



CITY COUNCIL AGENDA
Monday, July 16, 2018

2:45 p.m. **Closed session as provided by Section 2.2-3712 of the Virginia Code**
Second Floor Conference Room (Interviews for interim City Manager; Legal Consultation)

6:30 p.m. **Regular Meeting - CALL TO ORDER**
Council Chambers

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATIONS Boys & Girls Club

CITY MANAGER RESPONSE TO COMMUNITY MATTERS & August 12 Planning Update

COMMUNITY MATTERS Public comment is provided for up to 16 speakers at the beginning of the meeting (limit 3 minutes per speaker.) Pre-registration is available for up to 8 spaces, and pre-registered speakers are announced by noon the day of the meeting. The number of speakers is unlimited at the end of the meeting.

- 1. CONSENT AGENDA*:** (Items removed from consent agenda will be considered at the end of the regular agenda.)
- a. Minutes for July 2, 2018
 - b. APPROPRIATION: 2018-2019 Safe Routes to School Non-Infrastructure Grant -- \$77,000 (1st of 2 readings)
 - c. APPROPRIATION: Virginia Department of Social Services (V.D.S.S.) Employment for Temporary Aid to Needy Families (T.A.N.F.) Participants Grant (1st Renewal) – \$66,667 (1st of 2 readings)
 - d. RESOLUTION: Review of discretionary funding process for nonprofits (1st of 1 reading)
 - e. RESOLUTION: Authorizing the City Attorney to retain legal counsel (1st of 1 reading)
 - f. RESOLUTION: Delegation of Contracting Authority to Director of Emergency Management (1st of 1 reading)
 - g. ORDINANCE: Parking Modified Zone Amendments (2nd of 2 readings)
 - h. ORDINANCE: Restaurants: Drive-through windows in Highway Corridor Zoning Text Amendment (2nd of 2 readings)
 - i. ORDINANCE: Mixed Use Development Standards Zoning Text Amendment (2nd of 2 readings)
 - j. ORDINANCE: Amended Ordinance Regulating Use of Explosives for Excavation and Demolition Activities (1st of 2 readings)
- 2. PUBLIC HEARING / ORDINANCE*:** Release of a Stormwater Management Agreement across 550 Water Street (1st of 2 readings)
- 3. PUBLIC HEARING / ORDINANCE*:** Closing a Portion of the Coleman Street Right of Way (1st of 2 readings)
- 4. PUBLIC HEARING / ORDINANCE*:** Regulation of Small Cell Wireless Facilities in Public Rights of Way (1st of 2 readings)
- 5. RESOLUTION*:** Emancipation Park and Justice Park Renaming (1st of 1 reading)
- 6. REPORT:** Transition to the Mayor-Council Form of Government: A Preliminary Analysis
- 7. RESOLUTION*:** Belmont Bridge Replacement Project – Approving Design Public Hearing (1st of 1 reading)
- 8. APPROPRIATION*:** Mountainside Funding Request for Memory Care Unit – \$50,000 (1st of 2 readings)
- 9. RESOLUTION*:** Policy on Public ROW for Paper Streets and Alleyways (1st of 1 reading)
- 10. ORDINANCE*:** Amending City's Special Events Ordinance (1st of 2 readings)

OTHER BUSINESS MATTERS BY THE PUBLIC

*ACTION NEEDED

GUIDELINES FOR PUBLIC COMMENT

**We welcome public comment;
it is an important part of our meeting.**

**Time is reserved near the beginning and at the end of each
regular City Council meeting for public comment.**

Please follow these guidelines for public comment:

- Each speaker has **3 minutes** to speak. Please give your name and place of residence before beginning your remarks.
- Please **do not interrupt speakers**, whether or not you agree with them. **Speaking from the audience is not permitted** without first being recognized by the Chair.
- Please **refrain from using obscenities**.
- If you are here to speak for a **Public Hearing**, please wait to speak on the matter until the report for that item has been presented and the Public Hearing has been opened.
- If you cannot follow these guidelines, you will be asked to leave City Council Chambers and will not be permitted to re-enter.

**CITY OF CHARLOTTESVILLE,
VIRGINIA CITY COUNCIL
AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Request for Appropriation - Safe Routes to School Non-Infrastructure Grant Application
Presenter:	Amanda Poncy, Bicycle and Pedestrian Coordinator
Staff Contacts:	Amanda Poncy, Bicycle and Pedestrian Coordinator; Kyle Rodland, Safe Routes to School Coordinator
Title:	Safe Routes to School Non-Infrastructure Grant Application - \$77,477

Background:

Virginia Department of Transportation (VDOT) has awarded the City of Charlottesville with a Safe Routes to School Non-Infrastructure (Activities and Programs) Grant of \$77,000. This grant will be used to fund education, encouragement, evaluation and enforcement programs related to Safe Routes to School. The Non-Infrastructure Grant will also be used to fund a full-time SRTS coordinator who works within a school division to promote and facilitate Safe Routes to School activities.

The city received non-infrastructure grant in the amount of \$56,000 for the last two years to fund a part-time coordinator and associated program budget to manage, train, and expand Safe Routes to School programming city-wide. The grant provides a dedicated champion to working within schools to provide education, encouragement and evaluation activities needed to support active transportation for K-8 students.

Discussion:

As part of the grant application, the City was required to update the Safe Routes to School (SRTS) Activities and Programs Plan (APP), a written document that outlines a community's intentions for enabling and encouraging students to engage in active transportation (i.e. walking or bicycling) as they travel to and created through a team-based approach that involved key community stakeholders and members of the public in both identifying key behavior-related to barriers to active transportation and, using the four non-infrastructure related E's (education, encouragement, enforcement and evaluation) to address them.

The APP update reflects minimal changes from last year's plan, but emphasizes lessons learned since our Coordinator was hired in October 2016. The following short-term recommendations were developed:

- Institute bike riding, repair, and safety curriculum (Education)
- Develop a division-wide SRTS website and newsletter (Education)
- Facilitate biking and walking incentive program (Encouragement)
- Regularly host walk- and bike-to-school days (Encouragement)
- Consistently host annual Bicycle Rodeos (Encouragement)
- Conduct bike safety checks (Enforcement)
- Expand the bike helmet give-away program (Enforcement)
- Administer student travel tallies (Evaluation)
- Keep records of participation in workshops, biking and walking trains, bike rodeos, afterschool clubs, and other events (Evaluation)

One major change is the addition of two new schools (The Village School and the International School), which enables the city to apply for funding for a full-time position. The SRTS Activities and Programs Plan will continue to serve as a guiding document to assist in promoting, encouraging, and enabling walking and bicycling to school. The \$77,000 grant appropriation from VDOT will fund a full-time Safe Routes to School Coordinator and the supplies needed to implement the recommendations included in the APP for the 2018-2019 school year. As a reimbursable grant, costs will be incurred by Neighborhood Development Services and reimbursed by VDOT.

In addition, the city received a donation of \$477 from Three Notch'd Brewery and Craft Kitchen.

Alignment with City Council's Vision and Strategic Plan:

This initiative supports Council's Vision to be a "Connected Community" ("the City of Charlottesville is part of a comprehensive, regional transportation system that enables citizens of all ages and incomes to easily navigate our community") and "America's Healthiest City" ("we have a community-wide commitment to personal fitness and wellness, and all residents enjoy our outstanding recreational facilities, walking trails, and safe routes to schools").

In addition, the project contributes to Goals 1 and 3 of the Strategic Plan, to be an inclusive, self sufficient community and a healthy and safe city.

The initiative further implements recommendations within the Comprehensive Plan (2013), Bicycle and Pedestrian Master Plan (2015) and supports the City's Healthy Eating Active Living (HEAL) Resolution.

Community Engagement:

This grant application implements one of the programming recommendations included in the Bicycle and Pedestrian Master Plan (adopted 2015), which included significant public involvement. Further, city staff from Neighborhood Development Services worked with staff from the Thomas Jefferson Health District and Charlottesville City Schools (Physical Education and Pupil Transportation) to create a Safe Routes to School Task Force in 2016 that was responsible for outlining elements of a city-wide Safe Routes to School Activities and Programs Plan (APP). The task force included representatives from city schools, community organizations, multiple city departments (NDS, PW, Parks), as well as health and enforcement disciplines. The APP was developed by the task force with input from parents (via Parent Survey) and further discussed/refined at public meeting in February 2016. The Bicycle and Pedestrian Advisory Committee provided feedback on the updates in Feb. 2018.

Budgetary Impact:

The grant appropriation will provide funding (100% reimbursable) for both a full-time Safe Routes to School Coordinator and the supporting activities included in the Activities and Programs plan. The grant will fund a position for 12 months with an opportunity to reapply for funding in future years. While funding will be provided at 100% for the 2018-2019 school year, local partners will provide both cash and in-kind donations to demonstrate program sustainability. Future grants would require a 20% match (cash or in-kind donations are acceptable).

Recommendation:

Staff recommends approval and appropriation of the grant funds.

Alternatives:

If grants funds are not appropriated, Safe Routes to School programming will continue in an ad-hoc fashion with assistance from community partners and parent volunteers.

Attachments:

Safe Routes to School Activities and Programs Plan
<http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services/transportation/bicycle-and-pedestrian/safe-routes-to-school>

Resolution Supporting Safe Routes to School Projects adopted by City Council on April 3, 2017;

Appropriation

RESOLUTION
Supporting Safe Routes to School (“SRTS”) Projects

WHEREAS, obesity is one of the most serious threats to American public health, ranking third among preventable causes of death in the United States;

WHEREAS, motor vehicle crashes are also a leading cause of death and injury to children;

WHEREAS, between 1969 and 2009 the percentage of children walking and biking to school dramatically declined from 48 percent to 13 percent;

WHEREAS, the Safe Routes to School program, created by Congress in 2005, aimed to increase the number of children engaged in active transportation when traveling to school by funding (1) infrastructure projects, located within two miles of a public school, that directly increase safety and convenience for public school children walking and/or biking to school, and (2) non-infrastructure projects designed to encourage public school children to walk and bicycle to school;

WHEREAS, Safe Routes to School projects are a proven, effective approach to increasing the number of children actively traveling to school by foot or bike;

WHEREAS, Safe Routes to School projects provide important health, safety, and environmental benefits for children, including reducing risk of obesity/chronic disease and pedestrian/bicycle injuries as well as improving air quality;

WHEREAS, the need for Safe Routes to School projects is especially strong in low-income areas, which suffer from a disproportionately high incidence of both childhood obesity/chronic disease and pedestrian and bicycle injuries and often have inferior pedestrian and bicycle infrastructure;

WHEREAS, Safe Routes to School projects make it safer and more convenient for all residents to walk and bike to destinations, further promoting public health;

WHEREAS, a goal of the City of Charlottesville’s current Comprehensive Plan, Bicycle and Pedestrian Master Plan, Complete Streets Resolution and Healthy Eating Active Living Resolution supports active transportation options, which can be met in part by implementation of Safe Routes to School projects;

NOW, THEREFORE, BE IT RESOLVED that the City of Charlottesville affirms its commitment to active transportation and supporting Safe Routes to School infrastructure and non-infrastructure projects.

APPROPRIATION

Safe Routes to School Program (SRTS) Non-Infrastructure Grants
\$77,477

WHEREAS, the Safe Routes to School Program (SRTS) non-infrastructure grant, providing Federal payments for **education, encouragement, evaluation and enforcement** programs to promote safe walking and bicycling to school has been awarded the City of Charlottesville, in the amount of \$77,000;

WHEREAS, the SRTS program is a 100% reimbursement program requiring the City to meet all federal guidelines to qualify;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the following is hereby appropriated in the following manner:

Revenues

\$77,000	Fund: 209	Cost Center: 3901008000	G/L Account: 430120
\$477	Fund: 209	Cost Center: 3901008000	G/L Account: 451020

Expenses

\$52,477	Fund: 209	Cost Center: 3901008000	G/L Account: 519999
\$25,000	Fund: 209	Cost Center: 3901008000	G/L Account: 599999

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$77,000 from the Virginia Department of Transportation.

This page intentionally left blank.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Appropriation of Grant Funds
Presenter:	Hollie Lee, Chief of Workforce Development Strategies
Staff Contacts:	Hollie Lee, Chief of Workforce Development Strategies
Title:	Virginia Department of Social Services (V.D.S.S.) Employment for Temporary Aid to Needy Families (T.A.N.F.) Participants Grant (1 st Renewal) - \$66,667

Background:

In 2017, the City of Charlottesville, through the Office of Economic Development (O.E.D.), received a matching grant for \$50,000 from the Virginia Department of Social Services in order to provide workforce development training to individuals residing in the City of Charlottesville living at or below 200% poverty. The grant required a 15 percent match of local dollars, with funding being used for workplace readiness/productivity skills training, specific technical training, and/or supportive services required for employment (e.g., childcare, transportation, rental assistance, etc.). One hundred percent of the funds were expended between July 1, 2017 and June, 30 2018. Funding for the local match in the amount of \$16,667 was from the Workforce Investment Fund account in the CIP. Grant funding was used to support 26 individuals in the following programs during F.Y. 2018: GO Driver 7, GO Driver 8, GO Driver 9, and GO Skilled Trades Academy.

V.D.S.S. has agreed to renew the grant to the O.E.D. for the new fiscal year (July 2, 2018 to June 30, 2019) in the same amount of \$50,000. The O.E.D. will once again match the grant in the amount of \$16,667 from the Workforce Investment Fund. Funding will be used for the same purpose as the original grant (training programs and supportive services).

Discussion:

In July 2013, the City's Strategic Action Team on Workforce Development (S.A.T.) issued a report to City Council entitled, *Growing Opportunity: A Path to Self-Sufficiency*. The report, which was subsequently endorsed by Council, examines the barriers to employment for low-income City residents and makes recommendations on how to address these barriers. One of the recommendations is to "work to ensure that training programs align with the needs of new and existing businesses."

In an effort to make progress towards this recommendation, the O.E.D. has been actively engaged in developing jobs-driven workforce development training programs in partnership with local employers. The flagship program, GO Driver, has been conducted nine times and trains City residents to get their Class B Commercial Driver's License and become Relief Transit Bus Operators

with Charlottesville Area Transit (CAT) and/or Pupil Transportation at a rate of \$15.50 per hour. In addition to technical training, GO programs also include assistance with supportive services such as rental assistance, car repair, exam fees, etc. These costs, which average about \$200 per participant, are also included as part of the programming. Other programs, such as GO Cook and/or a GO Skilled Trades Academy, will also be funded using grant funds.

Alignment with Council Vision Areas and Strategic Plan:

This effort supports City Council's "Economic Sustainability" vision and aligns directly with the S.A.T.'s *Growing Opportunity* report that was approved by City Council in 2013.

It also contributes to the following goals and objectives in the City's Strategic Plan:

Goal 4: A Strong, Creative and Diversified Economy

- Objective 4.1: Develop a quality workforce

Goal 1: An Inclusive Community of Self-sufficient Residents

- Objective 1.2: Prepare residents for the workforce

It aligns with Chapter 3 on Economic Sustainability in the Comprehensive Plan, and more specifically Goal 6, which focuses on workforce development and being an effective partner in creating a well-prepared and successful workforce.

Community Engagement:

Like practically all of the City's workforce development efforts, its employment training programs are supported by numerous community agencies and organizations. Examples include: Albemarle County, Piedmont Virginia Community College, Piedmont Workforce Network/Goodwill Industries of the Valleys, the Virginia Workforce Center – Charlottesville, Charlottesville Works Initiative, and employer partners. None of the work that is currently being done could be possible without this strong community engagement.

Budgetary Impact:

The required match of \$16,667 will come from already appropriated funds in the Workforce Investment Fund (P-00385).

Recommendation:

Staff recommends approval and appropriation of grant funds.

Alternatives:

If grant funds are not appropriated, more local dollars will have to be used for training or fewer low-income, underemployed City residents will be able to be trained.

Attachments:

- VDSS Subrecipient Renewal Agreement

APPROPRIATION

**Virginia Department of Social Services (VDSS) Employment for Temporary Aid to Needy Families (TANF) Participants Grant (1st Renewal)
\$66,667**

WHEREAS, the City of Charlottesville has received funds from the Virginia Department of Social Services in the amount of \$50,000 requiring a \$16,667 in local in-kind match provided by the Office of Economic Development through the Workforce Investment Fund; and

WHEREAS, the funds will be used to support workforce development training programs provided by the Office of Economic Development; and

WHEREAS, the grant award covers the period from June 30, 2018 and July 1, 2019;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$66,667 is hereby appropriated in the following manner:

Revenue

\$50,000	Fund: 209	IO: 1900309	G/L: 430120 State/Fed pass thru
\$16,667	Fund: 209	IO: 1900309	G/L: 498010 Transfers from Other Funds

Expenditures

\$66,667	Fund: 209	IO: 1900309	G/L: 599999 Lump Sum
----------	-----------	-------------	----------------------

Transfer From

\$16,667	Fund: 425	WBS: P-00385	G/L: 561209 Transfer to State Grants
----------	-----------	--------------	--------------------------------------

Transfer To

\$16,667	Fund: 209	IO: 1900309	G/L: 498010 Transfers from Other Funds
----------	-----------	-------------	--

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$50,000 from the Virginia Department of Social Services and the matching in-kind funds from the Office of Economic Development through the Workforce Investment Fund.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF SOCIAL SERVICES

May 16, 2018

Christopher V. Cullinan, Director of Finance
City of Charlottesville
Office of Economic Development
610 E. Market Street
Charlottesville, VA 22902

RE: 1st Renewal of Contract No. BEN-17-056-01

Dear Mr. Cullinan:

The Commonwealth of Virginia, Department of Social Services, in accordance with Section I, Award Information, of the modified original contract at (C), Period of Performance, wishes to exercise its option to renew the above referenced contract for twelve (12) months. The period of renewal will be from July 1, 2018 through June 30, 2019. The amount of the renewal shall be \$50,000.00.

It is understood and agreed that the Scope of Services and all terms and conditions of the original contract shall remain the same during this contract renewal period. Please signify acceptance of this letter of renewal by signing in the space provided below on all three originals and returning them along with a new budget to this office within seven (7) business days after receipt.

Sincerely,

Faye Palmer
Grant Administrator

City of Charlottesville
Office of Economic Development

By: _____

Title: _____

Date: _____

Virginia Dept. of Social Services

By: _____

Title: _____

Date: _____

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Approval
Presenter:	Mike Murphy, Assistant City Manager
Staff Contacts:	Mike Murphy, Assistant City Manager Kaki Dimock, Director, Department of Human Services Gretchen Ellis, Human Services Planner
Title:	Review of discretionary funding process for nonprofits

Background:

Since at least 1984, there has been a joint Charlottesville/Albemarle application process for local government funding for nonprofit organizations. The Agency Budget Review Team (ABRT) was created in 1991, in order to have a more objective process for reviewing applications. In 1999, the City, County, and United Way began to use Outcome Measurement as part of the application process and hired a consultant to provide training and technical assistance to applicant organizations for two years. In 2006, ABRT adopted the use of an objective rating tool.

During the recession, in July, 2010, the ABRT, in consultation with the City Manager's and County Executive's Offices, recommended that the localities undertake a comprehensive review of the annual funding process for outside community agencies. The purpose of this review was to provide the framework that would allow the localities to establish a process for determining priorities for local government funding, enabling the localities to maximize results, especially during difficult financial times. As a result, City Council and the Board of Supervisors identified funding priorities, including physical and mental health, safety and basic needs, and child development and academic success. In addition to these funding priorities City Council also asked that the ABRT consider outreach to, and effective engagement of, underserved populations, as a condition of funding. During this review process ABRT applications were not accepted for FY 12, and the FY 12 funding to the outside agencies was "frozen" at the same amount the agencies received for their FY11 allocation.

Beginning with the FY17 process, ABRT priorities were directly aligned with the localities' strategic plans and funding applicants were asked to self-identify outcomes that demonstrated progress toward goals and objectives. The degree of alignment with the localities' strategic plan goals/objectives and related outcomes is a key factor in the overall rating of each application. During the summer of 2017 (prior to the release of the FY19 application) staff held a series of meetings with applicants to align the localities' strategies and identify a set of common outcomes and metrics. All prior applicants were invited to attend and representatives from 42 organizations participated.

Following the FY 19 budget adoption, City Council suggested a comprehensive review of the process for funding external organizations.

Since the current process is a joint City-County process (partially funded by Albemarle County), staff has shared this information with staff at Albemarle County. They plan to present information about the proposed comprehensive review to the Board of Supervisors on August 1.

Discussion:

A comprehensive review of the process for funding external organizations is expected to take about ten months. The Charlottesville Department of Human Services will manage the review in collaboration with the Charlottesville Office of Budget and Performance Management and the Albemarle Office of Management and Budget (if the County chooses to participate). A consultant will be hired for data analysis and public engagement.

A steering committee will oversee the review process. Members of the steering committee will include staff from the offices of the City Manager and County Executive (if applicable), members of the ABRT, representatives from community organizations which apply for funding, and the contracted researcher. The review plan will incorporate the following:

- Identification of best practices
- Review of practices in peer communities
- An anonymous survey of all applicant organizations (a similar survey of ABRT members has been completed)
- Structured interviews with City Council and Board of Supervisors members (if applicable)
- Key stakeholder interviews
- One or more public hearings
- Presentations to the community
- Final report and recommendations to the City Council and Board of Supervisors (if applicable)

The review project will begin in July, 2018 and conclude by May, 2019. While the review process is underway, staff recommends forgoing an application process for FY20 for ABRT-reviewed external organizations and maintaining funding for currently funded organizations at the FY19 level. These organizations will be required to submit brief progress reports.

Alignment with City Council's Vision and Strategic Plan:

The proposed review supports City Council's vision to have a Smart, Citizen-Focused Government. It also supports Goal 5 of the Strategic Plan to be a well-managed and responsive organization and objective 5.1 to integrate effective business and strong fiscal policies.

Community Engagement:

The proposed review will engage the community through participation in the Steering Committee, an anonymous survey, structured interviews, a public hearing and community presentations.

Budgetary Impact:

This has no impact on the General Fund other than FY20 ABRT funding obligations. The consultant will be paid using funds from the Department of Human Services.

Recommendation:

Staff recommends that Council authorize the review process. Staff also recommends that the City forgo an application process for FY20 for discretionary external organizations and maintain funding for currently funded organizations at the FY19 level.

This recommendation only applies to organizations that are reviewed under the Agency Budget Review Team process. Contractual organizations will still be required to submit full applications to be reviewed by the Budget office.

Alternatives:

The City could continue with the current Agency Budget Review Team process.

RESOLUTION
Authorizing review of ABRT process and
Maintaining funding for currently funded organizations at FY19 level

NOW THEREFORE, BE IT RESOLVED, that Council hereby authorizes staff to engage in a review of the Agency Budget Review Team process; and

BE IT FURTHER RESOLVED, that Council directs the City to forego an application process for the fiscal year (FY) 2020 for external organizations and maintain funding for currently funded organizations at the FY19 level; and

BE IT FURTHER RESOLVED, that this applies only to organizations that are reviewed under the Agency Budget Review Team process; contractual organizations will still be required to submit full applications to be reviewed by the Budget office.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Required:	Adoption of Resolution
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson, Chief Deputy City Attorney
Title:	Resolution Authorizing City Attorney to Retain Legal Counsel

Background:

Pursuant to the provisions of City Code Sec. 2-213(d) City Council may authorize the city attorney to retain such legal counsel as it deems necessary to assist him/[her] on legal matters for the city.

Discussion:

Recently the City Attorney's Office, which is not fully staffed at the present time, has identified a need for the ability to seek assistance from outside legal counsel, either on a consulting basis, or to provide supportive services in connection with litigation. It is anticipated that a consultation with outside counsel would assist the City Attorney's Office with (i) review of certain matters that are outside the normal purview of day-to-day local government practice here in the City, and (ii) with continued defense of the Statue Litigation. The City Attorney's Office requests City Council's approval of the attached Resolution.

Alignment with Council Vision Areas and Strategic Plan: N/A

Community Engagement: N/A

Budgetary Impact:

There will be some budgetary impact to this request; however, it will be incumbent upon the City Attorney's Office and the Finance Director to establish the availability of funds for any outside services requested.

Recommendation:

It is recommended that Council approve the attached Resolution.

Alternatives:

Council could decline to approve the attached Resolution.

Attachment:

Proposed Resolution

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville that, in accordance with Sec. 2-213(d) of the City Code, the City Attorney, including any individual serving as acting city attorney, is hereby authorized to retain such legal counsel as he or she deems necessary to assist him or her on legal matters for the City, subject to the following conditions: (i) any such engagement shall be subject to the availability of funds, as determined by the City's Finance Director, and (ii) any such engagement shall be for or in connection either with the pending Statue Litigation (Payne, *et al.* v. City of Charlottesville, *et al.*) or a City Council project or assignment.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Required:	Adoption of Resolution
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson, Chief Deputy City Attorney
Title:	Delegation of Contracting Authority to Director of Emergency Management

Background:

As the City continues to plan for possible civil disturbances during July and August 2018, staff is attempting to ensure that it can quickly and effectively take all actions necessary to implement safety and security measures that may be necessary for management of a major disturbance. July 16th is the City Council's last regular meeting date prior to the weekend of August 10-12, and staff desires to ensure that the planning process builds in as much flexibility and adaptability as possible. Attached is a Resolution delegating certain contracting authority to the City's Director of Emergency Management, for the time period from July 16, 2018 through August 31, 2018. The contracts authorized would include agreements to obtain cooperation in the provision of police services from outside law enforcement agencies, and contract with property owners to obtain permission for temporary use of private property.

Discussion:

City Code Sec. 2-7 allows City Council to identify City Officials who have authority to enter into contractual agreements in the name of and on behalf of the City. Various provisions within Title 15.2, Chapter 17, Article 2 of the Virginia Code authorize localities such as the City to enter into agreements for mutual aid and for cooperation in the provision of police services. Also, Virginia Code §15.2-1800 allows the City to enter into agreements for the use of property for public purposes. The purpose of the attached Resolution is to ensure that the Director of Emergency Management will be authorized to enter into any necessary agreements on an expedited basis, if necessary.

Community Engagement: Not applicable.

Budgetary Impact:

Not applicable. The availability of public funds is determined by the Finance Director upon review of any proposed agreement.

Recommendation: Staff recommends approval.

Alternatives: Council could decline to approve the Resolution.

Attachments:

Proposed Resolution

RESOLUTION

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia (the “City Council”) that, on this 16th day of July, 2018, the City Council does hereby delegate to its Director of Emergency Management (“Director”) the power and authority to act as the agent of City Council for the following purposes:

- (1) To enter into agreements in the name of and on behalf of the City of Charlottesville in accordance with the provisions of Virginia Code §15.2-1726, for the cooperation in the furnishing of police services, with the Department of State Police, with any other Virginia locality, with police of the University of Virginia, with any agency of the Federal government, or any combination of the foregoing, as the Director of Emergency Management may deem advisable or expedient; and
- (2) To enter into agreements in the name of and on behalf of the City of Charlottesville with other law enforcement agencies, pursuant to any other statutory provisions within Title 15.2, Chapter 17, Article 2 of the Virginia Code; and
- (3) To enter into agreements in the name of and on behalf of the City of Charlottesville with any landowner(s) to authorize the temporary use of private property for or in connection with the provision of police services.

The terms and conditions of each such agreement shall be subject to the review and approval by the City Attorney and the City’s Director of Finance, prior to signature by the Director. Any such agreement signed and executed by the Director of Emergency Management shall be binding upon the City of Charlottesville, and shall have all of the same force and effect as if approved by City Council itself.

This Resolution shall be effective upon its adoption, and the authority hereby delegated to the Director of Emergency Management shall be and remain in effect through August 31, 2018.

This page intentionally left blank.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 2, 2018
Action Required:	Consideration of a Zoning Map Amendment
Presenter:	Brenda Kelley, Redevelopment Manager, City Manager's Office
Staff Contacts:	Brenda Kelley, AICP, Redevelopment Manager, City Manager's Office Missy Creasy, AICP, Assistant Director, Neighborhood Development Services
Title:	<u>ZM18-03-01 - Parking Modified Zone Amendments</u>

Background:

At the March 5, 2018 City Council meeting, a zoning map amendment was initiated for consideration to include within the Parking Modified Zone referenced in City Code section 34-971(e)(3) the following locations:

- The site of Friendship Court (Tax Map Parcel ID number: 280112000; 400-426 Garrett Street); and
- The site of Charlottesville Redevelopment and Housing Authority's (CRHA) Crescent Halls (Tax Map Parcel ID number: 280218000; 500 1st Street S); and
- The site of Charlottesville Redevelopment and Housing Authority's (CRHA) Avon/Levy site (Tax Map Parcel ID numbers: 580115000 and 580114000; 405 Levy Avenue and 405 Avon Street); and
- The site of Charlottesville Redevelopment and Housing Authority's (CRHA) 6th Street site (Tax Map Parcel ID number: 270019000; 715 6th Street SE)

During discussions on redevelopment with Piedmont Housing Alliance (PHA; Friendship Court) and Charlottesville Redevelopment and Housing Authority (CRHA), both organizations have represented that they want and need to build the necessary parking to meet their respective future demands, but neither organization wants to build more than is necessary. The costs of parking construction, especially in structured parking, has been identified as an overly burdensome cost that will weigh on each organizations' ability to achieve the desired additional affordable housing during redevelopment.

The objective of this request is to reduce the on-site parking requirements to provide each organization the flexibility they need to meet parking demand, plan well and reduce overall costs

of redevelopment in order to construct more affordable housing units on Friendship Court, and the Charlottesville Redevelopment and Housing Authority's (CRHA) Crescent Halls site, Avon/Levy site and 6th Street site.

The City's Parking Modified Zone is established to provide some flexibility to specified parking requirements in an urban development area as shown on the City of Charlottesville Zoning Map, and as pursuant to Sec. 34-971(e)(3), (4) and (5).

Please note: Approval of this request will not require that the property owners construct less parking; it simply provides the flexibility of the owners to plan for and build less parking, depending on their parking demand and needs.

Discussion:

Staff recommends approval of the proposed zoning map amendment to revise the boundary to include the sites of Friendship Court and CRHA's Crescent Halls, Avon/Levy and 6th Street based on the following:

- Amending the Parking Modified Zone boundary to include the subject properties is a strategic and good zoning practice to provide flexibility and options for the property owners for redevelopment of existing public and subsidized housing.
- Including these properties in the Parking Modified Zone may allow for the development of less required, costly parking, therefore helping to provide for more affordable housing.
- Including these properties in the Parking Modified Zone may allow for the development of less required, costly parking, therefore possibly helping to provide for more on-site green space.
- These properties are in an urban area and are close to employment centers and convenient to neighborhood amenities and public transportation service.

Planning Commission

Among the matters discussed by the Planning Commission at their June 12, 2018 meeting were the following:

- Whether the proposed zoning map amendment may create an on-street parking burden on the surrounding community.
- Whether PHAR was involved and supportive of this request. Some Commissioners discussed their desire that PHAR support the request.

Alignment with City Council’s Vision Areas and Strategic Plan:

The proposed zoning map amendment aligns with the **City Council Vision** of *Quality Housing Opportunities for All* and **Strategic Plan, Goal 1.3**, “*Increase affordable housing options.*”

Community Engagement:

Specific community engagement information is provided in the Planning Commission report. Themes from this engagement include public meetings held by Piedmont Housing Alliance and Charlottesville Redevelopment and Housing Authority informing the public of the application.

The following public comments were received subsequent to the public notice of Planning Commission item ZM18-03-01:

- 1 letter offering support from Piedmont Housing Alliance guaranteeing that the Advisory Committee is focused on meeting the need of parking while also not wasting limited, vital resources on unnecessary parking; matching the parking with other resident priorities – well-planned open and green spaces as well as ample more affordable housing onsite
- 1 email regarding concern that there was not sufficient public notice – NDS staff clarified the state law requirements regarding public notice
- 3 emails voicing opposition to the request – primary concerns are losing parking under the Belmont Bridge, along old Avon Street, in the Water Street garage and with the building intended to house the city market; many homes in the area do not have adequate off-street parking; neighborhood parking already experiencing adverse parking effects due to the development and popularity of the downtown and IX Art Park areas; rarely is available parking on Monticello Avenue or Garrett Street no matter the time of day; Sixth Street is fully parked up from 7:30am to 5:30pm on weekdays; survey of the area bounded by Avon Street, 6th Street, Monticello Avenue and Garrett Street shows that approximately 80% of the residents rely on street parking; residents of Friendship Court and Crescent Halls will suffer without adequate parking for the commercial units, the delivery vehicles, guest parking and personal parking spaces; the downtown area cannot afford to lose any more parking and be able to survive.

In addition, there was a concern raised by one member from the public during public comment at the Planning Commission meeting stating the neighborhood is receiving pressure on parking from downtown Belmont restaurant district, Belmont Bridge construction and downtown market; and regarding night time restricted on-street parking adjacent to Friendship Court.

Follow up - Following a site visit to verify, the only restrictions to on-street parking along the four streets adjacent to Friendship Court are No Parking areas due to curb cuts or proximity to intersections (there are no night time restrictions).

Budgetary Impact:

There is no budgetary impact.

Recommendation:

The Planning Commission took the following action:

Mr. Lahendro moved to recommend the city approval of this petition to amend the zoning map to extend the boundaries of the Parking Modified Zone to include only the property of Friendship Court (400-426 Garrett Street – Tax Map Parcel ID number: 280112000) on the basis that the rezoning would serve the interests of public necessity, convenience, general welfare or good zoning practice.

Mr. Smith seconded the motion. The Commission voted 5-2 (Dowell, Mitchell) to recommend approval of the motion.

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached Ordinance (granting the zoning map amendment);
- (2) by motion, request changes to the attached Ordinance, and then approve the zoning map amendment in accordance with the amended Ordinance;
- (3) by motion, deny the requested zoning map amendment.

Attachment:

- (1) Proposed Ordinance approving a Zoning Map Amendment
- (2) Planning Commission Staff Report with Attachments, June 12, 2018
<http://www.charlottesville.org/home/showdocument?id=62029>

**AN ORDINANCE
AMENDING THE CITY’S OFFICIAL ZONING MAP
TO INCLUDE CERTAIN ADDITIONAL PROPERTIES IN THE
PARKING MODIFIED ZONE**

WHEREAS, by Resolution approved on March 18, 2018, City Council initiated a Zoning Map amendment proposing to add four (4) additional areas to the Parking Modified Zone referenced in City Code Sec. 34-971(e)(3), hereinafter the “Map Amendment”; and

WHEREAS, on June 12, 2018 the Planning Commission reviewed the proposed Map Amendment and recommended that only Friendship Court be added to the Parking Modified Zone; and

WHEREAS, a public hearing on the proposed Map Amendment was held by City Council on July 2, 2018, after notice to the public as required by law; now, therefore,

BE IT ORDAINED that the Charlottesville City Council hereby designates the following properties to be included in the Parking Modified Zone, and amends the most recently approved Official Zoning Map accordingly:

1. Friendship Court (Tax Map Parcel 280112000)
2. Crescent Halls (Tax Map Parcel 280218000)
3. 405 Levy Avenue and 405 Avon Street (Tax Map Parcel 580115000 and 580114000)
4. CRHA property at 6th Street, S.E. and Monticello Avenue (Tax Map Parcel 270019000)

This page intentionally left blank.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 2, 2018
Action Required:	Consideration of a Zoning Text Amendment
Presenter:	Heather Newmyer, City Planner, Neighborhood Development Services
Staff Contacts:	Heather Newmyer, City Planner, Neighborhood Development Services
Title:	<u>ZT18-04-01 – Restaurants: Drive-through windows in Highway Corridor</u>

Background:

At the April 16, 2018 City Council meeting, a zoning text amendment was initiated for consideration of allowing restaurants with drive-through windows to be allowed by special use permit in the Highway Corridor (HW) Mixed Use District. The request was brought to staff by Ashley Davies of Williams Mullen Law Firm on behalf of Alan Taylor, Riverbend Development, who is the applicant for 1801 Hydraulic (K-Mart site) redevelopment project titled “Hillsdale Place.”

Project Description: The current final site plan application is under administrative review by City staff and includes Tax Map 41B Parcels 1 and 2 with road frontage on Hydraulic Road, Seminole Trail (Route 29), Hillsdale Drive and India Road. The site plan proposes i) to reduce existing buildings on-site (held by K-Mart and Gold’s Gym currently) from 121,197 SF to 77,000 SF in preparation for new retail tenants and ii) provide parking, utility and landscape improvements on-site. The Subject Property is zoned HW, EC (Highway Corridor District, Entrance Corridor Overlay (Note: The site received a Certificate of Appropriateness (COA) from the Entrance Corridor Review Board (ERB) on December 15, 2017). The general usage specified in the Comprehensive Plan for the Subject Property is Mixed Use.

While the current final site plan proposes only renovations to the existing building on-site, Riverbend Development has indicated the desire to include in their future redevelopment plans a restaurant with a drive-through window, which currently is not allowed within the HW District.

Please note: While the request was made on behalf of one developer, this consideration is for the entirety of the HW District throughout the City; and, should the ZTA be approved, any developer who wishes to include a restaurant with a drive-through window as a use on a property within the HW District would require a special use permit be approved by City Council prior to the use being allowed on said property.

Standard of Review

Per Sec. 34-42(c), Planning Commission is to make a recommendation on an initiated amendment to the zoning ordinance within 100 days to City Council. Planning Commission makes their recommendation based off of the following factors:

- (1) Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;
- (2) Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;
- (3) Whether there is a need and justification for the change; and
- (4) When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the commission shall consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification.

Per Sec. 34-43, City Council is to hold at least one (1) public hearing prior to acting on any proposed amendment to the zoning ordinance.

Relevant Code Sections

§34-1200: The *restaurant* definition under §34-1200 includes “fast food restaurant” which is one at which patrons order and receive food orders at a counter or **window** for consumption either on or off-premises.

§34-157: When considering an application for a special use permit, there is a higher level of review that is conducted by staff, the Planning Commission and City Council as opposed to when a use is allowed by-right. Within Sec. 34-157, there is a list of factors that are considered prior to approving or denying such request. These factors include:

- Whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood
- Whether the proposed use or development and associated public facilities will substantially conform to the city’s comprehensive plan
- Whether the proposed use or development of any buildings or structures will comply with all applicable building code regulations

- Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts (then the section goes onto list potential adverse impacts such as traffic, noise, lighting, etc.)
- Whether the proposed use or development will be in harmony with the purposes of the specific zoning district which it will be placed
- Whether the proposed use or development will meet applicable general and specific standards set forth within the zoning ordinance, subdivision regulations, or other city ordinances or regulations; and
- When the property that is the subject of the application for a special use permit is within a design control district, city council shall refer the application to the BAR or ERB, as may be applicable, for recommendations as to whether the proposed use will have an adverse impact on the district, and for recommendations as to reasonable conditions which, if imposed, that would mitigate any such impacts. The BAR or ERB, as applicable, shall return a written report of its recommendations to the city council.

Proposed Zoning Text Change

Revise the Mixed Use (§34-796) matrix as follows:

- Place an “S”, which indicates special use permit required, in the row labeled “Drive-through windows” under the heading “Restaurants:” located in the Non-residential: General and Misc. Commercial section, under the HW zoning district column.

Discussion:

Overview of Staff Analysis

Please see the staff report prepared for the June 12, 2018 Planning Commission Meeting ([Attachment 2](#)) for more information.

Staff recommended approval of the proposed zoning text amendment to allow for restaurants with drive-through windows in the Highway Corridor based off of the following:

- The three areas zoned as Highway Corridor (see Map 1, [Attachment 2](#)) are roads that carry the highest traffic volumes within the City according to VDOT 2014 data.
- Areas zoned Highway Corridor run up against both the northern city limits (Emmet St N of 250 Bypass to northern city limits) and the southern city limits (5th St Extended and Monticello Avenue) where much of the traffic is using these roads as a means to enter the City from the County and beyond
- The purpose of the Highway Corridor Mixed Use District, expressed in Sec. 34-541, states it is to facilitate **development of a commercial nature that is more auto oriented**

than other mixed use and neighborhood commercial districts and this district is intended for the areas where the most intense commercial development in Charlottesville occurs.

- Staff recognizes that two out of the three areas zoned for Highway Corridor are within the City's identified small areas as called out in the 2013 Comprehensive Plan ((i) Emmet St north of the 250 Bypass which includes the recently adopted Hydraulic-29 Small Area Plan and (ii) 5th Street Extended), where these areas speak to future urban design opportunities, multimodal connections, future roadways, and more walkable, bikeable and transit oriented development (Please refer to the staff report ([Attachment 2](#), pp. 3-13) to find more detailed analysis on the small area plans). Staff would not feel comfortable allowing the proposed use by-right given there are many factors to consider other than land use compatibility specific to these identified areas (e.g. compliance with multimodal connections, open spaces, future roadways, etc.); however, staff believes allowing this use by special use permit allows for a higher level of review that requires compliance with the Comprehensive Plan (which includes not only the small area plan guidance but other amendments like Streets That Work), discretion for adding conditions that minimize negative impacts, and allows for the ability to deny the use request altogether.
- Staff believes allowing this use via special use permit balances the reality that these areas carry the highest volumes of vehicular traffic in the City and are called out to house the most intense commercial development in order to limit it elsewhere throughout the City while still holding a *higher level of review* that can either ensure the end commercial product follows the guidance provided in the small area plans and other elements of the Comprehensive Plan ultimately providing for a context sensitive commercial use OR retain the ability to deny the request altogether when not appropriate.

Planning Commission

Among the matters discussed by the Planning Commission at their June 12, 2018 meeting were the following:

- Whether the proposed ZTA was compatible with the Comprehensive Plan's small area plans. Some Commissioners believed the proposed ZTA was incompatible.
- Desire to preserve entrances to Charlottesville
- Charlottesville's goal of being a green and healthy City of Charlottesville
- Other Commissioners in support of the ZTA stated Zaxby's was a successful example of a context sensitive drive-through restaurant and that drive-through restaurants can be designed in such a way that can be in a compatible form to the City in these areas.

Alignment with City Council’s Vision Areas and Strategic Plan:

The proposed zoning text amendment aligns with the City Council Vision of **Economic Sustainability**, where the City is a “*business friendly environment.*”

The proposed zoning text amendment aligns with the City’s **Strategic Plan, Goal 4.3**, “*grow and retain viable businesses.*”

Allowing the proposed use via special use permit (higher level of review) aligns with **Strategic Plan, Goal 3.1**, “*engage in...context sensitive urban planning....*”

Community Engagement:

No public comment was received.

Budgetary Impact:

No budgetary impact.

Recommendation:

The Commission took the following action:

Ms. Keller moved to recommend denial of this Zoning Text Amendment to allow restaurants with drive-through windows by special use permit in the Highway Corridor on the bases that the changes would not serve the interests of public necessity, convenience, general public welfare or good zoning practice.

Mr. Solla-Yates seconded the motion. The Commission voted 5-2 (Lahendro, Mitchell) to recommend denial of the Zoning Text Amendment

Alternatives:

City Council has several alternatives:

- (1) by motion, take action to approve the attached resolution (granting the ZTA);
- (2) by motion, request changes to the attached Resolution, and then approve the ZTA in accordance with the amended Resolution;
- (3) by motion, deny the requested ZTA (as recommended by the Planning Commission).

Attachment:

- (1) Proposed Resolution Approving a Zoning Text Amendment
- (2) Staff Report with Attachments, June 12, 2018

ORDINANCE
AMENDING AND RE-ENACTING CHAPTER 34 (ZONING) OF THE CODE OF THE
CITY OF CHARLOTTESVILLE (1990), AS AMENDED, TO AUTHORIZE
RESTAURANTS WITH DRIVE THROUGH WINDOWS IN THE
HIGHWAY CORRIDOR (HW) MIXED USE ZONING DISTRICT
WITH A SPECIAL USE PERMIT

WHEREAS, by resolution adopted April 16, 2018 City Council initiated a zoning text amendment to authorize drive through windows in restaurants in the Highway Corridor (HW) Mixed Use Zoning District (“Proposed Zoning Text Amendment”); and

WHEREAS, following a public hearing duly advertised and conducted in accordance with law, the Planning Commission considered the Proposed Zoning Text Amendment at its meeting on June 12, 2018, and voted to recommend denial of the Proposed Zoning Text Amendment as presented; and

WHEREAS, a public hearing on the Proposed Zoning Text Amendment was held by City Council on July 2, 2018, after notice to the public and to adjacent property owners as required by law; and

WHEREAS, after consideration of the Planning Commission’s recommendation, and comments from the public, this Council is of the opinion that the Proposed Zoning Text Amendment has been designed to give reasonable consideration to the purposes listed in Sec. 15.2-2283 of the Code of Virginia (1950), as amended, and this Council hereby finds and determines that: (i) the public necessity, convenience, general welfare and good zoning practice require the proposed zoning text amendment, and (ii) the proposed zoning text amendment is consistent with the Comprehensive Plan; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Chapter 34 of the Code of the City of Charlottesville (1990), as amended, is hereby amended and re-enacted as follows:

1. Sec. 34-796 (Use matrix—Mixed use corridor districts) of Article VI (Mixed Use Districts), of Chapter 34 (Zoning), are hereby amended and re-enacted, to incorporate the following change in the column titled “HW”:

<i>Use Types</i>	<i>Zoning Districts</i>
NON-RESIDENTIAL: GENERAL AND MISC. COMMERCIAL	<i>HW</i>
Restaurants:	
Drive-through windows	<u>S</u>

CITY OF CHARLOTTESVILLE
DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES
STAFF REPORT



REQUEST FOR A ZONING TEXT AMENDMENT

**JOINT CITY COUNCIL AND PLANNING COMMISSION PUBLIC
HEARING**

DATE OF PLANNING COMMISSION MEETING: June 12, 2018

Author of Staff Report: Heather Newmyer, AICP

Date of Staff Report: May 31, 2018

Application Number/Description: ZT18-04-01: Restaurants: Drive-through windows in Highway Corridor

Applicable City Code Provisions: §34- 41 (Amendments to the Zoning Ordinance), §34-796 (Use matrix – mixed use corridor districts)

Executive Summary

This is a proposed zoning text amendment to amend §34-796 to allow restaurants with drive-through windows to be allowed by special use permit in the City’s Highway Corridor (HW) Mixed Use Districts. Staff recommends that the use be permitted by special use permit in the HW District as the intent of this district is to provide for the “intense commercial development with very limited residential use” in the “areas where the most intense commercial development in Charlottesville occurs” (ref. Sec. 34-541 – Mixed use districts - intent and description), as opposed to other mixed use districts within the City. By allowing this use via the special permit process, City Council reserves the authority to protect adjacent properties and/or zoning districts from potential impacts associated with the use, such as noise, lighting and business hours.

