

August 13, 2019

// A regular meeting of the Council of the City of Lynchburg was held on the 13th day of August, 2019 at 4:00 p.m. in the Council Chamber, City Hall, Treney Tweedy, President, presiding. The following Members were present:

Present: Mary Jane Dolan, Jeff Helgeson, J. Randy Nelson, E. J. Turner Perrow, Sterling A. Wilder,
Beau Wright, Treney Tweedy 7

Absent: 0

// On motion of Councilmember Perrow, seconded by Vice Mayor Dolan, by the following recorded vote elected to hold a closed meeting for discussion of plans to protect the safety and security of the members of City Council while they are in City Hall, because discussion in an open meeting would jeopardize such safety and security plans, pursuant to Section 2.2-3711(A.)(19.) of the Code of Virginia:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright 7

Noes: 0

// The meeting was re-opened to the public.

// Councilmember Helgeson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Councilmember Wilder, and Council by the following recorded vote adopted the motion:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright 7

Noes: 0

// In the matter of Community Development, Zoning Amendments, Short-term Rentals, Agenda Item #2, Ms. Bonnie Svrcek reminded them that a public hearing had been conducted on May 14, 2019. Council had requested the item be held over to a work session. Dr. Reid Wodicka reminded them that short-term rentals are being operated ultimately under a zoning interpretation rather than a very clear ordinance. The hope is that we come up with a very clear definition of our policies that can be codified. Mr. Kent White gave a presentation. He commented that short-term rentals represent approximately 10 percent of the City's total lodging revenue. Host Compliance, a third party monitoring site, gave them an updated assessment of short-term rentals in May 2019. It identified 483 unique rental units resulting in 529 rental listings. The estimated median nightly rate is \$77. Three quarter of the units were single-family homes and three quarters of the hosts rented the entire home.

Digital platforms have created an opportunity for residents to showcase Lynchburg to the world. Short-term rentals increase lodging choices and create great opportunities for individuals to generate additional income, as well

as highlight distinct area of the City. Conversely, short-term rentals have raised questions of fairness. The 22 hotels and four bed and breakfasts in the City must obtain business licenses and remit taxes. Neighborhood impacts are also a concern. Some reported issues include transiency, occupancy, parking, noise and trash.

Last year, Council heard two updates on short-term rentals. In October, Council directed staff to prepare code changes that allow for the use while balancing lodging industry equity and neighborhood protections. Staff presented recommendations to the Planning Commission on January 23, 2019. The Commission held a total of four meetings, including two public hearings, as they sought to balance the issues Council previously defined in their ordinance recommendation. Planning Commission's proposed the following short-term rental recommendations for Council's consideration: 1) Short-term rentals would be permitted by right in all zoning districts, except industrial and institutional 1; 2) owner occupancy is required in the R-C, R-1, and R-2 single-family districts; 3) Occupancy is limited to four unrelated guests. An unlimited number of related guests would be allowed but no unrelated guests may accompany them; 4) One additional parking space would be required per short-term rental except in the B-4 district; 5) All units must register and pay an annual \$150 fee; 6) The City may revoke unit approval for three ordinance violations related to the short-term rental in three years.

Staff provided answers to questions posed by the public and City Council. Does state code allow the City to adopt the proposed ordinance? Yes, State Code Title 15.2, Chapter 9, Section 15.2-983 allows the City's proposed ordinance.

How are complaints addressed based on the current policy? Short-term rentals are permitted in business zoned districts by right. Occupancy standards for residential zoning apply for short-term rental uses. Occupancy is limited to three unrelated people per dwelling unit or, when two or more related people reside there, only one unrelated guest. In residentially zoned districts, the owner must also be present during the guests' stay. Occupancy cases often take significant time, up to five months, to meet notification requirements, if they go to court. There were 11 zoning cases for short-term rentals in 2018. Some cases were based on multiple complaints about a specific property.

How would the proposed short-term rental ordinance improve enforcement? It would provide clearly defined rules. Registry would provide location information for short-term rentals. It would also allow for due process for the zoning administrator to address complaints without requiring staff to take each individual violation to court. Three code violations related to short-term in three years would prohibit that rental.

What would be the impact of prohibiting short-term rentals in R-1 and R-2? There are potentially hundreds of short-term rental operators in violation. City does not currently have the resources to enforce. There might be reduced transiency in neighborhoods but there would be lessened lodging/tourism options. There could also be General Assembly action.

Mr. Tom Martin addressed the following questions: Why does the short-term ordinance allow four unrelated people instead of three? It was originally proposed to limit short-term rental occupancy to three people. Planning Commission proposed raising the number of guests to four unrelated people to allow two couples to rent a short-term rental together. An unlimited number of related individuals may rent a short-term rental just like they can with a long-term rental. For long-term rentals, where two or more related people reside in a dwelling unit, one person

unrelated to the related people may reside in the dwelling unit. Council would need to make this change to the current draft ordinance if it would like one unrelated person to be allowed to accompany a group of related guests.

In answer to a question about the requirements for a bed and breakfast, staff provided the following definition: A dwelling, occupied as such, in which sleeping accommodations in less than six rooms with not more than four persons per room are provided or offered for transient guests for compensation, under the management of the occupants of that dwelling for dwelling purposes. A tourist home or bed and breakfast shall not be deemed a home occupation. In residentially zoned districts, a conditional use permit is required; business license and lodging tax is required, as well one parking space per room. It is managed by the occupants of the building and the primary use of the home shall remain a residence. In R-1 and R-2 districts, it is restricted to three rooms with up to two persons per room. In R-3 and R-4 districts, it is restricted to five rooms with up to four persons per room.

In commercially zoned districts, bed and breakfasts are permitted by right in B-1, B-3, B-4, B-5 and IN-2. Business license and lodging tax are required. It is managed by the occupants of the building and up to five rooms are allowed with no more than four persons per room.

The definition of a hotel is a building or part thereof containing five or more guest rooms without kitchens where lodging is provided for compensation, excluding a fraternity or sorority house, a school or college dormitory, or a tourist home. They are permitted by right in B-3, B-4, B-5 and IN-2. They are allowed by conditional use permit in the I-1 district. A parking space for each room is required, as well as a business license and lodging taxes.

How is owner defined as it relates to owner occupancy? Related people are related individuals including people who are related by blood, are married to each other or are in a substantially similar relationship, and children under their care. This would prohibit corporate entities from purchasing residences in the City's lower density residential neighborhoods and converting them to strictly short-term rentals.

Occupancy: Except as allowed by conditional use permit or for non-conforming duplex or multi-household dwellings, no dwelling unit or boarding unit may be occupied by more than three unrelated people. Where two or more related people reside in a dwelling unit, only one person unrelated to the related people may reside in the dwelling unit.

What are Airbnb deserts? What are the concerns about affordability? "Airbnb deserts" are neighborhoods with significant (ten percent or higher) residential living space rented on a short-term basis. They cause impacts on the character of a neighborhood and the cost of housing. It is not yet identified as an issue in Lynchburg and the owner occupancy requirement provides some protection. When we talk about neighborhoods, we need to look at what the City's *Comprehensive Plan* lists, which is a City of strong neighborhoods as a guiding principle of the vision. Specifically, the *Comprehensive Plan* says the City's reputation as a good place to live and work will grow from the quality of its many neighborhoods with their distinctive characters, histories and natural settings. Lynchburg neighborhoods will provide residents safe, healthy environments and strong senses of identity and ownership. The short-term ordinance as proposed today would help maintain that sense of ownership in our low-density residential districts.

