a form approved by the City Attorney. However, failure to adhere to this requirement shall in no way adversely affect or void such written agreement.

2. That this Ordinance shall be effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

MINUTES OF THE DECEMBER 13, 2023 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Consideration of amending the Zoning Ordinance by adopting Section 35.2-74, Decommissioning surety for energy storage facilities. The proposed ordinance would require a written agreement for the decommissioning of an energy storage or solar facility prior to site plan approval.

Ms. Rachel Frischeisen, Interim City Planner, provided the following summary to the Commission. The purpose of the zoning ordinance amendment is to ensure that any energy storage project within the City has an agreement in place to decommission all the equipment, facilities, and/or devices of the energy storage facility or solar facility, so that they are removed and properly disposed of when operations of the facility cease. This Zoning Ordinance amendment would affect energy storage facilities, which are considered a "Major Public Utilities Service." These uses are permitted by Conditional Use Permit (CUP) in all residential districts, all commercial districts, all institutional districts, and I-1, Restricted Industrial District. They are permitted by-right in the I-2, Light Industrial District, and I-3, Heavy Industrial District. An example of the type of project this ordinance would apply to is the battery energy storage facility, which stores power from the electrical grid at off-peak hours and resupplies that power back into the grid during peak hours when demand is high, which Planning Commission reviewed this past March. It would also apply to solar projects, which have not been done within the City yet. This amendment was initiated by staff. The draft ordinance, in addition to the agreement which would be approved by the City Attorney, also requires a surety, which ensures the owner, lessee, or developer has the financial means to carry out the decommissioning, if needed. The terms of these agreements would be determined on a project-by-project basis and approved by the City Attorney's office prior to execution of the agreements. This Zoning Ordinance amendment was advertised in the legal notice of the newspaper as "Section 35.2-73:1." Section 35.2-73 refers to Telecommunications Facilities. After discussion with the City Attorney, Planning staff recommends altering this to Section 35.2-74 to clarify that Energy Storage Systems are a separate land use and do not fall under Telecommunications Facilities. Staff recommends approval of the ordinance amendment.

Commissioner Bowden asked if the requirement was being added to or taken away from the telecommunications ordinance

Ms. Frischeisen advised that there is already a decommissioning requirement for telecommunications. Staff recommended changing Section 35.2-73:1 to 35.2-74 in order to clarify that it is a separate use and does not fall under telecommunications.

Chair Johnson asked if there was anyone present to speak in favor of this petition.

Chair Johnson asked if there was anyone present to speak in opposition of this petition.

Chair Johnson closed the public hearing.

Commissioner Rogers asked if it would be a bond paid in advance.

Ms. Frischeisen advised there would be an agreement and surety to make sure funds would be available to decommission the facility.

Commissioner Marion asked if this would apply to home solar.

Ms. Frischeisen responded that it would not apply to residential projects but for projects large enough to warrant a site plan review.

Chair Johnson asked if the city has had an issue in the past with an energy business leaving equipment or if this is mostly for future protection.

Ms. Frischeisen replied that this ordinance was proactive – the City has not encountered this issue yet.

Commissioner Rogers asked if this ordinance would apply retroactively for the battery energy storage project that is under development.

Ms. Frischeisen advised the company had received a Conditional Use Permit but had not received site plan approval yet so it would be subject under this ordinance.

Commissioner Bowden stated that regardless of the energy source that there will be materials that will need to be cleaned up and while determining the cost of it is not something he understands, he feels that the ordinance makes sense to address this issue proactively.

Ms. Frischeisen advised that the ordinance specifies that a qualified engineer would be used to make that cost determination.

Commissioner Bowden asked what the process would look like if the facility expanded.

Ms. Frischeisen replied that any expansion would be required to go through a Site Plan Review and the decommissioning agreement would be addressed or revisited at that point.

Commissioner Gammon stated that he has twenty (20) years of experience in real estate and ten (10) in power generation, giving him some familiarity with this subject. These energy projects generally fall under the Renewable Energy Pilot Program which is implemented by the state. This is a model where if a company can generate electricity, they are not required to be classified as a utility and as long as certain guidelines are met, the utilities are required to purchase this electricity. Most solar farms and battery storage facilities are privately owned due to this process. Utilities also use battery storage to balance out the grid. This creates competition between the private company and the utility. Commissioner Gammon asked what brought this to the City's attention and made the City feel like they needed to address this issue, as the surety requirement would limit the scope of what companies would be able to meet these requirements. What companies were consulted in the drafting of the ordinance?