Background

At the April 16, 2018 City Council meeting, a zoning text amendment was initiated for consideration of allowing restaurants with drive-through windows to be allowed by special use permit in the HW District (Attachment 1). The request was brought to staff by Ashley Davies of Williams Mullen Law Firm on behalf of Alan Taylor, Riverbend Development, who is the applicant for 1801 Hydraulic (K-Mart site) redevelopment project titled “Hillsdale Place.”

Project Description: The current final site plan application is under administrative review by City staff and includes Tax Map 41B Parcels 1 and 2 with road frontage on Hydraulic Road, Seminole Trail (Route 29), Hillsdale Drive and India Road. The site plan proposes i) to reduce existing buildings on-site (held by K-Mart and Gold’s Gym currently) from 121,197 SF to 77,000 SF in preparation for new retail tenants and ii) provide parking, utility and landscape improvements on-site. The Subject Property is zoned HW, EC (Highway Corridor District, Entrance Corridor Overlay (Note: The site received a

Certificate of Appropriateness (COA) from the Entrance Corridor Review Board (ERB) on December 15, 2017). The general usage specified in the Comprehensive Plan for the Subject Property is Mixed Use.

While the current final site plan proposes only renovations to the existing building on-site, Riverbend Development has indicated the desire to include in their future redevelopment plans a restaurant with a drive-through window, which currently is not allowed within the HW District.

Please note: While the request was made on behalf of one developer, this consideration is for the entirety of the HW District throughout the City; and, should the ZTA be approved, any developer who wishes to include a restaurant with a drive-through window as a use on a property within the HW District would require a special use permit be approved by City Council prior to the use being allowed on said property.

Relevant Code Sections:

§34-1200: The *restaurant* definition under §34-1200 includes “fast food restaurant” which is one at which patrons order and receive food orders at a counter or **window** for consumption either on or off-premises.

§34-157: When considering an application for a special use permit, there is a higher level of review that is conducted by staff, the Planning Commission and City Council as opposed to when a use is allowed by-right. Within Sec. 34-157, there is a list of factors that are considered prior to approving or denying such request. These factors include:

- Whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood
- Whether the proposed use or development and associated public facilities will substantially conform to the city’s comprehensive plan
- Whether the proposed use or development of any buildings or structures will comply with all applicable building code regulations
- Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts (then the section goes onto list potential adverse impacts such as traffic, noise, lighting, etc.)
- Whether the proposed use or development will be in harmony with the purposes of the specific zoning district which it will be placed
- Whether the proposed use or development will meet applicable general and specific standards set forth within the zoning ordinance, subdivision regulations, or other city ordinances or regulations; and
- When the property that is the subject of the application for a special use permit is within a design control district, city council shall refer the application to the BAR or ERB, as may be applicable, for recommendations as to whether the proposed use will have an adverse impact on the district, and for recommendations as to reasonable conditions which, if imposed, that would mitigate any such impacts. The BAR or ERB, as applicable, shall return a written report of its recommendations to the city council.

Study Period and Public Hearing

Once an amendment has been initiated by City Council, it is deemed referred to the Planning Commission for study and recommendation (City Code §34-41(d)). From the time of initiation, the planning commission has **100 days** in which to make its recommendation to City Council, or else it will be deemed to be a recommendation of approval.

Standard of Review

As per §34-42 of the City Code, the planning commission shall review and study each proposed amendment to determine:

- (1) Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;
- (2) Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;
- (3) Whether there is a need and justification for the change; and
- (4) When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the commission shall consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification.

Proposed Zoning Text Change

Revise the Mixed Use (§34-796) matrix as follows:

- Place an “S”, which indicates special use permit required, in the row labeled “Drive-through windows” under the heading “Restaurants:” located in the Non-residential: General and Misc. Commercial section, under the HW zoning district column.

Standard of Review Analysis

- 1. Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;**

Land Use Chapter:

The Comprehensive Plan Land Use Chapter lists goals that include but are not limited to: establishing a mix of use throughout Charlottesville, being context sensitive to surrounding neighborhoods, highlighting pedestrian connections between residences, commercial centers, public facilities, amenities and green spaces, and providing opportunities for employment centers and nodes of activity along mixed-use corridors.

The areas within the City that are zoned HW District fall under the Land Use category Mixed Use, which is described as “areas intended to ... encourage development of a moderate or high intensity, and where a large variety of uses will be permitted, including many

commercial uses, residential uses, and some limited research and manufacturing where appropriate.”

Land Use Staff Analysis: Staff finds that the proposed amendment to allow for restaurants with drive-through windows is consistent with the Land Use general guidelines mentioned above given that:

- The areas within the City zoned HW District fall under the Mixed Use land use category, which is called to encourage “many commercial uses”
- Allowing restaurants with drive-through windows in the HW District by special use permit will require a higher level of review than if the use was allowed by-right. Staff believes because of the higher level of review, which includes a number of factors that have to be considered when reviewing a special use permit as well as the ability to include conditions that help mitigate potential adverse impacts, there is flexibility and more liberty in review to help guide development that would conform to many of the general guidelines given in the Land Use Chapter that speak to urban design, context sensitivity, and connectivity. Should the ZTA be approved, developers wishing to include a restaurant with a drive-through window in the HW District would be required to include in their design how the project complies with the Comprehensive Plan and its goals. In addition to that, Staff, Planning Commission and Council can recommend conditions that help mitigate potential adverse impacts and help provide for a better design overall. For example, increased buffering, increased screening for parking that is relegated to the back of the building, limited business hours to prevent noise issues, wider sidewalks, café seating areas, requiring the drive-through window/order area to not be visible from the right-of-way, etc., would provide for a drive-through window design that is more context sensitive, follows urban design guidelines, and fits more into what is desired for a commercial use in the City. Furthermore, if an application is presented that does not comply with the Comprehensive Plan, Council has the ability to deny such request. Given the higher level of review and built in flexibility, staff believes the proposed amendment is consistent with the Comprehensive Plan.

Below, staff goes into further detail regarding the Comprehensive Plan Land Use Chapter’s small area plans and how these areas relate to the proposed amendment; however, the above analysis is the overall analysis given for the Land Use Chapter.

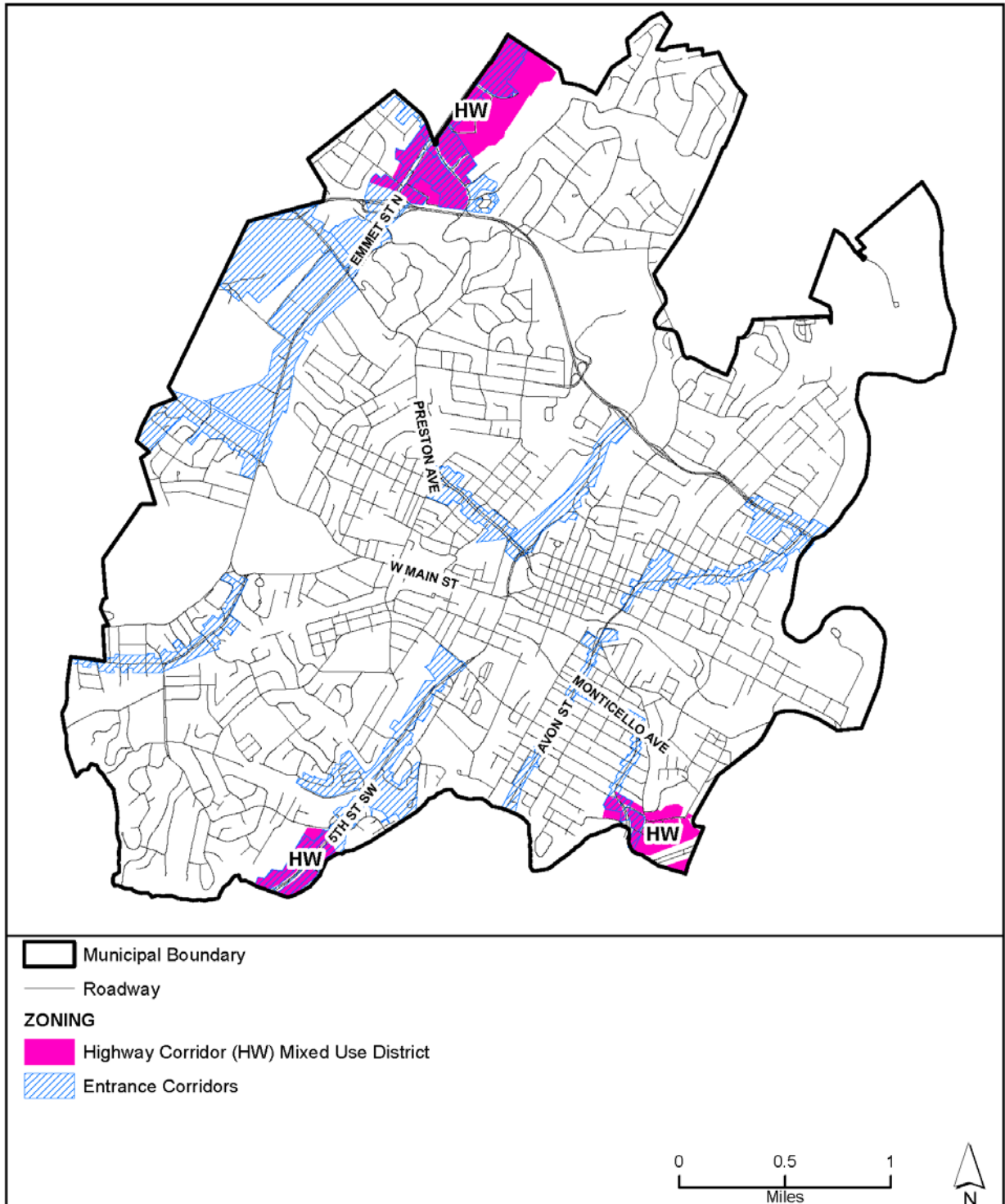
Land Use Small Areas:

Within the Land Use Chapter of the 2013 Comprehensive Plan, there are several specific areas identified for future small area plans with the goal in mind that the resulting small area plans will provide the basis for future planning, urban design and investment decisions.

There are three corridors within the City fall under the HW District zoning: i) Emmet St north of the 250 Bypass, ii) a portion of 5th Street extended, and iii) a portion of Monticello Avenue (See Map 1).

MAP 1:

HIGHWAY CORRIDOR MIXED USE DISTRICTS IN THE CITY OF CHARLOTTESVILLE



CITY OF CHARLOTTESVILLE
DEPARTMENT OF NEIGHBORHOOD DEVELOPMENT SERVICES
STAFF REPORT



REQUEST FOR A ZONING TEXT AMENDMENT

**JOINT CITY COUNCIL AND PLANNING COMMISSION PUBLIC
HEARING**

DATE OF PLANNING COMMISSION MEETING: June 12, 2018

Author of Staff Report: Heather Newmyer, AICP

Date of Staff Report: May 31, 2018

Application Number/Description: ZT18-04-01: Restaurants: Drive-through windows in Highway Corridor

Applicable City Code Provisions: §34- 41 (Amendments to the Zoning Ordinance), §34-796 (Use matrix – mixed use corridor districts)

Executive Summary

This is a proposed zoning text amendment to amend §34-796 to allow restaurants with drive-through windows to be allowed by special use permit in the City’s Highway Corridor (HW) Mixed Use Districts. Staff recommends that the use be permitted by special use permit in the HW District as the intent of this district is to provide for the “intense commercial development with very limited residential use” in the “areas where the most intense commercial development in Charlottesville occurs” (ref. Sec. 34-541 – Mixed use districts - intent and description), as opposed to other mixed use districts within the City. By allowing this use via the special permit process, City Council reserves the authority to protect adjacent properties and/or zoning districts from potential impacts associated with the use, such as noise, lighting and business hours.

Background

At the April 16, 2018 City Council meeting, a zoning text amendment was initiated for consideration of allowing restaurants with drive-through windows to be allowed by special use permit in the HW District (Attachment 1). The request was brought to staff by Ashley Davies of Williams Mullen Law Firm on behalf of Alan Taylor, Riverbend Development, who is the applicant for 1801 Hydraulic (K-Mart site) redevelopment project titled “Hillsdale Place.”

Project Description: The current final site plan application is under administrative review by City staff and includes Tax Map 41B Parcels 1 and 2 with road frontage on Hydraulic Road, Seminole Trail (Route 29), Hillsdale Drive and India Road. The site plan proposes i) to reduce existing buildings on-site (held by K-Mart and Gold’s Gym currently) from 121,197 SF to 77,000 SF in preparation for new retail tenants and ii) provide parking, utility and landscape improvements on-site. The Subject Property is zoned HW, EC (Highway Corridor District, Entrance Corridor Overlay (Note: The site received a

Certificate of Appropriateness (COA) from the Entrance Corridor Review Board (ERB) on December 15, 2017). The general usage specified in the Comprehensive Plan for the Subject Property is Mixed Use.

While the current final site plan proposes only renovations to the existing building on-site, Riverbend Development has indicated the desire to include in their future redevelopment plans a restaurant with a drive-through window, which currently is not allowed within the HW District.

Please note: While the request was made on behalf of one developer, this consideration is for the entirety of the HW District throughout the City; and, should the ZTA be approved, any developer who wishes to include a restaurant with a drive-through window as a use on a property within the HW District would require a special use permit be approved by City Council prior to the use being allowed on said property.

Relevant Code Sections:

§34-1200: The *restaurant* definition under §34-1200 includes “fast food restaurant” which is one at which patrons order and receive food orders at a counter or **window** for consumption either on or off-premises.

§34-157: When considering an application for a special use permit, there is a higher level of review that is conducted by staff, the Planning Commission and City Council as opposed to when a use is allowed by-right. Within Sec. 34-157, there is a list of factors that are considered prior to approving or denying such request. These factors include:

- Whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood
- Whether the proposed use or development and associated public facilities will substantially conform to the city’s comprehensive plan
- Whether the proposed use or development of any buildings or structures will comply with all applicable building code regulations
- Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts (then the section goes onto list potential adverse impacts such as traffic, noise, lighting, etc.)
- Whether the proposed use or development will be in harmony with the purposes of the specific zoning district which it will be placed
- Whether the proposed use or development will meet applicable general and specific standards set forth within the zoning ordinance, subdivision regulations, or other city ordinances or regulations; and
- When the property that is the subject of the application for a special use permit is within a design control district, city council shall refer the application to the BAR or ERB, as may be applicable, for recommendations as to whether the proposed use will have an adverse impact on the district, and for recommendations as to reasonable conditions which, if imposed, that would mitigate any such impacts. The BAR or ERB, as applicable, shall return a written report of its recommendations to the city council.

Study Period and Public Hearing

Once an amendment has been initiated by City Council, it is deemed referred to the Planning Commission for study and recommendation (City Code §34-41(d)). From the time of initiation, the planning commission has **100 days** in which to make its recommendation to City Council, or else it will be deemed to be a recommendation of approval.

Standard of Review

As per §34-42 of the City Code, the planning commission shall review and study each proposed amendment to determine:

- (1) Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;
- (2) Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;
- (3) Whether there is a need and justification for the change; and
- (4) When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities. In addition, the commission shall consider the appropriateness of the property for inclusion within the proposed zoning district, relating to the purposes set forth at the beginning of the proposed district classification.

Proposed Zoning Text Change

Revise the Mixed Use (§34-796) matrix as follows:

- Place an “S”, which indicates special use permit required, in the row labeled “Drive-through windows” under the heading “Restaurants:” located in the Non-residential: General and Misc. Commercial section, under the HW zoning district column.

Standard of Review Analysis

- 1. Whether the proposed amendment conforms to the general guidelines and policies contained in the comprehensive plan;**

Land Use Chapter:

The Comprehensive Plan Land Use Chapter lists goals that include but are not limited to: establishing a mix of use throughout Charlottesville, being context sensitive to surrounding neighborhoods, highlighting pedestrian connections between residences, commercial centers, public facilities, amenities and green spaces, and providing opportunities for employment centers and nodes of activity along mixed-use corridors.

The areas within the City that are zoned HW District fall under the Land Use category Mixed Use, which is described as “areas intended to ... encourage development of a moderate or high intensity, and where a large variety of uses will be permitted, including many

commercial uses, residential uses, and some limited research and manufacturing where appropriate.”

Land Use Staff Analysis: Staff finds that the proposed amendment to allow for restaurants with drive-through windows is consistent with the Land Use general guidelines mentioned above given that:

- The areas within the City zoned HW District fall under the Mixed Use land use category, which is called to encourage “many commercial uses”
- Allowing restaurants with drive-through windows in the HW District by special use permit will require a higher level of review than if the use was allowed by-right. Staff believes because of the higher level of review, which includes a number of factors that have to be considered when reviewing a special use permit as well as the ability to include conditions that help mitigate potential adverse impacts, there is flexibility and more liberty in review to help guide development that would conform to many of the general guidelines given in the Land Use Chapter that speak to urban design, context sensitivity, and connectivity. Should the ZTA be approved, developers wishing to include a restaurant with a drive-through window in the HW District would be required to include in their design how the project complies with the Comprehensive Plan and its goals. In addition to that, Staff, Planning Commission and Council can recommend conditions that help mitigate potential adverse impacts and help provide for a better design overall. For example, increased buffering, increased screening for parking that is relegated to the back of the building, limited business hours to prevent noise issues, wider sidewalks, café seating areas, requiring the drive-through window/order area to not be visible from the right-of-way, etc., would provide for a drive-through window design that is more context sensitive, follows urban design guidelines, and fits more into what is desired for a commercial use in the City. Furthermore, if an application is presented that does not comply with the Comprehensive Plan, Council has the ability to deny such request. Given the higher level of review and built in flexibility, staff believes the proposed amendment is consistent with the Comprehensive Plan.

Below, staff goes into further detail regarding the Comprehensive Plan Land Use Chapter’s small area plans and how these areas relate to the proposed amendment; however, the above analysis is the overall analysis given for the Land Use Chapter.

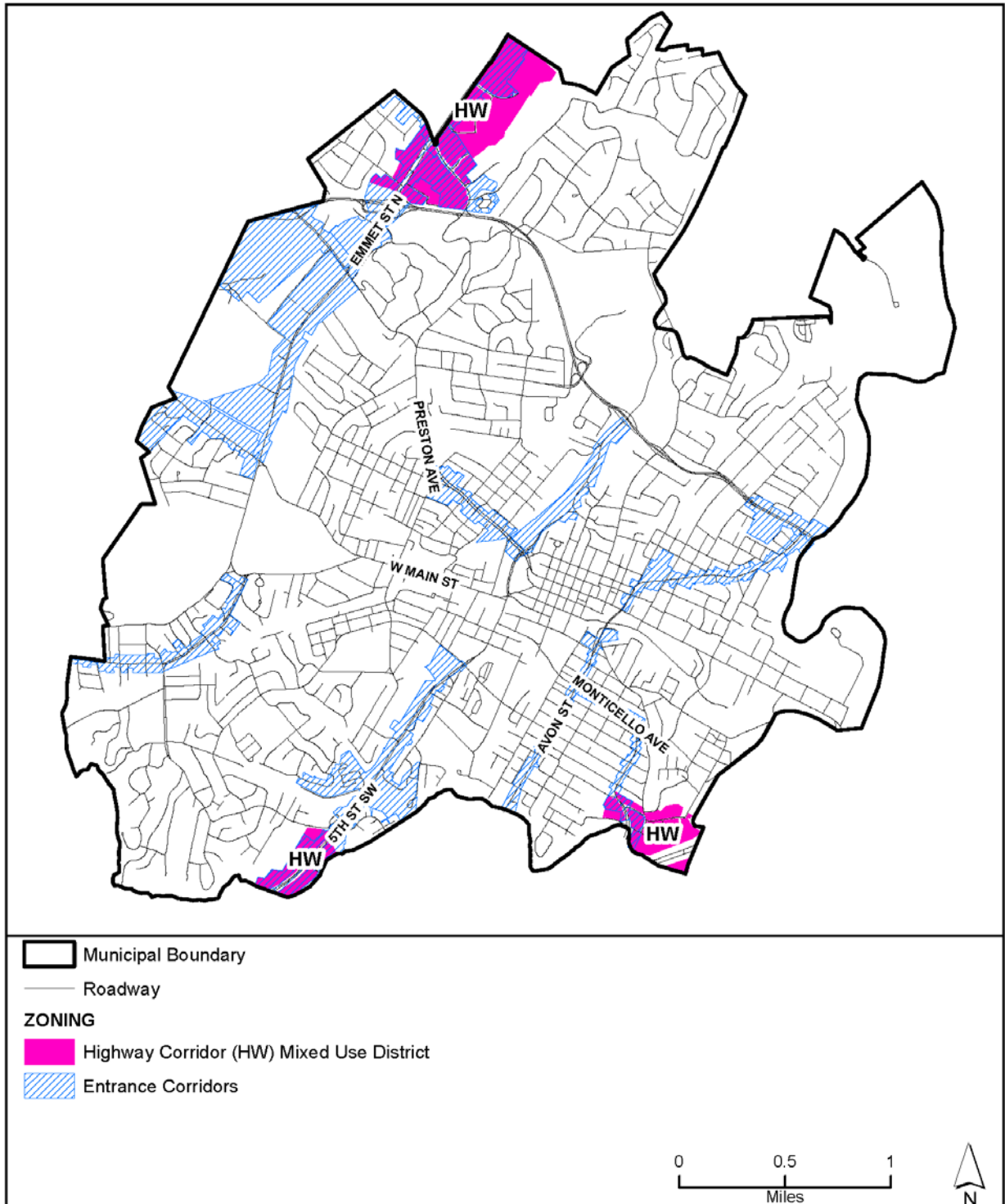
Land Use Small Areas:

Within the Land Use Chapter of the 2013 Comprehensive Plan, there are several specific areas identified for future small area plans with the goal in mind that the resulting small area plans will provide the basis for future planning, urban design and investment decisions.

There are three corridors within the City fall under the HW District zoning: i) Emmet St north of the 250 Bypass, ii) a portion of 5th Street extended, and iii) a portion of Monticello Avenue (See Map 1).

MAP 1:

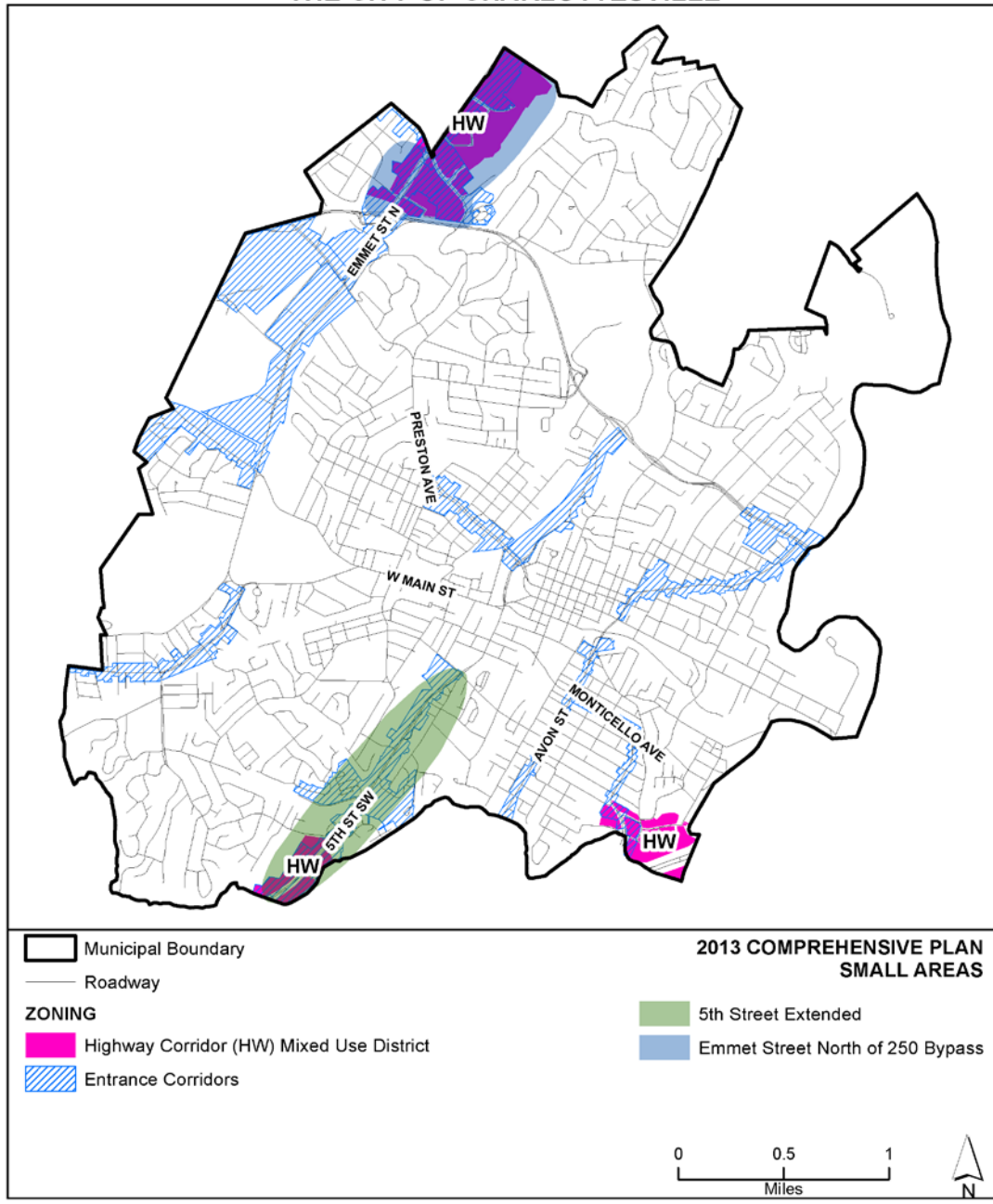
HIGHWAY CORRIDOR MIXED USE DISTRICTS IN THE CITY OF CHARLOTTESVILLE



Two of these corridors fall under areas called out as small area plans in the 2013 Comprehensive Plan: Emmet Street north of 250 Bypass and 5th Street Extended. See Map 2.

MAP 2:

**2013 COMPREHENSIVE PLAN SMALL AREAS THAT
OVERLAY HIGHWAY CORRIDOR MIXED USE DISTRICTS IN
THE CITY OF CHARLOTTESVILLE**



The 2013 Comprehensive Plan provides the following descriptions of the following areas that are intended for future small area plans:

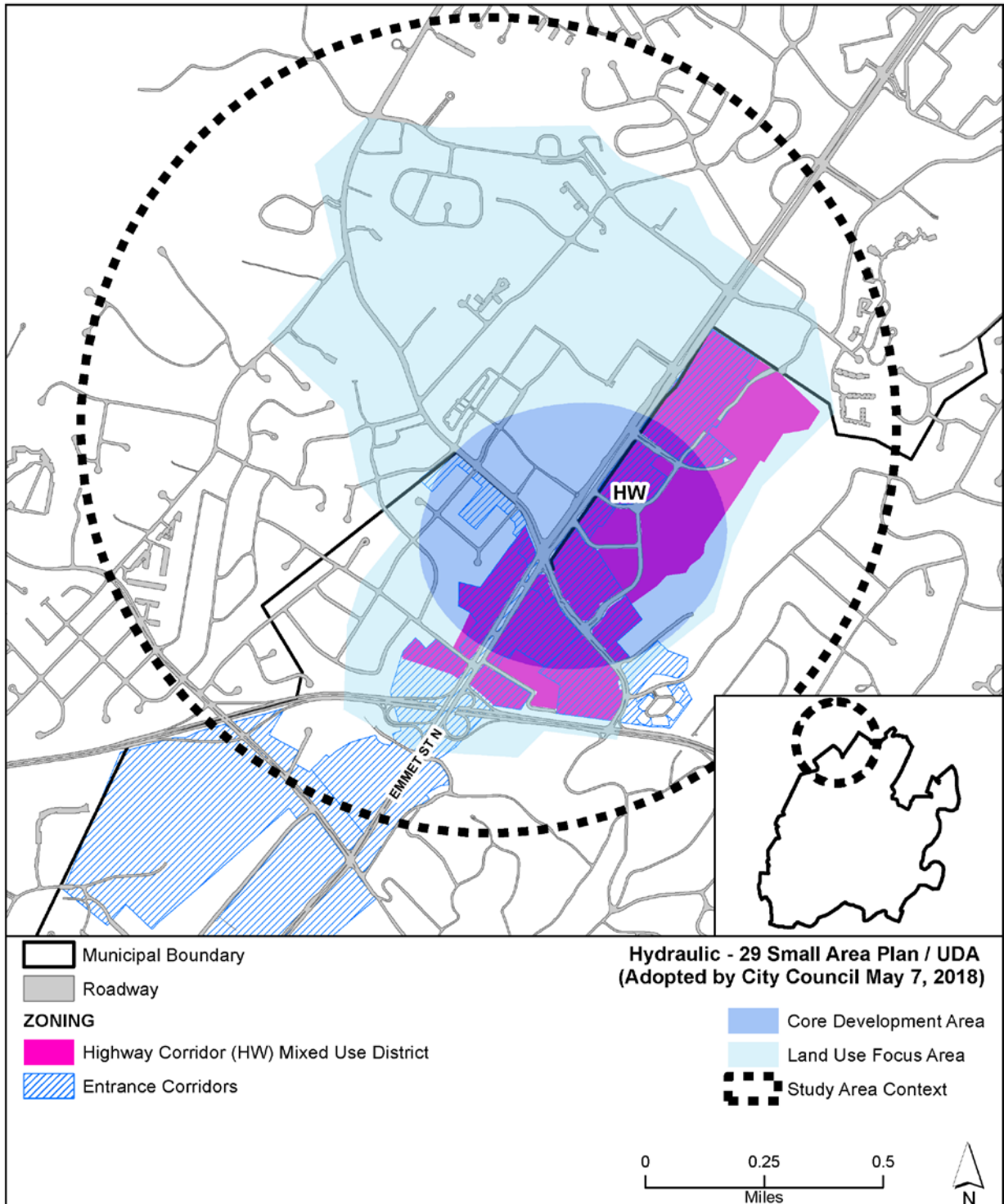
Emmet Street north of 250 Bypass: This area possesses considerable potential for new placemaking because of road network and traffic pattern changes, the development of the Stonefield commercial and residential development in the County, and future redevelopment of the K-Mart site and Michie Drive CRHA site. This area provides an expanded opportunity for dense, urban development at a major gateway to the city.

5th Street Extended: The construction of the Avon/5th Connector and the resultant big box center will change traffic patterns in this area and is likely to stimulate increased commercial activity near this city/county edge. Planning and design studies for this area may identify urban design opportunities more consistent with the city's desire for walkable, bikeable, and transit-supported development.

While the 5th Street Extended area does not yet have a formal small area attached to the above description, the Emmet Street north of the 250 Bypass area does as of May 2018. On May 7, 2018, City Council adopted the Hydraulic-29 Small Area Plan as well as designated the area as an Urban Development Area (UDA) (See Attachment 2 for the Resolution, Attachment 4 for UDA State Code). Map 3, shown below, depicts the boundaries of the Hydraulic-29 Small Area Plan/UDA which correspond to the boundaries shown in the full report that was also approved on May 7, 2018 (Attachment 3). Now part of the Comprehensive Plan, this small area plan is to act as the basis for future planning, design and investment decisions.

MAP 3:

2018 HYDRAULIC-29 SMALL AREA PLAN THAT OVERLAYS HIGHWAY CORRIDOR MIXED USE DISTRICTS IN THE CITY OF CHARLOTTESVILLE



A high-level overview of some of the recommendations and guidelines from this plan include:

- Road Framework Plan which includes proposed roads (p. 58, Attachment 3)
- Conceptual Bicycle/Pedestrian Plan which includes proposed multi-modal facilities (p. 60 of Attachment 3)
- Conceptual Open Space, Parks and Natural Systems Plan (p. 61 of Attachment 3)
- Conceptual Land Use Plan (p. 71 of Attachment 3)
- Conceptual Core Area Plan (p. 85 of Attachment 3)

The Conceptual Land Use Plan within the Hydraulic-29 Plan calls for the following land uses in the areas zoned HW District along Emmet St: Mixed Use Commercial, Commercial, Mixed Use Residential, and Mixed Use Office/Institutional (see p. 71 of Attachment 3).

Land Use Small Areas Staff Analysis:

Provided below is a more detailed analysis that is broken down into the three sections referencing the three corridors in the City zoned HW District.

- i) HW Districts along Emmet St north of the 250 Bypass: One of the corridors the HW District falls within is along Emmet St north of the 250 Bypass, an area called out in the 2013 Comprehensive Plan for future small area plans. On May 7, 2018, the Hydraulic-29 Small Area Plan was adopted as an amendment to the Comprehensive Plan by Council as a plan that provides more detailed guidance in the Emmet St north of the 250 Bypass area as mentioned above. Staff recognizes there is a high level of detail and guidance provided in the recently adopted Hydraulic-29 Small Area Plan that speaks to future roadways, multimodal connections, open spaces and land use recommendations. Any new development being proposed that falls within the Hydraulic-29 small area plan should incorporate elements of the small area plan and comply.

The majority of the areas zoned HW District on the City's current zoning map are called out in the Hydraulic-29 Plan for land use that is mixed use commercial or mixed use residential. The proposed zoning text amendment that would allow a restaurant with a drive-through window would not necessarily go against the recommended land uses; however, staff would not feel comfortable allowing this use by-right as there are many other factors than land use compatibility that come into play when applying implementation of a small area plan (e.g. compliance with future roads, multimodal connections, open spaces, etc).

Allowing a restaurant with a drive-through window *by special use permit* in the HW District allows for the higher level of review prescribed in Sec. 34-157, where many factors are weighed prior to a recommendation being made, one of which is compliance with the Comprehensive Plan. As such, any special use permit application for this use at a property falling within the Hydraulic-29 Small Area Plan would be required to show compliance with the elements prescribed in the Hydraulic-29 Small Area Plan as part of the application per Sec. 34-157(a)(2).

Staff believes the amendment would be consistent with the small area plan due to the special use permit application process having the built in required compliance with the Comprehensive Plan (Sec. 34-157(a)(2)), the discretion for Council to provide conditions that prevent any negative impacts to adjacent communities can be minimized, or the ability to deny a special use permit request if the application request is found non-compliant to elements of the small area plan, etc.

- ii) HW Districts along 5th Street Extended: While the Comprehensive Plan does not include a more detailed small area plan for the 5th Street Extended area, the description provided within the Comprehensive Plan states there will be “increased commercial activity” near the city/county edge. The description also states this area is desired for walkable, bikeable, and transit-supported development.

Because of the future desire for this area to identify urban design opportunities that allow for more walkable, bikeable and transit-oriented development, staff believes allowing restaurants with drive-through windows by-right would prevent such opportunities. However, staff recognizes that this is one of the three corridors total in the City identified as a Highway Corridor that carries higher volumes of vehicular traffic, and, therefore, would be appropriate to house a more auto-oriented use. The special use permit process allows for a higher level of review, requires compliance with the Comprehensive Plan, discretion for adding conditions that minimize negative impacts, and allows for the ability to deny the use request altogether. Because of this, staff believes that allowing this use by special use permit would either ensure compliance with the Comprehensive Plan goals for this area OR allow the ability for the request to be denied if compliance is not met. Allowing the more auto-oriented use via special use permit also recognizes that this area does carry more vehicular traffic and is one of three areas called out by the City as a Highway Corridor.

- iii) Monticello Avenue: The third area of the City zoned HW District is near the southeastern city/county edge and includes a portion of Monticello Avenue (Route 20) that runs through the city/county edge. This area is not called out as a small area in the 2013 Comprehensive Plan. In addition to Monticello Avenue, this area includes streets such as Linden Avenue, Monticello Road, Keystone and Mountain View Street. This area contains a mixture of uses that include residential uses (condominiums, townhomes, single-family residential homes) and commercial uses (gas station, Moose’s By The Creek restaurant, Albemarle Heating & Air, Jaunt, a private tree business, roofing business, and more). Because of this area’s proximity to Route 20 and I 64, staff sees this area as being appropriate for potentially housing a restaurant with a drive-through window; however, staff believes allowing this use by special use permit is vital in protecting the existing residential uses of the area because there are pockets within the overall area that are predominately residential and would not be appropriate unless it was shown by the applicant that conditions would adequately mitigate potential adverse impacts.

Economic Sustainability Chapter

The Comprehensive Plan Economic Sustainability Chapter lists goals that include but are not limited to: work strategically to continue to develop and implement land use policies and regulations that ensure the availability of sites for businesses to locate and expand as well as generate successful businesses.

Economic Sustainability Staff Analysis: Staff believes the amendment is consistent with goals prescribed in the Economic Sustainability Chapter of the Comprehensive Plan as this amendment would open up the opportunity for a use to available locations in the HW District in the zoning district that staff believes is most appropriate to house this type of commercial use.

Streets That Work

The Streets That Work Plan was adopted by City Council on September 6, 2016 as an amendment to the City's Comprehensive Plan. The Streets That Work Plan includes design guidelines that provide guidance for all elements of the public right-of-way and include design recommendations specific to the street types given for the City's framework streets. For example, in the *Mixed Use A Street Typology* (both Emmet St N of 250 Bypass and 5th Street Extended classified as Mixed Use A) prioritize bicycle facilities, >7' sidewalks and 3'-6' curbside buffers.

Streets That Work Plan also identifies that Charlottesville's principal arterial roadways carry a disproportionate amount of the traffic in and through the city, whereas 74% of roads in Charlottesville have an average annual daily traffic (AADT) count below 1,000, which is relatively low. The roads that include the highest traffic volumes are shown below in Table 1 of this report, taken from Chapter 3 of the Streets That Work Plan. Please note all three of the HW District corridors are along roads with the highest traffic volumes in the City and the 29 N/Seminole Trail corridor (250 Bypass to North City Limits) is the highest with 60,000 AADT (2014).

TABLE 1: AVERAGE ANNUAL DAILY TRAFFIC ON CHARLOTTESVILLE'S MAJOR ROADS¹

Road Name	Segment	Number of Through Travel Lanes	AADT VDOT, 2012	AADT VDOT 2014 ⁸
29 N/Seminole Trail	250 Bypass to North City Limits	6	59,000	60,000
250 Bypass	Hydraulic Road to Dairy Road	4	42,000	37,000
29 N/Emmet Street	Barracks Road to 250 Bypass	4	31,000	29,000
Preston Avenue	Grady Avenue to Market Street	4	21,000	20,000
Ridge Street	Dice Street to Main Street	2	22,000	20,000
E High Street	Gillespie Avenue to 250 Bypass	2	19,000	18,000
5th Street	South City Limits to Cherry Avenue	4	18,000	17,000
Monticello Avenue	South City Limits to Meridian Avenue	2	15,000	14,000
Avon Street/9 th Street NE	Monticello Avenue to High Street	2-4	14,000	13,000
W Main Street	Jefferson Park Avenue to McIntire Road	2	13,000	12,000

¹City of Charlottesville. *Streets That Work Plan*. Adopted September 2016.
 < <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services/streets-that-work/streets-that-work-plan>>

Streets That Work Staff Analysis: Staff believes the proposed amendment is consistent with the Streets That Work Plan because of the following:

- The proposed amendment would allow for a use that is more auto-oriented in three areas that are identified as carrying the highest traffic volumes throughout the City. By allowing this use in the higher volume areas of the City, staff believes there is opportunity to localize the use in the appropriate areas in the City while protecting other areas in the City with less intensive commercial uses.
- Since Streets That Work was adopted in September 2016, there have been many developers who have incorporated the recommendations in STW that are given for the street type their project fronts on. Staff has found that in cases where there is a higher level of review on such projects (e.g. Entrance Corridor, Special Use Permit), the developer is more likely to comply with the recommended guidelines found in Streets That Work. In some cases, there are conditions included as part of the higher level of review that requires the developer to comply with certain guidelines found within STW. A few examples of recent projects that have been approved or are in review that include street elements that follow the design parameters found in STW are:
 - the CVS at Barracks and Emmet (required Entrance Corridor review; site plan **approved/under construction**)
 - Zaxby's restaurant located at 1248 Emmet St (required Special Use Permit for restaurant drive-through window; **approved/ construction complete**).
 - Hillsdale Place (1801 Hydraulic Rd) (required Entrance Corridor Review; site plan still **in review**) **Note: Developer showing 10' multiuse trails and 5' curbside buffers along Hydraulic and Seminole Trail– this was also vetted through TJPDC as this review ran while Hydraulic-29 Small Area Plan was being developed*

Staff brings up the above mentioned examples to show that there have been successes in implementing Streets That Work in part to the higher level of reviews in place for certain development projects. Staff believes the proposed amendment is consistent with Streets That Work Plan as it would allow the use by special use permit, allowing for the higher level of review and required compliance with the Comprehensive Plan, which includes Streets That Work.

2. Whether the proposed amendment will further the purposes of this chapter and the general welfare of the entire community;

The purpose of the Highway Corridor Mixed Use District is expressed in Sec. 34-541 as “to facilitate development of a commercial nature that is **more auto oriented than the mixed use and neighborhood commercial corridors. Development in these areas has been traditionally auto driven and the regulations established by this ordinance continue that trend. This district provides for intense commercial development with very limited residential use. It is intended for the areas where the most intense commercial development in Charlottesville occurs.**

Staff Analysis: The purposes of the chapter would be furthered by the amendment. An approved amendment would not only encourage economic development but also better align the district with its intent, where it is stated that this district is “traditionally auto driven” and

is intended for the “most intense commercial development in Charlottesville.” Staff believes that by focusing this auto-oriented use to the City’s high volume corridors, this could help relieve pressure from other zoning districts throughout the City that are intended for mixed use and pedestrian centered development patterns (e.g. the Urban Corridor (URB) Mixed Use District).

In addition, by permitting the use through a special use permit, adjacent properties and neighborhoods can be protected while having their character and stability enhanced. In allowing the uses by special use permit, neighborhood participation in the development process is also encouraged through a public hearing.

3. Whether there is a need and justification for the change;

Staff believes there is a justification for the change because the zoning text amendment, if approved, would be allowing an auto-oriented use by special use permit in areas in the City that experience the highest volumes of traffic and where the zoning district’s intent expressly states these areas are traditionally auto-driven. As stated before, by allowing this type of use in this zoning district, this could help relieve pressure from other zoning districts that are intended for a variety of uses that are more pedestrian focused and less intensive.

4. When pertaining to a change in the zoning district classification of property, the effect of the proposed change, if any, on the property itself, on surrounding property, and on public services and facilities.

This zoning text amendment does not include a change in the zoning district classification of any particular property. The zoning text amendment proposes to allow for a use by special use permit throughout the entirety of the HW District.

Staff believes that allowing a restaurant with a drive-through window by special use permit in the HW District ensures a built-in review process that’s aim is to protect adjacent properties from potential negative impacts; and, furthermore, provide a way to deny such request if, in the end, a specific location is not appropriate.

Public Comment

No public comment has been received at this time.

Recommendation

As noted in the Streets That Work Plan, the three areas zoned as Highway Corridor (see Map 1) are roads that carry the highest traffic volumes within the City (See Table 1). One corridor in particular, 29 N/Seminole Trail, carries the highest volumes in the City, totaling at 60,000 average annual daily traffic (AADT) according to VDOT in 2014. The three areas zoned as Highway Corridor run up against both the northern city limits (Emmet St north of 250 Bypass to

northern city limits) and the southern city limits (5th St Extended and Monticello Avenue) where much of the traffic is using these roads as a means to enter the City from the County and beyond. Given that these areas not only carry the most traffic but the zoning district specifically calls for these areas to house more auto oriented uses than other mixed use and neighborhood corridors and limit the most intense commercial development in Charlottesville within this district, staff finds the proposed amendment to be appropriate.