Can neighbor address short-term rental concerns through the host's rental platform? Yes, however, it is unclear how, when and if the concern raised by a neighbor gets to the owner of the short-term rental. "Airbnb neighbors"

allows people other than operators and guests to file complaints. Follow-up with neighbors and operators varies based on whether the complaint includes the web address of the listing or the street address. Other platforms typically refer neighbors to local governments for complaints and occupancy standards.

Does the Airbnb platform perform background checks on its guests? Not typically. Although they reserve the right to do so, Airbnb does not typically perform background checks other than verifying that the guest is who they say they are at time of registration.

Can't neighbors just create a homeowners association (HOA) to address issues with short-term rentals? HOAs typically cover the maintenance of common areas; however, they can include additional restrictions on private property. They are typically created during the original development of the neighborhood. All property owners would have to agree to the HOA. HOA regulations are solely a civil matter and local government plays no role in their enforcement. Councilmember Perrow asked if an existing HOA could make a change and Mr. Martin said it would still have to have 100 percent owner agreement to do so.

Mr. Mitch Nuckles addressed the registration fee and tax collection options. Registration fees can only be used to offset City program costs. The annual short-term rental registration fee was proposed as a way to help recoup some staff costs to administer the program and provide some level of equity with the lodging industry that currently pays lodging tax. The proposed fee would cover the equivalent of thirty days of lodging tax for a host. Concerns about the registration fee include high startup costs, which might exclude some from the market and low cost recovery for occasional rentals.

Is the \$150 annual registration fee excessive to cover staff costs? It was computed using hourly rates for existing staff plus equipment. First year City costs are estimated at \$51,000, which assumes \$13,000 for third party monitoring of short-term rental locations. It includes startup (database, billing system, program advertisement, etc.), database maintenance, inspection, registration/collection and enforcement. If third party monitoring is not used to identify short-term rental locations, additional full-time staff would be required. It is estimated that \$45,000 can be collected through the registration fee, which means a loss of \$6,000 to the City.

Are realtors exempt from the registry? What requirements do they have? State code exempts the following from registering short-term rentals: 1) persons licensed by the Real Estate Board; 2) property owners represented by a real estate licensee; 3) persons registered with Virginia Real Estate Time-Share Act; 4) Entities licensed or registered with the Department of Health for provision of room or space for lodging; and 5) persons or entities registered with the locality related to the rental or management of real property (hotels, motels, campgrounds, bed and breakfasts). These entities must remit lodging tax and all other taxes associated with their businesses.

What about the security of data used by a third-party monitoring service? Any owner or location data the City would provide to a third-party monitoring service is already publicly available through the City's Geographic Information System.

Why don't we just charge short-term operators lodging tax? Taxes are revenue sources that can be used for purposes other than solely offsetting City program costs. Collecting lodging tax from short-term rentals is equitable with the lodging industry. Some platforms provide hosts with statements indicating how much they should remit. Staff does not recommend requiring hosts to voluntarily remit lodging tax due to low collection rates experienced by

other localities, difficulty determining rental receipts and the need for additional staff to assist with collection. Providing for the voluntary remittance of the lodging taxes without additional staff necessary to determine rental receipts would create disparity among the short-term rentals.

What about an exception for infrequent occurrences? Offering an exception for the registration fee or voluntary lodging tax remittance with infrequent occurrences would be very difficult since the City does not have the ability to determine the individual nights that short-term rentals are occupied. Of the \$87,000 (estimation) that staff should collect, they anticipate a 15% collection rate. It would net an estimated \$13,000. \$51,000 is the estimated cost of monitoring the program, which would mean a \$38,000 loss for the City. Another option would be to hire additional staff, which would mean the cost is \$91,000 a year and the collection rate is expected to be 75 percent, or \$65,000. That would mean a \$26,000 loss for the City.

Is there an alternative for collecting lodging tax that is less staff intensive? Airbnb is currently the only platform that offers voluntary collection agreements with localities. It is estimated that 96 percent of the City's short-term rental hosts use Airbnb. The agreement allows Airbnb to collect the locality's lodging tax as part of the guest reservation process. Airbnb then remits the tax directly to the City. Staff initially had concerns with this process because Airbnb does not allow the City to audit their collections and does not release information about hosts. Effective July 1, 2019, Airbnb now remits sales tax to the Commonwealth of Virginia. The ability to compare the lodging tax received to that sales tax information assists the City in ensuring compliance. With the alternative and no registration fee, the City estimates it would collect \$84,000 and have a cost of \$51,000. It would net an increase in \$33,000. Alexandria has an agreement with Airbnb. It estimated it would collect \$100,000 and collected \$350,000 this fiscal year.

Mr. White summarized the recommendation of staff and Planning Commission to adopt the ordinance as recommended by the Planning Commission with the provision "where two or more related people reside in a dwelling unit, one person unrelated to the related people may reside in the dwelling unit." This would be consistent with the City's occupancy standard and current zoning interpretation for short-term rentals. An alternative recommendation if Council prefers that the City collect lodging tax in lieu of charging the registration fee. Council should direct staff to negotiate a collection agreement with Airbnb, establish a short-term rental registration program without an annual registration fee. The only cost associated with the registry would be a \$500 penalty for failing to register as a host. Staff would contract with a third-party monitoring service to identify the location of short-term rentals in Lynchburg. The Commissioner of the Revenue would monitor Airbnb lodging tax remittance and work with hosts that list on other platforms to voluntarily remit their lodging tax. The registry would help the City follow up on zoning concerns.

Councilmember Nelson asked Mr. Martin if the ordinance will require a short-term rental to be owned by a natural person and not an entity. Mr. Martin would not say it is requiring it but it would be very difficult for an entity to occupy a structure and maintain occupancy there. If two people formed an LLC and bought four or five houses, they obviously could not maintain legal domicile in all four of those houses. It would not prevent an entity from owning them but it would prevent an entity from doing short-term rentals. Councilmember Nelson noted that the ordinance would have to implicitly require that it be owned by a natural person who does physically in their own

August 13, 2019

right occupy it in those districts where owner occupancy is required. Mr. Martin does believe that is correct. Councilmember Nelson could imagine a situation where an entity may, as a part of the rental fee, have the short-term resident become a temporary owner of the business and then submit a damage deposit. If they want their damage deposit back, they have to surrender that interest. Then it gets very complicated. Mr. Martin said it would be very difficult and unrealistic. It may be possible in theory but he thinks it would be very difficult to do. Councilmember Nelson thinks the conclusion is that in order for the ordinance to be enforceable with owner occupancy, it has to be owned by a natural person not a person as otherwise defined in our code, which can be a business entity. Mr. Martin believes that is fair.

Councilmember Perrow noted that developers will intentionally have a different LLC for each property. Then you have a one-to-one relationship and you could not prove otherwise. He asked Councilmember Nelson if a natural person is a legally definable term. Councilmember Nelson said if we use person or owner, we need to tailor it very specifically in the context of this ordinance and not our general definition of owners or persons that otherwise exists in the City code. Mr. Martin believes the end result is the same but we could be clearer on it. Councilmember Perrow pointed out that an entity such as BB&T owns and occupies several buildings. Mr. Martin indicated they are not residing in them; they are not dwellings. That would be the differentiation.