City Attorney Matthew Freedman replied that the city has been negotiating siting agreements for two battery facilities but the names have not been made public at this time. This will most likely go before City Council, as a public hearing will likely be required for such an agreement. These companies will be receiving special tax breaks and due to that, the city will be able to negotiate payments from these facilities. The City consulted with an attorney that specializes in this field and with the nature of a large battery siting facility, there has to be a way for the City to enforce decommissioning. This ordinance is designed to work across the board for other similar facilities, such as solar facilities that may come into the city. The surety allows the City to enforce decommissioning when needed and protects the City with the decommissioning agreement. The decommissioning agreement can be signed alongside a Conditional Use Permit or during the site plan review process.

Commissioner Gammon asked if it then came out of the city's office as part of the negotiations.

Mr. Freedman advised that this will be needed as there will be siting agreements presented for approval. This will need to be in place to allow them to outline and allow for decommissioning of these facilities. It was the City's desire to establish this ordinance and it did not come from a third party.

Commissioner Rogers stated that the city has a decommissioning ordinance for telecommunications and the city had a history of seeing companies leaving behind facilities, such as brownfields and factories. Batteries also don't have a lifespan of other manufacturing facilities. Commissioner Rogers asked if he was understanding it correctly that this was to protect the city.

Mr. Freedman advised he was correct and advised that he believed the General Assembly contemplated that when they passed the code section for solar facilities. This is due to the fact that these energy facilities are special.

Commissioner Gammon stated he was not opposed to the idea of the ordinance and appreciated the clarification. With the length of time these facilities exist, it is appearing it would be difficult for anyone to estimate the cost of the facilities and what they would cost to decommission. The ordinance could look as if it is anticompetitive, as it would require a guaranty for a long time, which would require a company to have a lot of funds or to be a utility. It can look like a way to force out small businesses and could appear to be a form of antitrust.

Mr. Freedman responded that the city would work with these companies and that it would not be a one size fits all approach.

Commissioner Marion asked for an explanation of how surety would work and if it would be through an insurance company.

Mr. Freedman advised that it could be an insurance company or a bonding company, He is not aware of the specifics of what the contractual arrangements look like for that, but an agreement would be put in place.

Commissioner Marion asked if the companies would be required to have the funding up front.

Mr. Freedman advised that it would be rare a company would take that approach.

Commissioner Bowden added that it was similar to an insurance policy where you pay a fraction for the benefit.

Commissioner Marion asked if it follows the property.

Mr. Freedman advised he believed the language of the ordinance that the decommissioning agreement would follow the property.

Commissioner Bowden asked if the City could call the bond if the company purchasing the property was doing something the City did not want.

Mr. Freedman advised that the City would only call the bond if the company refused to decommission as required.

Commissioner Bowden stated that the surety would provide accountability and that it made a lot of sense to protect the city. There is enough flexibility in the market that it would not be anticompetitive and if a company cannot get a bond, it would be concerning.

Commissioner Gammon asked if other localities had a similar ordinance.

Mr. Freedman advised he would be surprised if other localities did not have such an ordinance.

Commissioner Bowden added that this was a recommendation from an expert in the field that the city consulted.

Mr. Freedman agrees with Commissioner Bowden and advised that the firm had worked with solar facilities.

Commissioner Rogers stated that he did not believe it was the role of the commission to determine business competitiveness but believes an ordinance like this will drive businesses to find solutions to this

problem. If AEP left a power transfer station and there was no way to enforce decommissioning of the facility, Lynchburg would be left with a mess. Businesses have a history of leaving messes behind.

Mr. Freedman advised the big concern is fire and so a decommissioning agreement would help alleviate the risk to the city.

Commissioner Gammon advised that the City should tread lightly on this subject and should see the effect of how it has impacted other places. The concern would be that only utilities would be able to qualify for such arrangements. Commissioner Gammon asked how the bonds would be computed.

Ms. Frischeisen advised that it would be for the total cost and would be assessed by a qualified engineer who has experience in preparing decommissioning estimates. This calculation would not exceed total cost, but would take into consideration costs such as administrative and an annual inflation factor.

Commissioner Gammon asked what would happen if the bill was larger than what the bond was for and how a business would be able to show they had the funds and had a surety.

Mr. Freedman advised that it was options and that they did not need all of the things listed. This was added to address the different types of businesses that might be involved in doing this.