Staff recognizes, as mentioned in detail above, that two out of the three areas zoned for Highway Corridor are within the City's identified small areas as called out in the 2013 Comprehensive Plan: i) Emmet St north of the 250 Bypass and ii) 5th Street Extended. Within the Emmet St north of the 250 Bypass area, the Hydraulic-29 Small Area Plan has just been adopted in May 2018 by City Council. The Hydraulic-29 Small Area Plan provides more detailed guidance that speaks to future roadways, multimodal connections, open spaces and land use recommendations. The majority of the areas zoned HW District are called out in the Hydraulic-29 Small Area Plan for land use that is mixed use commercial or mixed use residential. Both the Emmet St north of the 250 Bypass (which includes the adopted Hydraulic-29 Small Area Plan) and the 5th Street Extended areas speak to future urban design opportunities, multimodal connections, and more walkable, bikeable and transit oriented development. While staff would not feel comfortable allowing the proposed use by-right as there are many factors to consider other than land use compatibility within these identified areas (e.g. compliance with multimodal connections, open spaces, future roadways, etc.), staff believes allowing this use by special use permit allows for a higher level of review, requires compliance with the Comprehensive Plan (which includes not only the small area plan guidance but the above mentioned Streets That Work Design Guidelines as well), discretion for adding conditions that minimize negative impacts, and allows for the ability to deny the use request altogether.

Allowing the more auto-oriented use *via special use permit* retains the ability (through the higher level of review) to shape a drive-through development that is more context sensitive, follows the urban design guidelines and goals given in the Comprehensive Plan, including those more detailed guidelines prescribed in the small area plans, and provide for a more desirable commercial use in the City. In addition, the proposed amendment acknowledges that these areas carry the highest volumes of vehicular traffic in the City and are called out to house the most intense commercial development in order to limit it elsewhere throughout the City.

Staff recommends that the zoning text amendment be approved by the Planning Commission and City Council as written to allow restaurants with drive-through windows by special use permit in the HW – Highway Corridor zone.

Appropriate Motions

1. "I move to recommend approval of this zoning text amendment to amend and re-ordain Section 34-796 of the Code of The City of Charlottesville, 1990, as amended, to allow restaurants with drive-through windows by special use permit in the Highway Corridor on the basis that the changes would serve the interests of (*public necessity, convenience, general public welfare and/or good zoning practice*)."

2. “I move to recommend approval of this zoning text amendment to amend and re-ordain Section 34-796 of the Code of The City of Charlottesville, 1990, as amended, to allow restaurants with drive-through windows by special use permit in the Highway Corridor on the basis that the changes would serve the interests of (*public necessity, convenience, general public welfare and/or good zoning practice*) with the following additions and modifications:”
 - a.
 - b.

3. “I move to recommend denial of this zoning text amendment to amend and re-ordain Section 34-796 of the Code of The City of Charlottesville, 1990, as amended, to allow restaurants with drive-through windows by special use permit in the Highway Corridor on the basis that the changes would not serve the interests of (*public necessity, convenience, general public welfare and/or good zoning practice*) for the following reasons:”
 - a.
 - b.

Attachments

- 1) ZTA Initiation April 16, 2018
- 2) Hydraulic-29 Small Area Plan Resolution, Adopted May 8, 2018
- 3) Hydraulic-29 Small Area Plan Final Report, Adopted May 8, 2018
Follow link: <https://bit.ly/2JmlUZF>
- 4) §15.2-2223.1 – Urban Development Area (UDA) State Code

RESOLUTION
Initiating Zoning Text Amendments
for the Highway Corridor (HW) Mixed Use District

WHEREAS, the intent of the Highway Corridor District is to facilitate development of a commercial nature that is more auto oriented than other mixed use corridor zoning designations; and

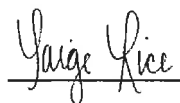
WHEREAS, restaurants with drive-through windows are allowed by special use permit in the Cherry Avenue (CH), High Street (HS), Urban Corridor (URB), and the Central City (CC) mixed use districts; and

WHEREAS, a joint City Council/Planning Commission work session on the Hydraulic Small Area Plan has considered the need for such use (drive-through restaurant) to be allowed by special use permit in the Highway Corridor mixed use district; and

WHEREAS, Council finds that the public necessity, convenience, general welfare or good zoning practice requires consideration of a zoning text amendment to the Highway Corridor (HW) Mixed Use District designation to allow restaurants with drive-through windows to be allowed by special use permit;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlottesville that the zoning text amendment referenced above within this Resolution is hereby initiated by City Council, and the Planning Commission is directed to review the proposed text amendment, conduct a joint public hearing with City Council to allow affected persons to be heard on these matters, and then report its findings and recommendations back to City Council within 100 days of the date of this Resolution.

Approved by Council
April 16, 2018



Clerk of Council


RESOLUTION
APPROVING AN AMENMENT TO THE CITY COMPREHENSIVE PLAN BY
INCORPORATION THE 2018 HYDRAULIC-29 SMALL AREA PLAN, AND
DESIGNATING THE AREA AS AN URBAN DEVELOPMENT AREA (UDA)

WHEREAS, on April 10, 2018, after notice was given as required by law, the Charlottesville Planning Commission and Charlottesville City Council conducted a public hearing on a proposed amendment to the 2013 Comprehensive Plan for the City of Charlottesville, to include the contents of the proposed 2018 Hydraulic-29 Small Area Plan, and designation of the area as an Urban Development Area (UDA); and

WHEREAS, on April 10, 2018, the Planning Commission adopted a resolution recommending approval by the City Council of the Comprehensive Plan Amendment, and certifying a copy of the Comprehensive Plan Amendment to Council for its consideration; now, therefore,

BE IT RESOLVED that, upon consideration of the Comprehensive Plan Amendment, the City Council hereby adopts the 2018 Hydraulic-29 Small Area Plan as an amendment to the City's Comprehensive Plan. The City Council further designates the area as an Urban Development Area (UDA) in accordance with the Code of Virginia, section §15.2-223.1. The Neighborhood Development Services staff shall post on the City's website notice of Council's adoption of this Update, along with a copy of the approval Update.

Approved by Council
May 7, 2018



Clerk of Council

§ 15.2-2223.1. Comprehensive plan to include urban development areas

A. For purposes of this section:

"Commercial" means property devoted to usual and customary business purposes for the sale of goods and services and includes, but is not limited to, retail operations, hotels, motels and offices. "Commercial" does not include residential dwelling units, including apartments and condominiums, or agricultural or forestal production, or manufacturing, processing, assembling, storing, warehousing, or distributing.

"Commission" means the Commission on Local Government.

"Developable acreage," solely for the purposes of calculating density within the urban development area, means land that is not included in (i) existing parks, rights-of-way of arterial and collector streets, railways, and public utilities and (ii) other existing public lands and facilities.

"Population growth" means the difference in population from the next-to-latest to the latest decennial census year, based on population reported by the United States Bureau of the Census. In computing its population growth, a locality may exclude the inmate population of any new or expanded correctional facility that opened within the time period between the two censuses.

"Urban development area" means an area designated by a locality that is (i) appropriate for higher density development due to its proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and (ii) to the extent feasible, to be used for redevelopment or infill development.

B. Any locality may amend its comprehensive plan to incorporate one or more urban development areas.

1. Urban development areas are areas that may be appropriate for development at a density on the developable acreage of at least four single-family residences, six townhouses, or 12 apartments, condominium units, or cooperative units per acre, and an authorized floor area ratio of at least 0.4 per acre for commercial development, any proportional combination thereof, or any other combination or arrangement that is adopted by a locality in meeting the intent of this section.

2. The urban development areas designated by a locality may be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of at least 10 but not more than 20 years, which may include phasing of development within the urban development areas. Where an urban development area in a county with the urban county executive form of government includes planned or existing rail transit, the planning horizon may be for an ensuing period of at least 10 but not more than 40 years. Future residential and commercial growth shall be based on official estimates of either the Weldon Cooper Center for Public Service of the University of Virginia, the Virginia Employment Commission, the United States Bureau of the Census, or other official government projections required for federal transportation planning

purposes.

3. The boundaries and size of each urban development area shall be reexamined and, if necessary, revised every five years in conjunction with the review of the comprehensive plan and in accordance with the most recent available population growth estimates and projections.

4. The boundaries of each urban development area shall be identified in the locality's comprehensive plan and shall be shown on future land use maps contained in such comprehensive plan.

5. Urban development areas, if designated, shall incorporate principles of traditional neighborhood design, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) mixed-use neighborhoods, including mixed housing types, with affordable housing to meet the projected family income distributions of future residential growth, (vi) reduction of front and side yard building setbacks, and (vii) reduction of subdivision street widths and turning radii at subdivision street intersections.

6. The comprehensive plan shall describe any financial and other incentives for development in the urban development areas.

7. A portion of one or more urban development areas may be designated as a receiving area for any transfer of development rights program established by the locality.

C. No locality that has amended its comprehensive plan in accordance with this section shall limit or prohibit development pursuant to existing zoning or shall refuse to consider any application for rezoning based solely on the fact that the property is located outside the urban development area.

D. Localities shall consult with adjacent localities, as well as the relevant planning district commission and metropolitan planning organization, in establishing the appropriate size and location of urban development areas to promote orderly and efficient development of their region.

E. Any county that amends its comprehensive plan pursuant to subsection B may designate one or more urban development areas in any incorporated town within such county, if the council of the town has also amended its comprehensive plan to designate the same areas as urban development areas with at least the same density designated by the county. However, if a town has established an urban development area within its corporate boundaries, the county within which the town is located shall not include the town's projected population and commercial growth when initially determining or reexamining the size and boundary of any other urban development area within the county.

F. To the extent possible, federal, state and local transportation, housing, water and sewer facility, economic development, and other public infrastructure funding for new and expanded facilities shall be directed to designated urban development areas or to such similar areas that accommodate growth in a manner consistent with this section.

2007, c. [896](#);2009, c. [327](#);2010, cc. [465](#), [528](#);2011, c. [561](#);2012, cc. [192](#), [518](#), [805](#), [836](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section

may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 2, 2018
Action Required:	Vote to Recommend Approval or Denial of Zoning Text Amendment
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson; Mike Stoneking (PLACE); Missy Creasy
Title:	Zoning Text Amendments Proposing Clarifications of Provisions within Article VI of the Zoning Ordinance (Mixed Use Districts)

Background:

In November 2016, the City Attorney’s Office provided a Legal Audit of the Zoning Ordinance. Among the deficiencies noted within the Legal Audit is the fact that there are several mixed-use corridor districts in which bonus building height, or bonus residential density, is offered, but there is no guidance within the ordinance as to how “significant” each mixed use component (i.e., residential and non-residential) needs to be in order to qualify for the bonus. This deficiency was discussed by the City Attorney’s office staff and the Planning Commission in a series of workshop meetings in 2017. In the opinion of the City Attorney’s office, this situation represents poor zoning practice.

In the summer of 2017 the Planning Commission adopted a resolution authorizing the City Attorney’s office to proceed to draft several categories of zoning text amendments deemed most urgent. This particular issue was among those which were considered most urgent. After that resolution was adopted, however, PLACE organized a working group of local design professionals, attorneys and developers who requested an opportunity to brainstorm a different way to achieve the goals of the bonus provisions. The efforts of the working group were in earnest; however, they ultimately did not agree on an approach that would solve the significant loopholes that exist in the current ordinance.

In March 2018 Mike Stoneking, on behalf of PLACE, transmitted a Memo to the City Attorney’s Office (copied to Lisa Green, PC Chair, Kathy Galvin, City Councilor, and to PLACE members) requesting that staff request the Planning Commission to consider the recommended short-term fix proposed by the City Attorney’s Office. At its meeting on June 12, 2018, the Planning Commission voted to recommend approval of the proposed ordinance by City Council.

Discussion:

Attached is a proposed ordinance, seeking to include within the introductory, “general” provisions of Chapter 34, Article VI (Mixed Use Corridor Districts) a section addressing how to interpret the term “mixed use” for purposes of determining eligibility for bonus height or density provisions.

The proposed amendments specify a minimum percentage (12.5%) of GFA that must be met by each category of use (residential, and non-residential) within a mixed-use building, development or project—IF there is otherwise no percentage specified within the regulations for a particular mixed use zoning district.

The attached ordinance also proposes two housekeeping changes to the existing ordinance:

- (1) Moving provisions that reference the “purpose and intent” of a specific mixed use zoning district into the Division that contains the regulations for that district, AND moving the provisions which establish “primary” and “linking” streets for a specific district (and which related specifically to the setbacks for those districts) into the Division for that specific zoning district.
- (2) Making the list of additional regulations at the end of “Division 1” more accessible to read and understand.

Community Engagement:

As noted, the provisions of the November 2016 Legal Audit were discussed at a series of public meetings and workshops of the Planning Commission throughout 2017. Also, the provisions of this proposed text amendment were the subject of a public hearing at the Planning Commission meeting on June 12, 2018, and City Council will also conduct a public hearing on this proposed ordinance at their meeting on July 2, 2018.

Budgetary Impact:

None

Recommendation:

The City Attorney’s Office recommends approval of the proposed zoning text amendments.

Attachments:

Proposed Ordinance
PLACE Correspondence

**AN ORDINANCE AMENDING AND REORDAINING
ARTICLE VI (MIXED USE CORRIDOR DISTRICTS)
OF CHAPTER 34 (ZONING) RELATING TO
BONUS HEIGHT OR DENSITY IN MIXED USE DISTRICTS**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia, that:

1. Sections 34-540, 34-541, and 34-542 of Article VI of Chapter 34 of the Charlottesville City Code (1990), as amended, are hereby amended and reordained; and
2. Sections 34-564, 34-584, 34-604, 34-624, 34-644, 34-663, 34-682, 34-702, 34-740A, 34-748, 34-760A, 34-767A, 34-775, and 34-783 are hereby added to the Charlottesville City Code (1990), as amended, all as follows:

**ARTICLE VI. MIXED USE CORRIDOR DISTRICTS
DIVISION 1. GENERAL**

Sec. 34-540. Purpose of article.

- (a) The purpose of this article is to encourage mixed-use development within appropriate areas of the city, located along or adjacent to streets or highways found by the city council to be significant routes of access to the city. Objectives of these districts include the following: (i) creation of a dynamic street life, encouraging the placement of buildings close to property lines, and/or heavily landscaped yard areas, in order to engage pedestrians and de-emphasize parking facilities; (ii) encouragement of mixed-use development; (iii) facilitation of development that demonstrates an appropriateness of scale; (iv) encouragement of development that offers creative minimization of the impact of parking facilities and vehicular traffic; (v) encouragement of landscaped spaces available for pedestrian use (e.g., pocket parks, tree-lined streets and walkways); (vi) encouragement of alternate forms of transportation (e.g., pedestrian travel, bicycle paths, use of public transit); (vii) encouragement of neighborhood-enhancing economic activity; (viii) encouragement of home ownership; and (ix) encouragement of neighborhood participation in the development process.
- (b) The districts in which such development is encouraged fall, generally, into two (2) categories:
 - (1) *Commercial/residential mixed use districts.* With little remaining vacant land, the city's continued vitality depends upon its ability to attract and facilitate a harmonious mixture of commercial and residential development and redevelopment. Generally, each of these zoning districts seeks to encourage a mixture of residential, commercial and cultural uses within a single building, or within multiple related buildings and structures. Of particular importance is the creation of corridors to serve as vital centers for economic growth and development while at the same time encouraging development that is friendly to pedestrians and alternate modes of transportation characteristic of an urban setting.

- (2) *Commercial/industrial mixed use districts.* Each of these zoning districts seeks to provide an area in which important industrial uses, of limited scale, may be located, but in which opportunities for incorporation of related or harmonious commercial uses can be facilitated.

Sec. 34-541. Application of the term “mixed-use” for determining bonus height or density.

Where a provision of any mixed use zoning district included within this article allows additional height for a “mixed use building”, or allows additional residential density for a “mixed use building”, “mixed use development” or “mixed use project”, the following requirements must be met for such building, development or project to become entitled to the additional height or density (unless different percentages are specified within the division containing the regulations for the applicable district):

(1) where a provision allows additional height for a “mixed use building”, residential and non-residential uses shall each occupy at least 12.5% of the gross floor area (GFA) of the mixed use building;

(2) where a provision allows additional residential density for a “mixed use building”, residential and non-residential uses shall each occupy at least 12.5% of the gross floor area (GFA) of the mixed use building; and

(3) where a provision allows for additional residential density for a “mixed use development” or “mixed use project”, residential and non-residential uses shall each occupy at least 12.5% of the total gross floor area (GFA) of the buildings within the proposed development or project.

Sec. 34-541. – Mixed use districts— Intent and description.

~~(1) *Downtown Corridor.* The intent of the Downtown Corridor district is to provide for a mixture of commercial and residential uses, and encourage such development by right, according to standards that will ensure harmony with the existing commercial environment in the city's downtown area. Ground floor uses facing on primary streets should be commercial in nature. The area within this zoning district is the entertainment and employment center of the community and the regulations set forth within this district are designed to provide appropriate and convenient housing for persons who wish to reside in proximity to those activities. Within the Downtown Corridor district the following streets shall have the designations indicated:~~

~~*Primary streets:* All streets are primary.~~

~~*Linking streets:* None.~~

~~(2) *Downtown Extended Corridor.* Historically, the areas within the Downtown Extended district contained manufacturing uses dependent upon convenient access to railroad transportation. In more recent times, use patterns within this area are similar to those within the Downtown district. The intent of this district is to encourage an inter-related mixture of high-density residential and commercial uses harmonious with the downtown business environment, within developments that facilitate convenient pedestrian and other links to the Downtown area. Within the Downtown Extended district, the following streets shall have the designations indicated:~~

~~*Primary streets:* Garrett Street, Monticello Avenue, 6th Street, Market Street, Carlton Road and 10th Street, N.E.~~

~~Linking streets: Avon Street, Dice Street, 1st Street, 4th Street, Gleason Street, Goodman Street, Oak Street, and Ware Street.~~

- (3) ~~North Downtown Corridor.~~ The Downtown North Corridor district is the historic center of the City of Charlottesville, and contains many historic structures. In more recent years this area has also developed as the heart of the city's legal community, including court buildings and related law and professional offices, and commercial and retail uses supporting those services. Within this area, residential uses have been established both in single use and in mixed use structures. Many former single family dwellings have been converted to office use. The regulations for this district are intended to continue and protect the nature and scale of these existing patterns of development. Within the Downtown North Corridor district, the following streets shall have the designations indicated:

~~Primary streets: 8th Street, N.E. (between High Street and Jefferson Street), 5th Street, N.E., 1st Street, 4th Street, N.E., High Street, Jefferson Street, Market Street, 9th Street, 9th Street, N.E., 2nd Street, N.E., 2nd Street, N.W., 7th Street, N.E., 6th Street, N.E., and 3rd Street, N.E.~~

~~Linking streets: East Jefferson Street (east of 10th Street, N.E.), 8th Street, 11th Street, N.E., Lexington Street, Locust Street, Maple Street, Sycamore Street.~~

- (4) ~~West Main West Corridor.~~ The land use and lots on West Main Street west of the railroad bridge are generally larger in size than those east of the bridge. The West Main West district ("WMW") is established to provide the opportunity for large scale redevelopment that may alter established patterns of commercial and residential development along West Main Street and that will respect the character of neighborhoods in close proximity. Within this district, the purpose of zoning regulations is to facilitate redevelopment while at the same time creating a walkable, mixed use "main street" setting that encourages vibrant pedestrian activity. The following streets shall have the designations indicated:

a. ~~Where only one (1) street abuts a lot, that street is considered the primary street.~~

b. ~~Where more than one (1) street abuts a lot, the following are considered primary streets:~~

~~(i) West Main Street;~~

~~(ii) Roosevelt Brown Boulevard;~~

~~(iii) Jefferson Park Avenue;~~

~~(iv) Wertland Street;~~

~~(v) 10th Street NW.~~

c. ~~Where a lot with multiple street frontages on the primary streets listed in subsection b. exists, each frontage is considered a primary street.~~

d. ~~Where a lot has multiple street frontages, streets not listed in subsection b. above will be considered a linking street.~~

- (5) ~~West Main East Corridor.~~ The land use and lots on West Main Street east of the railroad bridge are smaller than those west of the bridge, containing existing buildings (including historic buildings) that have been renovated to accommodate modern commercial uses.

Established buildings are located in close proximity to the street on which they front. Within this district, the purpose of zoning regulations is to encourage a continuation of the established pattern and scale of commercial uses, and to encourage an extension of a walkable, mixed use "main street" setting eastward from the railroad bridge, continuing into the area where the West Main Street Corridor transitions into the city's downtown. Within the West Main Street East district ("WME"), the following streets shall have the designations indicated:

- a. ~~Where only one (1) street abuts a lot, that street is considered the primary street.~~
- b. ~~Where more than one (1) street abuts a lot, the following are considered primary streets:~~
 - ~~(i) West Main Street;~~
 - ~~(ii) Commerce Street;~~
 - ~~(iii) South Street;~~
 - ~~(iv) Ridge Street;~~
 - ~~(v) 7th Street SW;~~
 - ~~(vi) 4th Street NW.~~
- c. ~~Where a lot with multiple street frontages on the primary streets listed in subsection b. exists, each frontage is considered a primary street.~~
- d. ~~Where a lot has multiple street frontages, streets not listed in subsection b. above will be considered a linking street.~~

~~(6) *Cherry Avenue Corridor.* This zoning classification establishes a district designed to encourage conservation of land resources, minimize automobile travel, and promote employment and retail centers in proximity to residential uses. It permits increased development on busier streets without fostering a strip commercial appearance. It is anticipated that development will occur in a pattern consisting of ground floor commercial uses, with offices and residential uses located on upper floors. This district is intended to promote pedestrian oriented development, with buildings located close to and oriented towards the sidewalk areas along primary street frontages. Within the Cherry Avenue Corridor district the following streets shall have the designations indicated:~~

~~*Primary streets:* Cherry Avenue, 9th/10th Connector.~~

~~*Linking streets:* 4th St., 5th St., Delevan St., Estes St., Grove St., King St., Nalle St., 9th St., 6th St., 6½ St., 7th St.~~

~~(7) *High Street Corridor.* The areas included within this district represent a section of High Street that has historically developed around medical offices and support services, as well as neighborhood oriented service businesses such as auto repair shops and restaurants. The regulations within this district encourage a continuation of the scale and existing character of uses established within this district, and are intended to facilitate infill development of similar uses. Within the High Street corridor district the following streets shall have the designations indicated:~~

~~*Primary streets:* East High Street and Meade Avenue.~~

~~Linking streets: 11th Street, Gillespie Avenue, Grace Street, Grove Avenue, Hazel Street, Moore's Street, Orange Street, Riverdale Drive, Stewart Street, Sycamore Street, Ward Avenue, and Willow Street.~~

- ~~(8) —Neighborhood Commercial Corridor district. The intent of the Neighborhood Commercial Corridor district is to establish a zoning classification for the Fontaine and Belmont commercial areas that recognize their compact nature, their pedestrian orientation, and the small neighborhood nature of the businesses. This zoning district recognizes the areas as small town center type commercial areas and provides for the ability to develop on small lots with minimal parking dependent upon pedestrian access. The regulations recognize the character of the existing area and respect that they are neighborhood commercial districts located within established residential neighborhoods. Within this district the following streets shall have the designations indicated:~~

~~Primary streets: Bainbridge St., Carlton Ave., Douglas Ave., Fontaine Ave., Garden St., Goodman St., Hinton Ave., Holly St., Lewis St., Maury Ave., Monticello Rd., and Walnut St.~~

~~Linking streets: None.~~

- ~~(9) Highway Corridor district. The intent of the Highway Corridor district is to facilitate development of a commercial nature that is more auto oriented than the mixed use and neighborhood commercial corridors. Development in these areas has been traditionally auto driven and the regulations established by this ordinance continue that trend. This district provides for intense commercial development with very limited residential use. It is intended for the areas where the most intense commercial development in Charlottesville occurs. Within this district the following streets shall have the designations indicated:~~

~~Primary streets: Bent Creek Road, Carlton Rd., Emmet Street, 5th Street, Harris Road, Hydraulic Road, Monticello Ave., and Seminole Trail.~~

~~Linking streets: Angus Road, East View Street, Holiday Drive, India Road, Keystone Place, Knoll Street, Linden Avenue, Line Drive, Michie Drive, Mountain View Street, Seminole Circle, and Zan Road.~~

- ~~(10) Urban Corridor. The intent of the Urban Corridor district is to continue the close in urban commercial activity that has been the traditional development patterns in these areas. Development in this district is both pedestrian and auto oriented, but is evolving to more of a pedestrian center development pattern. The regulations provide for both a mixture of uses or single use commercial activities. It encourages parking located behind the structure and development of a scale and character that is respectful to the neighborhoods and university uses adjacent. Within this district the following streets shall have the designations indicated:~~

~~Primary streets: Barracks Road, Emmet Street, and Ivy Road.~~

~~Linking streets: Arlington Boulevard, Cedars Court, Copeley Drive, Copeley Road, Earhart Street, Massie Road, Meadowbrook Road, Millmont Street and Morton Drive.~~

- ~~(11) Central City Corridor. The intent of the Central City Corridor district is to facilitate the continued development and redevelopment of the quality medium scale commercial and mixed use projects currently found in those areas. The district allows single use~~

development, but encourages mixed use projects. The regulations are designed to encourage use of and emphasize proximity to natural features or important view sheds of natural features. Development allowed is of a scale and character that is appropriate given the established development that surrounds the district. Within the Central Corridor district the following streets shall have the designations indicated:

Primary streets: East High Street, Harris Street, Long Street, Preston Avenue, Rose Hill Drive, 10th Street, Preston Avenue, and River Road.

Linking streets: Albemarle Street, Booker Street, Caroline Avenue, Dale Avenue, 8th Street, Forest Street, 9th Street, and West Street.

- (12) *Water Street Corridor District.* The intent of the Water Street Corridor District is to provide for a mix of commercial, retail and entertainment uses in a way that complements and supports the Downtown Pedestrian Mall area. As the Downtown Pedestrian Mall develops, the natural spillover will be to this area. While not a complete pedestrian zone, it contains many characteristics thereof. Development therefore should blend the pedestrian scale with a slightly more automobile-oriented feel to achieve this supportive mixed-use environment.

Primary streets: All.

Linking streets: None.

- (13) *South Street Corridor District.* Adjacent to the downtown area and wedged against the railroad tracks is a small grouping of large historic homes, many of which have been converted to offices and/or apartments. In order to preserve the rich character and style of these few remaining structures from another era, the South Street Corridor District has been created. This district is intended to preserve the historic pedestrian scale, recognizing the importance of this area to the history of the downtown area.

Primary streets: South Street.

Linking streets: None.

- (14) *Corner District.* The Corner District is established to provide low intensity missed use development to primarily serve the area surrounding the University of Virginia. It encourages development at a scale that respects the established character of the historic commercial area adjacent to the central grounds of the University. Within the district two- and three-story buildings front the streets establishing a pedestrian scale for retail and commercial uses.

Primary streets: University Avenue, West Main Street, Wertland Street, Elliewood Avenue 13th Street and 14th Street.

Linking streets: Chancellor Street, 12th Street, 12½ Street and 13th Street.

Sec. 34-542. Additional regulations.

Other zoning regulations may also apply to uses, construction and development within the zoning districts included within this article. Without limitation, such other zoning regulations

include the following ~~For additional regulations governing use and development of land within a mixed-use corridor zoning district, refer to:~~

- (1) Article VIII, sections 34-850, et seq. (Landscaping and Other Developments Subject to Site Plans)
- (2) Article IX (General Regulations), including, without limitation:
 - (i) Off-Street Parking (sections 34-970, et seq.),
 - (ii) Outdoor Lighting (sections 34-1000, et seq.),
 - (iii) Sign Regulations (sections 34-1020, et seq.),
 - (iv) Buildings and Structures (sections 34-1100, et seq.),
 - (v) Lots and Parcels (sections 34-1120, et seq.),
 - (vi) Approvals of residential dwellings (section 34-1125), and
 - (vii) Mixed-use density calculation and required notations on subdivision plats, site plans, building permits and certificates of occupancy for a mixed use development (section 34-1126).

Secs. 34-543—34-555. Reserved.

DIVISION 2. REGULATIONS—DOWNTOWN CORRIDOR (“D”)

...

Sec. 34-564. Intent and Description.

Downtown Corridor. The intent of the Downtown Corridor district is to provide for a mixture of commercial and residential uses, and encourage such development by right, according to standards that will ensure harmony with the existing commercial environment in the city's downtown area. Ground-floor uses facing on primary streets should be commercial in nature. The area within this zoning district is the entertainment and employment center of the community and the regulations set forth within this district are designed to provide appropriate and convenient housing for persons who wish to reside in proximity to those activities. Within the Downtown Corridor district the following streets shall have the designations indicated:

Primary streets: All streets are primary.

Linking streets: None.

DIVISION 3. REGULATIONS—DOWNTOWN EXTENDED CORRIDOR (“DE”)

...

Sec. 34-584. Intent and Description.

Downtown Extended Corridor. Historically, the areas within the Downtown Extended district contained manufacturing uses dependent upon convenient access to railroad transportation. In more recent times, use patterns within this area are similar to those within the Downtown district.

The intent of this district is to encourage an inter-related mixture of high-density residential and commercial uses harmonious with the downtown business environment, within developments that facilitate convenient pedestrian and other links to the Downtown area. Within the Downtown Extended district, the following streets shall have the designations indicated:

Primary streets: Garrett Street, Monticello Avenue, 6th Street, Market Street, Carlton Road and 10th Street, N.E.

Linking streets: Avon Street, Dice Street, 1st Street, 4th Street, Gleason Street, Goodman Street, Oak Street, and Ware Street.

DIVISION 4. REGULATIONS—DOWNTOWN NORTH CORRIDOR (“DN”)

...

Sec. 34-604. Intent and Description.

Downtown North Corridor. The Downtown North Corridor district is the historic center of the City of Charlottesville, and contains many historic structures. In more recent years this area has also developed as the heart of the city's legal community, including court buildings and related law and professional offices, and commercial and retail uses supporting those services. Within this area, residential uses have been established both in single-use and in mixed-use structures. Many former single-family dwellings have been converted to office use. The regulations for this district are intended to continue and protect the nature and scale of these existing patterns of development. Within the Downtown North Corridor district, the following streets shall have the designations indicated:

Primary streets: 8th Street, N.E. (between High Street and Jefferson Street), 5th Street, N.E., 1st Street, 4th Street, N.E., High Street, Jefferson Street, Market Street, 9th Street, 9th Street, N.E., 2nd Street, N.E., 2nd Street, N.W., 7th Street, N.E., 6th Street, N.E., and 3rd Street, N.E.

Linking streets: East Jefferson Street (east of 10th Street, N.E.), 8th Street, 11th Street, N.E., Lexington Street, Locust Street, Maple Street, Sycamore Street.

DIVISION 5. REGULATIONS—WEST MAIN STREET WEST CORRIDOR (“WMW”)

...

Sec. 34-624. Intent and Description.

West Main West Corridor. The land use and lots on West Main Street west of the railroad bridge are generally larger in size than those east of the bridge. The West Main West district (“WMW”) is established to provide the opportunity for large-scale redevelopment that may alter established patterns of commercial and residential development along West Main Street and that will respect the character of neighborhoods in close proximity. Within this district, the purpose of zoning regulations is to facilitate redevelopment while at the same time creating a walkable, mixed use “main street” setting that encourages vibrant pedestrian activity. The following streets shall have the designations indicated:

a. Where only one (1) street abuts a lot, that street is considered the primary street.

b. Where more than one (1) street abuts a lot, the following are considered primary streets:

(i) West Main Street;

(ii) Roosevelt Brown Boulevard;

(iii) Jefferson Park Avenue;

(iv) Wertland Street;

(v) 10th Street NW.

c. Where a lot with multiple street frontages on the primary streets listed in subsection b. exists, each frontage is considered a primary street.

d. Where a lot has multiple street frontages, streets not listed in subsection b. above will be considered a linking street.

DIVISION 6. REGULATIONS—WEST MAIN STREET EAST CORRIDOR (“WME”)

...

Sec. 34-644. Intent and Description.

West Main East Corridor. The land use and lots on West Main Street east of the railroad bridge are smaller than those west of the bridge, containing existing buildings (including historic buildings) that have been renovated to accommodate modern commercial uses. Established buildings are located in close proximity to the street on which they front. Within this district, the purpose of zoning regulations is to encourage a continuation of the established pattern and scale of commercial uses, and to encourage an extension of a walkable, mixed use "main street" setting eastward from the railroad bridge, continuing into the area where the West Main Street Corridor transitions into the city's downtown. Within the West Main Street East district ("WME"), the following streets shall have the designations indicated:

a. Where only one (1) street abuts a lot, that street is considered the primary street.

b. Where more than one (1) street abuts a lot, the following are considered primary streets:

(i) West Main Street;

(ii) Commerce Street;

(iii) South Street;

(iv) Ridge Street;

(v) 7th Street SW;

(vi) 4th Street NW.

c. Where a lot with multiple street frontages on the primary streets listed in subsection b. exists, each frontage is considered a primary street.

d. Where a lot has multiple street frontages, streets not listed in subsection b. above will be considered a linking street.

DIVISION 7. REGULATIONS—CHERRY AVENUE CORRIDOR (“CH”)

...

Sec. 34-663. Intent and Description.

Cherry Avenue Corridor. This zoning classification establishes a district designed to encourage conservation of land resources, minimize automobile travel, and promote employment and retail centers in proximity to residential uses. It permits increased development on busier streets without fostering a strip-commercial appearance. It is anticipated that development will occur in a pattern consisting of ground-floor commercial uses, with offices and residential uses located on upper floors. This district is intended to promote pedestrian-oriented development, with buildings located close to and oriented towards the sidewalk areas along primary street frontages. Within the Cherry Avenue Corridor district the following streets shall have the designations indicated:

Primary streets: Cherry Avenue, 9th/10th Connector.

Linking streets: 4th St., 5th St., Delevan St., Estes St., Grove St., King St., Nalle St., 9th St., 6th St., 6½ St., 7th St.

DIVISION 8. REGULATIONS—HIGH STREET CORRIDOR (“HS”)

...

Sec. 34-682. Intent and Description.

High Street Corridor. The areas included within this district represent a section of High Street that has historically developed around medical offices and support services, as well as neighborhood-oriented service businesses such as auto repair shops and restaurants. The regulations within this district encourage a continuation of the scale and existing character of uses established within this district, and are intended to facilitate infill development of similar uses. Within the High Street corridor district the following streets shall have the designations indicated:

Primary streets: East High Street and Meade Avenue.

Linking streets: 11th Street, Gillespie Avenue, Grace Street, Grove Avenue, Hazel Street, Moore's Street, Orange Street, Riverdale Drive, Stewart Street, Sycamore Street, Ward Avenue, and Willow Street.

DIVISION 9. REGULATIONS—NEIGHBORHOOD COMMERCIAL CORRIDOR (“NCC”)

...

Sec. 34-702. Intent and Description.

Neighborhood Commercial Corridor district. The intent of the Neighborhood Commercial Corridor district is to establish a zoning classification for the Fontaine and Belmont commercial

areas that recognize their compact nature, their pedestrian orientation, and the small neighborhood nature of the businesses. This zoning district recognizes the areas as small town center type commercial areas and provides for the ability to develop on small lots with minimal parking dependent upon pedestrian access. The regulations recognize the character of the existing area and respect that they are neighborhood commercial districts located within established residential neighborhoods. Within this district the following streets shall have the designations indicated:

Primary streets: Bainbridge St., Carlton Ave., Douglas Ave., Fontaine Ave., Garden St., Goodman St., Hinton Ave., Holly St., Lewis St., Maury Ave., Monticello Rd., and Walnut St.

Linking streets: None.

DIVISION 10. REGULATIONS—HIGHWAY CORRIDOR (“HW”)

...

Sec. 34-740A. Intent and Description.

Highway Corridor district. The intent of the Highway Corridor district is to facilitate development of a commercial nature that is more auto oriented than the mixed use and neighborhood commercial corridors. Development in these areas has been traditionally auto driven and the regulations established by this ordinance continue that trend. This district provides for intense commercial development with very limited residential use. It is intended for the areas where the most intense commercial development in Charlottesville occurs. Within this district the following streets shall have the designations indicated:

Primary streets: Bent Creek Road, Carlton Rd., Emmet Street, 5th Street, Harris Road, Hydraulic Road, Monticello Ave., and Seminole Trail.

Linking streets: Angus Road, East View Street, Holiday Drive, India Road, Keystone Place, Knoll Street, Linden Avenue, Line Drive, Michie Drive, Mountain View Street, Seminole Circle, and Zan Road.

DIVISION 11. REGULATIONS—WATER STREET DISTRICT (“WSD”)

...

Sec. 34-748. Intent and Description.

Water Street Corridor district. The intent of the Water Street Corridor District is to provide for a mix of commercial, retail and entertainment uses in a way that complements and supports the Downtown Pedestrian Mall area. As the Downtown Pedestrian Mall develops, the natural spillover will be to this area. While not a complete pedestrian zone, it contains many characteristics thereof. Development therefore should blend the pedestrian scale with a slightly more automobile oriented feel to achieve this supportive mixed-use environment.

Primary streets: All.

Linking streets: None.

DIVISION 12. REGULATIONS—URBAN CORRIDOR (“URB”)

...

Sec. 34-760A. Intent and Description.

Urban Corridor. The intent of the Urban Corridor district is to continue the close-in urban commercial activity that has been the traditional development patterns in these areas. Development in this district is both pedestrian and auto oriented, but is evolving to more of a pedestrian center development pattern. The regulations provide for both a mixture of uses or single use commercial activities. It encourages parking located behind the structure and development of a scale and character that is respectful to the neighborhoods and university uses adjacent. Within this district the following streets shall have the designations indicated:

Primary streets: Barracks Road, Emmet Street, and Ivy Road.

Linking streets: Arlington Boulevard, Cedars Court, Copeley Drive, Copeley Road, Earhart Street, Massie Road, Meadowbrook Road, Millmont Street and Morton Drive.

DIVISION 13. REGULATIONS—SOUTH STREET DISTRICT (“SS”)

...

Sec. 34-767A. Intent and Description.

South Street Corridor District. Adjacent to the downtown area and wedged against the railroad tracks is a small grouping of large historic homes, many of which have been converted to offices and/or apartments. In order to preserve the rich character and style of these few remaining structures from another era, the South Street Corridor District has been created. This district is intended to preserve the historic pedestrian scale, recognizing the importance of this area to the history of the downtown area.

Primary streets: South Street.

Linking streets: None.

DIVISION 14. REGULATIONS—CORNER DISTRICT (“CD”)

...

Sec. 34-775. Intent and Description.

Corner District. The Corner District is established to provide low-intensity missed-use development to primarily serve the area surrounding the University of Virginia. It encourages development at a scale that respects the established character of the historic commercial area adjacent to the central grounds of the University. Within the district two- and three-story buildings front the streets establishing a pedestrian scale for retail and commercial uses.

Primary streets: University Avenue, West Main Street, Wertland Street, Elliewood Avenue 13th Street and 14th Street.

Linking streets: Chancellor Street, 12th Street, 12½ Street and 13th Street.

DIVISION 15. REGULATIONS—CENTRAL CITY CORRIDOR (“CC”)

...

Sec. 34-783. Intent and Description.

Central City Corridor. The intent of the Central City Corridor district is to facilitate the continued development and redevelopment of the quality medium scale commercial and mixed use projects currently found in those areas. The district allows single use development, but encourages mixed use projects. The regulations are designed to encourage use of and emphasize proximity to natural features or important view sheds of natural features. Development allowed is of a scale and character that is appropriate given the established development that surrounds the district. Within the Central Corridor district the following streets shall have the designations indicated:

Primary streets: East High Street, Harris Street, Long Street, Preston Avenue, Rose Hill Drive, 10th Street, Preston Avenue, and River Road.

Linking streets: Albemarle Street, Booker Street, Caroline Avenue, Dale Avenue, 8th Street, Forest Street, 9th Street, and West Street.

Memorandum
March 9, 2018

From: PLACE Design Task Force
To:
Lisa Robertson.

cc: Lisa Green, Chair Planning Commission, Kathy Galvin, City Council, PLACE

Re: Mixed Use.

Dear Lisa,

At the February 8th meeting of PLACE we discussed your proposed provisional zoning ordinance text amendment as shown below: (full copy of your memo under separate cover in email).

Proposal 1 for Consideration:

Where a provision of any mixed use zoning district included in this article allows additional height for a mixed-use building, or allows additional residential density for a mixed use building, development, or project, the following requirements must be met for the building, development, or project to be entitled to the additional height or density:

- Where the provision allows for additional height for a mixed-use building, residential and non-residential uses shall each occupy at least 12.5% of the Gross Floor Area of the proposed building.
- Where the provision allows for additional residential density for a mixed-use building, residential and non-residential uses shall each occupy at least 12.5% of the Gross Floor Area within the proposed building unless different percentages are specified within the division containing the regulations for the applicable mixed-use zoning district.
- Where the provision allows for additional residential density for a mixed-use development or project, residential and non-residential uses shall each occupy at least 12.5% of total Gross Floor Area of the buildings comprising the proposed development or project unless different percentages are specified within the division containing the regulations for the applicable mixed-use zoning district.

There were only five PLACE members in attendance but we unanimously agreed to support this provisional change. Final change is subject to a completed Zoning Audit.

Supporting discussion:

- This was a targeted, surgical change pointed at only two areas in the mixed -use section where no definition existed, The Corner having no standard for the density bonus and Downtown Extended having no standard for the height bonus.
- No other districts or definitions were changed.
- 12.5% is a precedent already- in the Cherry Street district.

Dissenting discussion:

- Perhaps 12.5 % is too low as 25% is used elsewhere in the ordinance.
- A proper mix might be best determined by measuring the benefit to the community and by looking through a cultural lens rather than a profit model.

Additional discussion was held regarding part two of your memo:

Proposal 2 for Consideration (“Companion” Amendments)

Within mixed-use buildings, developments, and projects, off-street parking facilities must meet the following requirements **along streets designated as “framework streets”** in the Streets That Work element of the Comprehensive Plan:

- Within structures containing parking: (i) any floor at street-level [of a framework street] shall be devoted to a permitted use other than parking; or (ii) any parking use at the street level [of a framework street] shall be concealed from view from the [framework] street using liner retail, residential, commercial, or office space.
- Entrances to surface parking lots and structured parking shall not be located along the framework street, but shall be located along non-framework streets or alleys.
- Surface parking lots must be located behind buildings and screened from the framework street with landscape elements [*or could specify S-2 or S-3 screen here*].

PLACE could not reach consensus to support this in its current form.

Supporting discussion:

- Relegating parking and parking structure entrances away from framework streets is a good idea and should be fleshed out on a neighborhood-specific basis.
- Concealing surface lots and parking structures has merit.

Dissenting Discussion:

- This might be a strong companion piece to the mixed-use definition might be better situated as a spate piece.
- More specific study is required to be sure the above listed notions are practicable throughout.

Submitted:

Mike Stoneking March 9, 2018

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Required:	Adoption of Ordinance (1 st reading)
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson, Chief Deputy City Attorney
Title:	Amendments to Ordinance Regulating Use of Explosives for Excavation and Demolition Activities

Background:

On July 2, 2018 City Council enacted a new Ordinance, requiring a public hearing and permit application process to be complied with by developers and utilities proposing to use explosives to conduct excavation or demolition activities. Any permit issued (or denied) by City Council following review of application materials, and review of information received in connection with a public hearing, would be IN ADDITION TO any permit required by the Statewide Fire Prevention Code. A developer could not commence blasting activities without first obtaining BOTH permits.

Pursuant to Virginia Code §15.2-1113, a municipality is expressly authorized to regulate the use of any explosive substance. Further, pursuant to the Virginia Code §27-97 local governments are empowered to adopt regulations more restrictive, and more extensive in scope, than those in the Statewide Fire Prevention Code.

Discussion:

Attached are amendments to the Ordinance approved by City Council on July 2, 2018. The amendments have been requested by individuals who previously appeared before Council and spoke at the public hearing on adoption of the original ordinance.

On the proposal that Council be authorized to consider imposition of a Surety Bond, to be administered by City staff: the City Attorney's Office does not recommend this and has not been able to verify that the typical surety bond mechanism would be available in these circumstances. (Typically, a surety bond obtained by the City from a private party is offered to guarantee the performance of a contractual obligation owed directly to the City (such as construction of a street to City design standards); if that contractual obligation is not satisfied, the purpose of the bond is to provide a source of funds for completion of the obligation. In most of these circumstances, there will be no direct contractual obligation between the blasting contractor and the City. Insurance policies, on the other hand, are designed to cover damages that a business owner/

contractor may cause to individuals or property harmed by its activities (public liability insurance; commercial general liability insurance). The City Attorney's Office has included a reference to a surety bond; however, it will be incumbent upon staff in a given situation, to verify whether or not a surety bond is feasible, and to identify an "escrow agent" or other administrator to notify the surety of claims being made against the bond.