Councilmember Nelson noted that we make exceptions in the zoning ordinance for yard sales and fundraising activities. There is a limit on those activities before they have to remit sales tax. He would like to know what the difference is here and say, for example, that seven days of short-term rentals in a year would be considered an infrequent use. Mr. Nuckles indicated that three fundraising activities by an organization in a year are exempt from sales tax. Those events are usually advertised and the Commissioner of Revenue can monitor them. They have no way to monitoring the number of nights a person rents out a short-term rental. Councilmember Nelson thinks the neighbors would keep pretty close tabs on it and someone will call someone to complain. In terms of public relations and with the number of colleges we have in the City, there are times in the year where we need a lot more residential short-term space than we have available in the commercial market. He would like to see an allowance for infrequent use in the ordinance. Mr. Nuckles would agree that there is no doubt it could be done. There was some discussion about the fact that Airbnb would still collect the lodging tax from the renter. Mr. Nuckles indicated that collecting the lodging tax from Airbnb was to be in lieu of the \$150 registration fee. He clarified that the lodging tax is not paid by the host; it is paid by the guest.

Councilmember Nelson asked why we would waive the registration fee if we collect the lodging tax from Airbnb. Why would we not collect both? Mr. Martin said that at the time this draft ordinance was first being proposed, staff was not comfortable with not being able to audit Airbnb. With the state code change that went into effect on July 1, 2019, they are now submitting receipts to the state, so they can compare numbers. The \$150 registration fee was to try and recoup staff time. If the City collected lodging tax, you would not need to require a registration fee as well. Councilmember Nelson asked if they are prohibited from doing so by state law. Mr. Martin indicated they are not. Councilmember Nelson thinks the registration fee is one component of the overhead cost. Then the lodging tax collected from short-term rentals is the same as hotels and motels have to pay. He does not see the logic with not requiring both a registration fee and the collection of lodging tax and he would like to see all

August 13, 2019

lodging entities treated the same in terms of collecting lodging tax. The registration fee is a means to offset overhead costs of staff time. Mr. White clarified that registration fees collected cannot exceed the cost of staff time involved in setting up and maintaining a registration program. The registration fee could be a lesser amount if Council would prefer. Mr. Martin clarified for Councilmember Nelson that most of the operators in the City are using Airbnb, which will remit the tax directly to the City. That will reduce the load for the Commissioner of Revenue in terms of collecting lodging tax from operators that use other platforms.

Councilmember Wright indicated that it seems they are being asked to weigh in on where short-term rentals occur and how, the reporting requirement and then how the lodging tax is collected. Mr. White indicated that assessment is correct as well as staff would like Council to weigh in on the number of people that may occupy a short-term rental.

Councilmember Wright said the owner occupancy requirement is troubling him and wondered if staff had any idea how many units there are in the residential zones. Staff indicated they have only been given dots on a map at this point. Councilmember Wright noted that if this goes into effect, there could potentially be several hundred units in violation. Mr. Martin clarified that the zoning administrator's interpretation is that short-term rentals need to be owner occupied in the R-1, R-2 and R-C districts. Therefore, they would not be in violation if Council passes that part of the ordinance. If they are owned by an entity, those entities are already in violation and will continue to be in violation.

Councilmember Wright asked how other localities are handling the owner occupancy issue. Mr. White said staff surveyed 28 localities and they were really all completely different. Mr. White clarified that when staff said there would be hundreds in violation in its presentation, they were referring to if Council prohibited them outright in residential districts. That is not staff's recommendation.

Councilmember Helgeson pointed out that we have just applied for wealth building grants. When you look historically, the best way to build wealth is private property rights. People used the homesteading act to acquire property and there was no interference with what they did with the land. Obviously, there should be some jurisdiction because you do not want a pig farm to disrupt your neighbors. When government helps to enforce that a private property owner maintains his private property rights, it helps to build wealth. When there is a free exchange, it helps build wealth. A stable money also helps build wealth, which local government has nothing to with that but can help with the other two things. They can really help build wealth by having solid property rights and not interfering on every little thing.

Councilmember Helgeson pointed out that we have more money than we anticipated in sales and use tax because the hotels were full. We also had more money in meals tax than we anticipated. We should figure out the best way to have as many people come here and stay here, even when the hotels are full, so they do not stay somewhere else like Charlottesville. Granted it should not interfere on the neighbors. Would we have more meals tax and sales tax if we say you cannot rent out your home? Probably not. Sometimes with these decisions, the hardest thing to do is figure out the unintended consequences. If you have to occupy the house in order to rent it, what is that going to do? There are a lot of negative unintended consequences that can happen.

Councilmember Helgeson thinks the best thing they can easily go with is to collect lodging tax through Airbnb

and no registration fee. That would be easier than exempting people that only do it infrequently. There were eleven complaints in a City of 80,000 and 20,000 to 25,000 individual property units is not a lot of complaints. He would agree with Councilmember Wright that the units should not have to be owner occupied.

As far as the number of people that can occupy a short-term rental, Councilmember Helgeson pointed out that if three people occupy a regular rental unit and they have guests stay overnight, that number can go to twelve very quickly without being in violation of the zoning ordinance. Mr. Martin thinks the difference is that he is talking about one instance where the residents might have had a party as opposed to it happening up to 365 days a year. Councilmember Helgeson thinks it is an economic decision between the person who owns the property and the person who is renting the property. Councilmember Helgeson would not be willing to have 20 people stay in his house for \$77 a night. He thinks the owners will do a better job of protecting their property than government thinking about how they could protect their property.

Councilmember Perrow suggested they look at Planning Commission's list and go down each item and determine if they agree on the recommendation or want to discuss it. From what he has heard, the second, third and fifth bullet points are items they want to discuss further.

Council began with the recommendation "permitted by right in all zoning districts except industrial and institutional 1." Mr. Martin explained that by right means a person can establish a short-term rental, subject to whatever provisions are in the ordinance, without having to come to Council for approval. The council members were in agreement on item number one.

Council discussed the recommendation "one additional parking space would be required per short-term rental except in the B-4 district." Councilmember Helgeson would like to see consistency here. Either there is no additional parking required anywhere or it is also required in the B-4 district. Mr. Martin explained that the rationale here is that there is no parking required in the B-4 district for any other uses and there is nowhere else in the City where there are parking decks or places to lease parking or the space to create massive off street parking lots. In the residential districts, the required parking can be in your driveway or it can be on street parking, if on street parking is available. Councilmember Helgeson would let the market decide because if a host does not have available parking, he does not think there will be many people staying in it. Mr. Martin said they would not get an argument from staff about a minimum parking requirement. They agree that the market should decide.

Councilmember Perrow noted that the way he is thinking about these issues is that unless there is a compelling reason otherwise, he will err on the side of liberty. He would rather not restrict at this point but if it had to come back in a year, they can reevaluate it. Councilmember Nelson noted that if he were a resident next door to a short-term rental and Council had said they do not have to provide any additional parking for the commerce you are inviting in, he would be upset. But he also agrees with Councilmember Perrow and staff that it will be very difficult to enforce. If there is a four-person limit on occupancy, there will not be many cars there at all. Councilmember Helgeson pointed out that a person who owns in and resides in their own home can be just as much of a problem if they and their children own several cars and they all park on the street. Councilmember Nelson also pointed out that many of the streets where there are no driveways or parking lots are permitted parking and the owner will have to have some sort of permit parking for the short-term renter.

August 13, 2019

Councilmember Wright commented that given this is our first attempt to regulate an evolving industry, the lighter touch here by the City, the better until we fully understand the implications. Once we have more information and more feedback from neighborhoods, we can then tailor our approach, if it becomes a problem.

Councilmember Helgeson would like them to clearly define for those in the Airbnb business that we are not going to double the charges or make them build a garage a year from now. Part of the law and policy is making sure we are protecting their private property rights as much as we can. They should have a clearly defined set of parameters that let the private property owners know they are not going to keep nibbling away at them or they will never improve the property to begin with. Council members were in agreement to remove the requirement for one additional parking space.

