PLANNING REVIEW MEMORANDUM: GOOD NEIGHBOR OVERLAY ZONE

Adoption of Draft Ordinance No. 2025-____ in its current form is not recommended. The ordinance substantially exceeds the Town Council's original directive, circumvents the procedural protections of the formal rezoning process, and places broad restrictions on the Town's entire commercial land base. It is recommended that the Planning Commission forward a recommendation of denial to the Town Council, with direction to staff to return with two targeted tools: amendments to the Commercial and Highway Resort base zones addressing buffering and compatibility, and a simple text amendment implementing the duplex use the Council originally directed.

I. Background

A. Origin of the Ordinance

The Town Council directed the Planning Commission to evaluate adding a two-family dwelling as a use in the Commercial Zone, specifically for long-term rental purposes. That directive was narrow. The 17-page ordinance now before the Commission substantially exceeds that scope — it creates an entirely new overlay structure with Transition Areas and Remainder Areas affecting both the Commercial and Highway Resort Zones, caps building sizes, restricts dozens of uses, changes the quiet time, and introduces sign and parking standards. This gap between the Council's original direction and the product before the Commission is a central concern of this review.

B. What the Ordinance Does

The GNO overlays new regulations on all undeveloped Commercial (C) and Highway Resort Zone (HRZ) parcels in the Town. Key provisions include:

- A 150-foot Transition Area adjacent to residential zones, limited to residential uses only;
- A C Zone Remainder Area restricting all C-zoned land beyond 400 feet from SR-9 to residential use only;
- An HRZ Remainder Area restricting all HRZ land beyond 1,000 feet from SR-9 to residential use only;
- A 3,000 square foot building size cap with no bonus pathway;
- An 8:00 p.m. quiet time for all GNO-regulated uses;
- A new Two-Family Dwelling use permit applicable in all C and HRZ zones; and
- An expanded prohibited uses list covering over 25 use types.

C. General Plan Context

The controlling planning document is the Virgin General Plan adopted in 2018. An updated plan is in preparation but has not been adopted and carries no legal weight as a consistency standard. Two findings from the 2018 plan are directly relevant: it acknowledges that roughly 77% of commercially zoned land is vacant — attributing that vacancy in part to overly strict regulations — and calls for flexibility to attract commercial development. It also includes an explicit private property protection policy stating that mandates should not unduly infringe on property rights. The GNO is difficult to reconcile with either finding.

II. Planning Assessment

A. The Ordinance Circumvents the Rezoning Process

The GNO achieves the functional equivalent of a downzone — removing established use rights from commercially-zoned land — without running the process Utah law requires for a zoning map amendment. A formal rezoning would require parcel-specific General Plan consistency findings, individual written notice to affected property owners, an opportunity to object, and affirmative legislative findings. By structuring this as a text amendment rather than a map amendment, those safeguards are bypassed. The Remainder Area provisions in particular eliminate use rights from specific, identifiable parcels without any of the procedural protections a formal rezoning would require.

B. The Overlay Risks Eliminating Prime Commercial Land

The C Zone Remainder Area triggers at 400 feet from SR-9 and the HRZ Remainder Area at 1,000 feet, automatically converting the deeper portions of affected parcels to residential-only use. Beyond the Remainder Areas, some C-zoned parcels are shallower than the 150-foot Transition Area — for those parcels the overlay would consume the entire commercial envelope, leaving no buildable area for commercial use. The building size cap, expanded prohibited uses list, and changed quiet time further reduce commercial viability across the entire inventory. In a town where the General Plan already documents high commercial vacancy, these provisions risk permanently converting prime commercial land to residential use through market pressure if not outright mandate.

C. The Ordinance Exceeds the Council's Original Directive

The Council asked for a two-family dwelling use in the Commercial Zone for long-term rental. That is a straightforward text amendment. The Remainder Areas, building size caps, quiet time change, prohibited uses list, and sign standards all go well beyond what was requested. These additional provisions represent a significant expansion of regulatory scope that the Council has not deliberated on as a unified policy package. Whether individually reasonable or not, they arrive together as part of an ordinance that is difficult to defend as the product of a deliberate legislative direction.

D. Compatibility Is Better Addressed Through Base Zone Amendments

If the Town's goal is to protect residential areas from impacts of adjacent commercial and resort development, the right tool is an amendment to the base zone regulations for VMC 16.40 and 16.44 — adding buffering requirements, screening standards, lighting controls, and enhanced conditional use criteria for higher-impact uses near residential zones. This approach targets the actual problem, applies only where it exists, and does not burden the broader commercial land base.

III. Code and Drafting Concerns

The following issues were identified in the review of the ordinance against Utah Code and the existing Virgin Municipal Code.