Alignment with Council Vision Areas and Strategic Plan:

N/A

Community Engagement:

A public hearing was conducted by City Council prior to adopting the initial Ordinance on July 2, 2018.

Budgetary Impact:

This Ordinance will have no substantial impact on the City's general fund.

Recommendation:

Staff recommends that City Council adopt the amendments to the ordinance.

Alternatives:

Council may decide to waive the second reading of this Ordinance proposing amendments. If Council does not waive the second reading, the amendments cannot be approved until Council's second meeting in August.

Attachments:

Proposed Ordinance

**AN ORDINANCE
AMENDING AND REORDAINING SECTION 5-208 OF CHAPTER 5 (Building
Regulations; Property Maintenance) OF THE CODE OF THE CITY OF
CHARLOTTESVILLE, 1990, AS AMENDED, REGULATING
THE USE OF EXPLOSIVES FOR AND IN CONNECTION WITH EXCAVATION OF
LAND OR DEMOLITION OF BUILDINGS OR STRUCTURES**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that Section 5-208 of Article VI of Chapter 5 of the Charlottesville City Code, 1990, as amended, is hereby amended and reordained as follows:

CHAPTER 5. BUILDING REGULATIONS; PROPERTY MAINTENANCE

ARTICLE VI. REGULATION OF EXPLOSIVES

Sec. 5-203. Purpose And Objectives.

The purpose of this division is to enumerate the policies of the City of Charlottesville for use in the review of applications seeking approval for the use of explosives for and in connection with construction and demolition activities within the City limits.

Further, this chapter is enacted for the protection of persons and property owners from damage to life or property as a result of excavation or demolition by blasting, and to protect the health, safety and general welfare of the community by preventing the interruption of essential services resulting from the destruction of, disruption of, or damage to underground utility lines during excavation or demolition by blasting.

Sec. 5-204. Scope.

The scope of this chapter is intended to encompass:

- (a) all utility operators serving any portion of or maintaining any utility line within the City of Charlottesville, Virginia; and
- (b) all landowners and contractors engaged by landowners or developers to perform demolition or excavation on any private property, public rights of way, or public easements within the City of Charlottesville.

Sec. 5-205. Definitions.

As used in this chapter:

- (a) "Blasting" means the use of an explosive for or in connection with excavation or demolition.
- (b) "Contractor" means any person, including a subcontractor, who contracts with an operator or the owner of public or private property, for the purpose of engaging in excavation, demolition, or blasting.
- (c) "Demolition" means the razing of any structure above the existing grade, or the demolition

of any structure below the existing grade.

(d) “Emergency” means any condition which may cause an interruption of essential services resulting from the destruction of, disruption of, or damage to underground utility lines. “Emergency” is classified as less severe than “hazardous”.

(e) “Excavate” or “excavation” means any operation in which earth, rock, or other material in the grounds is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, auguring, tunneling, scraping, cable or pipe plowing and riving, wrecking, razing, rendering, moving, or removing any structure or mass of material, but not including the tilling of the soil for agricultural purposes.

(f) “Hazardous” means any condition which may cause an interruption of essential services and, in addition, may result in death or injury to persons or property due to destruction of, disruption of, or damage to underground utility lines. “Hazardous” is classified as more severe than “emergency”.

(g) “Mechanized equipment” means powered equipment used to excavate, and includes equipment used for plowing-in or pulling-in cable or pipe.

(h) “Notify, notice or notification” means the completed delivery of information to the person to be notified and the receipt of same by such person to be notified within the time limits prescribed in this chapter.

(i) “Notification center” means any organization among whose purpose is the dissemination to one or more operators of the notification of planned construction activities in a special area. For the purpose of this chapter, Miss Utility and/or the current holder of the one-call State Certification Center, shall be considered to be the notification center.

(j) “Operator” means any person who furnishes or transports any of the following materials or services by means of a utility line:

- (1) Flammable, natural, toxic or corrosive gas;
- (2) Petroleum, petroleum products and hazardous liquids;
- (3) Electricity;
- (4) Sanitary sewer;
- (5) Communications;
- (6) Water; or
- (7) Cable television.

(k) “Person” means any individual, partnership, association, corporation, state, subdivision or instrumentality of a state, or the legal representative thereof.

(l) “Property owner” means any person who owns fee title to or leases a given area of land.

(m) “Surface replacement” means the routine maintenance or limited replacement of sidewalks, curbs and gutters, and similar structures, including patch-type road paving and street repairs.

(n) “Utility line” means any underground conduit and its related facilities including pipe or cable, by which an operator furnishes or transports material or services.

(o) “White lining” means the designation of the proposed limits of excavation or demolition with white paint by the contractor.

(p) “Working days” means Monday through Friday, excluding, however, any public and legal holidays.

Sec. 5-206. Applicability Of Existing Ordinances And Other Laws.

No provision of this chapter shall exempt any person from complying with the requirements and provisions of any existing laws, regulations, or ordinances, including, without limitation: Chapters 12 (Fire prevention), 29 (Subdivisions), 31 (Utilities) and 34 (Zoning) of the Code of the City of Charlottesville; the statutes and regulations of the Commonwealth of Virginia, the State Corporation Commission of Virginia, the Virginia Board of Housing and Community Development/ Virginia Fire Services Board; and the statutes and regulations of the Office of Pipeline Safety of the U.S. Department of Transportation, or the U.S. Department of Labor. The duties and requirements imposed by all such other existing laws, regulations and ordinances shall be in addition to the duties and requirements imposed by the provisions of this division.

Sec. 5-207. Administration And Enforcement.

This chapter shall be administered and enforced by the City Manager, or his or her designee, who may cause to be performed such tasks and inspections as he or she may deem reasonably necessary.

Sec. 5-208. Demolition Or Excavation By Blasting; Prior Notice And Permit.

(a) No landowner shall make or commence any blasting, nor shall any landowner allow any blasting to be made or commenced on his or her land, without first notifying the Office of the City Manager and obtaining a permit therefor.

(b) Every notice served by any person to the Office of the City Manager shall contain or be accompanied by the following information and materials:

(1) The blasting contractor's name and telephone number and verification of the contractor's authority to conduct business and blasting activities within the Commonwealth of Virginia (State Corporation Commission Registration number; Virginia contractor's license number, or evidence of a license recognized by the applicable Virginia licensing board);

(2) The name of the landowner on whose land the proposed blasting is being done;

(3) The date and approximate time blasting is to commence;

(4) An engineering plan depicting and describing:

(i) the nature and extent of the excavation or demolition by blasting (“work”) including:

a. a map of the blast area and a map of the potential impact area,

b. the type of explosives proposed, including specifying whether modular, composite, or other

c. a description of the ignition system planned specifying whether use of electric wire, wireless, shock tube, polytechnic compound, or other is to be used and a description of the safety plan for the selected method

- d. a listing of the number and frequency of the proposed detonations including a copy of the blast hole placement plan
- e. an analysis of the estimated off-gassing and the proposed means of mitigating them
- f. a description of the weight/volume of the blasting medium per incidence (per shot)
- g. an analysis of the estimated shock release direction and magnitude
- h. an analysis of the estimated shock waves with sound decibels tabulated by distance
- i. a copy of the blast design calculations for overburden depth, blast time spacing, stemming material/method analysis, and load factor/charge weight calculations
- j. a copy of the complete and certified “Blast Containment Plan” and the projectile avoidance plan (outlining the use of mats, curtains, or other)
- k. a copy of the “Blast Area Security Plan” including a listing of the planned number and locations of the ground and air blast monitoring stations and the Fire and Emergency Services participation plan
- l. a copy of any field test detonations performed in similar substrate conditions

(ii) the location and approximate depth of proposed work;

(iii) the topographic and geological conditions that will be disturbed by such excavation or demolition, based upon topographical and geological survey data, respectively, including, without limitation:

- a. rock type
- b. rock depth and graining
- c. subsurface water presence
- d. rock and overburden profile

(iv) an engineering professional’s opinion rendered in writing by an engineer certified to practice within the Commonwealth of Virginia, as to whether, based on topographical and geological survey data, and the nature and extent of the excavation or demolition by blasting, any emergency or hazardous conditions could occur as a result of blasting. If so, the engineering plan shall also include a mitigation plan designed to eliminate the risk of potential emergency or hazardous condition(s), or to reduce such risk to an acceptable level;

(v) a physical survey identifying the location of all utility lines owned or used by any operator within and adjacent to the parcel of land on which the blasting will occur, along with: the name and contact information for each operator; a detailed plan describing how the utility lines will be protected during the blasting; and evidence of written confirmation from each operator that the operator is aware of the blasting application to be presented to city council and has been given an opportunity to request a pre-blast survey of utility structures.

(vi) a pre-blast survey log containing a list of structures and utility lines eligible for pre-blast survey and list of those that have already received pre-blast surveys;

(vii) Applicant’s certification that it will pay all costs for pre-blasting seismic surveys of potentially affected properties, to be performed by a contractor engaged by the applicant

but selected from a list of qualified firms provided by the City, with data from such surveys to be provided to property owners.

(viii) written consent forms executed by the owner of every building, structure or utility line within one hundred (100) feet of any proposed blast, where each such written consent form, on its face, contains a certification of the blasting contractor that all blasting will conform to limits recommended by the U.S. Bureau of Mines Table of Scaled Distances.

(ix) proof of insurance from the applicant as well as the blasting contractor, ~~minimum shall not be less than~~ (for each): General Aggregate, \$5,000,000.00; ~~\$2,500,000.00~~ ~~\$2,000,000.00~~, for each occurrence; \$1,000,000.00 automobile liability; Workers Compensation, as required by Virginia law.

(x) a list of the most recent five sites at which the blasting contractor has performed excavations or demolitions by blasting.

(5) The blasting contractor's field representative or field contact, and field telephone number;

(6) An affidavit by the applicant, averring that written notice of the application has been given by U.S. mail, first class, postage pre-paid, to every landowner within five hundred (500) feet of the parcel of land on which the proposed blasting would occur, with a copy of the written notice and a list of all such landowners and their addresses attached to such affidavit. The list of landowners shall be obtained by the applicant from the online tax assessor's records of the City of Charlottesville. The written notice shall include the following information:

(i) Notice of intent to conduct blasting, estimated duration of blasting activities;

(ii) Name of the contractor who will perform the blasting activities

(iii) Name and contact information for the blasting contractor's liability insurance provider;

(iv) Name of an independent firm approved by the Fire Marshal, which shall conduct seismographic monitoring of all blast(s) during blasting activities and which shall make reports thereof directly to the Fire Marshall, at the cost and expense of the person who has made application to the City under this division; and written evidence that seismology equipment to be used has been calibrated and certified within 1 year of proposed blasting operation.

(7) Any special remarks or information the applicant deems relevant to the considerations referenced in paragraph (c), following below.

(8) An application fee in the amount of five hundred dollars (\$500.00).

(c) Upon receipt of the notice and application materials referenced in paragraphs (a) and (b) preceding above, the Office of the city Manager shall schedule a public hearing to be conducted at a regular meeting of the City Council, within sixty (60) days of the date the application is submitted. Notice of the date, time and location of the public hearing shall be given by newspaper advertisement, and by U.S. mail, first-class, postage pre-paid, to every landowner

within five hundred (500) feet of the parcel of land on which the proposed blasting would occur. Following conclusion of the public hearing, the city council will consider:

- (i) whether or not the proposed blasting presents an unreasonable danger to the life or health of any individual(s), or an unreasonable interference with the use or occupancy of adjacent property;
- (ii) whether or not, as a result of information received by council in connection with the public hearing, the blasting plan adequately takes into account unique topographical and geological conditions present in the vicinity of the proposed blasting;
- (iii) whether or not the insurance requirements referenced within this ordinance adequately cover the risks reasonably to be anticipated from the blasting;
- (iv) such other factors as the city council deems relevant for the protection of the welfare and safety of individuals and property within the vicinity of the blasting.

City Council may either approve or deny a permit for the proposed blasting. Any permit may be subject to suitable regulations and safeguards approved by city council as conditions of a permit. The City does not, by granting any permit or by identifying regulations or safeguards for blasting activities, assume any responsibility or liability for such blasting activity.

(d) If City Council approves a blasting permit, it may condition the permit upon proof of higher insurance coverage than the minimums specified within this ordinance, upon finding that specific blasting site conditions indicate that a higher minimum is necessary to ensure sufficient payment of all damages to persons or property which may arise from or be caused by the conduct of such blasting. In addition, upon a recommendation of the City Manager's office that a surety bond can be obtained to guarantee the proper performance of blasting activities, in addition to liability insurance coverage, and that an appropriate arrangement can be made by which individuals who have damage claims can present those to the surety for payment, then City Council may also require a surety bond in such amount as it deems reasonable and appropriate.

(e) No permit approved by City Council under paragraph (c), above, shall authorize any blasting, unless and until a separate permit has been obtained from the Fire Code Official, in accordance with applicable requirements of the Virginia Statewide Fire Prevention Code, and related codes and standards.

(f) The following documents shall be available for inspection at the site of any blasting, at all times during any blasting: (i) a copy of the approved permit from the Fire Code Official, (ii) a copy of the approved site plan or subdivision plan for a development, and (iii) a copy of the engineering plan required by paragraph (b)(4), above.

(g) In the event of ongoing excavation or demolition by blasting, notification by a contractor as provided in subsection (b) hereof shall be required every ten working days and so long as said excavation or demolition is continuous all markings of underground utility lines remain clearly visible, as provided in Section 1024.10(b).

Sec. 5-209. Contractor Requirements; Demolition Or Excavation.

(a) Any contractor performing excavation or demolition by blasting shall have an approved site

plan and/or subdivision plan, as applicable, or an engineering plan, indicating the plan view of all known existing and proposed utility lines at the site during such excavation or demolition.

(b) Any contractor performing excavation or demolition by blasting shall designate the proposed limits of such excavation or demolition: (i) within a survey submitted with the application (depicting the boundaries of the parcel(s) of land on which the excavation or blasting is proposed to occur, and containing a topographical survey of those parcel(s); and (ii) if a permit is approved, by white lining the affected area at the site.

(c) The act of obtaining information or any approval as required by this division shall not excuse any person making any excavation or demolition by blasting from doing so in a careful and prudent manner nor shall it excuse such person from liability for any damage resulting from his or her negligence.

Sec. 5-210. Contractors; Hazardous And Emergency Procedures.

(a) Communication between the job site and the contractor's base office shall be maintained at all times through the use of a two-way radio system or some other means approved by the City's Fire Code Official.

(b) When any person damages a utility line or the protective coating thereof, or accidentally exposes or severs a utility line during excavation or demolition by blasting, an emergency condition shall be deemed to exist and the operator of such utility line shall be directly notified at that time.

(c) When any gas or flammable liquid utility line is severed, or damaged to the extent that there is escapement of its contents, a hazardous condition shall be deemed to exist and the operator of such utility line and the City's Emergency Communications Center (Dial "911") shall be immediately notified.

(d) Contractors shall display in plain sight on the instrument or control panel or the dashboard of all trucks and mechanized equipment operated by them, the current telephone number which is to be utilized to serve hazardous-condition notice as required by subsection (c) hereof.

(e) The telephone numbers to be utilized in serving emergency-condition notice as required in subsection (b) hereof shall be located on the approved site plan, subdivision plan or engineering plan which is to be at the site during excavation or demolition as required by Sec. 5-209(a).

(f) It shall be unlawful to backfill around a damaged utility line, as described in subsection (b) or (c) hereof, until the operator of said utility line has been notified of such incident and has repaired the damage and/or has given clearance in writing to backfill.

(g) During an emergency or hazardous condition, it shall be lawful to excavate, without using blasting, if notification as required in subsection (b) or (c) hereof is given as soon as reasonably possible.

Sec. 5-211. Operators; Hazardous And Emergency Procedures.

(a) All operators shall make available on a twenty-four hour basis adequate emergency response crew(s), including answering personnel, radio dispatchers, appliance servicemen and utility repair crews capable of performing all work tasks necessary to cope with emergency or

hazardous situations. The number of emergency work crews shall be determined by the operator based upon reasonable response time (one hour estimated time or arrival to the emergency scene during other than work hours) and the number and frequency of experiences recorded.

(b) All reports of hazardous and/or emergency conditions received by operators shall be reported immediately to the City's Emergency Communications Center (Dial "911") and all reports of hazardous conditions received by the Emergency Communications Center, or the Charlottesville Fire Department shall be reported immediately to the appropriate operator.

(c) The decision to shut off a utility line during a hazardous condition shall be jointly made by the Incident Commander, Charlottesville Fire Department and an authorized representative for the utility operator concerned. If time and circumstances require, the decision may be made by either the Incident Commander or the authorized utility operator representative, with immediate notification provided to the other and to the Emergency Communication Center and Charlottesville Fire Department.

(d) Utility services interrupted under hazardous conditions, as referenced in subsection (d) hereof, may be restored by the authorized utility operator only after investigation and verification of safety by the Charlottesville Fire Department.

Sec. 5-212. Penalties.

(a) Any person who violates any provision of this division, by doing a prohibited act, failing to perform a required act, or failing to perform permitted acts in the prescribed manner, shall be deemed guilty of a Class 1 misdemeanor. Each day a violation of this chapter shall continue shall constitute a separate offense.

(b) If, during excavation or demolition by blasting, an underground utility line is damaged by any person who has failed to comply with any provision of this chapter, any permit(s) acquired through the City of Charlottesville to perform work related to said excavation or demolition (including permits for building, grading, blasting, plumbing, electrical and/or mechanical work) shall be revoked and any fees paid to the City for said permit(s) shall be forfeited. In order to continue work, a new application for permit(s) must be filed; plans of the proposed excavation or demolition by blasting must be re-examined; the location of all existing utility lines must be verified in writing by each operator having facilities in the area of proposed excavation or demolition; and new fees must be paid.

(c) Any person who is convicted two or more times within a twelve-month period of violating any provision of this division which resulted in damage to any existing utility line, shall be subject to suspension or revocation of any license(s) or permit(s) issued by the City of Charlottesville to perform related work for a period not to exceed twelve-months. Furthermore, no subsequent permits or licenses to perform said related work shall be issued to such convicted persons during that suspension or revocation period.

(d) The operator of a utility line shall notify the City of Charlottesville of any action by a contractor that is deemed to be a violation of this chapter and that may result in a hazardous condition. Upon such notification, a representative of the City shall promptly inspect the work site and, if deemed necessary, require the contractor to stop work until compliance with this chapter is verified by the City or operator of the line.

Secs. 5-213 - 5-218. Reserved.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Requested:	Public Hearing and Ordinance (1 st reading)
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Hugh Blake, Asst. City Engineer
Title:	Release of Stormwater Management Agreement across 550 Water Street

Background:

550 Water Street, LLC (“Owner”) is the owner of property on Water Street, designated as Parcel 162.3 on City Tax Map 53. Currently, construction of a new mixed-use building is underway on the property. In 2009, the previous owner of the property signed and recorded a Stormwater Management/BMP Facilities Agreement in favor of the City of Charlottesville as part of their approved site plan for the property. In 2010 the property was conveyed to 550 Water Street, LLC and a new site plan was submitted and approved in 2016.

Discussion:

The SWM Agreement is similar to an easement in that it gives the City the right to inspect and approve the stormwater facilities constructed under the easement and puts the burden of future maintenance on the property owner. The Owner recorded a new Stormwater Management/BMP Facilities Agreement dated July 11, 2016 in favor of the City in order to provide for stormwater detention on the property at a different location as part of the new site plan.

The Owner has requested the release of the 2009 SWM Agreement since it is duplicative and no longer needed for the current development. Since it is an agreement recorded in the Clerk’s Office, a formal Deed of Release, signed by the Mayor, is required.

Hugh Blake, P.E., NDS Civil Engineer, has reviewed the request and has confirmed that the 2016 SWM Agreement is compliant with the current site plan.

Community Engagement:

A public hearing is being held to give the public an opportunity to comment on the release of the 2009 SWM Agreement. Notice of the public hearing was advertised as required under Virginia Code Sec. 15.2-1800(B)

Budgetary Impact:

None.

Recommendation:

Staff recommends approval of the Ordinance.

Attachments:

Ordinance
2009 Stormwater Management/BMP Facilities Agreement
Proposed Deed of Release

**AN ORDINANCE
RELEASING THE 2009 STORMWATER MANAGEMENT/BMP FACILITIES
AGREEMENT ACROSS PROPERTY AT 550 WATER STREET**

WHEREAS, 550 Water Street, LLC owns the property at 550 Water Street (City Real Estate Tax Map Parcel 530162300), hereinafter the “Property”, and has asked the City to release the Stormwater Management/BMP Facilities Agreement (“SWM Agreement”) dated October 27, 2009, of record in the Charlottesville Circuit Court Clerk’s Office as Instrument 2009-5576; and

WHEREAS, the 2009 SWM Agreement was signed and recorded as part of a site plan for the Property approved in 2009, and since then the Property has been conveyed to the current owner and a new site plan of development was approved in 2016; and

WHEREAS, the stormwater detention facilities were relocated to a new location on the Property, and a Stormwater Management/BMP Facilities Agreement dated July 11, 2016 was signed and recorded by the current owner; and

WHEREAS, the City Engineering staff have no objection to the release of the 2009 SWM Agreement; now, therefore

BE IT ORDAINED that the Mayor is hereby authorized to sign a Deed of Release, in form approved by the City Attorney, to release the Stormwater Management/BMP Facilities Agreement dated October 27, 2009, of record in the aforesaid Clerk’s Office as Instrument 2009-5576.

Ref.: City Tax Map/Parcel No. 53-1623
Prepared by: Brian Haluska

2009 5576

**STORMWATER MANAGEMENT/BMP FACILITIES
MAINTENANCE AGREEMENT**

THIS AGREEMENT, made and entered into this 27th day of October, 2009, by and between [Insert Full Name of Property Owner(s)] Neal Sansovich of Sansovich Development LLC ("Landowner"), the GRANTOR, in favor of the City Council of the City of Charlottesville, Virginia, (hereinafter, "City"), whose address is c/o City Attorney, P.O. Box 911, Charlottesville, Virginia, 22902.

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property described on City of Charlottesville Tax Map 53 as Parcel 162.3, as recorded by deed in the land records of the City of Charlottesville, Virginia, in Deed Book 776 at Page 455, hereinafter called the "Property"; and

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision Plan known as 550 East Water St., [insert name of Plan/Development], as it may be revised from time to time hereafter ("Plan"), which Plan is expressly made a part hereof, as approved or to be approved by the City, provides for detention of stormwater within the confines of the property; and

WHEREAS, the parties hereto agree that the health, safety, and welfare of the residents of the City of Charlottesville, Virginia, require that on-site stormwater management/best management practices facilities ("SWM/BMP facilities") be constructed and maintained on the Property; and

WHEREAS, the City requires that the SWM/ BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including without limitation any homeowners' association;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The SWM/BMP facilities shall be constructed by the Landowner, its successors and assigns, including without limitation any homeowners' association (respectively, hereinafter "Landowner") in accordance with the plans, specifications and requirements identified in the Plan.

Ref.: City Tax Map/Parcel No. 53-162.3
Prepared by: Brian Haluoka

2. The Landowner shall maintain the SWM/BMP facilities in good working order at all times. This includes all pipes and channels built to convey stormwater to such facilities, as well as all structures, improvements, and vegetation provided to control the quantity and quality of stormwater. For the purposes of this agreement, "good working order" refers to a condition in which the SWM/BMP facilities are performing their design functions. In the event a maintenance schedule for the SWM/BMP facilities is outlined within the final approved Plan, the Landowner shall follow that schedule.

3. The Landowner shall inspect the SWM/BMP facilities annually and shall submit to the City an annual inspection report, using a form provided by the City. The purpose of the inspection is to assure that the SWM/BMP facilities are in good working order. The inspection shall cover the SWM/BMP facilities in their entirety, including, without limitation: berms, outlet structures, pond areas, access roads, etc. Deficiencies discovered during the Landowner's inspection shall be noted in the inspection report.

4. The Landowner hereby grants to the City, its authorized agents and employees, a right of entry upon the Property for the purpose of inspecting the SWM/BMP facilities whenever the City deems inspection to be necessary in order to review suspected or reported deficiencies and to respond to citizen complaints. Upon request, the City shall provide the Landowner copies of public records reflecting its inspection findings.

5. In the event the Landowner fails to maintain the SWM/BMP facilities in good working order, the City may enter upon the Property and take whatever steps it deems necessary to correct deficiencies and may charge the costs of such corrective action to the Landowner. It is expressly understood and agreed by the Landowner that the City is under no obligation to maintain or repair said facilities, routinely or otherwise, and in no event shall this Agreement be construed to impose any such obligation on the City. In the event the City performs work of any nature, or expends any funds or public resources in performance of said work (for labor, equipment, supplies, materials, etc.), the Landowner shall reimburse the City for the actual cost of such work or expenditure(s) within thirty (30) days of receipt of presentation of a demand therefor.

6. Landowner agrees to hold the City harmless from and against all liability, of any nature whatsoever, arising out of or in connection with (a) the construction and maintenance of the SWM/BMP facilities by Landowner, and (b) the failure of such SWM/BMP facilities to operate properly.

7. This Agreement shall be recorded among the land records of the City of Charlottesville, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, assigns, heirs and any other successors in interest, including any homeowners' association.

WITNESS the following signatures and seals:

Ref.: City Tax Map/Parcel No. 53-1C2.3
Prepared by: Brian Haluska

GRANTOR:

Sansovich Development, LLC

By: Neal Sansovich
Neal Sansovich

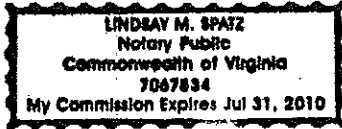
Title: owner

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville, to wit:

The foregoing Agreement was acknowledged before me this 27th day of October, 2009 by Neal Sansovich on behalf of the Grantor. Sansovich Development, LLC

Lindsay M. Spatz
NOTARY PUBLIC

My commission expires: 7/31/2010



ACKNOWLEDGED:

Brian J. Haluska
City Official With Authority to Approve
Subdivision/Site Plans

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville, to wit:

The foregoing Agreement was acknowledged before me this 15 day of December, 2009 by Brian Haluska, on behalf of the City of Charlottesville.

Sharon D. Patterson
NOTARY PUBLIC

My commission expires: 8/31/12



STATE TAX \$ _____ (099)
 CITY TAX \$ _____ (214)
 TRANS \$ _____ (212)
 TECH. FEE \$ 5.00 (108)
 CLERK'S FEE \$ 14.50 (301)
 VSLF \$ 1.50 (145)
 STATE FEE \$ _____ (036)
 SEC 58.1-801 \$ _____ (038)
 STATE TAX \$ _____ (220)
 LOCAL TAX \$ _____ (223)
 LOCAL TAX \$ _____ (223)
 TOTAL \$ 21.00

Admitted to Record in the Clerk's Office of the
 Circuit Court of the City of Charlottesville,
 Virginia, on the 29th day of Dec., 2009
 at 3:31 o'clock P M., and recorded
 Deed Book No. _____ Page _____
 The taxes imposed by §§ 58.1-801 and 58.1-
 802 of the Virginia Code have been paid.

Paul C. Gantt Clerk

Tax Map No. 530162300

PREPARED BY: *St. John, Bowling, Lawrence & Quagliana, LLP*
416 Park Street
Charlottesville, Virginia 22902

*This deed of release is exempt from taxes imposed by Va. Code Sec. 58.1-802
pursuant to Va. Code §58.1-811(C)(4)*

This **DEED OF RELEASE**, made this _____ day of _____, 2018, by and between the **CITY OF CHARLOTTESVILLE, VIRGINIA**, a municipal corporation and political subdivision of the Commonwealth of Virginia (“Grantor”), and **550 WATER STREET, LLC**, a Virginia limited liability company (“Grantee”), whose address is 195 Riverbend Drive, Suite 1, Charlottesville, VA 22911.

WITNESSETH:

WHEREAS, by Agreement dated October 27, 2009, recorded in the Clerk’s Office of the Circuit Court of the City of Charlottesville as Instrument No. 2009-5576, Sansovich Development, LLC, agreed to certain construction and maintenance responsibilities for storm water management detention facilities across the property at 550 Water Street. and said Agreement is no longer needed because the Grantee has relocated the storm water management facility on the property affected to a different location;

NOW THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby **RELEASE** and **ABANDON** the Storm Water Management/BMP Facilities Agreement dated October 27, 2009, from the Grantee to the Grantor, recorded in the aforesaid Clerk’s Office as Instrument No. 2009-5576.

IN WITNESS WHEREOF, the City of Charlottesville has caused this deed to be executed by its Mayor, pursuant to an ordinance approved by City Council on _____, 2018.

WITNESS the following signature and seal:

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____(SEAL)
Nikuyah Walker, Mayor

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Nikuyah Walker, Mayor, on behalf of the City of Charlottesville, Virginia.

Notary Public

My Commission Expires: _____
I.D. No. _____

This page intentionally left blank.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Requested:	Public Hearing/1 st Reading of Ordinance
Presenter:	Lisa A. Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa A. Robertson, Chief Deputy City Attorney Heather Newmyer, NDS, Planner
Title:	Closing a Portion of the Coleman Street Right of Way (Unaccepted)

Background:

Habitat for Humanity is the owner of three (3) parcels of land (City Tax Map 49, Parcels 112, 112.1 and 112.2) located southeast of an unaccepted portion of Coleman Street, and adjacent to the unaccepted (“paper”) street. Habitat plans to combine the 3 parcels to create 2 parcels and construct a duplex that will provide two (2) units of affordable housing.

With this application, Habitat proposes to close the adjacent unaccepted portion of Coleman Street (“Subject Right of Way”) which they will then add to those existing parcels to accommodate utility lines and drainage facilities, and to create access to Coleman Street and Coleman Court (public streets that have previously been accepted by the City). The property owners on the northwest side of the Subject Right of Way have agreed with Habitat to transfer to Habitat whatever legal interest they may acquire in the Subject Right of Way as a result of any street closing.

Discussion:

This portion of Coleman Street was created by an extension of the Locust Grove Subdivision, shown on a plat dated November 11, 1941, recorded in the Albemarle County Clerk’s Office in Deed Book 252, page 287-289. It was never formally accepted by the City as a public street, although at some point either the City or a private developer installed a sanitary sewer line and storm sewer line within the area proposed to be vacated. There is no record (at least none located at this point in time) of whether the City ever officially accepted these lines for ownership and maintenance.

The zoning ordinance currently allows up to six (6) single-family attached dwelling units by right in this location. Habitat has chosen to reduce the number of dwelling units to lessen the traffic impact on the surrounding neighborhood. The attached Plat shows Habitat’s proposed plan for combining the existing lots into 2 lots (Lot 321 and 326), both with frontage on Coleman Street.

The Subject Right of Way is 50’ wide and approximately 125 feet in length, and is heavily wooded, so it is currently inaccessible by vehicles pedestrians. Currently, only pedestrians authorized by the adjacent landowners to use the area would have a right to do so.

There are two existing utility features: a sanitary sewer line, a storm drain pipe (with riprap) which outflows into the woods, and possibly a water line. Habitat has designated on the Plat a 20' wide easement centered on the sanitary sewer line and a 20' wide drainage easement. Habitat initiated this application and requested that it be placed on the July 16 agenda; this has not left sufficient time for the Utilities Department to review the City facilities within the Subject Right of Way, in relation to the proposed closing.

The Utilities staff will need to perform a video inspection of both lines (sewer and storm sewer) to determine their condition and whether they need to be upgraded or replaced prior to the City accepting them for maintenance. The water line shows up on the City's GIS map, but is not shown on Habitat's proposed Plat, so Utilities will need to visit the site to see if it actually exists. There was not sufficient time for Utilities to investigate this prior to the first reading of the ordinance, but we should have an answer by the time the ordinance comes up for a 2nd reading on August 20th (assuming it is carried over on first reading).

Virginia Code Sec. 15.2-2272 allows City Council to vacate and close the Subject Right of Way, after consideration of the following questions:

1. Will vacating the street impede any person's access to his property, or otherwise cause irreparable damage to the owner of any lot shown on the original subdivision plat?

Answer: The Subject Right of Way does not provide vehicular or pedestrian access to any adjoining lot, and the City Traffic Engineer is of the opinion that topography would prevent development as a functional City street constructed to City street standards within a reasonable budget.

2. Are there any public utilities currently located in the area proposed to be vacated, and is the applicant offering to allow the City to reserve a public utility easement?

Answer: There is a sanitary sewer line and storm sewer pipe within the Subject Right of Way. Habitat is offering easements to the City and the general location of the easements have been designated on the Plat (the actual location of each line needs to be verified, to ensure that the easement areas shown on the Plat are centered in the sewer and storm sewer lines).

3. Will vacation of the street result in an adverse impact on traffic on nearby public streets, or result in undesirable circulation conditions for vehicular movements in and through the subdivision?

Answer: Habitat states that it will construct only one duplex on their property. This could reduce expected traffic impact on neighboring streets which might otherwise be anticipated from development of the existing three lots. Coleman Court is a cul-de-sac so Coleman Street is the only affected street.

Alignment with City Council's Vision and Strategic Plan:

This street closing application supports Council's Vision for **Quality Housing Opportunities for All: Our neighborhoods retain a core historic fabric while offering housing that is affordable and attainable for people of all income levels, racial backgrounds, life stages, and abilities.** It also is consistent with the Strategic Plan, Goal 1.3 (Increase Affordable Housing Options).

Community Engagement:

Habitat posted a sign on the Subject Right of Way notifying passersby that a public hearing would be held on the closing of this unaccepted street, in accordance with the City's Street Closing Policy. A public hearing is also scheduled at this meeting, notice of which was published in the Daily Progress as required by law, to allow the general public to offer comment. Habitat reached out to all the adjoining property owners and received their written agreement to convey their one-half property interest in all of the closed right of way to Habitat.

Budgetary Impact:

There is no negative budgetary impact that can be ascertained at this point. Additional real estate tax revenue will be generated as a result of construction and occupancy of the duplex proposed by Habitat.

Recommendation:

Staff does not oppose the proposed vacation. According to the City Traffic Engineer, although a connection road between Coleman Street and Smith Street could theoretically be constructed, the cost to do so would be prohibitive as some combination of bridge and/or retaining wall would be needed. Any closing should be conditioned upon the conveyance by Habitat of utility easements to the City for the sewer and storm sewer lines (City Attorney is authorized to accept easements on behalf of the City). Staff recommends that City Council should not take final action on the proposed closing until the Utilities Department evaluates the existing condition of the sewer line and of the storm sewer line and, if the existing lines are not in a condition that would allow them to be officially accepted for maintenance by the City, agreement with Habitat will need to be obtained as to either discontinuing the lines (which may not be feasible) or who will bear the cost of upgrading the lines. .

Alternatives:

City Council can choose to deny the Ordinance, or to approve the Ordinance with conditions.

Attachments:

Application and Supporting Materials by Habitat for Humanity
Proposed Ordinance and Plat
GIS utility map
Photo of Area

**AN ORDINANCE
CLOSING, VACATING AND DISCONTINUING AN
UNACCEPTED PORTION OF COLEMAN STREET**

WHEREAS, Habitat for Humanity, owner of property off Coleman Street, designated as Parcels 112, 112.1 and 112.2 on City Real Estate tax Map 49, initiated a petition seeking to close a portion of the 50' wide Coleman Street right-of-way adjoining its property (approximately 125 feet in length from its origin at the intersection of Coleman Street and Coleman Court), hereinafter "Subject Right of Way"; and,

WHEREAS, the Subject Right of Way was initially platted in 1941 as part of the Locust Grove Extension Subdivision, and was never accepted by the City as part of the City's public street system; and

WHEREAS, there are sanitary sewer and storm drain facilities located in the Subject Right of Way; and

WHEREAS, following notice to the public pursuant to Virginia Code §15.2-2272, a public hearing by the City Council was held on July 16, 2018, and comments from City staff and the public were made and heard; and,

WHEREAS, after consideration of the factors set forth within the City Street Closing Policy, adopted by Council on February 7, 2005, this Council finds and determines that the petitioner's request should be granted.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the City hereby closes, vacates and discontinues the Subject Right of Way, subject to the conditions listed below, described as follows:

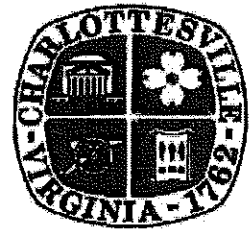
That portion of Coleman Street, 50' wide and 125 feet in length, adjoining 2018 City Tax Map Parcels 490112000, 490112100, 490112200, 4900125000 and 490124000, shown on the attached Plat made by Brian S. Ray, dated April 26, 2018.

BE IT FURTHER ORDAINED that approval of this Ordinance is conditioned upon confirmation by the City Utilities Department that the 20' wide sanitary sewer easement and the 20' wide drainage easement shown on the attached Plat are recommended for acceptance by the City for maintenance, and such easements shall be put to record in the Charlottesville Circuit Court as a deed, in form approved by the City Attorney; and

BE IT FURTHER ORDAINED that unless an appeal from Council's enactment of this ordinance is made to the Charlottesville Circuit Court within thirty (30) days of the date of adoption, the Clerk of the Council shall send a certified copy of this ordinance to the Clerk of the Circuit Court for recordation in the current street closing book.

PETITION TO CLOSE A STREET OR ALLEY

Please Return To: Department of Neighborhood Development Services
 PO Box 911, City Hall, Charlottesville, Virginia 22902
 Telephone (434) 970-3182 Fax (434) 970-3359



FEE: A filing fee of \$100.00 made payable to the City of Charlottesville.

A. PETITIONER INFORMATION

Petitioner Name: Greater Charlottesville Habitat for Humanity Inc.
 Petitioner Mailing Address: 919 West Main St. Charlottesville, VA 22903
 Does Petitioner currently own property adjacent to the area requested to be closed? YES If no, please explain _____

Petitioner Phone Number(s):
 Work: (434) 293-9066 x. 135
 Home: _____

Fax _____
 Email mbarbage@cvillehabitat.org

B. ADDRESSES OF PROPERTY OWNERS ADJACENT TO THE STREET/ALLEY (use back of form if necessary)

Property Owner Name	Mailing Address	City Tax Map and Parcel #
<u>River Road LLC</u>	<u>PO Box 17 Cville 22902</u>	<u>49-113</u>
<u>(Marti Thirumalaisamy)</u>	<u>762 30th St. Manhattan Beach, CA</u>	<u>49-112-3</u>
<u>ITJF LLC</u>	<u>1803 Leeward Ave. Cville</u>	<u>49-125</u>
<u>Rivanna Partners, LP</u>	<u>707 E. Jefferson St. Cville 22902</u>	<u>49-124</u>

C. PETITIONER'S REQUEST

- That, pursuant to the provisions of Section 15.2-2006 of the Code of Virginia (1950), as amended, the said Petitioner(s) apply for the vacating, closing and discontinuance of a certain street or alley, situated in the City of Charlottesville, Virginia, as described below as follows: (Provide name, right-of-way width and length of streets or alleys being closed)
Coleman Street, 50', as depicted on attached plat
- Confirm that no inconvenience will result to any person by reason of said closing, vacation and discontinuance of the said street or alley. Include details in narrative.
- That land owners along and adjacent to said street or alley desire and request the street of alley to be closed. Attach letters of approval or signatures of approval from adjacent property owners.
- Attach a copy of the city real property tax map showing the portion of the street or alley to be vacated with the square footage clearly indicated.
- Applicant must provide copies of a title search and opinion performed by an attorney or licensed title company of the property in question and the alley to the original dedication of the alley or street. Highlight on the deed when the street or alley was created. The deed information is available at the City Circuit Courthouse (315 E. High Street).
- Applicant must review the attached closing policy prior to submission of this form and attach a narrative which addresses the objectives outlined in that policy to include specific information as to why an alley closing is being requested.

Respectfully Submitted,

[Signature]
 Signature of Petitioner(s)

Mandy Borsage, Habitat for Humanity of Greater Charlottesville
 Print

The review process typically takes two months. Following the review, valid applications will be forwarded to a joint Planning Commission and City Council Public Hearing and then to City Council for two readings.

FOR OFFICE USE ONLY (Sign Posting)
 I certify that the sign(s) as required by Section 31-271 of the City Code (Zoning Ordinance) as amended has been posted on the following date:

 Signature _____
 Date Paid: _____ Amt. Paid: _____ Check #: _____ Recorded by: _____

Coleman Street Closure Application Narrative
May 7, 2018
Habitat for Humanity of Greater Charlottesville

Will vacating the street or alley impede any person's access to his property, or otherwise cause irreparable damage to the owner of any lot shown on the original subdivision plat?

No, the area proposed to be vacated does not provide vehicular or pedestrian access to any adjoining lot. Due to the challenging topography of the area proposed to be vacated, the right-of-way cannot practically be developed into a functional City street.

Are there any public utilities currently located in the area proposed to be vacated? If so, is the applicant offering to allow the City to reserve a public utility easement?

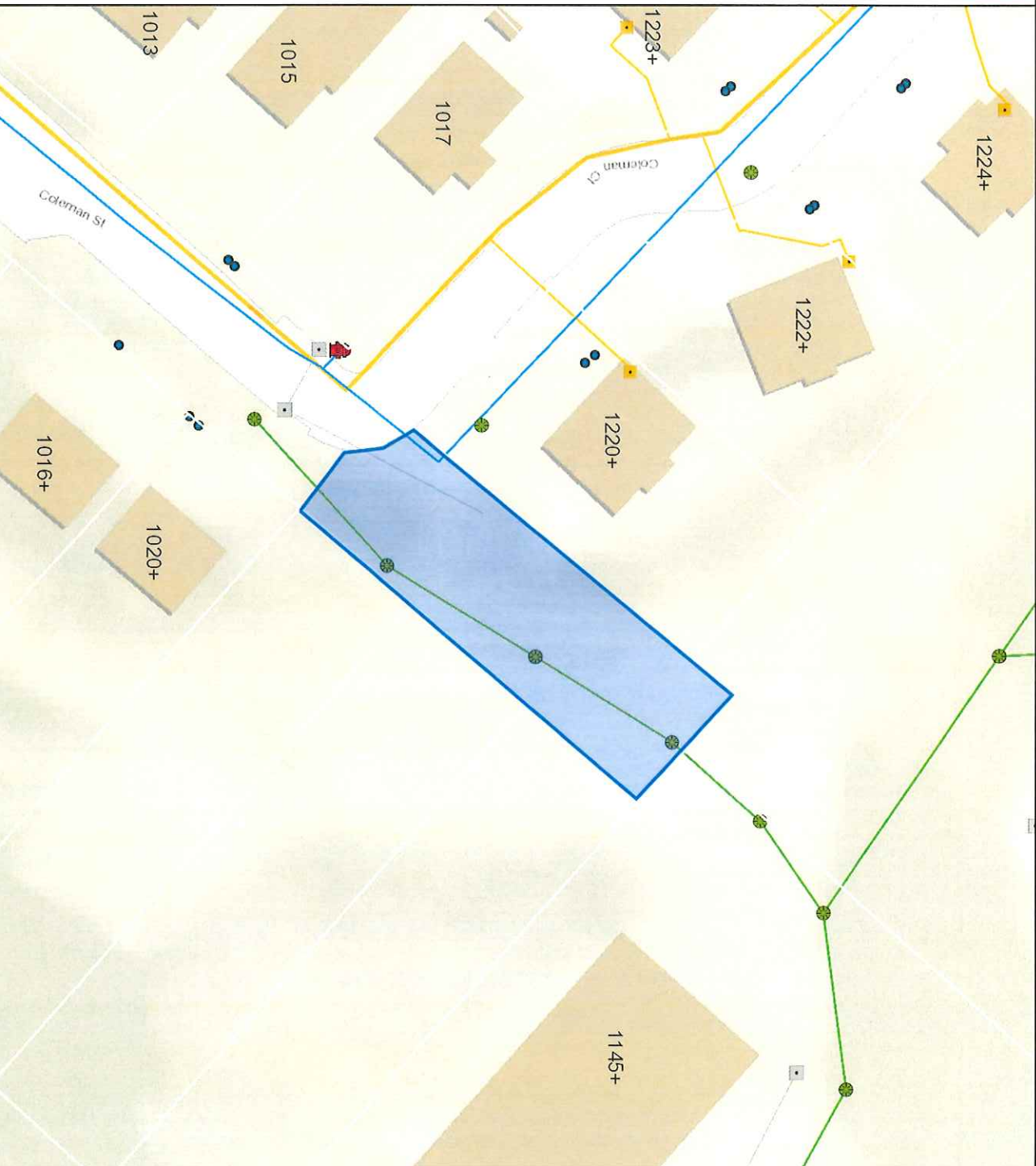
Yes, there is a stormwater pipe and sanitary sewer line currently located within the area proposed to be vacated. The applicant accepts that the City may reserve utility easements around these features. Proposed utility easements have been depicted on the attached plat.

Will vacation of the street or alley result in an adverse impact on traffic on nearby public streets, or result in undesirable circulation conditions for vehicular movements in and through the subdivision?