Council discussed the recommendation “The City may revoke unit approval for three ordinance violations related to the short-term rental in three years.” Councilmember Nelson agreed with that recommendation. Councilmember Helgeson did not agree with this recommendation because he thought it was arbitrary. Council did not have to grant them permission to do it because it is by right, so he does not know how they can “ungrant” it due to someone complaining about it. If it is an issue with noise, that is handled by the City’s noise ordinance. If the grass is not mowed, that has nothing to do with short-term rentals and is handled by the City’s weed ordinance. Issues with the maintenance of the house would be handled by the property maintenance ordinance. Mr. Martin clarified that it is says “three violations of state or local laws or ordinances or regulations as relating to the property,” which could pertain to gutters falling off the house or grass that is not mowed. Councilmember Helgeson reiterated that he does not agree with this provision as there are already mechanisms in place to handle things of this nature pertaining to the property.

Vice Mayor Dolan thought they should be clear that short-term rental is a business and there are ordinances for other businesses. Why can they not have an ordinance for them in terms of how they behave? Councilmember Perrow thinks that is reasonable.

Councilmember Perrow is not how we can enforce this. Would the City complain to Airbnb or pull their listing with Airbnb? He would suggest there might be a fee or a penalty associated with violations as opposed to revoking approval. Mr. White clarified that the intent of this is to have it apply to the operation of the short-term rental. A noise violation when it is being operated as a short-term rental could be deemed one of the three violations. Frequently violating the standards that are set forth in the City code as it pertains to operating as a short-term rental would constitute one of the three violations. It would not be a matter of pulling the Airbnb listing; it would be going to court just like we do for any other zoning violations. Having something so that the zoning administrator could just write a Notice of Violation still provides for due process and makes it easier for staff to enforce and provides greater clarity. Councilmember Perrow asked him about a penalty fee. Mr. White said state code allows you to prohibit the use based on three violations. It does not provide for a fee.

Councilmember Helgeson does not know how staff will separate out violations pertaining to the use of the unit as a short-term rental. A gutter could fall or paint could start chipping during the time it is being used as a short-term rental. Mr. Martin said the reason this provision was put in there was to give the existing neighborhoods some level of protection. All we have been talking about is deregulating what the Vice Mayor said was a business making

it easier for them, but we are doing nothing to protect the existing neighborhoods. Council is talking about removing the requirement for owner occupancy. They removed the requirement for an additional parking space. They are talking about increasing the number of unrelated occupants. Where is the protection for the existing neighborhoods as their *Comprehensive Plan* says? He would hope they think about that.

Councilmember Helgeson pointed out there were eleven violations last year out of 25,000 properties. 25,000 properties times 365 days a year is a lot of ability for things to happen. Mr. Martin pointed out that the eleven complaints were related to the approximately 400 short-term rental units in that year, not 25,000 properties.

Councilmember Helgeson does not think they have a lot of problems with short-term rentals and there are already a lot of protections in place for neighborhoods and there are actually improvements to neighborhoods. Councilmember Helgeson pointed out that long-term rentals are also a business. He would love nothing better than if his neighbor's house was no longer a long-term rental and became a short-term rental. He would prefer people come from far away, pay more money, stay the night and go as opposed to long-term rentals which can cause property values to decline. There are lots of positive aspects and he thinks they need to look at the unintended consequences.

Councilmember Nelson asked Mr. Martin if he is referring to the state's enabling statute or was he reading from the recommendation of the Planning Commission. Mr. Martin said he was reading from the recommendation of the Planning Commission. Councilmember Nelson said they could change the language to make the violations tied to the short-term rental ordinance. Mr. Martin said absolutely; his job is to make sure they understand what they are passing and the way it is written. Councilmember Nelson said it makes sense to him that the right to conduct a short-term rental is lost if there are three violations of the provisions of the short-term rental ordinance within a three-year period. Mr. Martin said he would agree with Councilmember Helgeson in that the host of a short-term rental is going to fix things like gutters and keep his grass cut because he or she wants to get a good review. In that sense, they are self regulating, but the ordinance is not written to address things directly related to its use as a short-term rental (noise, trash, etc.) Councilmember Nelson would like it clarified in two ways. If there are violations directly related to the short-term rental ordinance or if there are other violations, such as noise or trash, that occur during the time it is being rented as a short-term rental. Those are the things we want to protect the neighbors from so it is very much related to its use as a short-term rental. He does not think peeling paint is going to be one of the issues a neighbor is going to raise. If someone wants to use their house as a short-term rental and they do not comply with the regulations, Councilmember Nelson thinks it makes sense to take away that privilege just like a landlord might take away a tenant's right to use their home if they do not comply with the terms of the lease.

Councilmember Perrow asked for clarification that it would be a court proceeding and Mr. White said that is correct. Mr. White said the owner would be notified that his or her right to use it as a short-term rental is revoked because of three violations within a three-year period. If the use continued, it would go to court for the judge to enforce that provision. Councilmember Nelson noted that the owner would have an opportunity and due process to argue his case before the court. Councilmember Perrow would like to take a look at tweaking the language as recommended by Councilmember Nelson.

Councilmember Helgeson pointed out that this is not holding the person responsible who made the noise or

made the trash (the guest) but instead are going to go against a person who did not do it (the host or owner). Councilmember Helgeson pointed out that if there are 529 short-term rentals in the City times 365 days a year, there is a possibility for 193,000 complaints and we had eleven last year. He agrees with Councilmember Perrow that the more they can decide on the side of liberty, the better.

Mayor Tweedy asked if there was any consensus to either remove this recommendation entirely or to work up some language as suggested by Councilmember Nelson. The language would provide for violations related to the short-term rental and violations that occur while it is being used as a short-term rental. Council was in consensus that they would like staff to come back with some revised language for their consideration. Staff indicated they understood and would come back with some rewritten language along the lines of what Councilmember Nelson had suggested. Mr. Martin indicated he understood the language they are looking for staff to draft for their consideration.

The discussion moved to owner occupancy in single-family neighborhoods. Vice Mayor Dolan indicated that in order to support the integrity of neighborhoods, she would support owner occupancy in single-family neighborhoods. Allowing short-term rentals in single-family neighborhoods in other cities in the country has really destroyed the fabric of the neighborhoods. Councilmember Helgeson had mentioned unintended consequences and she thinks they need to think about what could happen to their single-family neighborhoods.

Councilmember Wright noted that point but is concerned with putting a number of listings in violation if they pass this requirement. Although they are already in violation, this requirement would codify it even further. He does not know the answer; he suggested maybe a person or company only be allowed to own a certain number of short-term rentals in single-family neighborhoods.

Mayor Tweedy asked who a person would call if there is a problem with a short-term rental. She noted that hotels have staff on site 24/7. Mr. White indicated that bed and breakfasts require on site management. In the case of short-term rentals, staff would have to go back to the owner of the property. Councilmember Helgeson noted that if there is a party going on, the police are going to deal with the guests and not the owner. Mr. White indicated that Charlottesville has a provision that the owner has to leave a contact number on site for emergencies and complaints.

Councilmember Helgeson noted that when he was part of the CDBG application process, he really pushed for people to own their own homes because that is absolutely the best thing for neighborhoods. But he does not think they have to say that the owner has to live there because we do not have that requirement if a person wants to do long-term rental. This would be treating short-term rentals very unequally. Especially during special events, he thinks short-term rentals are good because they allow more people to stay in the City, which generates more meals and sales taxes.