Commissioner Henderson asked if these companies would have their finances reviewed periodically.

Ms. Frischeisen stated that it was not a long or very specific ordinance and when speaking with the City Attorney, it was explained that the nature of the ordinance was by design, because different types and sizes of facilities will require different terms in the agreements. The draft ordinance is not intended to be rigid. It also helps cover a whole spectrum of facilities, from smaller projects to larger ones, being installed in the future.

Commissioner Gammon said the was not opposed to it and will support it with the confidence that the issues will be worked out and that short ordinances can have an even greater scope of who they impact.

Mr. Freedman advised that if an issue arises that the ordinance can be amended and would then come back through the commission for rereview.

Commissioner Bowden added that it would not be the first time an ordinance has been amended and that it should be viewed as a positive that the City is good about bringing issues to their attention. It's positive to see an evolving and involved process for these matters.

Commissioner Henderson asked if there was a way to check the financial health of the company at any point.

Mr. Freedman replied that the letter of credit or bond would be the financial backing they would need. If it was a financially weak company, it probably would not be able to qualify for these items.

Ms. Frischeisen added that the city would look more at the company issuing the bond and to confirm that company was legitimate.

Commissioner Bowden stated that the 3rd party expert would determine the cost and would be a check and balance for the bond or surety to be reassessed. Even if the funds do not fully cover, the cost it still helps cover a portion, which is better than nothing.

Commissioner Gammon replied that those were great points but hypothetical, as they are not all in the ordinance. The agreements are going to have to be very specific.

Commissioner Bowden added that the site plan would be where those agreements would be initiated.

Ms. Frischeisen agreed with Commissioner Bowden and added that Mr. Freedman is working with the outside counsel who drafted the ordinance to also help draft these agreements where we would have those specific terms articulated.

Mr. Freedman added that they had a template or "starting point" for the agreement and parent guaranty documents. Future agreements would be written specific to the projects as they arise.

Commissioner Perault stated that this is a healthy discussion and that the ordinance protects the public and puts the City in a stronger position.

Commissioner Perault made the following motion, seconded by Commissioner Rogers, and approved by the following vote:

"Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of a Zoning Ordinance amendment to adopt Section 35.2-74, Decommissioning surety for energy storage facilities."

AYES: Bowden, Gammon, Henderson, Johnson, Marion, Perault, Rogers	7
NOES:	0
ABSTENTIONS:	0
ABSENT:	0

The Department of Community Development

City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission

From: Planning Division

Date: December 13, 2023

Re: **Zoning Ordinance Amendment – Section 35.2-74, Decommissioning surety for energy storage facilities. The proposed ordinance would require a written agreement for the decommissioning of an energy storage or solar facility prior to site plan approval.**

I. PETITIONER

City of Lynchburg, 900 Church Street, Lynchburg, Virginia 24504

Property Owners:

N/A

II. LOCATION

This Zoning Ordinance amendment would affect energy storage facilities, which are considered a “Major Public Utilities Service.” These uses are permitted by Conditional Use Permit (CUP) in all residential districts, all commercial districts, all institutional districts, and I-1, Restricted Industrial District. They are permitted by-right in the I-2, Light Industrial District, and I-3, Heavy Industrial District.

III. PURPOSE

The purpose of this *Zoning Ordinance* amendment is to ensure that any energy storage project within the City has an agreement in place to decommission all the equipment, facilities, and/or devices of the energy storage facility or solar facility, so that they are removed and properly disposed of when operations of the facility cease.

IV. SUMMARY

- The *Zoning Ordinance* amendments were initiated by staff on November 2, 2023.

The Planning Division recommends approval of the *Zoning Ordinance* amendment.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The City’s *Comprehensive Plan 2013-2030* recognizes that in order for the City to continue in its role as the economic engine for the region it must keep pace with changes in technology (p. 83) Staff recognizes the need to update City Code as these technologies evolve and the need arises.
2. **Zoning.** The *Zoning Ordinance* was adopted by City Council on February 23, 2016. The ordinance does not currently address the decommissioning of energy storage facilities.
3. **Proffers.** N/A
4. **Board of Zoning Appeals (BZA).** N/A
5. **Surrounding Area.** N/A
6. **Site Description.** N/A
7. **Proposed Use of Property.** N/A

8. **Traffic, Parking and Public Transit.** N/A

9. **Stormwater Management.** N/A

10. **Emergency Services:** N/A

11. **Impact.** The proposed Zoning Ordinance amendment would require a written agreement between the owner, lessee, or developer of applicable projects to enter into a written agreement with the City to decommission all the equipment, facilities, and/or devices of the energy storage facility or solar facility, at the sole cost of the owner, lessee, or developer. The draft ordinance also has a requirement for a surety, which ensures the owner, lessee, or developer has the financial means to carry out the decommissioning, if needed. The terms of these agreements would be determined on a project-by-project basis and approved by the City Attorney's office prior to execution of the agreements.