The applicant currently owns three vacant lots along Coleman Street that can accommodate up to 6 single family attached dwelling units by right. The applicant proposes to add the vacated area to its current lots and through a boundary line adjustment, reduce the total number of lots to two. Habitat will then construct a duplex on the resulting lots that will provide two additional units of affordable housing in the City. By reducing the total number of potential dwelling units from six to two, the traffic impact on the surrounding neighborhood will be reduced by the proposed street closure compared to a by right development scenario.

Legend

- Parcels
- Addresses
- City Limits
- Sanitary Manhole
- Sanitary Line
- Storm Structure
- Storm Line
- Water Hydrant
- Water Line
- Water Meter
- Gas Meter
- Gas Main
- Gas Service



Title:

Date: 1/3/2018

DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records information, and data obtained from various sources, and Charlotteville is not responsible for its accuracy or how current it may be.



Google Maps 1220 Coleman St



Image capture: Oct 2014 © 2018 Google

This page intentionally left blank.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Adoption of Ordinance (1 st reading)
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson, Chief Deputy City Attorney
Title:	Regulation of Small Cell Wireless Facilities in Public Rights of Way

Background:

In 2017 and 2018 the General Assembly enacted new provisions, requiring local governments to offer special treatment to small cell wireless communications facilities to be placed within public rights-of-way. Through the City's legislative liaison, and through advocacy organizations (such as Virginia Municipal League) we made the City's opposition to these new laws known to legislators, but to no avail. The new legislation requires localities to enact ordinances implementing the new regulatory provisions.

Discussion:

Attached is a proposed ordinance that we believe properly implements the requirements of the new state laws. Once adopted, this ordinance will establish a new application process for review of small cell facilities proposed to be located within public rights of way. Under the ordinance, except for applications proposing facilities that can be administratively approved, service providers wishing to place their small cells on existing structures will need approval of an agreement with the locality (in the nature of a franchise agreement).

There is at least one service provider that is anxious for the City to adopt an ordinance as required by state law, because the provider is ready to begin installing small cells on a number of utility poles owned by Dominion (with Dominion's permission, of course). We anticipate that an application seeking Council's approval of an agreement will be forthcoming shortly after Council adopts this ordinance.

Alignment with Council Vision Areas and Strategic Plan:

N/A

Community Engagement:

N/A

Budgetary Impact:

Cannot be determined at this time; the process included within the ordinance is a state-mandate that will result in the need for staff time to review applications. Most likely that review will add more tasks to the functions of existing NDS employees, but there is no way to estimate the impacts at this time.

Recommendation:

Staff recommends approval of the ordinance.

Alternatives:

None. The contents of this proposed ordinance are mandated by state law.

Attachments:

State Legislation
Proposed Ordinance

**AN ORDINANCE
AMENDING AND RE-ORDAINING CHAPTER 28 (STREETS AND SIDEWALKS) OF
THE CODE OF THE CITY OF CHARLOTTESVILLE, VIRGINIA (1990) AS
AMENDED, TO ESTABLISH PROCEDURES FOR APPROVAL OF SMALL CELL
FACILITIES IN THE PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF
CHARLOTTESVILLE AND TO ESTABLISH STANDARDS FOR SUCH FACILITIES**

WHEREAS, the City of Charlottesville (“City”) desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are critical to delivering wireless access to advanced technology, broadband and 9-1-1 services to homes, businesses, and schools within the City; and

WHEREAS, the City recognizes that small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way; and,

WHEREAS, within the Virginia Acts of Assembly, Article 835 (2017), the state legislature mandated that localities must accommodate certain types of wireless communications infrastructure within its public rights-of-way, and the City intends to comply with this state mandate, and with requirements of other state and federal laws pertaining to wireless communications facilities, to the extent such laws preempt local municipal control;

NOW, THEREFORE, BE IT ORDAINED by the Charlottesville City Council that Title 28 (Streets and Sidewalks) of the Code of the City of Charlottesville shall be amended and re-ordained, by adding the following Article VIII (Wireless Communications Facilities in Public Rights of Way), as follows:

CHAPTER 28. STREETS AND SIDEWALKS

**ARTICLE VIII. WIRELESS COMMUNICATIONS FACILITIES IN
PUBLIC RIGHTS OF WAY**

Sec. 28-235. Purpose and Scope.

(a) Purpose. The purpose of this Article is to establish policies and procedures for the placement of certain small cell facilities in public rights-of-way within the City’s jurisdiction,

which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.

(b) Intent. In enacting this Article, the City is establishing uniform standards to address issues presented by small cell facilities located within the public rights-of-way, including without limitation, to:

- (1) limit interference with the use of streets, sidewalks, alleys, parkways, public utilities, public views, certain city corridors, and other public ways and places;
- (2) limit the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
- (3) limit interference with the facilities and operations of public utilities and other facilities lawfully located in rights-of-way or public property;
- (4) minimize impact on the City's historic districts; and
- (5) respect the character of the neighborhoods in which facilities are installed; and
- (6) facilitate the deployment of small cell facilities to meet the increasing telecommunications needs of its citizens.

(c) Zoning. Applications to collocate small cell facilities on structures located outside public rights-of-way shall be treated as required by Virginia Code § 15.2-2316.4 and City Code § 34-1070 et seq.

(d) Conflicts with Other Chapters. To the extent any provision of this Article may be in conflict with other provisions of the City Code, the provisions of this Article shall take precedence over any such conflicting provisions.

(e) Conflicts with State and Federal Laws. In the event that applicable federal or State laws or regulations conflict with the requirements of this Article, a wireless services provider shall comply with the requirements of this Article to the maximum extent possible without violating federal or State laws or regulations.

Sec. 28-236. Definitions

(a) Terms defined within Virginia Code § 15.2-2316.3 and § 56-484.26 shall have the meanings set forth therein.

(b) "Applicable Safety Codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with this Article. The term shall include, without

limitation, (i) the Virginia Uniform Statewide Building Code (USBC), (ii) the Virginia Statewide Fire Prevention Code (VSFPC), (iii) any international building or fire codes incorporated into the USBC or VSFPC, and (iv) the most recent editions of the National Electrical Code and National Electrical Safety Codes, regardless of whether a building permit is required by the City's Building Official for or in connection with the installation of a wireless facility.

- (c) "Applicant" means any wireless services provider who is authorized by this article to submit an application, or a duly authorized agent for such wireless services provider.
- (d) "Application" means a request submitted by an applicant pursuant to this Article.
- (e) "Day" means calendar day.
- (f) "Emergency" is a condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause wireless facilities in the right-of-way to be unusable and result in loss of the services provided.
- (g) "FCC" means the Federal Communications Commission of the United States.
- (h) "Fee" means a one-time charge.
- (i) "Law" means federal, state, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- (j) "Permit" means a written authorization required by the City or other state or federal authority to perform an action or initiate, continue, or complete a project.
- (k) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.
- (l) "Project" means (i) the installation or construction by a wireless services provider or wireless infrastructure provider of a new structure or (ii) the collocation on any existing structure of a wireless facility that is not a small cell facility. "Project" does not include the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure to which the provisions of Va. Code § 15.2-2316.4 apply.
- (m) "Rate" means a recurring charge.
- (n) "ROW" means "rights-of-way" or "right-of-way", as indicated by context, which terms each refer to the entire width between the boundary lines of a way or place open to the use of the public for purposes of pedestrian, bicycle or vehicular travel, including, without limitation, areas on, below, and/or above a City-owned roadway, highway, street, sidewalk, alley, or

similar property (but not including a federal interstate highway or any state-maintained roads), within the jurisdictional limits of the City of Charlottesville.

Section 28-237. Permitted Use; Application and Fees.

(a) Permit Required. No person shall place a small cell facility, or a support structure for such facility, within the ROW, without first filing an application and obtaining a permit therefor, except as otherwise provided in this Article. No special exception, special use permit, or variance required by provisions of the City’s zoning ordinance shall be required for (i) any small cell facility installed by a wireless services provider or wireless infrastructure provider on an existing structure within the ROW, provided that the wireless services provider or wireless infrastructure provider has permission from the owner of the structure to collocate equipment on the structure; or (ii) the installation or construction of an administrative review-eligible project.

(b) Application. Each application for a permit filed pursuant to this Article shall be on a form, paper or electronic format provided by the City. The applicant may designate any portions of its application materials that contain proprietary or confidential information as “proprietary” or “confidential” by clearly labeling such content where it appears on a particular page of the application materials. The City makes no representations or warranties as to whether any such marking(s) will allow any portion(s) of an application marked by an applicant to be exempt from public inspection under the Virginia Freedom of Information Act.

(c) Application Requirements. An application shall be made by a wireless services provider or its duly authorized agent and shall contain the following:

(1) The wireless services provider’s name, address, telephone number, and e-mail address;

(2) If a duly-authorized agent for a wireless services provider is making the application, then the agent’s name, address, telephone number, and e-mail address shall be provided, as well as the wireless services provider’s, and the application shall include evidence of the agent’s written authorization to act as the agent of the wireless services provider, and make binding representations and commitments on behalf of such provider, for and in connection with the application;

(3) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting together with the applicant with respect to the preparation of materials submitted with the application.

(4) A general description of the scope of work necessary for the construction or installation and the purposes and intent of the small cell facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the work proposed.

(5) A site plan, with sufficient detail to show the proposed location of all items the applicant seeks to construct or install in the ROW, including any manholes, poles, or other structures, and the size, type, and depth of any conduit, enclosure, or cabinets.

(6) For facilities proposed to be located on an existing structure, evidence that the applicant has permission from the owner of the structure to co-locate equipment on each such structure.

(7) An attestation that the construction of the proposed small cell facility(ies) will commence within two years of final approval and be diligently pursued to completion, unless the City and the applicant agree to extend this period. No extension(s) shall be granted to allow, cumulatively, more than 12 additional months beyond the permit issuance date.

(8) An attestation that, to the best of the applicant's knowledge, the information contained in the application is true.

(d) When Application Not Required. An application shall not be required for: (i) routine maintenance of any wireless facility within the ROW; (ii) the replacement of an existing small cell facility within the ROW with another small cell facility that is substantially similar or smaller in size, weight, and height; (iii) the installation, placement, maintenance, operation, or replacement of micro-wireless facilities that are strung on cables between existing utility poles in the ROW, in compliance with applicable Safety Codes; or (iv) replacement of wireless facilities or wireless support structures within the ROW, within a six-foot perimeter with wireless facilities or wireless support structures that are substantially similar or the same size or smaller. Notwithstanding the foregoing, the City may require a single use permit for an activity referenced within clause (i), (iii), or (iv) preceding above in this paragraph, if such activity will: involve working within a vehicular travel lane or require closure of a vehicular travel lane; disturb the pavement, shoulder, roadway or ditch line of any street; include placement on limited access ROW; require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in, or will be conducted in a time, place, or manner that is inconsistent with, terms of the existing permit for that facility or the structure upon which it is attached.

(e) Application Fees. All applications for permits shall be accompanied by the following fees:

- (1) \$250.00, for processing a permit seeking authorization to attach or collocate small cell facilities on existing or proposed new structures within a ROW; and, in addition,
- (2) \$100.00 each, for up to five small cell facilities addressed in an application, plus \$50.00 for each additional small cell facility addressed in the application (on a

single application an applicant may include not more than 35 individual facilities for review).

- (3) The maximum fee that may be charged in accordance with the provisions of Virginia Code §15.2-2316.4:1 for an administrative-eligible project is \$500.00.

Sec. 28-238. Action on Permit Applications.

(a) Review of Applications.

(1) Within ten days of receiving an application and a valid email address for the applicant, the City will determine and notify the applicant by electronic mail whether or not the application is complete. If an application is incomplete, the City will specifically identify any missing information in the electronic mail to the applicant; otherwise, the application shall be deemed complete. The processing deadline in subsection (2) is tolled from the time the City sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the City.

(2) An application shall be processed on a nondiscriminatory basis. The City shall approve or disapprove a requested permit for collocation of a small cell facility on an existing structure, and it shall be deemed approved if the City fails to approve or deny the application within 60 days of receipt of the complete application, in accordance with the requirements of Virginia Code § 56-484.29.

(3) Any disapproval of an application for a small cell facility shall be in writing and accompanied by an explanation for the disapproval. For any disapproval of an administrative review-eligible project or any standard process project, the City shall provide the applicant with a written statement of the reasons for such disapproval and, if the City is aware of any modifications to the project as described in the application that, if made, would permit the City to approve the proposed project, the City shall identify them in the written statement.

(4) The City shall approve or disapprove an application for a new structure within the lesser of 150 days of receipt of the completed application or the period required by federal law for such approval or disapproval.

(5) The City shall approve or disapprove the application for the collocation of any wireless facility that is not a small cell facility within the lesser of 90 days of receipt of a completed application or the period required by federal law for such approval or disapproval, unless the application constitutes an eligible facilities request as defined in 47 U.S.C. § 1455(a), in which approval shall be pursuant to Sec. 34-1083(b).

(6) The City may deny a proposed collocation of a small cell facility on an existing structure only for the following reasons:

- a. Material potential interference with other pre-existing communications facilities, or with future communications facilities that have already been issued a permit for a specific location, or that have been reserved for future public safety communications facilities;
- b. Substantial adverse effect on public safety or any critical public service needs;
- c. Conflict with a local ordinance adopted pursuant to Virginia Code § 15.2-2306 or pursuant to the City's charter, on an historic property that is not eligible for the review process established under 54 U.S.C. §306108.

(7) If an applicant submits an application seeking approval of a single permit for the collocation of multiple small cell facilities on existing structures, then the denial of one or more such facilities shall not delay processing of any other facilities that are part of that same application.

(8) For an application seeking a permit to authorize construction or installation of a new support structure within any ROW for a small cell facility, or for relocation of any existing utility pole or other existing wireless support structure within a ROW, for the purpose of accommodating the attachment of a small cell facility, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney and approved by City Council in accordance with any applicable requirements of Article VII, Section 9 of the Constitution of Virginia.

No such agreement shall exceed an initial term of ten (10) years or allow more than three options for renewals for terms of five years; each agreement shall include terms allowing for early termination by the City for cause, and for early termination by mutual agreement of the parties; and each agreement shall allow the City to require a permittee to relocate wireless support structures in accordance with the provisions of Virginia Code § 56-484.30.

(9) For an application seeking a permit to authorize the attachment of a small cell facility to a government-owned structure, the application shall (in addition to the materials required by Section 3(C) above) include a written agreement with the City, in a form approved by the Office of the City Attorney, containing rates, terms, and conditions compliant with the provisions of Virginia Code § 56-484.31, and approved by City Council in accordance with applicable legal requirements.

(b) Permit Scope and Effect.

Approval of a permit authorizes the applicant to:

- (1) Undertake the installation, modification or collocation; and
- (2) Subject to applicable relocation requirements and the applicant's right to terminate at any time: operate and maintain the small cell facilities on the existing support structure(s) identified within the application so long as they are in compliance with the criteria set forth in section 5 and do not create or result in any conditions for which the permit could have originally been denied, as set forth within subsection 4(A)(3), above.

(c) Authority Granted; No Property Right or Other Interest Created.

A permit from the City authorizes an applicant to undertake only certain activities, and to install only certain encroachments within a ROW, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the ROW.

Sec 28-239. Small Wireless Facilities in the Right Of Way; Maximum Height; Other Requirements.

(a) **Technical Requirements.** Small cell facilities and utility poles to which such facilities are attached shall comply with the following requirements:

(1) Height of new small cell facilities. New small cell facilities in the ROW may not extend (i) more than ten feet above an existing utility pole in place as of the effective date of this Article; (ii) for a replacement utility pole installed in the ROW, the top of the facility shall not exceed the greater of: (a) seventeen (17) feet in height above the pole being replaced, or (b) 60 feet above ground level; or (iii) for small cell facilities on a new utility pole, above the height permitted for a new utility pole under this Article.

(2) Height of new or modified utility poles installed to support small cell facilities. Each new structure designed to support small cell facilities installed in the ROW shall meet the maximum height limitations of an administrative review-eligible facility (i.e. not exceed fifty (50) feet above ground level, provided that the structure with attached wireless facilities is (i) not more than ten (10) feet above the tallest existing utility pole located within 500 feet of the new structure within the same ROW or within the existing line of utility poles; and (ii) not located within the boundaries of a local, state, or federal historic district); or, if a proposed new pole designed to support small cell facilities does not meet the height limitations of an administrative review-eligible facility, then it would require review and approval pursuant to Sec. 34-1083(e).

- (3) Maximum Size. The small cell facility must conform to the size and height limitations specified within the definition of a small cell facility as set forth within Va. Code § 56-484.26.
- (4) Utility Pole Modifications. Utility pole modifications proposed for the purpose of accommodating a small cell facility collocation shall be fabricated from material having a degree of strength capable of supporting the small cell facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable Safety Codes. A deviation from any applicable Safety Code shall be by written modification that is securely bound by an engineer in accordance with applicable engineering standards.
- (5) Color. Small cell facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable. Small cell facilities shall be of the same color for the antenna and related equipment. The color shall be one consistent with or that blends into the wireless support structure on which such facilities are installed, unless a different color is needed for public safety or service reliability reasons, or unless a different color is required within an architectural design control district, consistent with the provisions of City Code § 34-1080(a)(3).
- (6) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with applicable Safety Codes, National Electrical Code and National Electrical Safety Code. In no event shall wiring and cabling serving the small cell facility interfere with any wiring or cabling installed by a cable television or video service operator, gas or electric utility, water or sewer utility, or telephone utility.
- (7) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small cell facility, unless the small cell facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small cell facility application.
- (8) Grounding. The small cell facility, including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most recent edition of the National Electrical Code regarding grounding of small cell facilities.
- (9) Signage. No small cell facility may bear any signs or advertising devices other than certifications, warnings, or other information as required by federal or state law and/or regulation or by the City Code of Ordinances. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small cell facility shall not have signs installed thereon.
- (10) Access. Wireless service providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures and small cell facilities in the ROW at all times, following written notice to the City Engineer, for purposes consistent with this Article.

(b) Other Requirements. A wireless services provider that seeks to collocate small cell facilities or install or modify a utility pole supporting small cell facilities shall be subject to the following requirements:

(1) Small cell facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small cell facilities shall not be installed directly over any water, sewer, gas, electric or reuse main or service line.

(2) New utility poles installed to support small cell facilities shall be made of the same or similar material as existing poles in the immediate area.

(3) Small cell facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small cell facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.

(4) A wireless services provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer or water systems and water and sewer lines that are directly caused by any activities performed in connection with the installation and/or maintenance of a wireless facility in the ROW. The wireless services provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.

(c) Undergrounding Provisions. Wireless service providers shall comply with laws, ordinances, regulations and other requirements that prohibit installation of structures above ground within the ROW in areas designated solely for underground or buried cable and utility facilities where the City has required all cable and utility facilities other than City poles and attachments to be placed underground by a date certain that is at least three months prior to the submission of the application. If a permit applicant claims that compliance with such undergrounding provisions would constitute an “effective prohibition” under federal law, then the application shall contain the written opinion of an attorney licensed to practice within the Commonwealth of Virginia to that effect, and such written opinion shall set forth all of the factual bases for the attorney’s conclusions.

Sec. 28-240. Removal, Relocation or Modification of Small Cell Facility in the Right Of Way.

(a) Notice. Within ninety days following written notice from the City, a wireless services provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small cell facilities or utility pole for which it has a permit, whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the ROW.

(b) Emergency Removal or Relocation of Facilities. The City retains the right to cut or move any small cell facilities or utility poles located within the ROW, as the City may determine to be necessary, appropriate or useful in response to any public health or public safety emergency. If circumstances permit, the City shall notify the wireless services provider and provide it an opportunity to move its small cell facilities or utility poles prior to cutting or removing them and shall notify the wireless services provider after cutting or removing a small cell facility or utility pole.

(c) Abandonment of Facilities. A wireless services provider shall remove an abandoned small cell facility within 180 days of abandonment of such facility. Should the wireless services provider fail to timely remove the abandoned small cell facility or utility pole, the City may remove the small cell facility and may recover the actual cost of such removal from the wireless services provider, plus an administrative fee in the amount of ten percent (10%) of such actual cost. A small cell facility or utility pole shall be deemed abandoned at the earlier of the date that: (i) the wireless provider notifies the City in writing that it intends to abandon the small cell facility, or (ii) the City provides the wireless provider with written notice that it believes a facility has been abandoned, and the wireless provider has not notified in the City in writing within 90 days of receipt of such written notice from the City that the small cell facility is in service or that the wireless provider is working diligently to put the small cell facility into service.

(d) No wireless services provider shall allow any employee or contractor to perform any construction, installation, or removal of a small cell facility, or any structure supporting such facility, unless that employee or contractor holds a valid Virginia contractor's license or certificate.

Sec. 28-241. Liability of wireless service providers.

(a) Liability. Each wireless services provider who owns or operates any small cell facility within a ROW assumes all risk of liability for personal injuries and damages to persons or property that are directly caused by such facility, including all work associated with the construction, installation, relocation, operation or removal of such facility, whether completed by the wireless services provider or the provider's agent or contractor. Each wireless services provider shall procure and maintain insurance, as specified in the license agreement between the City and the wireless services provider.

(b) Indemnification. Each wireless services provider who receives a permit approved under this Article shall defend, indemnify, and hold harmless the City, its boards, commissions, officials, officers, agents, contractors, volunteers, and employees from and against any and all loss, damages, liability, claims, suits, costs and expenses, including court costs and reasonable attorney's fees, resulting from the alleged acts or omissions of permittee and the permittee's officers, agents, contractors or employees in connection with the permitted activities. This indemnity provision shall be applicable regardless of the merit or outcome of such claim or suit.

Sec. 28-242. Attachment to City Structures.

(a) Exclusivity. The City will not enter into arrangements with any person for the right to collocate on City-owned which would be unfair, unreasonable or discriminatory.

(b) Rates. The rate for collocation of small cell facilities on a City-owned structure shall be \$20 per City structure per year.

(c) Make-Ready Work

(1) The City may, by resolution, establish rates, terms and conditions for agreements by which it may authorize the installation of small cell facilities to City-owned structures. Any such rates, terms and conditions shall comply with the standards set forth within Virginia Code § 56-484.31.

(2) For utility poles owned by the City, estimates for make-ready work necessary to enable the utility pole to support an agreed upon collocation shall be provided in accordance with Virginia Code § 56-484.31.

Secs. 28-243—28.250. Reserved.

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2,
3 consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title
4 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, relating
5 to wireless communications infrastructure.

6 [S 1282]
7 Approved

8 Be it enacted by the General Assembly of Virginia:

9 1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article
10 numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by
11 adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through
12 56-484.31, as follows:

13 Article 7.2.

14 Zoning for Wireless Communications Infrastructure.

15 § 15.2-2316.3. Definitions.

16 As used in this article, unless the context requires a different meaning:

17 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals
18 used in the provision of any type of wireless communications services.

19 "Base station" means a station that includes a structure that currently supports or houses an
20 antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that
21 is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas,
22 coaxial cables, power supplies, and other associated electronics.

23 "Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,
24 under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support
25 structure. "Co-location" has a corresponding meaning.

26 "Department" means the Department of Transportation.

27 "Existing structure" means any structure that is installed or approved for installation at the time a
28 wireless services provider or wireless infrastructure provider provides notice to a locality or the
29 Department of an agreement with the owner of the structure to co-locate equipment on that structure.

30 "Existing structure" includes any structure that is currently supporting, designed to support, or capable
31 of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,
32 flag poles, signs, and water towers.

33 "Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in
34 length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer
35 than 11 inches.

36 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each
37 antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an
38 antenna that has exposed elements, the antenna and all of its exposed elements could fit within an
39 imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with
40 the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is
41 established by the Federal Communications Commission. The following types of associated equipment
42 are not included in the calculation of equipment volume: electric meter, concealment,
43 telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer
44 switches, cut-off switches, and vertical cable runs for the connection of power and other services.

45 "Utility pole" means a structure owned, operated, or owned and operated by a public utility, local
46 government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or
47 wires for communications, cable television, or electricity.

48 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support
49 structure, originally constructed for use as a reservoir or facility to store or deliver water.

50 "Wireless facility" means equipment at a fixed location that enables wireless communications
51 between user equipment and a communications network, including (i) equipment associated with wireless
52 services, such as private, broadcast, and public safety services, as well as unlicensed wireless services
53 and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial,
54 or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of
55 technological configuration.

56 "Wireless infrastructure provider" means any person that builds or installs transmission equipment,

57 wireless facilities, or wireless support structures, but that is not a wireless services provider.

58 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);
 59 (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial
 60 mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices
 61 through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or
 62 unlicensed spectrum, provided using wireless facilities.

63 "Wireless services provider" means a provider of wireless services.

64 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
 65 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
 66 of supporting wireless facilities. "Wireless support structure" does not include any telephone or
 67 electrical utility pole or any tower used for the distribution or transmission of electrical service.

68 **§ 15.2-2316.4. Zoning; small cell facilities.**

69 A. A locality shall not require that a special exception, special use permit, or variance be obtained
 70 for any small cell facility installed by a wireless services provider or wireless infrastructure provider on
 71 an existing structure, provided that the wireless services provider or wireless infrastructure provider (i)
 72 has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies
 73 the locality in which the permitting process occurs.

74 B. Localities may require administrative review for the issuance of any required zoning permits for
 75 the installation of a small cell facility by a wireless services provider or wireless infrastructure provider
 76 on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a
 77 single application. In addition:

78 1. A locality shall approve or disapprove the application within 60 days of receipt of the complete
 79 application. Within 10 days after receipt of an application and a valid electronic mail address for the
 80 applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete
 81 and specify any missing information; otherwise, the application shall be deemed complete. Any
 82 disapproval of the application shall be in writing and accompanied by an explanation for the
 83 disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an
 84 additional 30 days. The application shall be deemed approved if the locality fails to act within the
 85 initial 60 days or an extended 30-day period.

86 2. A locality may prescribe and charge a reasonable fee for processing the application not to
 87 exceed:

88 a. \$100 each for up to five small cell facilities on a permit application; and

89 b. \$50 for each additional small cell facility on a permit application.

90 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

91 4. The locality may disapprove a proposed location or installation of a small cell facility only for the
 92 following reasons:

93 a. Material potential interference with other pre-existing communications facilities or with future
 94 communications facilities that have already been designed and planned for a specific location or that
 95 have been reserved for future public safety communications facilities;

96 b. The public safety or other critical public service needs;

97 c. Only in the case of an installation on or in publicly owned or publicly controlled property,
 98 excluding privately owned structures where the applicant has an agreement for attachment to the
 99 structure, aesthetic impact or the absence of all required approvals from all departments, authorities,
 100 and agencies with jurisdiction over such property; and

101 d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306 or pursuant to local
 102 charter on a historic property that is not eligible for the review process established under 54 U.S.C.
 103 § 306108.

104 5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting,
 105 any conditions that otherwise address potential visual or aesthetic effects resulting from the placement
 106 of small cell facilities.

107 6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
 108 removal of abandoned wireless support structures or wireless facilities.

109 C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance,
 110 or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between
 111 existing utility poles in compliance with national safety codes shall be exempt from locality-imposed
 112 permitting requirements and fees.

113 **§ 15.2-2316.5. Moratorium prohibited.**

114 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless
 115 services providers or wireless infrastructure providers.

116 CHAPTER 15.1.

117 WIRELESS COMMUNICATIONS INFRASTRUCTURE.

118 **§ 56-484.26. Definitions.**

119 *As used in this chapter, unless the context requires a different meaning:*

120 *"Antenna" means communications equipment that transmits or receives electromagnetic radio signals*
 121 *used in the provision of any type of wireless communications services.*

122 *"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,*
 123 *under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support*
 124 *structure. "Co-location" has a corresponding meaning.*

125 *"Department" means the Department of Transportation.*

126 *"Districtwide permit" means a permit granted by the Department to a wireless services provider or*
 127 *wireless infrastructure provider that allows the permittee to use the rights-of-way under the*
 128 *Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the*
 129 *Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform*
 130 *multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited*
 131 *access right-of-way without obtaining a single use permit for each occurrence. The central office permit*
 132 *manager shall be responsible for the issuance of all districtwide permits. The Department may authorize*
 133 *districtwide permits covering multiple districts.*

134 *"Existing structure" means any structure that is installed or approved for installation at the time a*
 135 *wireless services provider or wireless infrastructure provider provides notice to a locality or the*
 136 *Department of an agreement with the owner of the structure to co-locate equipment on that structure.*

137 *"Existing structure" includes any structure that is currently supporting, designed to support, or capable*
 138 *of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,*
 139 *flag poles, signs, and water towers.*

140 *"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in*
 141 *length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer*
 142 *than 11 inches.*

143 *"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each*
 144 *antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an*
 145 *antenna that has exposed elements, the antenna and all of its exposed elements could fit within an*
 146 *imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with*
 147 *the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is*
 148 *established by the Federal Communications Commission. The following types of associated equipment*
 149 *are not included in the calculation of equipment volume: electric meter, concealment,*
 150 *telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding*
 151 *equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power*
 152 *and other services.*

153 *"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local*
 154 *government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or*
 155 *wires for communications, cable television, or electricity.*

156 *"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support*
 157 *structure, originally constructed for use as a reservoir or facility to store or deliver water.*

158 *"Wireless facility" means equipment at a fixed location that enables wireless services between user*
 159 *equipment and a communications network, including (i) equipment associated with wireless services,*
 160 *such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed*
 161 *wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or*
 162 *fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of*
 163 *technological configuration.*

164 *"Wireless infrastructure provider" means any person, including a person authorized to provide*
 165 *telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,*
 166 *or wireless support structures, but that is not a wireless services provider.*

167 *"Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);*
 168 *(ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial*
 169 *mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices*
 170 *through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or*
 171 *unlicensed spectrum, provided using wireless facilities.*

172 *"Wireless services provider" means a provider of wireless services.*

173 *"Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed*
 174 *or self-supporting, or suitable existing structure or alternative structure designed to support or capable*
 175 *of supporting wireless facilities. "Wireless support structure" does not include any telephone or*
 176 *electrical utility pole or any tower used for the distribution or transmission of electrical service.*

177 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
 178 **infrastructure providers; generally.**

179 A. No locality or the Department shall impose on wireless services providers or wireless
 180 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,
 181 including the permitting process, the zoning process, notice, time and location of excavations and repair
 182 work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or
 183 discriminatory.

184 B. No locality or the Department shall require a wireless services provider or wireless infrastructure
 185 provider to provide in-kind services or physical assets as a condition of consent to use public
 186 rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions
 187 that provide utility services, or the Department to enter into voluntary pole attachment, tower
 188 occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or
 189 wireless infrastructure providers.

190 C. No locality or the Department shall adopt a moratorium on considering requests for access to the
 191 public rights-of-way from wireless services providers or wireless infrastructure providers.

192 **§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the**
 193 **installation and maintenance of small cell facilities on existing structures.**

194 A. Upon application by a wireless services provider or wireless infrastructure provider, the
 195 Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict
 196 with this chapter, granting access to public rights-of-way that it operates and maintains to install and
 197 maintain small cell facilities on existing structures in the rights-of-way. The application shall include a
 198 copy of the agreement under which the applicant has permission from the owner of the structure to the
 199 co-location of equipment on that structure. If the application is received on or after September 1, 2017,
 200 (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and
 201 (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the
 202 complete application. Within 10 days after receipt of an application and a valid electronic mail address
 203 for the applicant, the Department shall notify the applicant by electronic mail whether the application is
 204 incomplete and specify any missing information; otherwise, the application shall be deemed complete. A
 205 districtwide permit issued for the original installation shall allow the permittee to repair, replace, or
 206 perform routine maintenance operations to small cell facilities once installed.

207 B. The Department may require a separate single use permit to allow a wireless services provider or
 208 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when
 209 such activity requires (i) working within the highway travel lane or requiring closure of a highway
 210 travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited
 211 access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the
 212 protection of public infrastructure or the operation thereof. Upon application by a wireless services
 213 provider or wireless infrastructure provider, the Department may issue a single use permit granting
 214 access to install and maintain small cell facilities in such circumstances. If the application is received
 215 on or after September 1, 2017, (a) the Department shall approve or disapprove the application within
 216 60 days after receipt of the application, which 60-day period may be extended by the Department in
 217 writing for a period not to exceed an additional 30 days and (b) the application shall be deemed
 218 approved if the Department fails to approve or disapprove the application within the initial 60 days and
 219 any extension thereof. Any disapproval of an application for a single use permit shall be in writing and
 220 accompanied by an explanation of the reasons for the disapproval.

221 C. The Department shall not impose any fee for the use of the right-of-way on a wireless services
 222 provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing
 223 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not
 224 to exceed \$250 for processing an application for a districtwide or single use permit.

225 D. The Department shall not impose any fee or require a permit for the installation, placement,
 226 maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are
 227 strung between existing utility poles in compliance with national safety codes. However, the Department
 228 may require a single use permit if such activities (i) involve working within the highway travel lane or
 229 require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line;
 230 (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure
 231 the safety of the traveling public or the protection of public infrastructure or the operation thereof, and
 232 either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with
 233 terms of the existing permit for that facility or the structure upon which it is attached.

234 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
 235 **on existing structures.**

236 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality
 237 may issue a permit granting access to the public rights-of-way it operates and maintains to install and
 238 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way
 239 in the locality for the purpose of installing small cell facilities on existing structures, provided that the

240 wireless services provider or wireless infrastructure provider (i) has permission from the owner of the
 241 structure to co-locate equipment on that structure and (ii) provides notice of the agreement and
 242 co-location to the locality. The locality shall approve or disapprove any such requested permit within 60
 243 days of receipt of the complete application. Within 10 days after receipt of an application and a valid
 244 electronic mail address for the applicant, the locality shall notify the applicant by electronic mail
 245 whether the application is incomplete and specify any missing information; otherwise, the application
 246 shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for
 247 the disapproval. The 60-day period may be extended by the locality in writing for a period not to
 248 exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act
 249 within the initial 60 days or an extended 30-day period. No such permit shall be required for providers
 250 of telecommunications services and nonpublic providers of cable television, electric, natural gas, water,
 251 and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public
 252 rights-of-way under the locality's jurisdiction.

253 B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision,
 254 site plan, and comprehensive plan fees of general application, on a wireless services provider or
 255 wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the
 256 right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for
 257 processing a permit application under subsection A.

258 C. Localities shall not impose any fee or require any application or permit for the installation,
 259 placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or
 260 lines that are strung between existing utility poles in compliance with national safety codes. However,
 261 the locality may require a single use permit if such activities (i) involve working within the highway
 262 travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or
 263 ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific
 264 precautions to ensure the safety of the traveling public or the protection of public infrastructure or the
 265 operation thereof, and either were not authorized in or will be conducted in a time, place, or manner
 266 that is inconsistent with terms of the existing permit for that facility or the structure upon which it is
 267 attached.

268 **§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support**
 269 **structures; relocation of wireless support structures.**

270 Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia,
 271 public right-of-way permits or agreements for the construction of wireless support structures issued on
 272 or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for
 273 renewal for terms of five years, subject to terms providing for earlier termination for cause or by
 274 mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring
 275 permittees to relocate wireless support structures when relocation is necessary due to a transportation
 276 project or material change to the right-of-way, so long as other users of the right-of-way are required
 277 to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth
 278 in any written request by the Department or a locality for such relocation, as long as the Department or
 279 a locality provides the permittee with a minimum of 180 days' advance written notice to comply with
 280 such relocation, unless circumstances beyond the control of the Department or the locality require a
 281 shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation
 282 that is caused by the transportation project and shall not bear any cost related to private benefit or
 283 where the permittee was on private right-of-way. If the locality or the Department bears any of the cost
 284 of the relocation, the permittee shall not be obligated to commence the relocation until it receives the
 285 funds for such relocation. The permittee shall have no liability for any delays caused by a failure to
 286 receive funds for the cost of such relocation, and the Department or a locality shall have no obligation
 287 to collect such funds. If relocation is deemed necessary, the Department or locality shall work
 288 cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the
 289 relocation. There may be emergencies when relocation is required to commence in an expedited manner,
 290 and in such situations the permittee and the locality or Department shall work diligently to accomplish
 291 such emergency relocation.

292 **§ 56-484.31. Attachment of small cell facilities on government-owned structures.**

293 A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless
 294 infrastructure provider to attach small cell facilities to government-owned structures, both the
 295 government entity and the wireless services or wireless infrastructure provider shall negotiate in good
 296 faith to arrive at a mutually agreeable contract terms and conditions.

297 B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based,
 298 nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal
 299 laws. However, rates for attachments to government-owned buildings may be based on fair market
 300 value.

301 C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for
302 video, communications, or electric service, the parties shall comply with the process for make-ready
303 work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government
304 entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole
305 to support the requested co-location shall include pole replacement if necessary.

306 D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used
307 for video, communications, or electric service, the government entity owning or controlling the utility
308 pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to
309 support the requested co-location, including pole replacement, if necessary, within 60 days after receipt
310 of a complete application. Make-ready work, including any pole replacement, shall be completed within
311 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless
312 infrastructure provider.

313 E. The government entity owning or controlling the utility pole shall not require more make-ready
314 work than required to meet applicable codes or industry standards. Charges for make-ready work,
315 including any pole replacement, shall not exceed actual costs or the amount charged to other wireless
316 services providers, providers of telecommunications services, and nonpublic providers of cable television
317 and electric services for similar work and shall not include consultants' fees or expenses.

318 F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole
319 shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or
320 wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the
321 appropriateness of the rate, the government entity owning or controlling the utility pole shall have the
322 burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs
323 incurred for use of space on the utility pole for such period.

324 G. This section shall not apply to utility poles, structures, or property of an electric utility owned or
325 operated by a municipality or other political subdivision.

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Requested:	Rename two downtown parks
Presenter:	Brian Wheeler, Director of Communications
Staff Contacts:	Brian Wheeler, Director of Communications
Title:	Emancipation Park and Justice Park Renaming

Background:

On June 5, 2017, City Council voted to re-name Lee Park to Emancipation Park, and Jackson Park to Justice Park.

In December 2017, City resident Mary Carey brought a petition to the City Council requesting the City reconsider its decision to change the name of Lee Park to Emancipation Park. The petition encouraged Council to “immediately” rename the park.

On February 20, 2018, City Council held a public hearing and directed staff to conduct a new round of community engagement to collect feedback on the names for both parks. It specified that the names Lee Park, Jackson Park and Emancipation Park were not to be considered. It directed staff to collect public input on all previously considered name suggestions.

During March 2018, more than 7,500 votes on park naming preferences were received via an online survey, voicemail line, and on paper and email ballots.

On April 16, 2018, City Council held a public hearing on the new survey results and directed staff to conduct a final round of community engagement to collect feedback on four names for Emancipation Park and three names for Justice Park. Once again, a write-in option was to be included as an option for each park. City Council asked that the survey be restricted to City residents.

Discussion:

During the period from May 4, 2018 to June 30, 2018, staff collected public input through a parks renaming survey that was available online, on paper ballots in the City Manager’s office, via a telephone voicemail line, and through a paper ballot inserted in utility bills.

The online survey was hosted by Survey Monkey. It asked participants to select one name choice for each park and it included one write-in option for each park. The survey restricted participation to one submission per computer device and there was a screening question for location of residence.

SURVEY SOURCE SUMMARY (ALL ballots)

Online survey’s completed	3,331
Paper ballots	903
Voicemail messages received (location unspecified)	97
TOTAL	4,331

Survey participants included 945 Albemarle County residents and 352 from other locations. Per direction from Council, online voters indicating residency outside Charlottesville could not complete the survey and ballots submitted by Albemarle utility customers were not tabulated.

SURVEY SOURCE SUMMARY (ONLY Charlottesville residents)

Online survey’s completed	2,284
Paper ballots	654
Voicemail messages received (location unspecified)	96
TOTAL	3,034

The survey instructed participants that the names Lee Park and Jackson Park were not under consideration, however many votes were cast for variations of those names as write-ins. There were no other write-in suggestions receiving significant votes.

While not a scientifically valid sample of the public opinion of our local community, staff believes the survey did surface valuable information about the community’s park naming preferences. Further, by reviewing the voting precinct location reported by all Charlottesville participants, we see general alignment in location of online and paper ballots. Walker & Recreation precincts had the most votes and Venable and Buford precincts had the least votes. This mirrors the voter participation trend in general elections and indicates outside participants (who might have falsified their location and randomly selected a precinct choice) didn’t play a significant role.

VOTING RESULTS

Emancipation Park

Market Street Park	961 votes	33.3%
Swanson Legacy Park	537 votes	18.6%
Central Park	399 votes	13.8%
Other write-ins	342 votes	11.9%
Library Park	329 votes	11.4%
Lee Park (write-in)	316 votes	11.0%
TOTAL VOTES	2,884 votes	

Justice Park

Court Square Park	1,646 votes	57.9%
Justice Park	494 votes	17.4%
Jackson Park (write-in)	280 votes	9.8%
Courthouse Park	214 votes	7.5%
Other write-ins	209 votes	7.4%
TOTAL VOTES	2,843 votes	

Staff is seeking direction on the final park names from Council this evening.

Alignment with City Council’s Vision and Strategic Plan:

Community of Mutual Respect: In all endeavors, the City of Charlottesville is committed to racial and cultural diversity, inclusion, racial reconciliation, economic justice, and equity. As a result, every citizen is respected. Interactions among city leaders, city employees and the public are respectful, unbiased, and without prejudice.

Budgetary Impact:

We do not have an estimate on the cost of the renaming. When the Council voted to change the name of Lee and Justice Parks, staff made the changes online and in publications. As a result of litigation against the name change and the Council's desire to completely redesign both parks, the City has yet to purchase new signage.

The City Council allocated \$500,000 last December to assist with funding recommendations from the Blue Ribbon Commission on Race, Memorials and Public Spaces. Staff recommends using this funding when needed.

Attachments:

The survey ballot included in June 2018 utility bills.

Charlottesville City Council has decided to consider new names for the downtown parks initially renamed in June 2017. Council is going to select a NEW name for Emancipation Park (formerly Lee Park) and determine whether to keep the name Justice Park (formerly Jackson Park) or select a new name. The park name options were narrowed down by Council in April 2018 after a community survey and public hearing.

Now Council would like input from city residents on the park names that have been identified as finalists. The names included in this survey came from a survey conducted in March 2018.

The names Lee Park, Jackson Park, and Emancipation Park will not be considered.

This survey will be open until June 30, 2018 and it may be completed in one of the following ways:

1. Via the Internet: <http://www.charlottesville.org/parksurvey> ;
2. Via telephone: (434) 970-3109; or
3. By completing and returning this ballot with your utility bill.

I am a resident of...

Select one:

- City of Charlottesville
- Albemarle County
- Another location

If Charlottesville, please tell us your voting precinct or location:

- Alumni Hall Precinct - UVA Alumni Hall
- Buford Precinct - Buford Middle School
- Carver Precinct - Carver Rec. Center
- Clark Precinct - Clark Elem. School
- Johnson Precinct - Johnson Elem. School
- Recreation Precinct - Key Rec. Center
- Tonsler Precinct - Tonsler Park Rec. Center
- Venable Precinct - Venable Elem. School
- Walker Precinct - Walker Upper Elem. School

EMANCIPATION PARK

We would like to rename **Emancipation Park** (formerly Lee Park). Select your top choice below, or add one of your own!

Select one

- Central Park
- Library Park
- Market Street Park
- Swanson Legacy Park*
- Other

* Swanson Legacy Park was a write-in suggestion from our previous survey. The name honors Gregory H. Swanson, the first African-American admitted to the University of Virginia (1950).

JUSTICE PARK

Do you want to keep the name **Justice Park** or select a new name entirely? Select your top choice below, or add one of your own!

Select one

- Court Square Park
- Courthouse Park
- Justice Park (current name)
- Other

EMAIL UPDATES?

Would you like us to email you the final results of this survey? If, YES please share your email address.

email: _____

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Required:	None (Report Only)
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Other Staff Contact:	Memo Author: Sebastian Waisman, Assistant City Attorney
Title:	Transition to the Mayor-Council Form of Government: A Preliminary Analysis

INTRODUCTION

This memorandum provides a preliminary analysis of a potential transition from Charlottesville’s current “council-manager” form of government to a “mayor-council” system. It provides an overview of the two structures, describes the relevant practices of other Virginia localities, including Richmond, and outlines the procedure for amending Charlottesville’s charter.

DISCUSSION

A. Overview of the Mayor-Council and Council-Manager Systems

The mayor-council system typically separates power between an elected “unitary” executive and a representative legislative body in a way that resembles the federal system with which most Americans are familiar. Executive and administrative power is vested in a single, elected mayor, while legislative power resides in an elected city council. The mayor wields veto power over new legislation, controls the hiring and firing of department heads, and may be responsible, in whole or in part, for developing and presenting the city budget. The mayor is not a member of the city council and does not have the right to vote on legislation. The overwhelming majority of America’s largest cities, including New York, Chicago, Houston, Los Angeles, San Francisco, San Diego, and Philadelphia, currently use the mayor-council system. The alleged benefits of concentrating executive responsibility in a single elected official are, among others: greater democratic responsiveness and accountability to citizens; increased voter turnout and civic engagement; and, improved inter-governmental coordination.