Mayor Tweedy wondered if the owner occupancy requirement could be required moving forward but that those that already own short-term rentals in single-family neighborhoods could be grandfathered. Mr. Martin said he is trying to verify that hundreds of units would be in noncompliance if Council passes an owner occupancy requirement. Mr. White said he is referring to hundreds of them being in noncompliance if Council does not allow short-term rentals at all. Councilmember Wright noted that if they pass an owner occupancy requirement, law abiding, conscientious short-term rental owners will pull down their listings. Mr. White noted that this requirement

August 13, 2019

could change a business owner's business model in a number of different ways.

Councilmember Helgeson asked if there is the same provision for owner occupancy in the ordinance for long-term rentals because they are now getting down to defining a time frame. Things are easier now to rent short-term because of technology. Mr. Martin acknowledged that the ordinance does not address owner occupancy in single-family neighborhoods for long-term rentals. Councilmember Helgeson thinks businesses are not being treated fairly because long-term rentals are a business too. Mr. Martin thinks the difference is the transient occupancy that is coming and going potentially every day. A long-term renter is there typically for a year lease or longer. The renters become known in the neighborhood and that was the thought behind making the differentiation. Councilmember Helgeson said he understood the thought process but out of a possible 193,000 iterations, there were only eleven complaints. Mr. Martin noted that it was eleven cases. There could have been multiple complaints on one property.

Mayor Tweedy asked Councilmember Nelson if they can put a limit on the number of homes in a neighborhood that could become short-term rentals. Councilmember Nelson indicated they could not do so.

Councilmember Nelson noted that the purpose for the owner occupancy requirement is to encourage relationships and neighborhood continuity and not have a highly transient environment. This requirement would essentially limit the number of short-term rentals. Councilmember Nelson thinks the registration process will solve the issue of being able to contact an owner in the case of a problem as contact information can be a part of the information he or she needs to provide. Councilmember Nelson said he is not inclined to require owner occupancy as it is not required for long-term rentals. He thinks there is not an equal protection there in terms of having rules applied differently.

Councilmember Wilder thinks the provision is in there because short-term rentals bring more challenges. He has heard complaints from people about short-term rentals due to parking issues and different people coming and going. He likes the owner occupied piece because he feels short-term rental is different than renting a house for a year.

Councilmember Perrow said he struggles with this provision because he does not think it is appropriate to have businesses in residential neighborhoods. He is not as concerned with an owner who does it infrequently or only has one but that runs straight into conflict with people who are welcome to have a business in long-term rental. He does not think it should be required in the R-2 or R-C districts. He leans toward being consistent with how long-term rentals are treated in the R-1 district and not require owner occupancy in that district as well.

Vice Mayor Dolan said her concern is that young people and families that bought homes hoping to raise their families in a stable neighborhood now has transiency in the neighborhood. She has heard multiple complaints from her neighbors about problems with short-term rentals in her neighborhood. Even after the owner was contacted and told he was in violation, he continued to put his listing on Airbnb. She is adamant that certain neighborhoods need to be protected for people that are trying to raise their children in a stable environment. Councilmember Perrow suggested she make that as a motion and see if it passes or not in order to resolve this item.

Vice Mayor Dolan made a motion to require owner occupancy in the R-C and R-1 districts. The motion was seconded by Councilmember Wilder. Councilmember Nelson asked if she meant to include grandfathering in existing short-term rentals (no enforcement against those that would otherwise be out of compliance.) She said that

is correct. Mr. Martin indicated that the current owners need to register as soon as this ordinance is adopted. A year or two from now, staff does not want to be trying to prove or disprove that they were operating it prior to the adoption of the ordinance. Councilmember Nelson clarified that even though they are grandfathered in, the non-owner occupied short-term rentals that exist today will need to register and comply with all the other requirements of the short-term rental ordinance.

Councilmember Helgeson thinks that is going to be a complete mess and Mr. Martin said probably but staff will get through it. You are artificially limiting someone's property rights and how will this be equal protection under the law. My neighbor can do it but I cannot because I did not start prior to this ordinance. Councilmember Helgeson said he wholeheartedly wish that he had an Airbnb next to him rather than a long-term rental. They are looking at a very little number of complaints and he wondered how many complaints were on owner occupied units. Mr. Kevin Henry said eight of them were on owner occupied units. They were not informed about the number of complaints on long-term rentals. He feels this would be giving different people different property rights and he does not know how they can do that.

Councilmember Wright wondered if they could limit an owner to a certain number of non-owner occupied short-term rentals, say three to five, in single-family neighborhoods. Mr. Martin does not think this would be permissible under state code. It can be discussed with the City Attorney. Mr. Martin pointed out owners can just set up different LLCs and have each LLC own three to five units. Councilmember Helgeson pointed out that if an owner is doing it well, you want more of them, not to restrict them.

Councilmember Wright thought that whatever they do, they want to have a grace period for operators because many of them could have booking out as far as a year from now.

Mayor Tweedy is not sure how the registration process will be a mess. Mr. White said they don't know what they don't know but staff will have to get the third party data, see where they are and compare it against owners that register. It might not be as clean as everyone would like but staff will try to implement the ordinance that Council puts forward. Mayor Tweedy commented that the motion is on the table for a vote but they will wait for Councilmember Wilder. She also commented that staff will propose a grace period for implementation of the ordinance and bring that back to them for discussion.

Councilmember Nelson noted that as properties are sold, the pool of those that are not owner occupied should shrink. It is also difficult anytime you start something new but you have to start somewhere if it is a good idea. He thinks this ordinance is a good idea.

Councilmember Helgeson remarked that typically zoning follows a property not an owner. Conditional use permits go with a property. Also, if we like that property values have increased for those that have done it and we get more lodging and meals tax, let try to have more of it done if it is done well. Councilmember Nelson replied that zoning also pertains to the use of a property. Councilmember Nelson commented that the undesirable activity they would be trying to minimize with owner occupancy is the transiency of a neighborhood.

Before the vote was taken, Councilmember Perrow asked Vice Mayor Dolan if she meant to include the R-2 district. She said she did not. The motion passed by the following vote:

AYES: Dolan, Nelson, Tweedy, Wilder, Wright

5

The discussion moved to the number of unrelated guests allowed to rent a short-term rental. Councilmember Helgeson noted that a nanny could not accompany a family if the provision that no unrelated persons may accompany a family is included in the ordinance.

Councilmember Perrow asked how short-term rentals are handled in vacation destinations such as Virginia Beach. He wondered if they could develop some commonality between the two. Mr. White said occupancy standards are really all over the place all over Virginia, just as it is for long-term rentals. Councilmember Helgeson thinks this will be difficult for the zoning administrator to enforce because the guests will be gone by the time he investigates a complaint. He would like to have laws that are not making good people bad.

Vice Mayor Dolan wonders if this could not be regulated by the owner of the property. When you rent a property at the beach, the owner will say the number of guests that are allowed. Councilmember Helgeson pointed out that if a person has a one-bedroom to rent, he does not think that 12 people will be staying there. Mr. White noted that the occupancy standard City wide is three unrelated people. If Council does not establish the occupancy standard, it would default to three unrelated people no matter the size of the unit. Councilmember Helgeson pointed out the occupancy standard was created for people living there not for people having guests. Mr. Martin reminded them that in 2016 when they adopted the new zoning ordinance that besides the number of chickens, their main discussion centered on the number of unrelated people that could occupy a rental unit. He reminded them that the number of people being determined by the number of bedrooms was discussed during the rewriting of the zoning ordinance. Mr. Martin pointed out that an astute property owner could just convert all of his long-term rentals to short-term leases of less than 30 days and rent them to six, seven or eight college students. The number of unrelated people occupying a long-term rental is the number one complaint that the zoning administrator gets from citizens.