Note: This Zoning Ordinance amendment was advertised in the legal notice of the newspaper as "Section 35.2-73:1." Section 35.2-73 refers to Telecommunications Facilities. After discussion with the City Attorney, Planning staff recommends altering this to Section 35.2-74 to clarify that Energy Storage Systems are a separate land use and do not fall under Telecommunications Facilities.

12. **Technical Review Committee.** N/A

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of a Zoning Ordinance amendment to adopt Section 35.2-74, Decommissioning surety for energy storage facilities.

This matter is respectfully offered for your consideration.



Rachel Frischeisen
Interim City Planner

pc: Wynter Benda, City Manager
Greg Patrick, Deputy City Manager
Kent White, Assistant City Manager
Tom Martin, Director of Community Development
Matthew Freedman, City Attorney
J. Lee Newland, City Engineer
Cynthia Kozerow, Lynchburg Police Department
Thomas Goode, Fire Marshal
Doug Saunders, Building Official
Kevin Henry, Zoning Administrator
Michael Lockaby, Attorney, Spilman Thomas & Battle, PLLC

VII. ATTACHMENTS

1. **Ordinance**

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY ADDING THERETO A NEW SECTION 35.2-74 OF ARTICLE VII OF CHAPTER 35.2; SUCH NEW SECTION PROVIDING FOR SURETY REQUIREMENTS SPECIFIC TO THE DECOMMISSIONING OF ENERGY STORAGE FACILITIES

ORDINANCE:

#O-23-_____

WHEREAS, the Lynchburg City Council held a public hearing to consider and address the proposed Zoning Ordinance amendments described herein and to receive public comment on _____; and

WHEREAS, the Lynchburg City Council finds that these proposed Zoning Ordinance amendments should be adopted in order to promote the public necessity, convenience, welfare, and good zoning practice.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That the Code of the City of Lynchburg, 1981, be amended and reenacted by adding thereto a new Section 35.2-74 of Article VII of Chapter 35.2 as follows:

Sec. 35.2-74. Decommissioning surety for energy storage facilities.

(a) Definitions.

Decommission means the removal and proper disposal.

Energy storage facility means the energy storage equipment and technology within an energy storage project that is capable of absorbing energy, storing such energy for a period of time, and redelivering such energy after it has been stored.

Project means a solar facility or an energy storage facility of any kind, either or both.

Solar facility means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

(b) Surety Requirements.

As a condition of approval of a site plan for any project, the owner, lessee, or developer of the project, as determined by the City Planner, shall enter into a written agreement with the City to decommission all the equipment, facilities, and/or devices of the energy storage facility or solar facility upon the following terms and conditions:

- (i) if the owner, lessee, or developer defaults in its obligation to decommission a project in accordance with a written agreement provided by this section, the City may enter the real property without further consent and engage in the decommissioning at the sole cost of the owner, lessee, or developer, and
- (ii) the owner, lessee, or developer must provide financial assurance of such performance to the City in the form of certified funds, cash escrow, surety bond, letter of credit, or parent guaranty, based upon an estimate of a professional engineer licensed in the

Commonwealth of Virginia, acceptable to the City, who is engaged by the applicant, who has experience in preparing decommissioning estimates. The estimate shall not exceed the total of the projected costs of decommissioning, which may include the net salvage value of such equipment, facilities, and/or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor. The City Manager, or his/her designee, shall execute such written agreements on behalf of the City.

(c) Approval as to Form.

All written agreements entered into pursuant to this section shall contain provisions related to the form and quality of the surety or guaranty, and shall be in a form approved by the City Attorney. However, failure to adhere to this requirement shall in no way adversely affect or void such written agreement.

2. That this Ordinance shall be effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

City of Lynchburg Decommissioning Ordinance
December 13, 2023

PLEASE PRINT CLEARLY

[illegible]