By contrast, the council-manager form of government is modeled on the publicly held corporation, with most powers vested in an elected city council that sets long-term policy and is responsible for appointing a city manager, who serves as the city’s chief executive officer. The unelected city manager is delegated all executive and administrative power, controls

the day-to-day operation of local government, including all of the city departments¹, and typically serves at the pleasure of the city council. The “mayor” in this system is usually a voting member of the city council appointed by her colleagues to preside over meetings and to serve in a purely ceremonial capacity as head of the city. The council-manager system reflects the perceived need for professional administration and expert guidance to ensure the delivery of local services. The unelected city manager is supposed to govern by technical expertise, rather than political judgment, and is allegedly more resistant to capture by special interest groups and less likely to participate in corruption. The National Civic League’s most recent Model City Charter recommends the council-manager system for most cities, and has done so in every iteration for over a century.

B. Current Practice in Virginia Cities

In Virginia, localities have adapted these two principal structures for municipal government by making specific changes to the distribution of powers and responsibilities. The only independent city that uses the mayor-council system is Richmond, which adopted this model in 2004. (It is also common among small Virginia towns, which typically do not have complex needs requiring the hiring of a full-time professional manager.) Richmond’s mayor-council system is unique in vesting executive power in a popularly elected mayor, but Richmond’s charter also incorporates professional management and limits the mayor’s direct control over city departments.²

The remaining 37 independent cities in Virginia currently use the council-manager system. Nonetheless, Newport News, Norfolk, Hampton, and several other larger Virginia cities that delegate the executive power to an unelected city manager also have popular elections for the ceremonial role of mayor.

The Richmond model and the Newport News model are discussed in more detail below, as they are most relevant to the changes that City Council is considering.

1. Richmond

In Richmond, the revised city charter makes clear that the mayor is “the chief executive officer of the city.” The office of mayor is a full-time position with salary and expenses set by the city council. The mayor is also recognized as the head of government for all ceremonial purposes.

Voters directly elect the mayor every four years. To become mayor, a candidate must win a majority of the votes cast in at least five of the city’s nine election districts. If no candidate receives the required share of votes, the two candidates that received the most votes participate in a runoff election.

¹ In localities that have a Council-Manager form of government, the position of City Attorney position can either be established as the head of an operational department (reporting administratively to the City Manager, but responsible for representing the interests of the entire organization), or it can be set up as a position that is appointed by and that works at the pleasure of the City Council (see footnote 3, below). In the latter case, a municipal charter will still typically make it clear that the City Attorney is the legal advisor not only for the Council, but also for the City Manager and all departments, boards, commissions and agencies of the City. If Council wanted to obtain the ability to itself select and appoint the position of City Attorney, that can also be done by a Charter Amendment.

² Former Richmond mayor Dwight C. Jones, who served from 2009 to 2017, stated that the “strong mayor” label often applied to Richmond’s mayor-council system is misleading, because the mayor of Richmond does not control all the levers of power and lacks authority to appoint the superintendent of public schools, the city attorney, and other important local officials.

The mayor attends city council meetings, but is not a member of the council and does not have the right to vote on proposed ordinances. The mayor has the power to veto any ordinance passed by city council by delivering a written notice of veto to the city clerk within 14 days of the council's action. The city council may then override the mayor's veto with six or more votes at any regular or special meeting held within 14 days of the receipt of the written notice of veto. The mayor must keep the city council advised of the financial condition and future needs of the city and may recommend to council any action regarding proper administration of the city that he sees fit. The mayor also oversees the preparation and submission of the annual budget to council, although he does not prepare the budget himself.

Richmond's mayor is "responsible for the proper administration of city government," but does not exercise direct control over city departments. Instead, the city charter directs the mayor to appoint a Chief Administrative Officer ("CAO") with the advice and consent of city council. The CAO is selected based exclusively on his executive and administrative qualifications. The CAO takes on much of the day-to-day decision-making and serves "at the pleasure of the mayor." The CAO prepares the annual budget for city council under the oversight of the mayor.

The city charter explicitly sets forth the permissible scope of mayor and city council involvement in appointment and removal of department heads. The mayor "may participate in the hiring and removal of heads of administrative departments." In addition, the mayor and city council may "(1) communicate publicly or privately their approval or disapproval of the performance of any particular city employee, (2) recommend persons to the CAO for consideration for hiring or promotion, or (3) request of the CAO that he remove or take other disciplinary action against any particular city employee." Nonetheless, the charter is clear that "ultimate responsibility for hiring, removal, and other personnel decisions relating to administrative personnel, and for the direction of administrative personnel, shall reside in the CAO." Neither the mayor nor the city council are allowed to "give orders either publicly or privately" to any subordinate of the CAO.

2. Newport News

In Newport News' council-manager system, the city manager serves as the "chief administrative officer of the city" and is "responsible to the council for the proper administration of city government." The city manager is appointed by the council for an indefinite term.³

The city charter vests power in a city council that is composed of "a mayor and six members of council." The members of council are elected from each of the city's six election districts, whereas the mayor is elected at large by all qualified voters in the city. Although the office of mayor is filled by popular election, the mayor does not have any executive power. The city charter sets forth all of the powers and duties of the mayor in a single paragraph.

The mayor is a member of the city council and has the same right to vote as other members. He does not have the power to veto ordinances passed by council. The mayor presides over meetings of council and is recognized as the head of government for ceremonial purposes. Neither the mayor nor any other member of council is allowed to interfere in the appointment or removal of any officers or employees of the city.

C. Procedure for Amending Charlottesville's Charter

In Virginia, a municipality's form of government is laid out within a document approved by the

³ In Newport News, their municipal Charter establishes a Department of Law headed by a City Attorney that is appointed by the City Council.

General Assembly and referred to as a “charter.” An existing charter may be amended by the General Assembly in accordance with a legal process set forth in Va. Code §§ 15.2-200 through 15.2-202 (“Charter Amendment Process”). The City has, from time to time, sought charter amendments to obtain additional powers not provided for cities under the general provisions of state law. If City Council desires to request fundamental changes in the city’s form of government then it will need to follow the Charter Amendment Process.

The Charter Amendment Process allows a locality two procedures by which to seek input from city residents on the question of whether the City’s charter should be amended:

(1) *Election*: A locality may hold an election to determine if voters of the locality desire to amend the charter, pursuant to Va. Code §15.2-201. If a majority of voters voting in the election vote in favor of requesting the General Assembly to grant a charter amendment, the locality **must** transmit the election results to its elected representatives for introduction as a bill.

(2) *Public hearing*: Alternatively, Va. Code §15.2-202 provides that, in lieu of an election, a locality may hold a public hearing at which citizens shall have an opportunity to be heard, in order for to determine whether the citizens desire for the locality to request a new charter, or to amend the existing charter. Upon the completion of the public hearing, the locality may request the proposed charter amendment.

In both procedures:

The City must have the proposed amendments ready, and available for public inspection, and the text or an informative summary of the charter amendment must be completed and available for public inspection and review (and must be published in a newspaper of general circulation in the locality), at least 10 days prior to the election or public hearing.

If the City’s legislators do not introduce a bill incorporating the proposed charter amendment(s) at the General Assembly Session next succeeding the election or public hearing, then (A) election process: the request for the amendment shall be void, and the matter would need to be re-presented to voters for approval, or submitted to a public hearing process, before legislation could be re-introduced in the General Assembly, or (B) public hearing process: the authority of the locality to request a charter amendment by reason of the public hearing will become void.

If the City’s legislators do introduce a bill, but the General Assembly then does not enact the bill and do not carry over or pass by indefinitely the bill, then a new public hearing would need to be conducted before the proposed charter amendment could be re-introduced at the General Assembly.

D. Conclusion

City Council should carefully consider the administrative details that would be associated with a change of its form of government, and should carefully draft a proposed charter amendment and “vet” the changes through a process that will consider any budgetary impacts (such as additional job positions) related to a change. If Council decides to move to the next step in the process of evaluating a possible change, Council should direct the City Manager’s office and the City Attorney’s Office to prepare a detailed analysis of the strengths and weaknesses of a proposed charter amendment in relation to the functions and operations of the City government, a cost-benefit analysis, and a thorough interview of Richmond City Officials to obtain information

about their transition from one form of government to the other in 2004, so that Charlottesville can obtain the benefit of their prior experience.

Attachments:

1. City Charter of the City of Richmond, Virginia
2. City Charter of the City of Newport News, Virginia
3. Richard Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, Yale Law Journal (2006)
4. Victor S. DeSantis and Tari Renner, *City Government Structures: An Attempt at Clarification*, State & Local Government Review (2002)
5. Richmond Times-Dispatch, *12 years after switch to an elected mayor, Richmond government still trying to find its footing*, Sep. 5, 2015

Virginia Charters

Richmond, City of

History of incorporation

Town of Richmond established, 1742, c. XX (Hening's Statutes at Large).

Designated Capitol of Virginia, 1779, c. XXI (Hening's Statutes at Large).

Town incorporation "to be stiled the city of Richmond," 1782, c. XXV (Hening's Statutes at Large).

City incorporation and charter, 1842, c. 197; repealed 1870, c. 101.

Charter, 1870, c. 101; repealed 1926, c. 318.

Manchester, Barton Heights, Fairmount, and Highland Park annexed, 1910 - 1914.

Charter, 1926, c. 318; repealed 1948, c. 116.

Current charter

Charter, 1948, c. 116.

Editor's note: Amendments are numerous. Please see amendment listing at the end of the document.

Chapter 1. Incorporation and Boundaries.

§ 1.01. Incorporation.

The inhabitants of the territory comprised within the limits of the city of Richmond, as the same now are or may hereafter be established by law, shall continue to be a body politic and corporate under the name of the city of Richmond and as such shall have perpetual succession, may sue and be sued, contract and be contracted with and may have a corporate seal which it may alter, renew or amend at its pleasure. (1948, c. 116)

§ 1.02. Boundaries.

The boundaries of the city shall be as described in the act of the General Assembly approved March 24, 1926, found in Chapter 318 at page 533 of the Acts of Assembly of 1926 as modified and enlarged by the decree of the Circuit Court of Henrico County entered February 1, 1940, in the annexation proceedings styled City of Richmond versus County of Henrico, which decree was modified, amended and enlarged by decrees of the Supreme Court of Appeals entered June 9, 1941, in accordance with the written opinion of that court in the case styled County of Henrico, Windsor Farms, Incorporated, and others versus City of Richmond, officially reported in volume 177 of the Virginia Reports at page 754, all of which decrees are recorded in the clerk's office of the Circuit Court of the City of Richmond, Division I, in Deed Book 430-C at pages 275 and 292, and as modified and enlarged by the decree of the Circuit Court of Chesterfield County entered November 6, 1941, in the annexation proceeding styled City of Richmond versus County of Chesterfield, which decree is recorded in the clerk's office of the Circuit Court of the City of Richmond, Division I, in Deed Book 429-C, page 421, and in the clerk's office of the Circuit Court of the City of Richmond, Division II, in Deed Book 86-B, page 358, and as modified and enlarged by an order of annexation entered by the Circuit Court of Chesterfield County on July 12, 1969, which order is recorded in the clerk's office of the Circuit Court of Chesterfield County in Chancery Order Book 49, page 210. (1948, c. 116; 1975, c. 112; 1976, c. 633; 1998, c. 711)

Chapter 2. Powers.

§ 2.01. General grant of powers.

The city shall have and may exercise all powers which are now or may hereafter be conferred

upon or delegated to cities under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of a city government the exercise of which is not expressly prohibited by the said Constitution and laws and which in the opinion of the council are necessary or desirable to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants, as fully and completely as though such powers were specifically enumerated in this charter, and no enumeration of particular powers in this charter shall be held to be exclusive but shall be held to be in addition to this general grant of powers. (1948, c. 116)

§ 2.02. Financial powers.

In addition to the powers granted by other sections of this charter, the city shall have power:

- (a) To raise annually by taxes and assessments in the city such sums of money as the council shall deem necessary to pay the debts and defray the expenses of the city, in such manner as the council shall deem expedient, provided that such taxes and assessments are not prohibited by the laws of the Commonwealth. In addition to, but not as a limitation upon, this general grant of power, the city shall, when not prohibited by the laws of the Commonwealth, have power to levy and collect ad valorem taxes on real estate and tangible personal property and machinery and tools, to levy and collect taxes for admission to or other charge for any public amusement, entertainment, performance, exhibition, sport or athletic event in the city, which taxes may be added to and collected with the price of such admission or other charge; to levy on and collect taxes from purchasers of any public utility service and from subscribers to franchised cable antenna television service used within the city, which taxes may be added to and collected with the bills rendered purchasers of such service; to require licenses, prohibit the conduct of any business or profession without such a license, require taxes to be paid on such licenses in respect of all businesses and professions which cannot, in the opinion of the council, be reached by the ad valorem system; and to require licenses of owners of vehicles of all kinds for the privilege of using the streets, alleys, and other public places in the city, require taxes to be paid on such licenses and prohibit the use of streets, alleys and other public places in the city without such licenses; provided, however, that nothing herein contained shall be construed as permitting the city to levy and collect directly or indirectly a tax on payrolls.
- (b) To borrow money for the purposes and in the manner provided by Chapter 7B of this charter.
- (c) To make appropriations, subject to the limitations imposed by this charter, for the support of the city government, and any other purposes not prohibited by this charter and the laws of the Commonwealth.
- (d) To appropriate, without being bound by other provisions of this charter, funds for the purpose of meeting a public emergency threatening the lives, health or property of the inhabitants of the city, provided that any such appropriation shall require at least seven affirmative votes in the council and that the ordinance making such appropriation shall contain a clear statement of the nature and extent of the emergency.
- (e) To accept or refuse gifts, donations, bequests or grants from any source for any purpose related to the powers and duties of the city government.
- (f) To provide, or aid in the support of, public libraries and public schools.

(g) To grant financial aid to military units organized in the city in accordance with the laws of the Commonwealth, and to charitable or benevolent institutions and corporations, including those established for scientific, literary or musical purposes or the encouragement of agriculture and the mechanical arts, whose functions further the public purposes of the city.

(h) To establish a system of pensions for injured, retired or superannuated city officers and employees, members of the police and fire departments, teachers and other employees of the school board, judges, clerks, deputy clerks, bailiffs and other employees of the municipal courts, and to establish a fund or funds for the payment of such pensions by making appropriations out of the treasury of the city, by levying a special tax for the benefit of such fund or funds, by requiring contributions payable from time to time from such officers or employees, or by any combination of these methods or by any other method not prohibited by law, provided that the total annual payments into such fund or funds shall be sufficient on sound actuarial principles to provide for the pensions to be paid therefrom; and provided further, that the benefits accrued or accruing to any person under such system shall not be subject to execution, levy, attachment, garnishment or any other process whatsoever nor shall any assignment of such benefits be enforceable in any court.

(i) To provide for the control and management of the fiscal affairs of the city, and prescribe and require the adoption and keeping of such books, records, accounts and systems of accounting by the departments, boards, commissions, courts or other agencies of the city government provided for by this charter or otherwise by law as may be necessary to give full and true accounts of the affairs, resources and revenues of the city and the handling, use and disposal thereof. (1948, c. 116; 1972, c. 336; 1984, c. 163; 1990, c. 401; 1992, c. 850; 1993, c. 613; 1998, c. 711)

§ 2.03. Powers relating to public works, utilities and properties.

In addition to the powers granted by other sections of this charter, the city shall have power:

(a) To lay out, open, extend, widen, narrow, establish or change the grade of, close, construct, pave, curb, gutter, adorn with shade trees, otherwise improve, maintain, repair, clean and light streets, including limited access or express highways, alleys, bridges, viaducts, subways and underpasses, and make and improve walkways upon streets and improve and pave alleys within the city; and the city shall have the same power and authority over any street, alley or other public place ceded or conveyed to the city or dedicated or devoted to public use as over other streets, alleys and other public places.

(b) To acquire, construct, own, maintain and operate, within and without the city, public parks, parkways, playfields and playgrounds, and to lay out, equip and improve them with all suitable devices, buildings and other structures.

(c) To collect and dispose of garbage and other refuse and to construct, maintain and operate, within and without the city, incinerators, dumps or other facilities for such purposes.

(d) To construct, reconstruct, improve, maintain and operate, within and without the city, sewers, drains, culverts and sewage disposal works, and stormwater control facilities.

(e) To assess the whole or part of the cost of making and improving walkways on then existing streets, improving or paving existing alleys, or constructing sewers, culverts and drains, upon the owners of land abutting thereon or on the street or alley in which such sewer, culvert or drain is

laid in the manner provided in § 12.06 of this charter, provided that the amount of such assessment shall not exceed the peculiar benefit resulting to the landowner from the improvement; provided further, that in lieu of any such assessment for the construction of a sewer, culvert or drain, the city may assess and collect an annual sewer tax as compensation for the use thereof, and may provide for the commutation thereof upon such terms and conditions as the council may provide by ordinance, but such assessment shall not be in excess of the peculiar benefit resulting therefrom to such abutting landowners; and provided further, that the city may acquire by condemnation or otherwise any interest or right of any owner of abutting property in the use of any sewer, culvert or drain, and thereafter charge such landowner for the use of such sewer, culvert or drain. The city may order such improvements to be made and the cost thereof apportioned in pursuance of an agreement between the city and the abutting landowners.

(f) To construct, maintain and equip all buildings and other structures necessary or useful in carrying out the powers and duties of the city. The city may contract as provided by law with a private party or parties to provide the financing, site selection, acquisition, construction, maintenance, and leasing, or any of them, for a jail, juvenile detention facility, or other correctional facility. Nothing herein shall be interpreted to preclude operation of correctional facilities by private parties.

(g) To sell, lease or dispose of, except as otherwise provided in this charter and in the Constitution and laws of the Commonwealth, land, buildings and other property of the city, real and personal.

(h) To control and regulate the use and management of all property of the city, real and personal.

(i) To acquire, construct and maintain or authorize the construction and maintenance of bridges, viaducts, subways or underpasses over or under the James River or any other stream, creek or ravine when any portion of such bridge, viaduct, subway or underpass is within the city limits, and to charge or authorize the charging of tolls for their use by the public, and to require compensation for their use by public utility, transmission or transportation companies, except as the right to require such compensation is affected by any contract heretofore or hereafter made with the company concerned; provided that no tolls or compensation shall ever be imposed or collected for the use of "Robert E. Lee Bridge" by any vehicle or pedestrian.

(j) To authorize by ordinance, in accordance with the Constitution and laws of the Commonwealth, the use of the streets for the laying down of street railway tracks and the operation of street railways therein under such conditions and regulations as may be prescribed by such ordinance or by any future ordinance, or to acquire by agreement or condemnation any such street railway and maintain and operate the same.

(k) To acquire, construct, own, maintain and operate, within and without the city, places for the parking or storage of vehicles by the public, which shall include but shall not be limited to parking lots, garages, buildings and other land, structures, equipment and facilities, when in the opinion of the council they are necessary to relieve congestion in the use of streets and to reduce hazards incident to such use; provide for their management and control by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; authorize or permit others to use, operate or maintain such places or any portions thereof, pursuant to lease or agreement, upon such terms and conditions as the council may determine by ordinance; and charge or authorize the charging of compensation for the parking or

storage of vehicles or other services at or in such places.

(l) To acquire, construct, own, maintain and operate, within and without the city, airports and all the appurtenances thereof; provide for their management and control by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use of any such airport or any of its appurtenances; lease any appurtenance of any such airport or any concession incidental thereto or, in the discretion of the council, lease any such airport and its appurtenances with the right to all concessions thereon to, or enter into a contract for the management and operation of the same with, any person, firm or corporation on such terms and conditions as the council may determine by ordinance.

(m) To acquire, construct, own, maintain and operate, within and without the city, stadia, arenas, swimming pools and other sport facilities; provide for their management and control by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use of or admission to such stadia, arenas, swimming pools and other sport facilities, including charges for any services incidental thereto; and lease, subject to such regulations as may be established by ordinance, any such stadium, arena, swimming pool or other sport facility or any concession incidental thereto, or enter into a contract with any person, firm or corporation for the management and operation of any such stadium, arena, swimming pool or other sport facility, including the right to all concessions incident to the subject of such contract, on such terms and conditions as the council may determine by ordinance.

(n) To acquire, construct, own, maintain and operate, within and without the city, water works, gas plants and electric plants with the pipe and transmission lines incident thereto, to be managed and controlled as provided in Chapter 13 of this charter, for the purpose of supplying water, gas and electricity within and without the city, and to charge and collect compensation therefor and to provide penalties for the unauthorized use thereof.

(o) To acquire, construct, own, maintain and operate, within and without the city, landings, wharves, docks, canals and the approaches to and appurtenances thereof, tracks, spurs, crossings, switchings, terminals, warehouses and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares and merchandise; perform any and all services in connection with the receipt, delivery, shipment and transfer in transit, weighing, marking, tagging, ventilating, refrigerating, icing, storing and handling of goods, wares and merchandise; prescribe and collect charges from vessels coming into or using any of the landings, wharves, and docks, and from persons using any of the facilities above described; provide for the management and control of such facilities or any of them by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; lease any or all of such facilities or any concessions properly incident thereto to any person, firm or corporation, or contract with any person, firm or corporation for the maintenance and operation of any or all of such facilities on such terms and conditions as the council may determine by ordinance; apply to the proper authorities of the United States to grant to the city the privilege of establishing, maintaining and operating a foreign trade zone within or without the city; regulate the use of other landings, wharves and docks located on the James River within and without the city; prevent and remove obstructions from the harbor of the James River and in, upon or near the landings, wharves, docks or canals adjacent thereto, and collect from the person or persons responsible for such obstructions the cost of their removal; close or discontinue the

use of any such wharf, landing, dock or canal now owned or hereafter acquired by the city and upon the closing or discontinuance of such use the same shall thereupon be forever discharged from any public use or easement or from any obligation theretofore imposed by reason of such public use or easement by statute or otherwise, provided that the dock or any part thereof conveyed by the Chesapeake and Ohio Railway Company to the William R. Trigg Company, by deed dated June 1, 1901, in accordance with the provisions of the act of assembly approved February 15, 1901, and which dock is now owned by the city may be maintained and operated by the city for such other public purposes as authorized by the city council, but further provided if said dock shall be closed by the city to such public use and purpose and filled in, the city shall make provision for disposing of the water required by said dock and shall at its own cost and expense maintain the provision so made and the city shall have the right to use or dispose of the land upon which the said landing, wharf, dock or canal may be located, together with all lands or other rights appurtenant thereto, to the same extent as if the said landing, wharf, dock, canal or lands, or right thereto belonging, had never been charged with any public use or easement; improve and keep in good, safe and navigable condition the James River in the corporate limits and within twenty miles thereof, and may hold, lease, sell or otherwise dispose of all lands or interest therein acquired for the improvement of the James River and navigation and for the construction of canals or widening the river; and provide and operate such connections by ferries, bridges, or otherwise, as may be necessary for transportation between the section of land divided by such canals.

(p) To construct, own, maintain, operate and equip a visitors center and incidental parking, playgrounds and facilities. (1948, c. 116; 1950, c. 251; 1987, c. 230; 1988, c. 269; 1992, c. 850; 1994, c. 215; 1998, c. 711)

§ 2.03.1. Powers relating to certain other public works, utilities and properties.

In addition to the powers granted by other sections of this charter the city shall have power:

(a) To construct, maintain and operate limited or controlled access or express highways within the city and to fix and revise from time to time and charge and collect tolls for transit over such highways and compensation for other uses that may be made thereof. (1958, c. 185)

§ 2.03.2. Use of buildings or structures acquired or constructed for municipal purposes.

In addition to the powers granted by other sections of this charter, the city shall have the power to permit any building or structure acquired or constructed for any municipal purpose, or any part thereof or any space therein, which is not needed for such purpose, to be used for private purposes upon such terms and conditions as shall be prescribed by the council until such building or structure or part thereof or space therein is needed for a municipal purpose, when in the opinion of the council it is deemed proper to do so. (1964, c. 120)

§ 2.03.3. Powers relating to public transportation.

In addition to the powers granted by other sections of this charter, the city shall have the power to acquire, operate, lease, or otherwise provide for the operation of a public transportation system, including, by way of illustration but not limitation, the operation of passenger buses, both within and outside the City of Richmond, including providing for transportation for pupils attending public schools operated by the school board of the City of Richmond; provided, however, that the operation of any such system outside the City of Richmond shall only be with the consent of the governing body of the political subdivision in which such operation is to occur.

(1973, c. 348)

§ 2.03.4. Riverfront development agreements.

(a) The city shall have the power, in the area bounded by the James River, 2nd Street, the Downtown Expressway, and 21st Street, and also including Mayo's Island, to enter into binding development agreements with any persons owning legal or equitable interests in real property there.

(b) Such an agreement between a property owner and the city shall be for the purpose of stimulating and facilitating economic growth along the Richmond riverfront, shall not be inconsistent with the master plan, and shall not authorize any use or condition not permitted by the zoning ordinance and other ordinances in effect at the time the agreement is made. It shall be authorized by ordinance. It shall be for a term not to exceed ten years and may be renewed by mutual agreement of the parties. It may provide for: uses, the density or intensity of uses; the maximum height, size, setback and/or location of buildings; the number of parking spaces required; the measures required to control stormwater; and other land use matters. It may authorize the property owner to transfer to the city land, public improvements, money, or anything of value to further the purposes of the agreement or other public purposes set forth in the city's master plan, but not as a condition to obtaining any permitted use or zoning. A property owner may agree to accept land use controls that are more restrictive than the zoning applicable to the property, conditioned on the city making public improvements, including parking, which also benefit the property; provided, however, that any agreement of the city to make such improvements shall be subject to the availability and appropriation of funds.

(c) If a property owner who is a party to such an agreement and is not in breach of the agreement dedicates or is required to dedicate real property of substantial value to the city, makes or is required to make substantial cash payments to the city, or makes or is required to make substantial public improvements for the city, then during the term of that agreement neither any amendment to the zoning map for the subject property nor any amendment to the text of the zoning ordinance with respect to the zoning district applicable to the property which eliminates or materially restricts, reduces, or modifies: the density or intensity of uses; the maximum height, size, setback or location of a building; the number of parking spaces required; or the measures required to control stormwater shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety or welfare. (1992, c. 850)

§ 2.04. Power to make regulations for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of the city and its inhabitants.

In addition to the powers granted by other sections of this charter, the city shall have power to adopt ordinances, not in conflict with this charter or prohibited by the general laws of the Commonwealth, for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants, and among such powers, but not in limitation thereof, the city shall have power:

(a) To provide for the prevention of vice, immorality, vagrancy and drunkenness; prevention and quelling of riots, disturbances and disorderly assemblages; suppression of houses of ill fame and gambling places; prevention of lewd and disorderly conduct or exhibitions; and prevention of conduct in the streets dangerous to the public.

(b) To regulate the construction, maintenance and repair of buildings and other structures and the plumbing, electrical, heating, elevator, escalator, boiler, unfired pressure vessel, and air conditioning installations therein, for the purpose of preventing fire and other dangers to life and health.

(c) To provide for the protection of the city's property, real and personal, and prevention of the pollution of the city's water supply, and the regulation of use of parks, playgrounds, playfields, recreational facilities, landings, docks, wharves, canals, airports and other public property, whether located within or without the city. For the purpose of enforcing such regulations all city property wherever located shall be under the police jurisdiction of the city. Any member of the police force of the city or employee thereof appointed as a special policeman shall have power to make arrests for violation of any ordinance, rule or regulation adopted pursuant to this section and the district court, criminal division, shall have jurisdiction in all cases arising thereunder within the city and the district court of the county wherein the offense occurs shall have jurisdiction of all cases arising thereunder without the city.

(d) To grant or authorize the issuance of permits under such terms and conditions as the council may impose for the use of streets, alleys and other public places of the city by railroads, street railways, buses, taxicabs and other vehicles for hire; prescribe the location in, under or over, and grant permits for the use of, streets, alleys and other public places for the maintenance and operation of tracks, poles, wires, cables, pipes, conduits, bridges, subways, vaults, areas and cellars; require tracks, poles, wires, cables, pipes, conduits and bridges to be altered, removed or relocated either permanently or temporarily; charge and collect compensation for the privileges so granted; and prohibit such use of the streets, alleys and other public places of the city, and no such use shall be made of the streets, alleys, or other public places of the city without the consent of the council.

(e) To prevent any obstruction of or encroachment over, under or in any street, alley, sidewalk or other public place; provide penalties for maintaining any such obstruction or encroachment; remove the same and charge the cost thereof to the owner or owners, occupant or occupants of the property so obstructing or encroaching, and collect the sum charged in any manner provided by law for the collection of taxes; require the owner or owners or the occupant or occupants of the property so obstructing or encroaching to remove the same; pending such removal charge the owner or owners of the property so obstructing or encroaching compensation for the use of such portion of the street, alley, sidewalk or other public place obstructed or encroached upon the equivalent of what would be the tax upon the land so occupied if it were owned by the owner or owners of the property so obstructing or encroaching, and, if such removal shall not be made within the time ordered, impose penalties for each and every day that such obstruction or encroachment is allowed to continue thereafter; authorize encroachments upon streets, alleys, sidewalks or other public places, subject to such terms and conditions as the council may prescribe, but such authorization shall not relieve the owner or owners, occupant or occupants of the property encroaching, of any liability for negligence on account of such encroachment; and recover possession of any street, alley, sidewalk or other public place or any other property of the city by suit or action in ejectment.

(f) To prescribe the route and grade of any railroad laid in the city, regulate the operation of locomotives and cars, and exclude such locomotives and cars from the city; provided, no contract between the city and the corporation operating such locomotives or cars is violated by such action.

(g) To regulate the operation of motor vehicles and exercise control over traffic in the streets of the city and provide penalties for the violation of such regulations; provided, that ordinances or administrative regulations adopted by virtue of this subsection shall not be inconsistent with the provisions of the Motor Vehicle Code of Virginia. All fines imposed for the violation of such ordinances and regulations shall be paid into the city treasury.

(h) To regulate, in the interest of public health, the production, preparation, distribution, sale and possession of milk, other beverages and foods for human consumption, and the places in which they are produced, prepared, distributed, sold, served or stored; regulate the construction, installation, maintenance and condition of all water and sewer pipes, connections, toilets, water closets and plumbing fixtures of all kinds; regulate the construction and use of septic tanks and dry closets, where sewers are not available, and the sanitation of swimming pools and lakes; provide for the removal of night soil, and charge and collect compensation for the removal thereof; compel the use of sewers, the connection of abutting premises therewith, and the installation in such premises of suitable sanitary facilities; regulate or prohibit connections to and use of sewers; provide for the quarantine of any person afflicted with a contagious or infectious disease, and for the removal of such person to a hospital or ward specially designated for contagious or infectious diseases; inspect and prescribe reasonable rules and regulations, in the interest of public health, with respect to private hospitals, sanatoria, convalescent homes, clinics and other private institutions, homes and facilities for the care of the sick, of children, the aged and the destitute; and make and enforce all regulations necessary to preserve and promote public health and sanitation and protect the inhabitants of the city from contagious, infectious or other diseases.

(i) To regulate cemeteries and burials therein, prescribe the records to be kept by the owners of such cemeteries, and prohibit all burials except in a public burying ground.

(j) To regulate or prohibit the exercise of any dangerous, offensive or unhealthful business, trade or employment, and the transportation of any offensive or dangerous substance.

(k) To regulate the light, ventilation, sanitation and use of occupancy of buildings heretofore or hereafter constructed, altered, remodeled or improved, and the sanitation of the premises surrounding the same.

(l) To regulate the emission of smoke or the construction, installation, operation and maintenance of fuel burning equipment, internal combustion engines or any other equipment or source of air pollution.

(m) To compel the removal of weeds from private and public property and snow from sidewalks; the covering or removal of offensive, unwholesome, unsanitary or unhealthy substances allowed to accumulate in or on any place or premises; the filling in to the street level of the portion of any lot adjacent to a street where the difference in level between the lot and the street constitutes a danger to life and limb; the raising or draining of grounds subject to be covered by stagnant water; the razing or repair of all unsafe, dangerous or unsanitary public or private buildings, walls or structures which constitute a menace to the health and safety of the occupants thereof or the public; and to compel the abatement or removal of any and all other nuisances whatsoever including the removal of inoperative or unlicensed motor vehicles or parts thereof from public or private property. If after such reasonable notice as the council may

prescribe by ordinance the owner or owners, occupant or occupants of the property or premises affected by the provisions of this subsection shall fail to abate or obviate the condition or nuisance, the city may do so and charge and collect the cost thereof from the owner or owners, occupant or occupants of the property affected in any manner provided by law for the collection of taxes.

(n) To regulate or prohibit the manufacture, storage, transportation, possession and use of explosive or inflammable substances and the use and exhibition of fireworks and discharge of firearms.

(o) To regulate or prohibit the making of fires in the streets, alleys and other public places in the city and to regulate the making of fires on private property.

(p) To regulate or prohibit the running at large and the keeping of animals and fowl and provide for the impounding and confiscation of any such animal or fowl found at large or kept in violation of such regulations.

(q) To prevent cruelty to and abuse of animals.

(r) To regulate the sale of goods, wares or merchandise at auction; regulate the conduct of and prescribe the number of pawnshops and dealers in secondhand goods, wares and merchandise; regulate or prohibit the peddling or hawking of any article for sale on the streets of the city; prevent fraud or deceit in the sale of goods, wares and merchandise; require the weighing, measuring, gauging and inspection of goods, wares and merchandise offered for sale; require weights and measures to be sealed and subject to inspection; and provide for the appointment of a sealer and one or more weightmasters who shall perform such duties and functions as may be prescribed by ordinance. (1948, c. 116; 1968, c. 644; 1972, c. 336; 1975, c. 112)

§ 2.04.1. Human rights commission.

The city shall have the power to establish a human rights commission consistent with the provisions of § 15.2-965 of the Code of Virginia. (1972, c. 333; 1989, c. 349; 1998, c. 711)

§ 2.05. Miscellaneous powers.

The city shall also have power:

(a) To establish, maintain and operate public employment bureaus, public markets and public baths.

(b) To establish, maintain and operate, within and without the city, public hospitals, sanatoria, convalescent homes, clinics and other public institutions, homes and facilities for the care of the sick, of children, the aged and the destitute.

(c) To provide care for the poor and have all the powers and duties conferred and imposed on cities by the laws of the Commonwealth relating to public assistance.

(d) To establish, own, maintain and operate, within and without the city, cemeteries for the interment of the dead, fix the price at which graves and lots therein shall be sold, make contracts for their perpetual care and establish the rates to be charged for the digging of graves, construction of vaults and other services.

(e) To establish, maintain and operate, within or without the city, a jail for the confinement of prisoners, ordered or sentenced to be confined therein, and a jail farm; and compel able-bodied prisoners confined in the jail to work on such farm, with the approval of the Circuit Court of the City of Richmond. Any lockup physically located within the City of Richmond, whether in the Safety, Health and Welfare Building of the City of Richmond or elsewhere shall be deemed a part of and included within the city jail facility for the purposes of supervision, administration, staffing and all other aspects germane to the operation of the city jail.

(f) To acquire in the manner provided in Chapter 18 of this charter, areas, properties, lands or any estate or interest therein located within the city's old and historic districts which, in the opinion of the council, should be acquired, preserved and maintained for use, observation, education, pleasure and welfare of the people, or to preserve the character of the old and historic district in which such property is located; provide for their renovation, preservation, maintenance, management and control as places of old and historic interest by the department of the city government or by a board, commission or agency specially established by ordinance for the purpose; charge or authorize the charging of compensation for the use thereof or admission thereto; lease or sell to a 501(c)(3) organization, subject to such regulations as may be established by ordinance, any such area, property, lands or estate or interest therein so acquired upon the condition that the old and historic character of the area, property or lands shall be restored and preserved and maintained; or to enter into contracts with any person, firm or corporation for the management, preservation, maintenance or operation of any such area, property, lands or estate or interest therein so acquired as a place of old and historic interest, provided, the city shall not use the right of condemnation under this paragraph unless the historic value of such area, property, lands or estate or interest therein are about to be destroyed, including destruction through lack of maintenance.

(g) To establish and collect such fees, including a charge for expenses incurred in auditing reports, accounts, and any records of organizations operating bingo games and raffles under the permissive provisions of § 18.2-335 of the Code of Virginia and admitting to record the annual report of such organization, as may be determined by the council to be reasonable for the rendering of special services. (1948, c. 116; 1950, c. 416; 1972, c. 334; 1974, c. 19; 1978, c. 78; 1989, c. 349)

§ 2.06. Enforcement of regulations.

When by the provisions of this charter or the Constitution and general laws of the Commonwealth the city is authorized to pass ordinances on any subject, the council may provide suitable penalties for the violation of any such ordinances, including ordinances effective outside the city as provided in this charter. No such penalty shall exceed the maximum fine permitted under state law for violation of a Class 1 misdemeanor or confinement for twelve months or both. Upon conviction for violation of any ordinance, the court trying the case may require bond of the person so convicted with proper security in the penalty of not more than \$2,000, conditioned to keep the peace and be of good behavior and especially for the period of not more than one year not to violate the ordinance for the breach of which he/she has been convicted. From any fine or confinement imposed, an appeal shall lie as in cases of misdemeanor. Whenever any fine or penalty shall be imposed but not paid, the court trying the case may, unless an appeal be forthwith taken, issue a writ of fieri facias for the collection of the amount due, returnable within sixty days from its issuance. The city is hereby expressly authorized and empowered to institute and maintain a suit or suits to restrain by injunction the violation of any ordinance legally

adopted by it, notwithstanding such ordinance may provide penalties for its violation. (1948, c. 116; 1991, c. 396; 1998, c. 711)

§ 2.07. Licenses and permits.

Whenever in the judgment of the council it is advisable in the exercise of any of the powers of the city or in the enforcement of any ordinance or regulation, it may provide for the issuance of licenses or permits in connection therewith, establish the amount of the fee to be charged the licensee or permittee and require from the licensee or permittee a bond and an insurance policy of such character and in such amount and upon such terms as it may determine. (1948, c. 116)

§ 2.08. Injunctions against the city.

No injunction shall be awarded by any court or judge to stay the proceedings of the city or any of its officers, employees or agents in the exercise of any of their powers unless it be manifest that the city, its officers, employees or agents are transcending the authority given the city by this charter and the general laws of the Commonwealth, and also that the intervention of a court of equity is necessary to prevent injury that cannot be compensated by damage. (1948, c. 116)

Chapter 3. Elections.

§ 3.01. Election of councilmen; nomination of candidates.

A. At the time of the November general election in 2004, and every second year thereafter, there shall be held a general city election at which shall be elected by the qualified voters of the city one member of council from each of the nine election districts in the city, the voters residing in each such district to elect one member for said district for terms of two years from the first day of January following their election. However, beginning with the elections to be held in 2008, and subject to approval by referendum as called for by this act, council members shall be elected for a term of four years.

B. No primary election shall be held for the nomination of candidates for the office of councilman, and candidates shall be nominated only by petition. (1948, c. 116; 1966, c. 486 (subject to referendum 6/14/66; defeated 6/14/66); 1971, c. 84 (c. 84 amended by c. 245, 1971, to provide effective date of noon, July 1, 1971); 1977, c. 513; 2004, cc. 514, 877, 898)

§ 3.01.1 Election of mayor.

On the first Tuesday after the first Monday in November 2004, and every four years thereafter, a general election shall be held to elect the mayor. All persons seeking to have their names appear on the ballot as candidates for mayor must comply with the provisions of Chapter 5 (§ 24.2-500 et seq.) of Title 24.2 of the Code of Virginia and must file with their declaration of candidacy a petition containing a minimum of 500 signatures of qualified voters of the city, to include at least 50 qualified voters from each of the nine election districts. However, these filing requirements shall only apply to the initial, general election and not to any runoff election that may subsequently become necessary.

In the general election, the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. Should no one be elected, then the two persons receiving the highest total of votes city wide shall be considered nominated for a runoff election. The runoff election shall be held on the sixth Tuesday after the November general election between the two nominees. The date of any such runoff election shall, as soon as possible, be posted at the courthouse and published at least once in a newspaper of general circulation in the city. In

any such runoff election, write-in votes shall not be counted, and the person receiving the most votes in each of at least five of the nine city council districts shall be elected mayor. In the event the two candidates in a runoff election shall each win an equal number of council districts, the candidate receiving the most votes city wide shall be elected mayor. An elected term shall run four years. Anyone eligible to serve on city council may serve as mayor, except no one may be elected mayor for three consecutive full terms, and no one may simultaneously hold the office of mayor and any other elected position. (2004, cc. 877, 898)

§ 3.02. (1948, c. 116; 1975, c. 112; 1976, c. 633; 1977, c. 513; repealed 1998, c. 711)

§ 3.03. (1948, c. 116; 1977, c. 513; repealed 1998, c. 711)

§ 3.04. Vacancies in office of councilman or mayor.

A. Vacancies in the office of councilman, from whatever cause arising, shall be filled in accordance with general law applicable to interim appointments and special elections, provided that, any provision in the general law to the contrary notwithstanding, a special election may be called to fill any such vacancy if the vacancy occurs more than one year prior to the expiration of the full term of the office to be filled.

B. A vacancy in the office of mayor shall be filled by special election conducted according to the rules herein provided for the general election and held within 60 days, but no sooner than 30 days, from the date of the vacancy. Any runoff, should one be necessary, shall be held on the first Tuesday after the fifth day following the date that voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. However, if the date by which either the special election or possible runoff election for the office of mayor must be conducted should fall within 60 days prior to a primary election or general election, then the special or runoff election shall be held on the same day as the primary or general election, if allowed by general law, or, if not allowed by general law, then the special election shall be held on the first Tuesday after the fifth day following the date that voting machines used in the primary or general election may be unsealed pursuant to § 24.2-659 of the Code of Virginia. Any runoff that may be necessary shall be held on the first Tuesday after the fifth day following the date that the voting machines used in the special election may be unsealed pursuant to § 24.2-659 of the Code of Virginia or the third Tuesday following the special election, whichever is later. The president of the council shall serve as acting mayor until a successor is elected. (1948, c. 116; 1975, c. 112; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844)

§ 3.04.1. Removal of council member or mayor and forfeiture of office.

A. In addition to being subject to the procedure set forth in § 24.2-233 of the Code of Virginia, any member of the council may be removed by the council, but only for malfeasance in office or neglect of duty. He/she shall be entitled to notice and hearing. It shall be the duty of the council, at the request of the person sought to be removed, to subpoena witnesses whose testimony would be pertinent to the matter in hand. From the decision of the council an appeal shall lie to the Circuit Court of the City of Richmond, Division I.

B. The mayor may be removed following the procedure set forth in § 24.2-233 of the Code of Virginia applicable to constitutional officers; provided, however, that the petition must be signed by a number of registered voters in each council district equal to at least 10 percent of the total number of votes cast in the last general election for mayor in each respective council district.

C. The mayor or any member of council who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude, or any felony, or any misdemeanor involving possession of marijuana or any controlled substances, shall forfeit his/her office. (2004, cc. [877](#), [898](#)).

§ 3.05. Election of other city officers.

All other city officers required by the laws of the Commonwealth to be elected by the qualified voters of the city shall be nominated and elected at the time, for the terms and in the manner prescribed by the general laws of the Commonwealth. Vacancies in elective offices referred to in this section shall be filled in accordance with general law. The officers so elected or appointed shall qualify in the mode prescribed by law and shall continue in office until their successors are elected and qualified. (1948, c. 116; 1950, c. 251; 1975, c. 112; 1976, c. 633; 1978, c. 78; 1982, c. 658; 1998, c. [711](#))

§ 3.06. (1976, c. 745; repealed 1977, c. 513)

§ 3.06.1. Submission of proposition to voters.

The council shall have authority to order, by resolution directed to the Circuit Court of the City of Richmond, the submission to the qualified voters of the city, for an advisory referendum thereon, any proposed ordinance or amendment to the city charter. Upon the receipt of such resolution, the Circuit Court of the City of Richmond shall order an election to be held in accordance with the applicable provisions of Article 5 (§ 24.2-681 et seq) of Chapter 6 of Title 24.2 of the Code of Virginia. Following certification of the election results by the Electoral Board to the Circuit Court, the Court shall enter an order proclaiming the results of the election, and a duly certified copy of the order shall be transmitted to the council, which may take such further action as it may deem advisable and in the best interests of the city.

If a petition requesting the submission of an amendment to this charter, set forth in such petition, signed by qualified voters equal in number to ten percent or more of the largest number of votes cast in any general or primary election held in the city during the five years immediately preceding, is filed with the clerk of the Circuit Court of the City of Richmond, he/she shall forthwith certify that fact to the Court. The process and requirements for voter petitions established under state law shall be applicable to voter petitions provided for under this section, except to the extent of any conflict with requirements set forth in this charter. Upon the certification of such petition, the Circuit Court of the City of Richmond shall determine that the proposed charter amendment pertains only to the structure or administration of the city government. When such determination has been made, the court shall order an election to be held in accordance with the applicable provisions of Article 5 (§ [24.2-681](#) et seq.) of Chapter 6 of Title 24.2 of the Code of Virginia, in which such proposed amendment shall be submitted to the qualified voters of the city for their approval or disapproval. If a majority of those voting thereon at such election approve the proposed amendment, such result shall be communicated by the clerk of the Circuit Court of the City of Richmond to the representatives of the city in the General Assembly with the same effect as if the council had adopted a resolution requesting the General Assembly to adopt the amendment. (1998, c. [711](#))

Chapter 4. Council.