Councilmember Perrow suggested that staff come back with some recommendations and list the pros and cons of each for their consideration. Mayor Tweedy acknowledged that staff's information to this point has been very thorough. Mr. Martin and Mr. White were clear on what type of recommendations they would like staff to bring back to them at a future work session.

The discussion moved to whether or not to require a \$150.00 registration fee. Councilmember Nelson does not think it necessarily needs to be \$150.00 but he would like a registration fee in addition to entering into an agreement with Airbnb to collect lodging tax. The City will incur costs to establish the registry and a registration fee will help to recoup some of those costs. In his opinion, there is no reason not to have a combination of a fee and a collection of lodging tax. Councilmember Helgeson would suggest that they do not have a registry and just let Airbnb send them a check for lodging tax. He reminded Council that a while ago, it did away with some business license fees because it cost a fortune to keep up with the paperwork. If someone is doing a de minimus of short-term rentals, he does not feel they need to register. He does not think they have 529 short-term rentals in the City that are renting them out every day. Councilmember Nelson said that to the extent that it is a deterrent to be operating businesses in residential areas, he thinks it is appropriate to have a fee. Councilmember Nelson acknowledged that long-term rentals are also a business, as pointed out by Councilmember Helgeson, but the difference is the impact on the

residential neighborhood.

Councilmember Wright would like to see a combination of a fee and collecting lodging tax from Airbnb. It is appropriate to recoup some of the staff costs for establishing and maintaining a registry. Councilmember Nelson made a motion to calculate the registration fee based on the projected staff costs. The motion was seconded by Councilmember Wright and passed by the following vote:

AYES:	Dolan, Nelson, Perrow, Tweedy, Wilder, Wright	6
NOES:	Helgeson	1

Ms. Svrcek asked for clarification that the grandfathering provision would not transfer with the sale of the property. Mr. Henry and Mr. Martin felt that it would be allowed to transfer with the property as other grandfathered uses are allowed to by state code. Mr. Martin clarified that if the use ceases for two years, the grandfathering of the uses ceases.

// In the matter of Roll Call, Councilmember Wright wished the school system a happy first week of school, which begins tomorrow. Councilmember Wilder noted that they are doing the annual Men to School event where men in the community greet our kids on their first day of school. The captains at each school can go over the guidelines with men that would like to volunteer tomorrow. Councilmember Nelson said he appreciated all the thoughts and prayers and good wishes that were extended to him from Council, staff and the general public while he out for surgery last month. Vice Mayor Dolan asked everyone to be mindful of the school busses.

Mayor Tweedy has the following announcements. 1. Congratulations to Parks & Recreation for a feature article in National Parks and Recreation Magazine entitled “The Ties that Bind,” a new sibshop program that provides support for siblings of special needs children. 2. Thank you and congratulations to all employees who assisted in the success of the State Games of America Main Games. Special props to the City’s Tourism Division and Parks & Recreation. This is a small but mighty group of employees who worked tirelessly to exhibit the best of what the City has to offer. Also, heartfelt thanks to Liberty University for its partnership with the City on this national event. Liberty’s stellar facilities were a constant comment among spectators and athletes. 3. Great National Night Out at Riverfront Park. She wondered if there was some way to have the event and still have busses going to the neighborhoods. She noticed there were fewer neighborhood watch groups there. In future planning, she would like to look at both aspects because she feels it was appreciated when groups of them came out to the neighborhoods. Not all neighborhoods want to have a cookout or something but some of them do. 4. She thanked the schools for their back to school event on Saturday. Lynchburg City Schools opens tomorrow. Reminder to everyone to be alert and slow down, particularly in school zones.

// The meeting was recessed at 6:21 p.m.

// City Council reconvened the meeting at 7:30 p.m.

// The following members were present:

Present:	Mary Jane Dolan, Jeff Helgeson, J. Randy Nelson, E. J. Turner Perrow, Sterling Wilder, Beau Wright, Treney Tweedy	7
----------	---	---

Absent:		0
---------	--	---

// Councilmember Wilder gave the Invocation, followed by the Pledge of Allegiance.

August 13, 2019

// In the matter of Budget, Resolution #R-19-056, laid over from the July 23, 2019 meeting, was again presented and read, on motion of Councilmember Perrow and seconded by Councilmember Wilder, the FY 2019 City/Federal/State Aid Fund Budget was amended and to appropriate \$18,638 as the in-kind match to the \$163,204 appropriated with resources from the Temporary Assistance for Needy Families (TANF) Community Wealth Building (CWB) Grant. This grant is administered by the Virginia Department of Social Services (VDSS):

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// Copies of the minutes of the June 25, 2019 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Councilmember Perrow, seconded by Councilmember Wilder, by the following recorded vote approved the minutes as presented.

Ayes:	Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	6
Noes:		0
Abstentions:	Dolan	1

// Copies of the minutes of the July 9, 2019 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Councilmember Perrow, seconded by Councilmember Wilder, by the following recorded vote approved the minutes as presented.

Ayes:	Dolan, Helgeson, Perrow, Tweedy, Wilder, Wright	6
Noes:		0
Abstentions:	Nelson	1

// In the matter of Citizen Comment, Agenda Item #8, Mr. Frank Forest was present to address Council. He wanted to discuss the issue of traffic on 221 and Enterprise Drive and Dillard Drive leading into J Crew that occurs in the months of November and December. It can take up to an hour and a half to go one mile. He has spoken to VDOT and they said they could consider it a public safety hazard if they see the need. He spoke to Bedford County and they said they could provide a public safety officer at \$40 an hour. Mr. Forest figures it would cost the City and the County each approximately \$7,200 to provide a police officer for the two-month period. He is asking them to consider this as he does not think a person should have to wait an hour and a half to go a mile to get to work,

// In the matter of Community Development – Zoning Amendments, Agenda Item #9, a public hearing was held regarding the petition of 434 Center, LLC at 2009 Enterprise Drive, 1001 and 1009 Dillard Drive to amend the *Future Lane Use Map (FLUM)* from Employment 2 to Mixed Use to rezone approximately fifteen (15) acres from I-2, Light Industrial District and I-2C, Light Industrial District (Conditional) to B-3C, Community Business District (Conditional) and for a conditional use permit to allow the construction of commercial and multi-family buildings. Mr. Tom Martin summarized the report for Council. Mr. Scott Beasley of Hurt & Proffitt was present to represent the petitioner. He clarified one point from Mr. Martin's summary. Left turns out of the development will be restricted on to Enterprise Drive not left turns into the development. He mentioned he is not the engineer for the project but did do the traffic study. The owner Gary Schmincke was also present to answer any questions. Mr. Beasley noted that the traffic study showed no adverse impact to the local street system. It did show that left and right turn lanes were warranted on Enterprise Drive. No turn lanes were warranted on Dillard Drive but they

August 13, 2019

worked with the former City Transportation Engineer and came up with some improvements that are good practice in lengthening the turn lane--widening the road down to provide a significantly longer left turn lane westbound on Dillard Drive on to southbound Enterprise Drive. At the same time, they are also providing a short left turn lane into the development so that a car can get off into a turn lane and not restrict the flow down towards J Crew. This should help with the seasonal traffic issue that was brought up by Mr. Forest.

The developer Gary Schmincke came forward to speak, in favor of the petition. He explained the first phase of the development will be a fitness center with an indoor turf area. There will also be a multi-use venue space for trade shows and concerts as well as basketball/volleyball courts. They will be able to host travel teams and there is a lot of use locally for this type of facility. Marjette Upshur and Lisa Meriwether seem very excited about this project as it adds another component for athletic events in the City. There is always a need for practice facilities for local sports. The commercial areas and apartments will be built in a second phase. They love the mixed use environment and feel everything complements each other.