Under Utah Code § 10-9a-507, conditional use provisions must include objective standards. The GNO's exception provision authorizes the Town Planner to approve exceptions based on 'significant benefit to the Town' — a phrase undefined in the ordinance or the VMC — and does not satisfy this requirement. The provision also creates an ambiguous third use category outside the permitted/conditional framework required by § 10-9a-507(4).

Under Utah Code § 10-9a-511, the GNO should include a savings clause for existing lawful uses and vested development approvals. The public record for this ordinance includes a documented instance of a property owner holding a recorded Conditional Use Permit authorizing uses the GNO would prohibit, with significant capital investment made in reliance on those entitlements. The absence of a savings clause is a serious gap given the documented facts in the record.

Within the VMC, the GNO's 8:00 p.m. quiet time conflicts with the 10:00 p.m. standard in both the C Zone (VMC 16.40.36.I) and HRZ (VMC 16.44.16.J) without any supersession language. The 3,000 square foot building size cap silently conflicts with the C Zone bonus system and HRZ development agreement pathway without stating which controls. The current VMC 16.42 is the Resort Zone — a live mapped zone — whose repeal is implied in the ordinance structure but accomplished without specific notice to affected property owners. Several internal cross-references are incorrect and cite nonexistent or wrong sections. Blank fields remain throughout the recitals.

IV. Public Input

Written public comments and oral testimony were received before and at the March 10, 2026 public hearing. The following summarizes the principal themes.

The most consistent theme across all input was that the ordinance has grown well beyond what the Council originally asked for. Multiple commenters — both those opposed to and cautiously supportive of the overlay's goals — noted that the Council's direction was narrow and that the 17-page ordinance now before the Commission is a significant departure from that starting point.

Commercial property owners described concrete effects on their specific parcels — the Transition Area consuming most of their usable land, the building size cap eliminating development potential they currently hold under existing zoning, and the prohibited uses list restricting activities they had planned or invested toward. One commenter documented a recorded Conditional Use Permit authorizing uses the GNO would prohibit, representing tens of millions of dollars in physical improvements. These accounts establish a concrete factual record that the Commission should weigh carefully.

Several commenters, including some who had consulted legal counsel, independently raised the possibility that the GNO constitutes a regulatory taking. The formation of an organized commercial landowner group in opposition was also noted. Multiple commenters arrived at the same alternative recommendation found in this memorandum — amend the base Commercial Zone rather than create a new overlay. One commenter suggested a project-specific planned development approach rather than a blanket overlay, consistent with the alternative path described in Section V.C.

One concern raised in oral testimony but not in the written comments is worth noting: the GNO's structure may create a situation where adjacent residential property owners have undue influence over commercial development rights simply by virtue of proximity. This is a planning and process concern that should be examined before the ordinance proceeds further.

Not all input was in opposition. Several residential property owners expressed support for the overlay's stated goals of protecting neighborhood character and limiting higher-impact uses near homes. Those goals are acknowledged. The concerns in this memorandum address the mechanism chosen to achieve them, not the goals themselves.

One factual error in the written comments should be corrected in the record. Both written submissions stated that the GNO reduces setbacks from residential areas. This is inverted. The current Commercial Zone requires a 30-foot landscaped buffer from residential uses (VMC 16.40.16). The GNO requires a 40-foot setback plus a masonry wall plus a 10-foot landscaped buffer — a more protective standard, not a reduction.

V. Summary of Findings

The following table summarizes the issues identified in this review.

Section	Issue	Recommended Action
Entire ordinance	Functions as a de facto rezoning of all undeveloped C and HRZ land without the procedural protections required for a formal map	Recommend denial. Return to Council with two targeted tools: base zone compatibility amendments and a simple two-family dwelling text amendment.