§ 4.01. Composition; compensation; appointment of members to office of profit.

The council shall consist of nine members elected as provided in Chapter 3. Compensation of

members of council shall be fixed in accordance with and within the limits prescribed in general laws of the Commonwealth for pay and expenses of councils and mayors of cities of the Commonwealth. The members of the council, subject to the approval of the council, may also be allowed their reasonable actual expenses incurred in representing the city. No member of the council shall during the term of which he was elected and one year thereafter be appointed to any office of profit under the government of the city. (1948, c. 116; 1954, c. 64; 1964, c. 120; 1968, c. 644; 1974, c. 19; 1975, c. 112; 1982, c. 658; 1992, c. 850)

§ 4.02. Powers.

All powers vested in the city shall be exercised by the council except as otherwise provided in this charter. In addition to the foregoing, the council shall have the following powers:

- (a) To provide for the organization, conduct and operation of all departments, bureaus, divisions, boards, commissions, offices and agencies of the city.
- (b) To create, alter or abolish departments, bureaus, divisions, boards, commissions, offices and agencies other than those specifically established by this charter.
- (c) To create, alter or abolish and to assign and reassign to departments, all bureaus, divisions, offices and agencies except where such bureaus, divisions, offices or agencies are specifically assigned by this charter.
- (d) To provide for the titles, qualifications, powers, duties and compensation of all officers and employees of the city, subject in the case of members of the classified service to the provisions of § 5A.03 of this charter.
- (e) To provide for the form of oaths and the amount and condition of surety bonds to be required of certain officers and employees of the city.
- (f) To provide for the appointment and removal by the council or otherwise of such officers and employees as the council may require for the purpose of assisting the council in discharging its legislative, oversight, and constituent relations functions, as well as any officers or employees whom the council is authorized to appoint and remove pursuant to this charter or other applicable laws of the Commonwealth. (1948, c. 116; 1998, c. 711; 2010, cc. 218, 476)

§ 4.03. President of the council.

At the time of the council's January organizational meeting, the council shall elect from among its members a president of the council to preside at council meetings for a one-year term; however, beginning January 1, 2007, the president of council shall serve a two-year term. Should a vacancy occur in the office of mayor, the president of the council will become acting mayor until a successor is elected to fill out the remainder of the unexpired term in accordance with § 3.04. An acting mayor shall have the same powers and responsibilities as the elected mayor. In addition, notwithstanding the provisions of § 3.01.1, any acting mayor shall retain his or her city council position, including the right to vote. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844)

§ 4.04. City clerk.

The council shall appoint a city clerk for an indefinite term. He/she shall be the clerk of the council, shall keep the journal of its proceedings and shall file the original draft of all ordinances

and shall maintain an index of all such ordinances. He/she shall be the custodian of the corporate seal of the city and shall be the officer authorized to use and authenticate it. All records in his/her office shall be public records and open to inspection at any time during regular business hours. He/she shall receive compensation to be fixed by the council and all fees received by him/her shall be paid into the city treasury. He/she shall appoint and remove a deputy city clerk, who shall be authorized to act as acting city clerk in the absence or disability of the city clerk, and all deputies and other employees in his/her office, and shall have such other powers and duties as may be prescribed by this charter or by ordinance. (1948, c. 116; 1977, c. 513; 1998, c. 711; 2005, c. 844)

§ 4.05. Induction of members.

The first meeting of a newly elected council shall take place in the council chamber in the city hall as provided for by general law. It shall be called to order by the city clerk who shall administer the oaths of office to the newly elected council members and, when applicable, also to the newly elected mayor. In the absence of the city clerk, the meeting may be called to order and the oaths administered by any judicial officer having jurisdiction in the city. The council shall be the judge of the election and qualifications of its members and the mayor, but the decisions of the council in these matters shall be subject to review by the Circuit Court of the City of Richmond. The first business of the council shall be the election of a president of council and the adoption of rules of procedure. Until this business has been completed, the council shall not adjourn for a period longer than 48 hours. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844)

§ 4.06. Rules of procedure.

The council shall have power, subject to the provisions of this charter, to adopt its own rules of procedure. Such rules shall provide for the time and place of holding regular meetings of the council which shall be not less frequently than once in each month; however, the council shall not be required to hold a regular meeting in the month of August. They shall also provide for the calling of special meetings by the mayor or any three members of the council, and shall prescribe the method of giving notice thereof, provided that the notice of each special meeting shall contain a statement of the specific item or items of business to be transacted and no other business shall be transacted at such meeting except by the unanimous consent of all the members of the council. (1948, c. 116; 1987, c. 230; 2004, cc. 877, 898)

§ 4.07. Voting.

No ordinance, resolution, motion or vote shall be adopted by the council except at a meeting open to the public and, except motions to adjourn, to fix the time and place of adjournment, and other motions of a purely procedural nature, unless it shall have received the affirmative votes of at least five members. All voting except on procedural motions shall be by roll call and the ayes and noes shall be recorded in the journal. (1948, c. 116; 1992, c. 850)

§ 4.08. Ordinances, when required.

In addition to such acts of the council which are required by the Constitution or general laws of the Commonwealth or by this charter to be by ordinance, every act of the council creating, altering or abolishing any department or creating, altering, assigning or abolishing any bureau, division, office, agency or employment, fixing the compensation of any officer or employee of the city, making an appropriation, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a fine or penalty is imposed, or placing any

burden upon or limiting the use of private property pursuant to Chapter 17 of this charter, shall be by ordinance. (1948, c. 116)

§ 4.09. Ordinances; form.

Every ordinance except the annual appropriation ordinances and an ordinance codifying ordinances shall be confined to a single subject which shall be clearly expressed in its title. All ordinances shall be introduced in typewritten or printed form or a combination of both. All ordinances which repeal or amend existing ordinances shall set forth in full the section or subsection to be repealed or amended and, if it is to be amended, shall indicate matter to be omitted by enclosing the same in brackets, striking through the matter to be omitted, or by both such brackets and striking through and indicating new matter by underscoring. When printed or published prior to enactment the same indications of omitted and new matter shall be used except that strikeout type may be substituted for brackets and italics for underscoring. The enacting clause of all ordinances shall be: "The City of Richmond hereby ordains." Unless another date is specified therein and except as otherwise provided in this charter an ordinance shall take effect on the tenth day following its passage. (1948, c. 116; 1982, c. 658)

§ 4.10. Procedure for passing ordinances.

An ordinance may be introduced by any member or committee of the council or by the mayor at any regular meeting of the council or at any special meeting. Upon introduction a time, not less than seven days after such introduction, and place shall be set at which the council or a committee thereof will hold a public hearing on such ordinance, provided that the council may reject any ordinance on first reading without a hearing thereon by vote of six members. The hearing may be held separately or in connection with a regular or special meeting of the council and may be adjourned from time to time. It shall be the duty of the city clerk to cause to be printed in a newspaper published or in general circulation in the city, not later than the fifth day before the public hearing on the proposed ordinance, a notice containing the time and place of the hearing and the title of the proposed ordinance. It shall also be his/her duty, not later than the fifth day before the public hearing, to cause its full text to be printed or otherwise reproduced, as the council may by resolution direct, in sufficient numbers to supply copies to those who individually request them, or, if the council shall so order, to cause the same to be printed as a paid advertisement in a newspaper published or in general circulation in the city. It shall further be his/her duty to place a copy of the ordinance in a file provided each member of the council for this purpose. A proposed ordinance, unless it is an emergency ordinance, shall be finally passed at a meeting of the council following the introduction of the ordinance and after the conclusion of the public hearing thereon. If an ordinance, other than an emergency ordinance, is amended as to its substance, it shall not be passed until it shall be reprinted, reproduced or published as amended, and a hearing shall be set and advertised and all proceedings had as in the case of a newly introduced ordinance. (1948, c. 116; 1964, c. 120; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 4.11. Emergency ordinances.

An emergency ordinance for the immediate preservation of the public peace, health and safety may be read a second time and passed with or without amendment at any regular or special meeting subsequent to the meeting at which the ordinance was introduced, provided that prior to its passage the full text of the original ordinance has been printed in a newspaper published or in general circulation in the city. An emergency ordinance must contain a specific statement of the emergency claimed and six affirmative votes shall be necessary for its adoption. (1948, c. 116;

1998, c. 711)

§ 4.12. (1948, c. 116; 1975, c. 112; 1976, c. 633; 1995, c. 165; repealed 1998, c. 711)

§ 4.13. Record and publication of ordinances.

Every ordinance after passage shall be given a serial number and shall be retained by the clerk in a permanent file kept for that purpose and the clerk shall maintain a permanent card or similar index. Within one year after the first Tuesday in September 1948 there shall be prepared under the direction of the city attorney, who is hereby authorized to employ such assistance as he/she deems necessary for the purpose, a codification of all ordinances in force. Such codification shall be passed by the council as a single ordinance and without prior publication. Upon its passage it shall be published in bound or loose-leaf form. This codification, to be known and cited officially as the city code, shall be furnished to city officers and shall be sold to the public at a price to be fixed by the council. A similar codification shall be prepared, passed, published and distributed, as above provided, at least every five years. It shall be the duty of the city clerk to cause all ordinances adopted to be printed as promptly as possible after their adoption in substantially the same style and format as the codification of ordinances and sold at such prices as the council may establish. (1948, c. 116; 1977, c. 513; 1998, c. 711)

§ 4.14. Appointments and removals generally.

The council in making appointments and removals shall act only by affirmative votes of at least five members. It may remove any person appointed by it for an indefinite term, for any lawful reason or no reason. The decision of the council shall be final. (1948, c. 116; 1998, c. 711; 2004, cc. 514, 877, 898)

§ 4.15. Removal of members of boards and commissions; forfeiture of office or employment for certain convictions.

A. Any member of a board or commission appointed by the council for a specified term may be removed by the council but only for malfeasance in office or neglect of duty. He/she shall be entitled to notice and hearing. It shall be the duty of the council, at the request of the person sought to be removed, to subpoena witnesses whose testimony would be pertinent to the matter in hand. From the decision of the council an appeal shall lie to the Circuit Court of the City of Richmond, Division I.

B. Any officer, appointee of the council or employee of the city who shall be convicted by a final judgment of any court from which no appeal has been taken or which has been affirmed by a court of last resort on a charge involving moral turpitude or any felony or any misdemeanor involving possession of marijuana or any controlled substances shall forfeit his/her office or employment. (1948, c. 116; 1975, c. 112; 1976, c. 633; 1990, c. 401; 1998, c. 711; 2004, cc. 877, 898)

§ 4.16. Powers of investigation.

(a) The council, or any committee of members of the council when authorized by the council, shall have power to make such investigations relating to the municipal affairs of the city as it may deem necessary, and shall have power to investigate any or all departments, boards, commissions, offices and agencies of the city government and any officer or employee of the city, concerning the performance of their duties and functions and use of property of the city.

(b) The mayor, the chief administrative officer, the heads of all departments, all boards and

commissions whose members are appointed by the council, and the city auditor shall have power to make such investigations in connection with the performance of their duties and functions as they may deem necessary, and shall have power to investigate any officer or employee appointed by them or pursuant to their authority concerning the performance of duty and use of property of the city.

(c) The council, or any committee of members of the council when authorized by the council, the mayor, chief administrative officer, the heads of departments, and boards and commissions whose members are appointed by the council and the city auditor, in an investigation held by any of them, may order the attendance of any person as a witness and the production by any person of all relevant books and papers. Any person, having been ordered to attend, or to produce such books and papers, who refuses or fails to obey such order, or who having attended, refuses or fails to answer any question relevant or pertinent to the matter under investigation shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$100 or imprisonment in jail not exceeding 30 days, either or both. Every such person shall have the right of appeal to the Circuit Court of the City of Richmond, Division I. The investigating authority shall cause every person who violates the provisions of this section to be summoned before the general district court criminal division for trial. Witnesses shall be sworn by the person presiding at such investigation, and they shall be liable to prosecution or suit for damages for perjury for any false testimony given at such investigation. (1948, c. 116; 1964, c. 120; 1974, c. 19; 1989, c. 349; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 4.17. City attorney.

The city attorney shall be the chief legal advisor of the council, the mayor, the chief administrative officer and all departments, boards, commissions and agencies of the city in all matters affecting the interests of the city. The city attorney shall perform particular duties and functions as assigned by the council. The city attorney shall be appointed by the council, shall serve at its pleasure, and shall devote full time and attention to the representation of the city and the protection of its legal interests. The city attorney shall have the power to appoint and remove assistants or any other employees as shall be authorized by the council and to authorize any assistant or special counsel to perform any of the duties imposed upon him in this charter or under general law. The city attorney may represent personally or through one of his assistants any number of city officials, departments, commissions, boards, or agencies that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, commission, board, or agency. In matters where the city attorney determines that he is unable to render legal services to the mayor, chief administrative officer, or city departments or agencies under the supervision of the chief administrative officer due to a conflict of interests, the mayor, after receiving notice of such conflict, may employ special counsel to render such legal services as may be necessary for such matter. (1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 4.18. City auditor.

There shall be a city auditor who shall be appointed by the council for an indefinite term. He/she shall have been certified as a certified public accountant by the Virginia State Board of Accountancy or by the examining board of any other state which extends to and is extended reciprocity by the Commonwealth of Virginia, and shall be qualified by training and experience for the duties of his/her office. In performing his/her duties, he/she shall have access at any and all times to all books, records and accounts of each department and agency subject to

examination and audit by him/her. (1998, c. 711)

Chapter 5. Mayor and Chief Administrative Officer.

§ 5.01. Mayor.

The mayor shall be the chief executive officer of the city and shall be responsible for the proper administration of city government. The mayor shall be recognized as the head of government for all ceremonial purposes, military law and the service of civil process. The office of mayor shall be a full-time position with salary and expenses set by the council. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898)

§5.01.1. Chief administrative officer.

The mayor shall appoint a chief administrative officer, subject to the advice and consent of a majority of the members of city council, who shall be chosen solely on the basis of his/her executive and administrative qualifications, with special reference to his/her actual experience in or knowledge of accepted practice with respect to the duties of his/her office. At the time of his/her appointment, the chief administrative officer need not be a resident of the city or the Commonwealth but he/she shall reside within the city during his/her tenure in office. The chief administrative officer shall serve at the pleasure of the mayor. The mayor shall set the salary of the chief administrative officer subject to the approval of a majority of the members of city council. (2004, cc. 877, 898)

§ 5.02. Power of appointment and removal.

The chief administrative officer shall appoint for an indefinite term qualified officers and employees to head all the administrative departments of the city, and shall appoint, dismiss and discipline, in accordance with the city's personnel regulations, all officers and employees in such departments, except as otherwise specifically provided by law or this charter. Department heads who are appointed by the chief administrative officer shall serve at the pleasure of the chief administrative officer.

The chief administrative officer shall designate some other officer or employee to perform the duties of any office or position of the administrative service under his/her control which is vacant or which lacks administration due to the absence or disability of the incumbent. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898)

§ 5.03. Involvement of mayor and council in appointment and removals.

The mayor may participate in the hiring and removal of heads of administrative departments. The mayor and members of council may (i) communicate publicly or privately their approval or disapproval of the performance of any particular city employee, (ii) recommend persons to the chief administrative officer for consideration for hiring or promotion, or (iii) request of the chief administrative officer that he remove or take other disciplinary action against any particular city employee, as they may see fit. Ultimate responsibility for hiring, removal and other personnel decisions relating to administrative personnel, and for the directing of administrative personnel, shall reside in the chief administrative officer, unless expressly provided otherwise in this charter. Except for the purpose of inquiry, the mayor, council and its members shall deal with the administrative services solely through the chief administrative officer, and neither the mayor, council nor any member thereof shall give orders either publicly or privately to any subordinate of the chief administrative officer. (1948, c. 116; 1998, c. 711; 2004, cc. 514, 877, 898; 2005, c. 844; 2010, cc. 218, 476)

§ 5.04. Temporary transfer of personnel between departments.

The chief administrative officer shall have power, whenever the interests of the city require, irrespective of any other provisions of this charter, to assign employees of any department, bureau, office or agency, the head of which is appointed by the chief administrative officer, to the temporary performance of duties in another department, bureau, office or agency. (1948, c. 116; 2004, cc. [877](#), [898](#))

§ 5.05. General duties; mayor.

It shall be the duty of the mayor to:

- (a) Attend, or appoint a designee empowered to answer questions and make recommendations on behalf of the mayor to attend, all meetings of the council with the right to speak but not to vote; the mayor or his designee shall have the right to attend a closed meeting pursuant to [§ 2.2-3711](#) of the Code of Virginia, unless the council determines that the subject matter of the closed meeting includes the office of the mayor and that inclusion of the mayor or his designee shall be detrimental to the purpose of the council's deliberations;
- (b) Keep the council advised of the financial condition and the future needs of the city and of all matters pertaining to its proper administration, and make such recommendations as may seem to the mayor desirable;
- (c) Oversee preparation of and submit the annual budget to the council as provided in Chapter 6 of this charter;
- (d) Perform such other duties as may be prescribed by this charter or which may be required of the chief executive officer of a city by the general laws of the Commonwealth, or by ordinances adopted by the council, provided that the mayor shall have the power to veto any city ordinance by written notice of veto delivered to the city clerk within 14 calendar days of council's actions, subject to override thereafter by the council with a vote of six or more of the currently filled seats on council at any regular or special meeting held within 14 calendar days of the clerk's receipt of the notice of veto; however, the appointment of members of a redevelopment and housing authority in the city shall be made by the council; and
- (e) Issue such regulations as may be necessary in order to implement the mayor's duties and powers. (1948, c. 116; 1950, c. 251; 1984, c. 163; 1989, c. 349; 1990, c. 401; 1998, c. [711](#); 2004, cc. [877](#), [898](#); 2005, c. [844](#); 2006, cc. [650](#), [712](#); 2010, cc. [218](#), [476](#))

§ 5.05.1. General duties; chief administrative officer.

It shall be the duty of the chief administrative officer, acting under the general direction of the mayor, to:

- (a) Prepare the annual budget for submission to the council by the mayor;
- (b) Prepare in suitable form for publication and submit to the council a concise report of the financial transactions and administrative activities of the city government during the fiscal year ending on the preceding thirtieth day of June and cause to be printed such number of copies thereof as the council shall direct;
- (c) Present adequate financial and activity reports as requested by the council;

(d) Fulfill the city's responsibilities for maintaining cemeteries as provided for in § 2.05(d) of the charter and § 15.2-1121 of the Code of Virginia;

(e) Attend, or be represented at, all meetings of the council in order to answer questions and make recommendations on behalf of the mayor, provided that prior to any such meetings, council has given the mayor at least 72 hours of advance notice of the matters on which it seeks information or a recommendation; and

(f) Perform such other duties as may be prescribed by this charter or required of him/her in accordance therewith by the mayor other than the duties conferred on the mayor by this charter. (2004, cc. 877, 898; 2006, cc. 650, 712)

§ 5.06. Relations with boards, commissions and agencies.

The mayor, or the mayor's designee, shall have the right to attend and participate in the proceedings of, but not to vote in, the meetings of all boards, commissions or agencies created by this charter or by ordinance, except the school board and the board of zoning appeals. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844)

§ 5.07. Acting chief administrative officer.

The mayor shall, with the advice and consent of a majority of the members of council, designate the head of a department, bureau or other officer appointed by the chief administrative officer, to act as chief administrative officer in case of the absence, incapacity, death or resignation of the chief administrative officer, until his/her return to duty or the appointment of his/her successor. An acting chief administrative officer shall serve at the pleasure of the mayor. (1948, c. 116; 1960, c. 7; 1962, c. 65; 1998, c. 711; 2004, cc. 877, 898)

§ 5.08. (1948, c. 116; 1968, c. 644; repealed 1998, c. 711)

§ 5.09. (1948, c. 116; 1950, c. 251; repealed 1956, c. 130)

§ 5.10. (1948, c. 116; repealed 1956, c. 130)

§ 5.11. (1948, c. 116; 1950, c. 251; repealed 1956, c. 130)

§ 5.12. (1948, c. 116; repealed 1956, c. 130)

§ 5.13. (1948, c. 116; 1954, c. 64; 1956, c. 130; repealed 1998, c. 711)

§ 5.13.1. (1972, c. 335; repealed 1998, c. 711)

§ 5.13.2. (1972, c. 811; 1987, c. 230; repealed 1998, c. 711)

Chapter 5-1. Department of General Services. (Repealed)

Editor's note: Section 5-1.1 is referred to as § 5.1.1 in Acts of Assembly of 1958, c. 185, and in Acts of Assembly of 1968, c. 644.

§ 5-1.1. (1956, c. 130; 1958, c. 185; 1968, c. 644, repealed 1998, c. 711)

§ 5-1.2. (1956, c. 130; 1975, c. 112; repealed 1998, c. 711)

§ 5-1.3. (1956, c. 130; repealed 1998, c. 711)

§ 5-1.4. (1956, c. 130; 1964, c. 120; 1974, c. 19; 1978, c. 78; 1981, c. 199; 1982, c. 658; 1985, c. 22; repealed 1998, c. 711)

§ 5-1.5. (1956, c. 130; repealed 1998, c. 711)

Chapter 5A. Administration.

§ 5A.01. Creation of departments.

The city council may establish administrative departments, bureaus, divisions, or offices, or may alter, combine or abolish existing administrative departments, bureaus, divisions or offices; however, neither the council, the mayor, nor the chief administrative officer shall have the power to alter the purpose of, combine, transfer or abolish any department created by this charter. (1998, c. 711; 2004, cc. 877, 898)

§ 5A.02. Responsibility of department heads.

There shall be a director appointed by the chief administrative officer as the head of each administrative department. Such directors shall be chosen on the basis of their executive and administrative ability, experience and education, and shall serve at the pleasure of the chief administrative officer. (1998, c. 711; 2004, cc. 877, 898)

§ 5A.03. Personnel rules and regulations.

The council, upon receiving any recommendations submitted to it by the mayor, shall establish a personnel system for the city administrative officials and employees. Such system shall be based on merit and professional ability and shall not discriminate on the basis of race, national origin, religion, sex, age, disabilities, political affiliation, or marital status. The personnel system shall consist of rules and regulations which provide for the general administration of personnel matters, a classification plan for employees, a uniform pay plan and a procedure for resolving grievances of employees as provided by general law for either local government or state government employees. (1998, c. 711; 2004, cc. 877, 898)

Chapter 5B. Retirement System.

§ 5B.01. Retirement system established.

The retirement system for the city employees hitherto established by ordinance shall continue in force and effect subject to the right of the council to amend or repeal the same as set forth in such ordinance. From and after July 1, 1978, the Board of Trustees of the Richmond Retirement System shall consist of seven members for terms of three years. Any vacancy shall be filled for the unexpired portion of the term. The mayor shall appoint two members; the council shall appoint five members, at least two of whom shall be members of the classified service. Such members of the Board of Trustees of the Richmond Retirement System shall have the responsibility of the supervision of the administration of the retirement plan, the determination of eligibility for the receipt of retirement benefits, the award of retirement benefits as authorized by ordinance of the City of Richmond, and such other duties as have heretofore been exercised by the Board of Trustees of the Richmond Retirement System other than fiduciary responsibilities concerning the management, control and investment of the financial resources of the Richmond Retirement System. The council of the City of Richmond may appoint and employ a corporation, vested with fiduciary powers under either the laws of the United States or the Commonwealth of Virginia, to be responsible for the investment of the funds of the Richmond Retirement System, which funds shall include any securities which may now or hereafter be part of the assets of such Richmond Retirement System. The director of finance shall be the disbursing officer for the payment of benefits awarded by the trustees of the Richmond Retirement System and as such shall perform such duties as may be required of the director of finance by ordinance but shall receive no additional compensation on account of such duties. To administer the retirement plan, the council may provide for an executive director to be appointed, supervised, and removed by the Board of Trustees of the Richmond Retirement System and for employees to be appointed,

supervised, and removed by the executive director. (1998, c. 711; 2005, c. 844; 2010, c. 218, 476)

§ 5B.02. Post-retirement supplements.

(a) In addition to the allowance authorized to be paid under § 51.1-801 of the Code of Virginia, the council may, by ordinance, provide for post-retirement supplements, payable in accordance with the provisions of this section, to the recipients of such allowances. Such supplements shall be subject to the same conditions of payment as are such allowances.

(b) The amounts of the post-retirement supplements provided for hereunder shall be determined as percentages of the allowances authorized to be supplemented hereby. Such percentages may be determined by reference to the increase, if any, in the United States Average Consumer Price Index for all items, as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average for the calendar year in which the allowance initially commenced as a result of the death or retirement of a member of a system of retirement authorized by § 5B.01 to its monthly average for the calendar year immediately prior to the calendar year as of which the amount of the post-retirement supplement is determined. Such supplement may be either the percentage computed from the actual increase in such index or some percentage of such actual increase.

(c) Amounts of post-retirement supplements shall be determined initially by the ordinance adopting the same, and thereafter as may be provided by ordinance.

(d) Any ordinance adopted hereunder may be retroactive to the extent that the council has heretofore appropriated funds for post-retirement supplements, which appropriation has been otherwise unexpended. (1998, c. 711)

Chapter 6. Budgets.

§ 6.01. Fiscal and tax years.

The fiscal year of the city shall begin on July 1 and shall end on June 30 of the succeeding year. The tax year for taxes levied on real estate, tangible personal property and machinery and tools shall begin on January 1 and end on December 31 following, and the tax year for all other taxes shall be fixed by the council by ordinance. The rate of taxes levied on real estate shall be fixed as authorized in § 58.1-3321 of the Code of Virginia. The rates of all other taxes and levies, except on new sources of tax revenues, shall be fixed before the beginning of the tax year. (1948, c. 116; 1958, c. 185; 1962, c. 65; 1982 c. 658; 1993, c. 613)

§ 6.02. Submission.

On a day to be fixed by the council, but in no case earlier than the second Monday of February or later than the seventh day of April in each year, the mayor shall submit to the council: (a) separate current expense budgets for the general operation of the city government, for the public schools and for each utility as defined in Chapter 13 of this charter; (b) a budget message; and (c) a capital budget. (1948, c. 116; 1958, c. 185; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 6.03. Preparation.

It shall be the duty of the head of each department, the judges of the municipal courts, each board or commission, including the school board, and each other office or agency supported in whole or in part by the city, including the attorney for the Commonwealth, to provide, at such time as the mayor may prescribe, estimates of revenue and expenditure for that department,

court, board, commission, office or agency for the ensuing fiscal year. Such estimates shall be submitted in a form as determined by the mayor, and it shall be the duty of the head of each such department, judge, board, commission, office or agency to supply all of the information which the mayor may require to be submitted thereon. The mayor shall hold such hearings as he/she may deem advisable and shall review the estimates and other data pertinent to the preparation of the budgets and make such revisions in such estimates as he/she may deem proper, subject to the laws of the Commonwealth relating to obligatory expenditures for any purpose, except that in the case of the school board, he/she may recommend a revision only as permitted by § 22.1-94 of the Code of Virginia or any other provision of general law not in conflict with this charter. (1948, c.116; 1989, c. 349; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 6.04. Scope of the budget.

In respect to each utility there shall be included in the budget estimates only the net amounts estimated to be received from or to be appropriated to such utility in the budget as provided in § 6.13. The budget shall be prepared in accordance with accepted principles of municipal accounting and budgetary procedures and techniques.

The budget shall provide a complete financial plan of all city funds and activities for the ensuing fiscal year and, except as required by law or this charter, shall be in such form as the mayor deems desirable or the city council may require. The budget shall begin with a clear general summary of its contents; shall show in detail all estimated income, indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. (1948, c. 116; 1986, c. 119; 1989, c. 349; 1998, c. 711; 2004, cc. 877, 898)

§ 6.05. Balanced budget required.

For any fund, the total of proposed expenditures shall not exceed the total of the estimated income plus the carried-forward fund balance. (1948, c. 116; 1989, c. 349; 1998, c. 711)

§ 6.06. The budget message.

The budget message shall contain the recommendations of the mayor concerning the fiscal policy of the city, a description of the important features of the budget plan, an explanation of all salient changes in each budget submitted, as to estimated receipts and recommended expenditures as compared with the current fiscal year and the last preceding fiscal year, and a summary of the proposed budgets showing comparisons similar to those required by § 6.04 above. (1948, c. 116; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 6.07. Appropriation and additional tax ordinances.

At the same time that he/she submits the budget, the mayor shall introduce in the council any appropriation ordinance required. The appropriation ordinance shall be based on the budget but need not be itemized further than by departments unless required by the council. At the same time, the mayor shall also introduce any ordinance or ordinances altering the tax rate on real estate and tangible personal property or levying a new tax or altering the rate of any other tax necessary to balance the budget as hereinbefore provided. The hearing on the budget plan as a whole, as provided in § 6.09, shall constitute the hearing on all ordinances referred to in this section, and the appropriation ordinances for each utility. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 6.08. Distribution of copies of budget message and budgets.

The mayor shall cause the budget message to be printed, mimeographed or otherwise reproduced for general distribution at the time of its submission to the council and sufficient copies of the general fund, school and utility budgets to be made to supply copies to each member of the council and each newspaper published or in general circulation in the city and two copies to be deposited in the office of the city clerk where they shall be open to public inspection during regular business hours. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898)

§ 6.09. Public hearings on budget plan.

A public hearing on the budget plan as a whole shall be held by the council within the time and after the notice provided for hearings on ordinances by § 4.10 of this charter, except that the notice of such hearing shall be printed in a newspaper published or in general circulation in the city. (1948, c. 116; 1993, c. 613; 1998, c. 711)

§ 6.10. Action by council on budget generally.

After the conclusion of the public hearing, the council may insert new items of expenditure or may increase, decrease or strike out items of expenditure in the budget, except that no item of expenditure for debt service or required to be included by this charter or other provision of law shall be reduced or stricken out. The council shall not alter the estimates of receipts contained in the said budget except to correct omissions or mathematical errors, and it shall not cause the total of expenditures as recommended by the mayor to be increased without a public hearing on such increase, which shall be held not less than five days after notice thereof has been printed in a newspaper published or in general circulation in the city. The council shall in no event adopt a budget in which the total of expenditures exceeds the receipts, estimated as provided in § 6.04, unless at the same time it adopts measures for providing additional revenue in the ensuing fiscal year sufficient to make up this difference. (1948, c. 116; 1982, c. 658; 1998, c. 711; 2006, cc. 650, 712)

§ 6.11. Adoption of budget, appropriation ordinance and ordinances for additional revenue.

Not later than the thirty-first day of May in each year the council shall adopt the budget, the appropriation ordinances and such ordinances providing for additional revenue as may be necessary to put the budget in balance. If for any reason the council fails to adopt the budget on or before such day, the budget as submitted by the mayor shall be the budget for the ensuing year and the appropriation ordinance and the ordinances providing additional revenue, if any, as recommended by the mayor shall have full force and effect to the same extent as if the same had been adopted by the council, notwithstanding anything to the contrary in this charter.

The mayor shall have the power to veto any particular item or items of any city budget ordinance by written notice of veto delivered to the city clerk within 14 calendar days of council's action. Council may thereafter override the mayor's veto with a vote of six or more of the currently filled seats on council at any regular or special meeting held within 14 calendar days of the city clerk's receipt of the notice of veto. Vetoes of any one or more items shall not affect other items not vetoed. (1948, c. 116; 1958, c. 185; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844; 2006, cc. 650, 712)

§ 6.12. Effective date of budget; certification and availability of copies thereof.

Upon final adoption, the budget shall be in effect for the ensuing fiscal year. A copy of such

budget as finally adopted shall be certified by the city clerk. Copies of the budget, capital program and appropriation and revenue ordinances shall be public records and shall be made available to the public at suitable places in the city. (1948, c. 116; 1998, c. 711; 2006, cc. 650, 712)

§ 6.13. Utility budgets and related ordinances.

Separate budget estimates for each of the utilities as defined in Chapter 13 of this charter shall be submitted to the mayor at the same time as the budgets of other departments and in the form prescribed by the mayor, subject, however, to the provisions of Chapter 13 which shall also control the action of the mayor and council thereon. The mayor shall submit with the budget of each utility an ordinance making appropriations for the operation of such utility during the ensuing fiscal year. He/she shall also at the same time submit any ordinance changing the rates to be charged by the utility, used in estimating receipts. The council shall have the same powers and be subject to the same limitations with regard to the adoption of such utility budgets and accompanying appropriation and rate ordinances, subject to the provisions of the said Chapter 13, as are conferred or imposed on it by § 6.10 with regard to the budget and its accompanying appropriation and revenue ordinances. If for any reason the council fails to adopt the utility budgets or any of them before the expiration of the time set for the adoption of the budget, such budget or budgets and the accompanying appropriation ordinance or ordinances and the ordinances changing rates, if any, shall have full force and effect to the same extent as if the same had been adopted by the council, notwithstanding anything to the contrary in this charter. (1948, c. 116; 1954, c. 64; 1998, c. 711; 2004, cc. 877, 898; 2006, cc. 650, 712)

§ 6.14. School budget.

It shall be the duty of the school board to submit its budget estimates to the mayor at the same time as other departments and in the form prescribed by the mayor. The mayor and council may take any action on the school budget permitted by § 22.1-94 of the Code of Virginia or any other provision of general law not in conflict with this charter. The school board shall before the beginning of the fiscal year file with the director of finance its budget as finally revised and its appropriations based thereon. It shall have power to order during the course of the fiscal year transfers from one item of appropriation to another, notice of which shall be immediately transmitted to the director of finance. The director of finance shall have the same authority to require expenditures to be made by school officers in accordance with the school budget as he/she is given by this charter to require expenditures by other city officers to be made in accordance with the general fund or utility budgets. (1948, c. 116; 1998, c. 711; 2004, cc. 877, 898 ; 2005, c. 844)

§ 6.15. (1948, c. 116; 1983, c. 164; repealed 1998, c. 711)

§ 6.15:1. (1985, c. 22; repealed 1998, c. 711)

§ 6.15:2. (1987, c. 230; repealed 1998, c. 711)

§ 6.16. Amendments after adoption.

(a) At any time within the fiscal year, upon the recommendation of the mayor and certification of the director of finance that there remain sufficient funds not theretofore allotted for a specific purpose, the council may, by not less than six affirmative votes, allot all or part of the funds appropriated to an account designated "Reserve for Contingencies" as authorized in § 15.2-2505 of the Code of Virginia for a designated program or project and authorize expenditure of the funds so allotted.

(b) If at any time during the fiscal year the mayor certifies that there are available for

appropriation revenues in excess of those estimated in the budget, the city council may by not less than six affirmative votes, and only upon the recommendation of the mayor, make supplemental appropriations for the year up to the amount of such excess.

(c) If at any time during the fiscal year it appears probable to the mayor that the revenue or fund balances available will be insufficient to finance the expenditures for which appropriations have been authorized, the mayor shall report to the city council without delay, indicating the estimated amount of the deficit, any remedial action taken by the mayor and recommendations as to any other steps to be taken. The council shall then take such further action as it deems necessary to prevent or reduce any deficit, and for that purpose it may by ordinance reduce one or more appropriations.

(d) At any time during the fiscal year, at the request of the mayor, the city council may by ordinance adopted by not less than six affirmative votes transfer part of or all of the unencumbered appropriation balance from one department or major organizational unit to the appropriation for other departments or major organizational units.

(e) No appropriation for debt service may be reduced or transferred, and no appropriation may be reduced below any amount required by law to be appropriated or by more than the amount of the unencumbered balance thereof. The supplemental and emergency appropriations and reduction or transfer of appropriations authorized by this section may be made effective immediately upon adoption. (1948, c. 116; 1982, c. 658; 1985, c. 22; 1998, c. 711; 2004, cc. 877, 898)

§ 6.17. (1948, c. 116; 1970, c. 226; 1973, c. 348; 1974, c. 19; 1982, c. 658; 1987, c. 230; 1995, c. 165 ; repealed 1998, c. 711)

§ 6.17.1. (1972, c. 336; 1974, c. 19; 1993, c. 613; repealed 1998, c. 711)

§ 6.18. Lapsing of appropriations.

Every appropriation, except an appropriation designated for special revenue or for a capital expenditure, shall lapse at the close of the fiscal year to the extent that it has not been expended or encumbered. Appropriations designated special revenue (funding provided beyond 12 months or extends beyond the end of the city's fiscal year) shall not lapse at the close of the fiscal year but shall remain in force for the life of the multiyear project, until expended, revised, or repealed. The purpose of any such multiyear appropriation should be restricted based on grant award instructions.

An appropriation for a capital expenditure shall continue in force until expended, revised or repealed; the purpose of any such appropriation shall be deemed abandoned if three years pass without any disbursement from or encumbrance of the appropriation. (1948, c. 116; 1998, c. 711; 2004, c. 514)

§ 6.19. Capital budget.

At the same time he/she submits the current expense budgets, the mayor shall submit to the council a program which he/she shall previously have submitted to the city planning commission of proposed capital improvement projects for the ensuing fiscal year and for the four fiscal years thereafter, with his/her recommendations as to the means of financing the improvements proposed for the ensuing fiscal year. The council shall have power to accept with or without amendments or reject the proposed program and proposed means of financing for the ensuing fiscal year; and may from time to time during the fiscal year amend by ordinance adopted by at

least six affirmative votes the program previously adopted by it or the means of financing the whole or any part thereof or both, provided that the amendment shall have been recommended by the mayor and shall have been submitted to the city planning commission for review and such additional funds as may be required to finance the cost of the improvements are available. The council shall adopt a capital budget prior to the beginning of the fiscal year in which the budget is to take effect. No appropriation provided for a capital improvement purpose defined in the capital budget shall lapse until the purpose for which the appropriation was made shall have been accomplished or abandoned, provided the council shall have the power to transfer at any time any appropriation or any unencumbered part thereof from one purpose to another on the recommendation of the mayor. The mayor may transfer the balance remaining to the credit of any completed project to an incompleting project for the purpose of completing such project, provided the projects have been approved in the adoption of a capital budget or budgets. If no such transfers are made, the balances remaining to the credit of completed or abandoned purposes and projects shall be available for appropriation and allocation in a subsequent capital budget or budgets. Any project shall be deemed to have been abandoned if three fiscal years elapse without any expenditure from or encumbrance of the funds provided therefor. The council shall have the power at any time to abandon or to reduce the scope of any project in a capital budget to the extent that funds appropriated therefor are unexpended and unencumbered. (1948, c. 116; 1950, c. 251; 1954, c. 64; 1964, c. 120; 1973, c. 348; 1977, c. 513; 1998, c. 711; 2004, cc. 877, 898)

§ 6.20. Certification of funds, penalties for violation.

Except as otherwise provided in § 13.06 of this charter, no payment shall be made and no obligation incurred by or on behalf of the city or the school board except in accordance with an appropriation duly made and no payment shall be made from or obligation incurred against any allotment or appropriation unless the director of finance or his designee shall first certify that there is a sufficient unexpended and unencumbered balance in such allotment or appropriation to meet the same. Every expenditure or obligation authorized or incurred in violation of the provisions of this charter shall be void. Every payment made in violation of the provisions of this charter shall be deemed illegal and every official who shall knowingly authorize or make such payment or knowingly take part therein and every person who shall knowingly receive such payment or any part thereof shall be jointly and severally liable to the city for the full amount so paid or received. If any officer, member of a board or commission, or employee of the city or of the school board, shall knowingly incur any obligation or shall authorize or make any expenditure in violation of the provisions of this charter or knowingly take part therein such action may be cause for his/her removal. Nothing in this section contained, however, shall prevent the making of contracts of lease or for services providing for the payment of funds at a time beyond the fiscal year in which such contracts are made, provided the nature of such transactions will reasonably require, in the opinion of the council, the making of such contracts. (1948, c. 116; 1950, c. 251; 1954, c. 64; 1991, c. 396; 1998, c. 711; 2004, c. 514)

§ 6.21. Reserve fund for permanent public improvements.

The council may by ordinance establish a reserve fund for permanent public improvements and may appropriate thereto any portion of the general fund cash surplus not otherwise appropriated at the close of any fiscal year. It may likewise assign to the said fund a specified portion of the ad valorem tax on real estate and tangible personal property or other source of revenue. Appropriations from the said fund shall be made only to finance improvements included in the capital budget. (1948, c. 116; 1954, c. 64; 1998, c. 711)

Chapter 7. Borrowing. (Repealed)

§ 7.01. (1948, c. 116; 1989, c. 349; repealed 1992, c. 850)

§ 7.02. (1948, c. 116; 1968, c. 644; 1972, c. 336; 1989, c. 349; repealed 1992, c. 850)

§ 7.03. (1948, c. 116; 1989, c. 349; repealed 1992, c. 850)

§ 7.04. (1948, c. 116; 1970, c. 226; 1989, c. 349; repealed 1992, c. 850)

§ 7.05. (1948, c. 116; 1950, c. 251; 1983, c. 164; 1989, c. 349; repealed 1992, c. 850)

§ 7.06. (1948, c. 116; 1964, c. 120; 1976, c. 633; 1978, c. 78; repealed 1992, c. 850)

§ 7.07. (1948, c. 116; 1975, c. 112; 1976, c. 633; repealed 1992, c. 850)

§ 7.08. (1948, c. 116; 1988, c. 269; 1989, c. 349; repealed 1992, c. 850)

§§ 7.09 through 7.12. (1948, c. 116; repealed 1982, c. 658)

§ 7.13. (1948, c. 116; 1982, c. 658; 1989, c. 349; repealed 1992, c. 850)

Chapter 7A. Borrowing. (Repealed)

§§ 7A.01 through 7A.13. (1992, c. 850; repealed 1998, c. 711)

Chapter 7B. Borrowing.

§ 7B.01. General borrowing power of city council.

The council may, in the name of and for the use of the city, incur indebtedness by issuing its bonds, notes or other obligations for the purposes, in the manner and to the extent provided by the general law of the Commonwealth of Virginia, as supplemented by the provisions of this chapter. Bonds, notes or other obligations authorized in compliance with the provisions of the charter as in effect at the time of such authorization may be issued whether or not such authorization complied with provisions of general law in effect at the time of their authorization. (1998, c. 711)

§ 7B.02. Limitations on indebtedness.

In the issuance of bonds, notes and other obligations, the city shall be subject to the limitations as to amount contained in Article VII, Section 10 of the Constitution of Virginia. (1998, c. 711)

§ 7B.03. Emergency expenditures.

The city may authorize by ordinance the issuance of bonds, notes or other obligations to provide for emergency expenditures. Bonds, notes or other obligations may be issued to finance an appropriation to meet a public emergency, as provided in § 2.02 (d) of this charter, when authorized by the ordinance making such appropriation. (1998, c. 711)

§ 7B.04. Procedures for adopting ordinances authorizing the issuance of bonds or notes.

(a) The procedure for the adoption of an ordinance authorizing the issuance of bonds shall be the same as for the adoption of any other ordinance, except that six affirmative votes shall be necessary for its adoption. No such ordinance shall take effect until the thirty-first day after publication of the notice of its adoption as hereinafter provided.

(b) Within ten days after the adoption of an ordinance authorizing the issuance of bonds, the city clerk shall cause a notice of the adoption of such ordinance to be printed in a newspaper published or in general circulation in the city. Such notice shall include a statement that the thirty-day period of limitation within which to file a petition for a referendum on the ordinance authorizing the issuance of bonds shall have commenced as of the date of such publication.

(c) The procedure for the adoption of an ordinance authorizing the issuance of notes shall be the same as for the adoption of any other ordinance, except that no such ordinance shall be passed as an emergency ordinance and that six affirmative votes shall be necessary for its adoption. An ordinance authorizing the issuance of notes shall not be subject to the requirement of publication of a notice of adoption as hereinabove provided, nor shall such ordinance be subject to the provisions of § 7B.05 of this charter concerning a petition for a referendum. Such ordinance shall be effective immediately unless otherwise provided by the city council in such ordinance. (1998, c. 711)

§ 7B.05. Optional referendum on ordinance authorizing the issuance of bonds.

If, within thirty days after publication of notice of adoption as required by § 7B.04 (a) of this charter, a petition, signed and verified as hereinafter provided and requesting the submission to the qualified voters of the city of an ordinance authorizing the issuance of bonds, shall be filed with the clerk of the Circuit Court of the City of Richmond, such ordinance shall be so submitted at an election called for such purpose. The provisions of § 3.07 of this charter as to the qualifications of the persons who sign the petition, the number of signatures to be required, the verification thereof, the filing of the petition and the request for the election shall apply equally to the petition and election provided for in this section. The election shall be ordered, conducted, and the results ascertained and certified in accordance with general law. If a majority of those voting thereon at such election shall fail to approve the ordinance, such ordinance shall be void. If a majority of those voting thereon at such election shall approve the ordinance, such ordinance shall be effective immediately. (1998, c. 711)

§ 7B.06. Procedures for sale and terms of bonds and notes.