Mr. Rick Reed with Coldwell Banker was present to speak in favor of the petition. He said he has been working with Buzzy Coleman on this property since the 1980s. He knows there is concern about rezoning industrial land to commercial but with the development of Enterprise Drive and Wyndhurst the whole complexion of the area has changed dramatically. The value of this property has priced itself beyond industrial to probably four times what your typical industrial site sells for in the City. This property has been on and off the market for eight years and he has only had one industrial prospect but once price was discussed, they were not interested. Everyone that has looked at and been interested has been for commercial uses. He goes up and down Enterprise Drive all day long and has experienced maybe a 15 to 20 minute delay during a shift change. The turning lane should help that situation a lot and the developer has voluntarily agreed to install it.

There was no else that wished to speak in favor or in opposition to the petition. Mayor Tweedy closed the public hearing portion of the petition.

Councilmember Perrow asked Mr. Martin if this widening will help the situation on Dillard Drive during shift changes at J Crew. Mr. Martin said it is adding extra storage capacity at the light which would allow more through movement. The traffic just backs up right now in one lane. Councilmember Perrow had wanted that restated since they are not able to discuss public comments items during the public comment period.

Councilmember Perrow asked Ms. Upshur to address a question. He does not believe in rezoning industrial property because we are landlocked and have limited industrial space. Councilmember Perrow asked Ms. Upshur why she is supportive of this project and to try to convince him why he should support it. He likes the idea but is very concerned about industrial space. Ms. Upshur noted that the land has been for sale for a very long time. She has marketed the land on the state's website and the City's website. She has only had one interested party and that was a church. The cost of the property is prohibitive for an industrial use and the neighborhood has changed drastically with the development of Wyndhurst. She is always concerned about the industrial neighbors and how they feel and a member of Wexco that backs up to this property came to the Planning Commission meeting. He had questions but seemed to have no issues with this site plan. Councilmember Perrow asked her if she thinks this development will detract from any of the industries in the area and she indicated she did not think it would. The

fitness center and apartments might benefit the employees that work in the industrial areas. From a tourism standpoint, the gym and the way they are proposing to attract travel teams would mean tax revenue for the City.

Councilmember Perrow noted he hears there are not enough basketball courts in the area and indoor soccer could be played as well. Ms. Upshur said they have just completed a sports tourism strategic plan to try and determine how they leverage the unbelievable assets of Liberty University but they cannot always access those facilities. She noted that Virginia Beach has built a business off of attracting youth sports. The same people developing this project own the Kinetix Gym in Fort Hill. It is so full and this fitness center would be a complement to the area.

Councilmember Perrow asked her if there is still marketable industrial property that can be preserved. Ms. Upshur said the EDA has two sites and the extension of John Capron Road will probably open up two or three additional sites. There are more sites on Odd Fellows Road. For some industrial prospects, a 15 acre site will not even be enough. They just finished a site characterization plan for the state for any sites over 25 acres. There is also another site of some good size behind Home Depot. Councilmember Perrow if she thinks it will be a detriment to the City if they let this go to commercial. She stated, in her opinion, no.

Councilmember Perrow made a motion to change the *FLUM* from Employment 2 to Mixed Use. The motion was seconded by Councilmember Nelson. Councilmember Wilder said he supports the project. He was concerned with traffic but he thinks the road improvements will ease that issue. He likes the mixed use and he understands the need for more gym space. He knows that there is always a need for places of a size that can facilitate AAU tournaments. This should bring in more tax revenue to the City. Since this site has been for sale for several years and the project is supported by Economic Development, he will support it as well.

Councilmember Nelson noted that Councilmember Perrow covered many of his concerns and points very well. It is hard to find a facility that will have all the amenities that this facility would purportedly have. There is tremendous stress on the school gymnasiums for sports uses. To the extent that it will take some of that stress off the school facilities, this would be a tremendous boon. He likes that the residential use is in the back and it backs up to the Forestdale subdivision and Graves Drive and he feels it makes a good transition from residential to commercial. The elements of the development being able to serve employees of the industrial uses is a plus. This should be complementary to other uses up and down Enterprise Drive. He agrees that they need to preserve their industrial sites and is normally hesitant to downzone industrial to commercial but there are good reasons to do adopt this proposal and he thinks it will be successful.

Councilmember Helgeson noted that they have been talking about the gym but there will be 116 more apartments here. When Wyndhurst was built people felt they built way too many apartments and townhomes there and not bigger grocery stores or more anchor type institutions such as banks and pharmacies. He does not mind going from industrial to commercial because it still provides employment but there are always apartments thrown in with mixed use. He asked Mr. Schmincke to address that topic. Mr. Schmincke said they felt it was a good mix. The president of Wexco had liked the idea that some of his employees might live in them and be able to walk to work. A representative of Azdel came to their office and echoed the same thing. They feel it works in that environment. They have done studies and people see it as a benefit to have residential uses mixed with the

other uses they are proposing. The developers like the idea of the apartments tucked in the back for privacy but residents can still walk to the gym, restaurant and venue. They are not trying to build a housing development. They are just trying to bring everything to benefit everyone.

Councilmember Helgeson brought up the Kemper Street apartments that came to them recently. That had started as industrial and went to 20 percent apartments and 80 percent commercial. Council approved a change in a proffer to allow them to have almost 80 percent apartments because the commercial piece was too large. The owner needed more apartments in order to make the project economically feasible. Mr. Schmincke said he agreed with what Councilmember Helgeson is saying about having more anchors in Wyndhurst. He said if they can go more commercial on that side, they have the spirit to do so. Councilmember Helgeson asked him if the apartments will all be built in Phase 2 and Mr. Schmincke indicated that is correct. Mr. Schmincke said it is their desire to do the commercial with a small amount of apartments. Councilmember Helgeson said that allows them to up the ante on the rents. Mr. Schmincke acknowledged that was part of their study. He said it allows them to build a better place because you can walk across the parking lot and get to a gym and restaurant and get into Wyndhurst. They do want to keep the apartments high end and they have built them for plenty of people and know how to do it. Councilmember Helgeson thanked him for a compelling presentation.

Vice Mayor Dolan asked him to orient her to where J Crew is located in relation to this project. She asked him how quickly they will build Phase 2 and he said as soon as Phase 1 is finished.

Councilmember Wilder said he hears from people that work at J Crew that it is hard to find an apartment they can afford in that area. He asked what the price point of these apartments will be. Mr. Schmincke said when he says high end he means high end in how they are built, not necessarily in price. Two bedrooms will be \$850 and three bedrooms will be \$950. He does not see them going any higher because of the market and what is already available. When you have amenities and a fair price, people are going to stay. He has seen people try to reach the top end of rent prices and fail.

Mayor Tweedy asked Ms. Upshur to clarify what industrial prospects are looking for because Mayor Tweedy said she has heard in meetings that they are looking for pad ready sites. Ms. Upshur said this site is probably in better shape than most if someone wanted because it is flatter but for all these years they have had no industrial interest. The one interested prospect they had a church. Because of its location and price it is not going to sell for industrial purposes. The owner would have to cut the price significantly and that is not what the market bears out.