Section	Issue	Recommended Action
	amendment. Substantially exceeds the Council's original directive.	
Sec. 42.06.b — C Zone Remainder Area (400 ft from SR-9)	Automatically converts C-zoned land beyond 400 ft from SR-9 to residential use only, eliminating commercial uses. Some C-zoned parcels are shallower than the 150-ft Transition Area, meaning the overlay consumes the entire commercial envelope.	Remove entirely. Reduce Transition Area depth or exempt shallow parcels where the overlay eliminates all commercial use.
Sec. 42.06.b — HRZ Remainder Area (1,000 ft from SR-9)	Automatically converts the majority of large HRZ parcels to residential use only, eliminating all resort and commercial uses. The HRZ's own location findings state the zone was chosen because it is separated from residential use — directly contradicting the overlay's rationale.	Remove entirely. If buffering is the goal, amend VMC 16.44 directly.
Sec. 42.10 — Residential uses in C and HRZ zones	Allowing residential uses risks permanently converting prime commercial land to residential use. The 2018 General Plan identifies commercial land scarcity and vacancy as a key challenge.	If residential uses are retained, ensure standards do not eliminate commercial development potential. Limit to what the Council's original directive contemplated: long-term rental duplexes only.
GNO generally — Vested rights / existing CUPs	No savings clause for existing CUPs, Development Agreements, or vested approvals. A property owner in the record holds a recorded CUP authorizing uses the GNO would prohibit, with tens of millions of dollars invested in reliance on those entitlements.	Add explicit savings clause preserving all existing recorded CUPs, Development Agreements, and vested development approvals. Given the documented facts in the record, this is the most pressing gap in the ordinance.
Sec. 42.04.D.b–c — Town Planner exceptions	'Significant benefit to the Town' is undefined. No objective standards, no appeal pathway.	Define with objective, measurable criteria. Elevate to Planning Commission review. Add appeal pathway.
Sec. 16.8.07.A — Use permit revocation	'Validated unresolved complaints' is undefined. No revocation procedure, notice, cure period, or appeal right specified.	Define trigger with objective thresholds. Add notice, cure period, hearing, and appeal right.

Section	Issue	Recommended Action
Sec. 42.20 — Quiet time (8:00 p.m.)	Conflicts with 10:00 p.m. quiet time in both C Zone (VMC 16.40.36.I) and HRZ (VMC 16.44.16.J). No supersession language. Significant policy choice for a tourism community near Zion.	Align with base zone standard (10:00 p.m.) or add explicit supersession language with stated rationale.
Sec. 42.12 — Building size cap	3,000 sq ft cap with no bonus silently conflicts with C Zone bonus system (up to 12,000 sq ft) and HRZ development agreement pathway (up to 45,000 sq ft). Relationship to base zone provisions is unstated.	Explicitly state whether the cap supersedes base zone bonus provisions.
Ch. 42 — Chapter numbering	Current VMC 16.42 is the Resort Zone (RZ), a live mapped zone. Repeal is implied in the ordinance structure but accomplished without specific notice to RZ property owners.	Confirm whether repeal of VMC 16.42 requires individual notice to RZ-zoned property owners before adoption.
Cross-references and drafting	Sec. 42.08.B cites wrong subsection for uses; Mixed Housing and Light Commercial definitions contain citation errors; noise control cites a nonexistent section; recitals contain 'finds finds'; blanks throughout.	Correct all cross-references and complete all blank fields before adoption.
STR and V zone designations	Zoning map shows STR and V designations within the overlay's geographic scope. GNO does not address these zones.	Add explicit provision addressing GNO applicability to STR and V zones.

VI. Recommendations

A. Primary Recommendation — Denial

It is recommended that the Planning Commission forward a recommendation of denial to the Town Council, with direction to staff to prepare the two targeted ordinances described below.

B. If the Commission Chooses to Table Rather Than Deny

If the Commission determines that revision is preferable to denial, the following are the minimum changes required before the ordinance could be considered sound from a planning and process standpoint:

Before any further consideration: remove both Remainder Area provisions entirely; add a savings clause for existing CUPs, Development Agreements, and vested approvals; reduce the Transition Area or exempt shallow C-zoned parcels where the overlay eliminates all commercial use; and correct all drafting errors and blank fields.

Before adoption: prepare a written General Plan consistency finding and enter it into the record; replace the undefined exception standard with objective criteria and elevate to Planning Commission review; add a revocation procedure for the Two-Family Dwelling use permit; resolve the quiet time conflict; clarify the building size cap's relationship to base zone bonus provisions; confirm that the implied repeal of the Resort Zone in the ordinance structure is handled properly with appropriate notice to affected property owners; and address the STR and V zone designations on the zoning map.

C. Suggested Alternative Path

In lieu of the GNO, it is recommended that the Town Council direct staff to prepare two separate, targeted ordinances.

The first would amend VMC 16.40 and VMC 16.44 to add buffering and screening requirements for development adjacent to residential zones, enhanced conditional use criteria for higher-impact uses near residential areas, and noise attenuation standards reinforcing the existing quiet time framework. This addresses the compatibility concern directly, applies only at the C/HRZ-residential interface, and does not restrict the broader commercial land base.

The second would be a straightforward text amendment to VMC 16.40 adding a two-family dwelling as a permitted or conditional use with standards addressing long-term rental restriction, design compatibility, wastewater requirements, and setbacks. This directly implements what the Council originally asked for in a form that is proportionate, administrable, and consistent with the General Plan.

This memorandum was prepared in a planning advisory capacity by a Senior Planner contracted to Virgin Town. Nothing in this memorandum should be construed as legal advice. The Town is encouraged to seek independent review of the concerns identified here before taking action on Draft Ordinance No. 2025-____.