Councilmember Helgeson asked Mr. Martin to explain the traffic improvements that will help, especially with additional cars coming in and out of this development. Mr. Martin said the extra lane will come from the intersection of Enterprise Drive down to their entrance. It would allow for a through and a right turn and left turn dedicated movement where now there is only one lane. The main entrance to the development is off Dillard Drive and it will allow right turns and left turns in and right turns out only. Councilmember Helgeson asked Mr. Beasley if the entrance is not too far from the signalized interchange at Dillard and Enterprise Drives. Normally it is said to have limited access to avoid queuing or accidents. He wondered how the site is going to work based on the engineering. Mr. Beasley said they felt that because of the proximity of the entrance to the signal if you have southbound traffic waiting to turn left onto Dillard Drive and they back up beyond that entrance then you are

impeding people to take a left out of there anyway. It would be safer just to prohibit a left turn and make people turn right out of it. Cars will be in the left lane to turn in and will not be blocking traffic. Mr. Beasley clarified for Council that there is already a two-way left turn lane on Enterprise Drive into the development and a left turn lane for drivers onto Dillard Drive. Councilmember Helgeson asked for more clarification on the left turn lane into the development from Dillard Drive. Mr. Beasley said that perhaps during the seasonal traffic it could be an issue but he does not think you would want to prohibit lefts into the development. There are 300 plus feet from Dillard Drive to that entrance. The traffic study showed left turn queues less than 300 feet. The study was done during the school year so it did pick up school traffic but did not account for seasonal traffic. Councilmember Helgeson asked Mr. Martin if he thinks 300 feet is long enough to avoid queuing because Mr. Martin had seemed surprised by the left turn in to the development. Mr. Martin said he was surprised by it but he is not a traffic engineer and cannot speak to how well it will help ease queuing. Mr. Beasley said it would take a lot of traffic turning left to cause a backup. You do not see that during typical everyday operations. Councilmember Perrow asked Mr. Martin if staff could be this is all addressed at site plan review and analyzed and ensure that the warrants are met for the turning movements. Mr. Martin said the Planning Commission minutes say that the City is looking to prohibit left turns into the development. He would prefer to get the City Engineer's opinion and he thinks it can be handled through a traffic study. Councilmember Helgeson thinks the left turn in would actually be helpful because it will not exacerbate the problem on the corner of Enterprise Drive and Dillard Drive. Mr. Beasley said he had many discussions with the former Transportation Engineer about that particular entrance. One of the things he recommended was a modular product that can be placed in the median that will prevent left turns out but not into the development. He does not think that Mr. Martin was a part of those discussions. Mr. Martin said this can be handled at the site plan review process but the concept plan is approved as part of the rezoning, as Councilmember Helgeson has pointed out. This is also a conditional use permit for the apartments and they could add a condition that the left hand turn movement has to be approved by the City Engineer.

Mayor Tweedy called for a vote on the *FLUM* amendment and it passed by the following vote:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:	Helgeson	0

Councilmember Perrow made a motion, which was seconded by Commissioner Wright, to rezone approximately fifteen (15) acres from I-2, Light Industrial District (Conditional) to B-3C, Community Business District (Conditional). The motion passed by the following vote:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// In the matter of Budget, Agenda Item #10, a resolution was introduced to amend the FY2019 City/Federal/State Aid Fund budget to appropriate \$21,293 with resources from the Virginia Wireless E-911 Services Board FY2019 Public Safety Answering Point (PSAP) Grant Program, which was used to replace aging computer equipment for 12 Computer Aided Dispatch (CAD). Ms. Melissa Foster explained this was a grant and no matching funds were required. Councilmember Helgeson, on behalf of the Finance Committee explained that the grant was done and the

computers were purchased. It is just now a matter of an allocation. Councilmember Helgeson made a motion on behalf of the Finance Committee to approve the resolution. The motion passed by the following vote:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright 7

Noes: 0

// In the matter of Budget, Agenda Item #11, a resolution was introduced to amend the FY 2020 City/Federal/State Aid budget and appropriate \$103,920 with resources of \$51,960 from the Virginia Office of Emergency Medical Services – Rescue Squad Assistance Fund (RSAF) and \$47,297 from the FY 2020 General Fund Fire Department budget and \$4,663 from the General Fund Fire Equipment Assigned Fund Balance to purchase three LifePak 15 cardiac monitors for the Fire Department. Fire Chief Greg Wormser explained that they apply for this grant twice a year. These are upgrades to monitors that have met their useful life. Councilmember Helgeson, on behalf of the Finance Committee, commended Chief Wormser because originally they had applied to get an 80/20 match and were told they could only get a 50% match. In the past, Chiefs have asked for the match to come from the fund for contingencies but Chief Wormser found it in his budget. Councilmember Helgeson made a motion on behalf of the Finance Committee to approve the resolution. The motion passed by the following vote:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright 7

Noes: 0

// In the matter of Budget, Agenda Item #12, a resolution was introduced to amend the FY2020 City/Federal/State Aid Fund budget and appropriate \$15,213 with resources from a grant from the Library of Virginia to preserve Deed Book JJ, 1884, Marriage Bonds A – L, 1835-1840, and Marriage Bonds J – Z, 1825 – 1834 at the Lynchburg Circuit Court Clerk’s Office. Mr. Eugene Wingfield said this grant will allow his office to continue to preserve some of the historical documents. Councilmember Helgeson, on behalf on the Finance Committee, commented that it nice to see a lot of our old records being preserved for a long period of time. He is delighted that the grant is 100 percent without a matching requirement. Hopefully, they will keep coming. On behalf of the Finance Committee, Councilmember Helgeson recommended approval of the resolution. It passed by the following vote:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright 7

Noes: 0

// In the matter of Budget, Agenda Item #13, consideration of approving the donation of a surplus vehicle to Central Virginia Community College (CVCC) for use by students in the administration of justice program. Ms. Bonnie Svrcek commented that the President, John Capps, has asked the City to donate a recently surplused Crown Victoria to its administration of justice program. It will be used by students in the defensive driving and officer survival training components of the program. The vehicle will replace one previously donated to CVCC by Campbell County that has reached the end of its useful life. Staff recommends the donation of the vehicle as students from this program become strong candidates for employment in local and regional law enforcement agencies. The City Charter requires five votes to pass this resolution.

Councilmember Perrow made a motion to approve the resolution, which was seconded by Councilmember Wright. Councilmember Perrow said if this can help Chief Zuidema in recruiting he thinks it is a worthwhile investment. Councilmember Helgeson asked Chief Zuidema how this vehicle will be used to help recruit. He said

August 13, 2019

students at CVCC will be sponsored to go through the police academy. The police academy does not provide vehicles. The host agency for that candidate or whoever employs that candidate has to provide a vehicle. If they are sponsored through CVCC, this vehicle will allow a candidate to complete the academy. Obviously, CVCC will let the candidate which agency provided the vehicle. In his opinion, this is a better use for vehicle as opposed to the minimal amount they would receive from auctioning it. The motion passed by the following vote:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// On motion of Councilmember Perrow, seconded by Vice Mayor Dolan, by the following recorded vote elected to hold a closed meeting for discussion of plans to protect the safety and security of the members of City Council while they are in City Hall, because discussion in an open meeting would jeopardize such safety and security plans, pursuant to Section 2.2-3711(A.)(19.) of the Code of Virginia:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// The meeting was re-opened to the public.

// Councilmember Helgeson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Councilmember Wilder, and Council by the following recorded vote adopted the motion:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// On motion of Councilmember Wilder, seconded by Councilmember Perrow, by the following recorded vote elected to hold a closed meeting for discussion of and consideration of the City Manager's and the City Attorney's performance evaluations, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// The meeting was re-opened to the public.

// Councilmember Helgeson made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

August 13, 2019

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

The Motion was seconded by Vice Mayor Dolan, and Council by the following recorded vote adopted the motion:

Ayes:	Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Wright	7
Noes:		0

// The meeting was adjourned at 9:15 p.m.

Clerk of Council