All bonds and notes shall be sold in such manner, either at public or private sale, for such price and upon such terms, including without limitation amounts, principal maturities, sinking fund requirements, maturity dates, interest rates and redemption features, as the council may determine by ordinance or resolution, or as the director of finance, with the approval of the chief administrative officer, may determine, when authorized to do so by ordinance or resolution. Furthermore, interest rates may be determined by reference to indices or formulas or agents designated by the council under guidelines established by it, or, when authorized to do so by ordinance or resolution, such determination and designation may be made by the director of finance, with the approval of the chief administrative officer. (1998, c. 711; 2005, c. 844)

Chapter 8. Financial Administration.

§ 8.01. Establishment and composition of department of finance.

There shall be a department of finance for the administration of the financial affairs of the city, including exercise of the powers conferred and duties imposed by law upon commissioners of the revenue, collectors of taxes, license inspectors, city treasurers, and similar officers. (1948, c. 116; 1982, c. 658; 1989, c. 349; 1998, c. 711)

§ 8.02. (1948, c. 116; repealed 1998, c. 711)

§ 8.03. General powers and duties of director of finance.

The director of finance, under the supervision of the chief administrative officer, shall have charge of the administration of the financial affairs of the city and to that end he/she shall have authority and shall be responsible for the department of finance in order to discharge the following functions:

- (a) Manage the city's finances in a professionally accountable and responsible manner.
- (b) Provide for regular reporting of the city's financial condition in conformance with generally accepted accounting principles.
- (c) Receive, deposit in legal depositories, maintain custody of and disburse all funds of the city or in the possession of the city, and prudently invest such funds as they are available for investment. The director shall not be liable for any loss sustained of funds so deposited.
- (d) Protect the interests of the city by withholding the payment of any claim or demand by any person, firm or corporation against the city until any indebtedness or other liability due from such person, firm or corporation shall first have been settled and adjusted.
- (e) Administer all debt of the city to include its issue, registration, transfer and retirement or redemption.
- (f) Enforce the provisions of this charter and the ordinances of the city with regard to any financial matters of the city. (1948, c. 116; 1950, c. 251; 1975, c. 112; 1982, c. 658; 1988, c. 269; 1989, c. 349; 1990, c. 401; 1998, c. [711](#); 2004, cc. [877](#), [898](#))

§ 8.03.1. (1978, c. 78; repealed 1989, c. 349)

§ 8.04. (1948, c. 116; repealed 1989, c. 349)

§ 8.05. (1948, c. 116; 1976, c. 633; 1982, c. 658; repealed 1988, c. 269)

§ 8.05.1. (1966, c. 243; repealed 1982, c. 658)

§ 8.06. (1948, c. 116; 1974, c. 19; 1976, c. 633; 1986, c. 119; repealed 1998, c. [711](#))

§ 8.07. (1948, c. 116; 1976, c. 633; repealed 1998, c. [711](#))

§ 8.08. (1948, c. 116; 1982, c. 658; repealed 1989, c. 349)

§ 8.09. (1948, c. 116; 1954, c. 64; 1973, c. 348; 1974, c. 19; 1982, c. 658; repealed 1998, c. [711](#))

§ 8.10. **Annual audit.**

The council shall cause to be made annually an independent financial audit of all accounts, books, records and financial transactions of the city by the auditor of public accounts of the Commonwealth or by a firm of independent certified public accountants to be selected by the council. The audit shall be of sufficient scope to express an opinion as to whether the books and records and the financial statements prepared therefrom as contained in the annual financial report of the city present fairly the fiscal affairs of the city in accordance with generally accepted accounting principles of municipal accounting and applicable governing laws. The report of such audit shall be filed within such time as the council shall specify, and one copy thereof shall be always available for public inspection in the office of the city clerk during regular business hours. (1948, c. 116; 1977, c. 513; 1982, c. 658; 1998, c. [711](#))

Chapter 9. Department of Personnel. (Repealed)

§ 9.01. (1948, c. 116; repealed 1998, c. [711](#))

§ 9.02. (1948, c. 116; repealed 1998, c. [711](#))

§ 9.03. (1948, c. 116; 1958, c. 185; 1968, c. 644; 1970, c. 226; 1972, c. 336; 1977, c. 513; 1978, c. 78; 1981, c. 199; 1983, c. 164; repealed 1998, c. [711](#))

§ 9.04. (1948, c. 116; 1975, c. 112; 1977, c. 513; 1983, c. 164; 1985, c. 22; 1993, c. 613; repealed

1998, c. 711)

§ 9.05. (1948, c. 116; 1972, c. 336; 1982, c. 658; 1983, c. 164; 1986, c. 119; repealed 1998, c. 711)

§ 9.06 (1948, c. 116; 1982, c. 658; 1983, c. 164; repealed 1998, c. 711)

§ 9.07. (1948, c. 116; 1958, c. 185; 1968, c. 644; 1972, c. 336; 1974, c. 19; 1975, c. 112; 1983, c. 164; 1984, c. 163; 1986, c. 119; 1989, c. 349; 1990, c. 401; repealed 1998, c. 711)

§ 9.08. (1948, c. 116; 1968, c. 644; 1983, c. 164; 1987, c. 230; repealed 1998, c. 711)

§ 9.09. (1948, c. 116; 1958, c. 185; repealed 1983, c. 164)

§ 9.10. (1948, c. 116; 1981, c. 199; 1983, c. 164; 1986, c. 119; repealed 1998, c. 711)

§ 9.11. (1948, c. 116; 1970, c. 226; 1983, c. 164; repealed 1998, c. 711)

§ 9.12. (1948, c. 116; repealed 1983, c. 164)

§ 9.13. (1948, c. 116; 1987, c. 230; repealed 1998, c. 711)

§ 9.14. (1948, c. 116; 1950, c. 251; 1952, c. 182; repealed 1998, c. 711)

§ 9.15. (1948, c. 116; 1950, c. 251; repealed 1998, c. 711)

§ 9.15:1. (1987, c. 230; repealed 1998, c. 711)

§ 9.15:2. (1987, c. 230; repealed 1998, c. 711)

§ 9.16. (1948, c. 116; 1974, c. 19; 1978, c. 78; 1982, c. 658; repealed 1998, c. 711)

§ 9.17. (1971, c. 130; 1982, c. 658; repealed 1998, c. 711)

Chapter 10. Department of Law. (Repealed)

§ 10.01. (1948, c. 116; repealed 1998, c. 711)

§ 10.02. (1948, c. 116; repealed 1998, c. 711)

§ 10.03. (1948, c. 116; repealed 1998, c. 711)

§ 10.04. 1948, c. 116; 1964, c. 120; repealed 1998, c. 711)

Chapter 11. Department of Public Safety. (Repealed)

§ 11.01. (1948, c. 116; 1988, c. 269; repealed 1992, c. 850)

§§ 11.02 through 11.09. (1948, c. 116; repealed 1992, c. 850)

§ 11.10. (1948, c. 116; 1956, c. 130; 1988, c. 269; repealed 1992, c. 850)

§ 11.11. (1958, c. 185; repealed 1992, c. 850)

Chapter 11A. Department of Police. (Repealed)

§§ 11A.01 through 11A.05. (1992, c. 850; repealed 1998, c. 711)

Chapter 11B. Department of Fire and Emergency Services. (Repealed)

§ 11B.01. (1992, c. 850; repealed 1998, c. 711)

§ 11B.02. (1992, c. 850; repealed 1998, c. 711)

§ 11B.03. (1992, c. 850; repealed 1998, c. 711)

Chapter 11C. Traffic Control. (Repealed)

§ 11C.01. (1992, c. 850; repealed 1998, c. 711)

§ 11C.02. (1992, c. 850; repealed 1998, c. 711)

Chapter 12. Department of Public Works. (Repealed)

§ 12.01. (1948, c. 116; repealed 1998, c. 711)

§ 12.02. (1948, c. 116; 1985, c. 22; 1994, c. 215; repealed 1998, c. 711)

§ 12.03. (1948, c. 116; 1954, c. 64; repealed 1998, c. 711)

§ 12.04. (1948, c. 116; repealed 1998, c. 711)

§ 12.05. (1948, c. 116; 1950, c. 251; 1975, c. 112; repealed 1998, c. 711)

§ 12.06. (1948, c. 116; 1950, c. 251; 1975, c. 112; repealed 1998, c. 711)

§ 12.07. (1948, c. 116; 1956, c. 130; 1958, c. 185; 1964, c. 120; 1970, c. 226; 1972, c. 336; 1974, c. 19; 1981, c. 199; 1985, c. 22; repealed 1998, c. 711)

§ 12.08. (1948, c. 116; 1956, c. 130; 1958, c. 185; repealed 1998, c. 711)

Chapter 13. Department of Public Utilities.

§ 13.01. Department of public utilities; created; composition.

There shall be a department of public utilities which shall consist of the director of public utilities and such other officers and employees organized into such bureaus, divisions and other units as may be provided by ordinance or by the orders of the director consistent therewith. The director shall have power to make rules and regulations consistent with this charter and the ordinances of the city for the conduct of its business. (1948, c. 116; 1998, c. 711)

§ 13.02. Functions.

The department of public utilities shall be responsible for: (a) the operation of the water, wastewater, stormwater, gas and electric utilities of the city, including street lighting; (b) the collection of all charges for the services of such utilities; and (c) such other powers and duties as may be assigned to the department by ordinance. (1948, c. 116; 1982, c. 658; 1994, c. 215)

§ 13.03. (1948, c. 116; 1988, c. 269; repealed 1998, c. 711)

§ 13.04. (1948, c. 116; repealed 1998, c. 711)

§ 13.05. Collection of bills.

The collection of unpaid bills may be enforced in the manner now or hereafter prescribed by law or ordinance, and water service may be disconnected for nonpayment of landfill refuse fees. (1948, c. 116; 1982, c. 658; 1988, c. 269; 1993, c. 613; 1998, c. 711)

§ 13.06. Each utility a separate enterprise.

The water, wastewater, stormwater, gas and electric utilities shall each be conducted as a separate enterprise, provided that nothing herein shall prevent the transfer of employees from one utility to another or the division of the time of any officer or employee between two or more of such utilities. To facilitate accurate analysis of the financial results of the operation of each utility:

(a) The customer service division shall, as directed by ordinance, bill for and collect on behalf of each utility not only the charges due from domestic, commercial and industrial users of its services but similar charges against the city and each department, board, commission, office and agency thereof, including the school board and each other utility. The rates to be charged for street lighting and for electric current furnished to the city and its departments, boards, commissions, offices and agencies, as well as any political subdivision, shall be fixed by the director of public utilities to generate such revenue as shall enable the utility to make a reasonable return on investment and meet retirement schedules and other debt service requirements in accordance with the provisions of any bond ordinance pursuant to which bonds have been issued to finance capital improvements of such utility and to comply with the terms and conditions of any documents securing any such bonds.

(b) Separate budgets shall be prepared for each utility annually at the time and in the manner prescribed in Chapter 6 of this charter, which shall include estimates of revenue and expense for the ensuing fiscal year. After the budget of a utility has been adopted, should it appear that substantial sales of the unit product of the utility can be made in excess of the sales of the unit product contemplated by the budget which were not reasonably foreseen at the time the estimates of revenue and expense were made, additional expenditures may be authorized by the chief administrative officer from the funds of the utility in an amount not exceeding the estimated cost of producing or purchasing additional units of the product of the utility to be sold upon the justification of such expenditure by and recommendation of the director of public utilities. The chief administrative officer shall report to the council as soon as practicable any such additional expenditures authorized by him/her and shall also report any such additional expenditures to the director of finance, who shall adjust the appropriation accounts accordingly. The expenditure of any other funds of any utility shall be authorized only when an additional appropriation thereof is made in accordance with § 6.16 of this charter. The budget estimates of each department of the city shall include items for gas, water, wastewater, stormwater, and electric current to be used by them. An item for street lighting shall be included in the general fund budget and shall be disbursed by the director of finance on the basis of bills rendered by the customer service division.

(c) The accounting system of each utility shall conform to generally accepted principles of public utility accounting and shall be kept on an accrual basis. Expenditures shall be authorized and made in accordance with appropriations made by the council and in accordance with the provisions of Chapters 6, 8 and 13 of this charter. The records of revenues of each utility shall be kept so that the services rendered to each class of customer according to the rate schedules adopted by the council for each utility can be obtained. After the close of each fiscal year there shall be submitted to the chief administrative officer and the council a report as to the operation of each utility containing at least the following financial statements: (1) a comparative balance sheet showing the financial condition of the utility as of the beginning and close of the fiscal year and an analysis of the surplus account showing the factors of change in the account as reflected by the comparative balance sheet; and (2) a comparative profit and loss statement of the last two fiscal years; and a comparative detailed analysis of operating expense for the last two fiscal years according to functional grouping. The expense of operating each utility shall include: (1) taxes, if any, lawfully accruing during the fiscal year; and (2) except for the stormwater utility, taxes not actually accruing but which would have accrued had the utility not been municipally owned, and such taxes shall be paid annually into the general fund. For the purposes of this chapter, all indebtedness of the city incurred on account of each utility shall be considered as the indebtedness of such utility. (1948, c. 116; 1954, c. 64; 1982, c. 658; 1988, c. 269; 1993, c. 613; 1994, c. 215; 1998, c. 711; 2006, cc. 650, 712)

§ 13.06.1. Payments by utilities for city services.

The amount charged to and to be paid for any city services provided to a city utility by any other department or agency of the city shall be computed upon and limited to the actual cost incurred by such city department or agency in providing such service. (1989, c. 349)

§ 13.06.2. Investment of utility funds.

The cash of any utility may be invested for the utility with other city funds, provided, however, that the investment earnings from such cash be credited to the utility. The excess cash not

required as working capital for any such utility, for renewal fund transfer, or for other legal obligations of a utility may be utilized for capital projects in accordance with industry standards as determined by and directed by the director of public utilities. (1989, c. 349)

§ 13.07. Utility renewal funds.

A renewal fund for each utility shall be established to be known as the "water utility renewal fund," the "wastewater utility renewal fund," the "stormwater utility renewal fund," the "gas utility renewal fund" and the "electric utility renewal fund," respectively. Simultaneously with the introduction of budgets for each city owned and operated utility there shall be introduced renewal fund budgets for each of the utilities utilizing operating cash of the respective utilities for appropriations to finance such budgets. Funds received from the federal and state governments, representing grants in aid of construction, shall be deposited into the respective utility renewal funds. Appropriations may be made by the council from the renewal fund of any utility, on the recommendation of the mayor, only for renewing, rebuilding or extending the plant and distribution system of such utility. (1948, c. 116; 1954, c. 64; 1973, c. 348; 1989, c. 349; 1994, c. 215; 2006, cc. 650, 712)

§ 13.07.1. Transfer of utility retained earnings.

Transfers of retained earnings of any utility of the city shall be made only after retention of sufficient funds to meet all bond covenant requirements, working capital requirements, and other legal requirements, and any such transfer shall be limited to thirty percent of any year's net income of such utility with such transfer to be made in the second succeeding fiscal year and provided further that in no case shall cash transfers be made to the general fund if a utility does not have a minimum of forty-five days working capital requirements. (1954, c. 64; 1960, c. 7; 1973, c. 348; 1989, c. 349)

§ 13.07.2. Amendment of the capital budget adopted pursuant to provisions of § 6.19 of the charter; increase in appropriation for utility purposes.

The capital budget ordinance for a fiscal year adopted by the city council pursuant to § 6.19 of the charter may be amended to allow for an increase in a public utility capital budget within the fiscal year if such additional appropriation is a result of and warranted by a demand for new services, changes in conditions, including emergencies and acts of God occurring after the capital budget goes into effect, necessity for complying with regulatory requirements, or the capital budget needs could not have been reasonably anticipated and estimated at the time of adoption of the capital budget. (1989, c. 349)

§ 13.08. Valuation of utilities.

At such times as it shall determine, the council shall cause to be made a valuation of each of the utilities, in accordance with accepted valuation principles, by a competent firm of engineers to be selected by the council on the recommendation of the chief administrative officer, showing in the case of the water utility the proportion of its valuation properly allocable to fire protection. (1948, c. 116; 1994, c. 215; 1998, c. 711; 2006, cc. 650, 712)

§ 13.09. Changes in rates.

The rates to be charged for the respective services of the water, wastewater, stormwater, and gas utilities and for the sale of any excess of electric current beyond the needs of the city and its departments, boards, commissions and agencies, as well as any political subdivisions, shall be fixed from time to time by the council on the recommendation of the director of public utilities

and the mayor. If for any fiscal year any utility other than the stormwater utility shall operate at a net loss as shown by its annual statement of profit and loss, it shall be the duty of the director of public utilities and the mayor to recommend and the council to adopt for that utility a schedule of rates which in its judgment will produce revenue at least equal to expense. (1948, c. 116; 1954, c. 64; 1982, c. 658; 1994, c. 215; 2006, cc. 650, 712)

§ 13.10. No sale or lease of utilities except when approved by referendum.

There shall be no sale or lease of the water, wastewater, gas or electric utilities unless the proposal for such sale or lease shall first be submitted to the qualified voters of the city at a general election and be approved by a majority of all votes cast at such election. (1948, c. 116; 1998, c. 711)

§ 13.11. Implementation of stormwater utility.

The stormwater utility shall be implemented by ordinance, and shall be effective as of the effective date of that ordinance. Notwithstanding other provisions of this charter, the stormwater utility program may be administered by either the Department of Public Works or the Department of Public Utilities. Stormwater utility charges shall be assessed to all property owners and shall be based upon their contributions to stormwater runoff. Procedures and guidelines may be established to provide for full or partial waivers of charges to any person who develops, redevelops, or retrofits outfalls, discharges, or property so that there is a permanent reduction in post-development stormwater flow and pollutant loading. Federal and state government agencies shall receive a full waiver of stormwater utility charges when the agency owns and provides for maintenance of storm drainage and stormwater control facilities. If stormwater utility charges are not paid when due, interest thereon shall at that time accrue at the rate determined by council, not to exceed any maximum allowed by law. The city may collect charges and interest by action at law or suit in equity, and such unpaid charges and interest shall constitute a lien against the property, of equal stature with liens for unpaid real estate taxes. (1994, c. 215; 2004, c. 514; 2010, cc. 218, 476)

Chapter 14. Department of Public Health. (Repealed)

§ 14.01. (1948, c. 116; 1966, c. 109; 1991, c. 396; repealed 1998, c. 711)

§ 14.02. (1948, c. 116; 1958, c. 185; repealed 1998, c. 711)

§ 14.03. (1948, c. 116; 1984, c. 163; repealed 1998, c. 711)

§ 14.04. (1948, c. 116; repealed 1998, c. 711)

§ 14.05. (1948, c. 116; 1991, c. 396; repealed 1998, c. 711)

§ 14.06. (1948, c. 116; repealed 1991, c. 396)

Chapter 15. Department of Social Services. (Repealed)

§ 15.01. (1948, c. 116; 1985, c. 22; repealed 1998, c. 711)

§ 15.02. (1948, c. 116; 1958, c. 185; 1985, c. 22; repealed 1998, c. 711)

§ 15.03. (1948, c. 116; 1985, c. 22; repealed 1998, c. 711)

§ 15.04. (1948, c. 116; 1985, c. 22; repealed 1998, c. 711)

Chapter 16. Department of Recreation and Parks. (Repealed)

§§ 16.01 through 16.05. (1948, c. 116; repealed 1998, c. 711)

§ 16.06. (1948, c. 116; 1958, c. 185; 1986, c. 119; repealed 1998, c. 711)

Chapter 17. Planning, Zoning and Subdivision Control.

§ 17.01. Power to adopt master plan.

In addition to the powers granted elsewhere in this charter the council shall have the power to adopt by ordinance a master plan for the physical development of the city to promote health, safety, morals, comfort, prosperity and general welfare. The master plan may include but shall not be limited to the following:

- (a) The general location, character and extent of all streets, highways, super-highways, freeways, avenues, boulevards, roads, lanes, alleys, walks, walkways, parks, parkways, squares, playfields, playgrounds, recreational facilities, stadia, arenas, swimming pools, waterways, harbors, water fronts, landings, wharves, docks, terminals, canals, airports and other public places or ways, and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension thereof.
- (b) The general location, character and extent of all public buildings, schools and other public property and of utilities whether publicly or privately owned, off-street parking facilities, and the removal, relocation, vacating, abandonment, change of use, alteration or extension thereof.
- (c) The general location, character and extent of slum clearance, housing and neighborhood rehabilitation projects, including the demolition, repair or vacation of substandard, unsafe or unsanitary buildings.
- (d) A general plan for the control and routing of railways, street car lines, bus lines and all other vehicular traffic.
- (e) The general location, character and extent of areas beyond the corporate limits of the city to be annexed thereto. (1948, c. 116)

§ 17.02. City planning commission, generally.

There shall be a city planning commission which shall consist of nine members. One member shall be a member of the council who shall be appointed by the council for a term coincident with his/her term in the council; one member shall be a member of the board of zoning appeals appointed by the board of zoning appeals for a term coincident with his/her term on such board; one member shall be the chief administrative officer or an officer or employee of the city designated from time to time by him/her; six citizen members shall be qualified voters of the city who hold no office of profit under the city government, appointed for terms of three years, one of whom shall be appointed by the mayor, and five of whom shall be appointed by the council. Vacancies shall be filled by the authority making the appointment, for the unexpired portion of the term. Members of the city planning commission, other than the member of council appointed to the commission and the chief administrative officer, or such officer or employee of the city as the chief administrative officer may designate to serve on the commission, shall be entitled to receive such compensation as may be fixed from time to time by ordinance adopted by the council. (1948, c. 116; 1968, c. 644; 1976, c. 633; 1985, c. 22; 1998, c. 711; 2004, cc. 877, 898; 2005, c. 844)

§ 17.03. (1948, c. 116; 1958, c. 185; 1968, c. 644; 1972, c. 336; 1993, c. 613; repealed 1998, c. 711)

§ 17.04. Duty to adopt master plan.

It shall be the duty of the commission to make and adopt a master plan which with

accompanying maps, plats, charts and descriptive matter shall show the commission's recommendations for the development of the territory covered by the plan. In the preparation of such plan the commission shall make careful and comprehensive surveys and studies of existing conditions and future growth. The plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the city and its environs which will in accordance with existing and future needs best promote health, safety, morals, comfort, prosperity and general welfare, as well as efficiency and economy in the process of development. (1948, c. 116)

§ 17.05. Control of monuments and other works of art.

It shall be the further duty and function of the commission to preserve historical landmarks and to control the design and location of statuary and other works of art which are or may become the property of the city, and the removal, relocation and alteration of any such work; and to consider and suggest the design of harbors, bridges, viaducts, airports, stadia, arenas, swimming pools, street fixtures and other public structures and appurtenances. (1948, c. 116)

§ 17.06. Adoption of master plan by commission and approval by council.

The commission may adopt the master plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, said parts corresponding to major geographical sections or geographical or topographical divisions of the city or with functional subdivisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. Before the adoption of the plan or any such part, amendment, extension, or addition, the commission shall hold at least one public hearing thereon. Notice of the time and place of such hearing shall be given in accordance with general law. The adoption of the plan or of any such part, amendment, extension or addition shall be by resolution of the commission carried by the affirmative vote of not less than a majority of the entire membership of the commission. The resolution shall refer expressly to the maps and descriptive matter and other matter intended by the commission to form the whole or part of the plan adopted, which resolution shall be signed by the chairman of the commission and attested by its secretary. An attested copy of the resolution, accompanied by a copy of so much of the plan in whole or in part as was adopted thereby, and each amendment, alteration, extension or addition thereto adopted thereby shall be certified to the council, and at least one public hearing shall be held thereon in accordance with general law. Neither the master plan nor any part, amendment, extension or addition thereto shall become effective until the action of the commission with respect thereto set out in the resolution shall have been approved by the council by ordinance or resolution. Upon the approval of the action of the commission by the council, an attested copy of the resolution adopted by the commission accompanied by a copy of so much of the plan in whole or in part as was adopted thereby, and each amendment, alteration, extension or addition thereto thereby adopted, together with the ordinance or resolution adopted by the council shall be certified to the clerk of the Circuit Court, Division I and Division II, of the city who shall file the same in his/her respective offices, and shall index the same in the deed index book in the name of the city and under the title: master plan of the city. (1948, c. 116; 1958, c. 185; 1975, c. 112; 1998, c. 711)

§ 17.07. Effect of adoption and approval of master plan.

Whenever the commission shall have adopted a master plan for the city or one or more parts thereof, geographical, topographical or functional, and the master plan or such part or parts thereof and any amendment or extension of the plan or part thereof or addition thereto shall

have been approved by the council and it has been certified and filed as provided in the preceding section, then and thereafter no street, square, park or other public way, ground, open space, public building or structure, shall be constructed or authorized in the city or in the planned section or division thereof until and unless the general location, character and extent thereof has been submitted to and approved by the commission; and no public utility, whether publicly or privately owned, shall be constructed or authorized in the city or in the planned section or division thereof until and unless its general location, but not its character and extent, has been submitted to and approved by the commission, but such submission and approval shall not be necessary in the case of pipes or conduits in any existing street or proposed street, square, park or other public way, ground or open space, the location of which has been approved by the commission; and no ordinance giving effect to or amending the comprehensive zoning plan as provided in § 17.10 shall be adopted until it has been submitted to and approved by the commission. In case of disapproval in any of the instances enumerated above the commission shall communicate its reason to the council which shall have the power to overrule such action by a recorded vote of not less than two-thirds of its entire membership. The failure of the commission to act within sixty days from the date of the official submission to it shall be deemed approval. The widening, extension, narrowing, enlargement, vacation or change in the use of streets and other public ways, grounds and places within the city as well as the acquisition by the city of any land within or without the city for public purposes or the sale of any land then held by the city shall be subject to similar approval and in case the same is disapproved such disapproval may be similarly overruled. The foregoing provisions of this section shall not be deemed to apply to the pavement, repavement, reconstruction, improvement, drainage or other work in or upon any existing street or other existing public way. (1948, c. 116; 1958, c. 185)

§ 17.08. (1948, c. 116; 1972, c. 336; repealed 1998, c. 711)

§ 17.09. Further powers and duties of the commission.

The commission shall have power to promote public interest in and understanding of the plan and to that end may publish and distribute copies of the plan or any report relating thereto, and may employ such other means of publicity and education as it may determine. The commission shall consult and advise with public officials and agencies, public utility companies, civic, educational, professional or other organizations, and with citizens, with relation to the protection or carrying out of the plan. All public officials shall upon request furnish to the commission within a reasonable time such available information as it may require for its work. The commission, its members, officers and employees in the performance of their duties may enter upon any land in the city and make examinations and surveys and place and maintain necessary monuments and markers thereon. In general the commission shall have such powers as may be necessary to enable it to fulfill its function, promote planning and carry out the purposes of this charter. The commission shall make an annual report to the council concerning its activities. (1948, c. 116)

§ 17.10. Zoning powers.

In addition to the powers granted elsewhere in this charter the council shall have the power to adopt by ordinance a comprehensive zoning plan designed to lessen congestion in streets, secure safety from fire, panic and other danger, promote health, sanitation and general welfare, provide adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate public and private transportation and the supplying of public utility services and sewage disposal, and facilitate provision for schools, parks, playgrounds and other public improvements and requirements. The comprehensive zoning plan shall include the

division of the city into districts with such boundaries as the council deems necessary to carry out the purposes of this charter and shall provide for the regulation and restriction of the use of land, buildings and structures in the respective districts and may include but shall not be limited to the following:

- (a) It may permit specified uses of land, buildings and structures in the districts and prohibit all other uses.
- (b) It may restrict the height, area and bulk of buildings and structures in the districts.
- (c) It may establish setback building lines and prescribe the area of land that may be used as front, rear and side yards and courts and open spaces.
- (d) It may restrict the portion of the area of lots that may be occupied by buildings and structures.
- (e) It may prescribe the area of lots and the space in buildings that may be occupied by families.
- (f) It may require that spaces and facilities deemed adequate by the council shall be provided on lots for parking of vehicles in conjunction with permitted uses of land and that spaces and facilities deemed adequate by the council shall be provided on lots for off-street loading or unloading of vehicles.
- (g) It may permit the use and development of land not less than ten acres in extent in a manner that does not conform in all respects with the regulations and restrictions prescribed for the district or districts in which such land is situated, provided that such use shall be approved by the city planning commission and the council.
- (h) It may provide that land, buildings and structures and the uses thereof which do not conform to the regulations and restrictions prescribed for the district in which they are situated may be continued so long as the then existing or more restricted use continues and so long as the buildings or structures are maintained in their then structural condition; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the district or districts in which they are situated whenever they are enlarged, extended, reconstructed or structurally altered; and may require that such buildings or structures and the use thereof shall conform to the regulations and restrictions prescribed for the district or districts in which they are situated, in any event within a reasonable period of time to be specified in the ordinance. (1948, c. 116)

§ 17.11. Uniformity of regulations within a district; special use permits.

(a) The regulations and restrictions shall be uniform and shall apply equally to all land, buildings, and structures and to the use and to each class or kind thereof throughout each district; however, the regulations and restrictions applicable in one district may differ from those provided for other districts.

(a1) The council may, by ordinance adopted after holding one or more public hearings concerning same, establish design overlay districts, providing for such design overlay districts, a design review process applicable to exterior changes within view from public right-of-ways in order to protect developed areas of the city which are characterized by uniqueness of established neighborhood character, architectural coherence and harmony, or vulnerability to deterioration,

and council may assess a reasonable fee, not exceeding the actual cost of the review process, for a determination if proposed new construction, alterations, rehabilitation, or demolition conforms to general guidelines for a particular design overlay district established by the planning commission and urban design committee after holding a public hearing.

(b) The council shall have the power to authorize by ordinance adopted by not less than six affirmative votes the use of land, buildings, and structures in a district that does not conform to the regulations and restrictions prescribed for that district and to authorize the issuance of special use permits therefor, whenever it is made to appear that such special use will not be detrimental to the safety, health, morals and general welfare of the community involved, will not tend to create congestion in streets, roads, alleys and other public ways and places in the area involved, will not create hazards from fire, panic or other dangers, will not tend to overcrowding of land and cause an undue concentration of population, will not adversely affect or interfere with public or private schools, parks, playgrounds, water supplies, sewage disposal, transportation or other public requirements, conveniences and improvements, and will not interfere with adequate light and air. No such special use permit shall be adopted until (1) the city planning commission has conducted a public hearing to investigate the circumstances and conditions upon which the council is empowered to authorize such use and until the commission has reported to the council the results of such public hearing and investigation and its recommendations with respect thereto, and (2) the council has conducted a public hearing on an ordinance to authorize such special use permit at which the person in interest and all other persons shall have an opportunity to be heard. Notice of the time and place of such public hearings shall be given in accordance with general law.

The council shall have the power to require greater notice as it may deem expedient. The city planning commission may recommend and the council may impose such conditions upon the use of the land, buildings and structures as will, in its opinion, protect the community and area involved and the public from adverse effects and detriments that may result therefrom. (1948, c. 116; 1960, c. 7; 1968, c. 644; 1987, c. 230; 1998, c. 711)

§ 17.12. Considerations to be observed in adoption and alteration of regulations.

The regulations and restrictions shall be enacted with reasonable consideration, among other things of the character of each district and its peculiar suitability for particular uses and with a view of conserving the value of land, buildings and structures and encouraging the most appropriate use thereof throughout the city. Upon the enactment of the ordinance dividing the city into districts and regulating and restricting the use of land, buildings and structures therein in accordance with a comprehensive zoning plan no land, building or structure shall be changed from one district to another district unless the change is in accord with the interest and purposes of this section and will not be contrary to the comprehensive zoning plan and the enumerated factors upon which it is based and the regulations and restrictions applicable to the districts involved in the change. (1948, c. 116; 1950, c. 251; 1960, c. 7)

§ 17.13. Duties of the city planning commission with relation to zoning.

It shall be the duty of the city planning commission to prepare and submit to the council a comprehensive zoning plan as referred to in § 17.10 and from time to time prepare and submit such changes in or revisions of the said plan as changing conditions may make necessary. (1948, c. 116)

§ 17.14. Adoption and amendment of zoning regulations and restrictions and establishment of district boundaries.

Subject to the other provisions of this chapter and general law, the council shall have power by ordinance to adopt the regulations and restrictions hereinbefore described and establish the boundaries of the districts in which they shall apply, provide for their enforcement, and from time to time amend, supplement or repeal the same. The council shall also have authority to provide for the collection of fees to cover costs involved in the consideration of any request for amendment, supplement or repeal of any such regulation, restriction or establishment of boundaries, to be paid to the department of planning and community development by the applicant upon filing such request. No such regulation, restriction or establishment of boundaries shall be adopted until:

- (a) The city planning commission has conducted a public hearing to investigate the circumstances and conditions upon which the council is empowered to authorize such regulation, restriction or establishment of boundaries, and until the commission has reported to the council the results of such public hearing and investigation and its recommendations with respect thereto; and
- (b) The council has conducted a public hearing on an ordinance to authorize such regulation, restriction or establishment of boundaries at which the person in interest and other persons shall have an opportunity to be heard.

Notice of the time and place of such public hearings shall be given in accordance with general law.

The procedures set forth in this section shall also apply to the adoption, amendment and repeal of historic district boundaries. All historic districts previously adopted by city council, except for the Church Hill North district adopted by Ordinance no. 90-197-194 and repealed by Ordinance no. 90-242-314, shall remain in full force and effect, shall be deemed to have been in continuous existence, and shall not henceforth be declared invalid by reason of a failure to follow the procedures set forth herein applicable to zoning districts. (1948, c. 116; 1984, c. 163; 1992, c. 850; 1998, c. 711)

§ 17.15. Effect of protest by twenty percent of the owners of property.

If a protest is filed with the city clerk against such amendment, supplement or repeal, signed and acknowledged before a person authorized to administer oaths, by the owners of twenty percent or more of the total area of the lots included in such proposed change or of the total area of the lots outside of the proposed change any point in which is within 150 of the boundary of such area, the council shall not adopt the ordinance making such amendment, supplement or repeal, by less than seven affirmative votes. (1948, c. 116)

§ 17.16. Board of zoning appeals; composition.

(a) There shall be a board of zoning appeals which shall consist of five regular members and two alternates. They shall be qualified voters of the city, shall hold no office of profit under the city government and shall be appointed by the chief judge of the Circuit Court of the City of Richmond for terms of four years. Vacancies shall be filled by the chief judge of such court for the unexpired portion of the term. A regular or alternate member may be removed by the chief judge of the said court for neglect of duty or malfeasance in office, upon written charges and after

public hearing. Members of the board of appeals shall serve without compensation.

(b) The city may by ordinance create a separate division of the board which shall be empowered only to hear appeals concerning interpretations of sections of the zoning ordinance dealing expressly with preservation of the Chesapeake Bay. This division shall consist of five regular members and two alternates appointed as provided in paragraph (a) of this section and subject to the same conditions of office. This division shall have only the powers set forth in § 17.20 (a). In all other respects, it shall be governed by those sections of this charter and of law which are generally applicable to the Board of Zoning Appeals. (1948, c. 116; 1960, c. 7; 1975, c. 112; 1992, c. 850)

§ 17.17. (1948, c. 116; 1960, c. 7; repealed 1998, c. 711)

§ 17.18. (1948, c. 116; repealed 1998, c. 711)

§ 17.19. Appeals to board of zoning appeals.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, commission or agency of the city affected, by any decision of the administrative officer designated by the council to administer and enforce the ordinance dividing the city into districts and regulating and restricting the use of land, buildings and structures therein. Appeals shall be taken within such reasonable time as shall be prescribed by the board by general rule, by filing with the said administrative officer and with the board a notice of appeal specifying the grounds thereof. The administrative officer shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the administrative officer from whose decision the appeal is taken certifies to the board that by reason of the facts stated in the certificate a stay would in his/her opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application and on notice to the administrative officer and on due cause shown.

The board shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest and decide the issue within a reasonable time. At the hearing any party may appear in person, by agent or by attorney and shall be given an opportunity to be heard. The board may prescribe a fee to be paid whenever an appeal is taken which shall be paid into the city treasury. (1948, c. 116; 1998, c. 711)

§ 17.20. Powers of board of zoning appeals.

The board shall have the following powers and it shall be its duty:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination by the administrative officer in the administration and enforcement of the provisions of the ordinance.

(b) To grant variations in the regulations when a property owner can show that his/her property was acquired in good faith and where by reason of the exceptional narrowness, shallowness or shape of a specific piece of property at the time of the effective date of the ordinance or where by reason of the exceptional topographical conditions or other extraordinary or exceptional situation the strict application of the terms of the ordinance actually prohibit or unreasonably restrict the use of the property, or where the board is satisfied, upon the evidence heard by it, the

granting of such variations will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the owner, provided, however, that all variations granted shall be in harmony with the intended spirit and purpose of this chapter and the ordinance.

(c) To permit, when reasonably necessary in the public interest, the use of land, or the construction or use of buildings or structures, in any district in which they are prohibited by the ordinance, by any agency of the city, county or Commonwealth or the United States, provided such construction or use shall adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase congestion in streets and shall not increase public danger from fire or otherwise affect public safety.

(d) To permit the following exceptions to the district regulations and restrictions, provided such exceptions shall by their design, construction and operation adequately safeguard the health, safety and welfare of the occupants of the adjoining and surrounding property, shall not unreasonably impair an adequate supply of light and air to adjacent property, shall not increase congestion in streets and shall not increase public danger from fire or otherwise unreasonably affect public safety and shall not diminish or impair the established property values in surrounding areas:

(1) Use of land or erection or use of a building or structure by a public service corporation for public utility purposes exclusively which the board finds to be reasonably necessary for the public convenience and welfare.

(2) Use of land or construction or use of buildings and structures in any district in which they are prohibited by the ordinance, for cemetery purposes, airports or landing fields, greenhouses and nurseries and the extraction of raw materials from land, such as rock, gravel, sand and similar products.

(3) Use of land in dwelling districts immediately adjoining or separated from business, commercial or industrial districts by alleys, or widths to be specified in the ordinance, for parking of vehicles of customers of business, commercial or industrial establishments, provided such use shall not extend more than the distance specified in the ordinance from the business, commercial or industrial district.

(4) Use of buildings for dwelling purposes in districts specified in the ordinance for use for other purposes, where it can be shown that conditions in the specified districts are not detrimental to the health, safety, or welfare of the inhabitants of such buildings and on condition that the buildings will be removed within a time specified in the ordinance.

(5) Reconstruction of buildings or structures that do not conform to the comprehensive zoning plan and regulations and restrictions prescribed for the district in which they are located, which have been damaged by explosion, fire, act of God or the public enemy, to the extent of more than sixty per cent of their assessed taxable value, when the board finds some compelling public necessity for a continuance of the use and such continuance is not primarily to continue a monopoly, provided that nothing herein shall relieve the owner of any such building or structure from obtaining the approval of such reconstruction by the council or any department or officer of the city when such approval is required by any law or ordinance.

(e) To modify the interpretation and application of the provisions of the ordinance where the street layout actually on the ground varies from the street layout as shown on the map fixing the districts and their boundaries adopted with and as a part of the ordinance. (1948, c. 116; 1954, c. 64; 1962, c. 65; 1981, c. 199; 1998, c. 711)

§ 17.21. Form and scope of decisions by board of zoning appeals.

In exercising the powers conferred upon it the board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as should be made, and to that end shall have all the powers of the administrative officer charged by the ordinance with enforcement. The concurring affirmative vote of three members of the board shall be necessary to reverse any order, requirement, decision or determination of the administrative officer or to decide in favor of the applicant in any matter of which it has jurisdiction. The board shall act by formal resolution which shall set forth the reason for its decision and the vote of each member participating therein which shall be spread upon its records and shall be open to public inspection. The board may, upon the affirmative vote of three members, reconsider any decision made and, upon such reconsideration, render a decision by formal resolution. Every decision of the board shall be based upon a finding of fact based on sworn testimony which finding of fact shall be reduced to writing and preserved among its records. (1948, c. 116)

§ 17.22. Same, appeals from boards.

Any person, firm or corporation, jointly or severally aggrieved or in fact affected by any decision of the board of zoning appeals, or any officer, department, board or agency of the city government charged with the enforcement of any order, requirement or decision of said board, may appeal from such decision by filing a petition in the Circuit Court of the City of Richmond, Division I, verified by affidavit, setting forth the alleged illegality of the action of the board and the grounds thereof. The petition shall be filed within thirty days from the date of the decision of the board. No appeal from the decision of the board shall be allowed in any case involving the same petitioner, principles, property and conditions previously passed upon by such court. (1948, c. 116; 1954, c. 73; 1975, c. 112; 1976, c. 633)

§ 17.23. Procedure on appeal.

Upon filing of the petition the court may cause a writ of certiorari to issue directed to the board, ordering it to produce within the time prescribed by the court, not less than ten days, the record of its action and documents considered by it in making the decision appealed from, which writ shall be served upon any member of the board. The issuance of the writ shall not stay proceedings upon the decision appealed from but the court may, on application, notice to the board and due cause shown, issue a restraining order. The board shall not be required to produce the original record and documents but it shall be sufficient to produce certified or sworn copies thereof or of such portions thereof as may be required by the writ. With the record and documents the board may concisely set forth in writing such other facts as may be pertinent and material to show the grounds of the decision appealed from, verified by affidavit. (1948, c. 116)

§ 17.24. Powers and duties of the court.

The court shall review the record, documents and other matters produced by the board pursuant to the issuance of the writ and may reverse or modify the decision reviewed, in whole or in part, when it is satisfied that the decision of the board is contrary to law or that its decision is arbitrary and constitutes an abuse of discretion. Unless it is made to appear that the decision is contrary to

law or is arbitrary and constitutes an abuse of discretion the court shall affirm the decision. If the court finds that the testimony of witnesses is necessary for a proper disposition of the matter it may hear evidence. (1948, c. 116)

§ 17.25. Proceedings against violators of zoning ordinance.

Whenever any building or structure is erected, constructed, reconstructed, altered, repaired or converted, or whenever any land, building or structure is used in violation of any ordinance adopted in accordance with § 17.14, the city may institute and prosecute appropriate action or proceedings to prevent such unlawful act and to restrain, correct or abate such violation or to prevent any unlawful act, conduct or use of such property. (1948, c. 116)

§ 17.26. Penalties for violation of zoning ordinance.

The council may in such ordinance provide that fines and jail sentences, either or both, shall be imposed for violations of the ordinance by owners of land, buildings or structures, their agents having possession or control of such property, lessees, tenants, architects, builders, contractors or any other persons, firms or corporations who take part in or assist in any such violations or who maintain any land, building or structure in which such violations exist, which penalties shall not exceed those prescribed in § 2.06 of this charter. (1948, c. 116)

§ 17.27. (1948, c. 116; 1982, c. 658; repealed 1998, c. 711)

§ 17.28. (1948, c. 116; repealed 1998, c. 711)

§ 17.29. (1948, c. 116; 1975, c. 112; 1994, c. 215; repealed 1998, c. 711)

§ 17.30. (1948, c. 116; repealed 1994, c. 215)

§ 17.31. (1948, c. 116; 1975, c. 112; 1976, c. 633; 1982, c. 658; 1994, c. 215; repealed 1998, c. 711)

§ 17.32. (1948, c. 116; 1994, c. 215; repealed 1998, c. 711)

§ 17.33. (1948, c. 116; 1994, c. 215; repealed 1998, c. 711)

§ 17.34. (1948, c. 116; 1994, c. 215; repealed 1998, c. 711)

§ 17.35. (1948, c. 116; 1981, c. 199; 1994, c. 215; repealed 1998, c. 711)

§ 17.36. Use of street for five years; dedication.

Whenever any piece, parcel or strip of land shall have been opened to and used by the public as a street, alley, lane or other public place or part thereof for the period of five years, the same shall thereby become a street, alley, lane, public place or part thereof for all purposes and the city shall have the same authority and jurisdiction over and right and interest therein that it has by law over the streets, alleys, lanes and public places laid out by it and thereafter no action shall be brought to recover such piece, parcel or strip of land so opened to and used by the public as aforesaid. Any street, alley, lane or other public place reserved in the division or subdivision into lots by a plat or plan of record shall be deemed and held to be dedicated to the public use and the council shall have authority upon the petition of any person or corporation interested therein to open such street, alley, lane or other public place or any portion of the same. No agreement between, or release of interest by, persons or corporations owning the lands immediately contiguous to any such street, alley, lane or other public place, whether the same has been opened or used by the public or not, shall avail or operate to abolish such street, alley, lane or other public place or to divest the interest of the public therein or the authority of the council over the same. (1948, c. 116; 1994, c. 215)

§ 17.37. Present master plan and comprehensive zoning plan.

The master plan and the comprehensive zoning plan as heretofore adopted, approved and filed,

with all amendments, additions and extensions thereto, in force and effect at the effective date of this charter, are hereby validated and confirmed as if the same had been prepared, adopted, approved and filed in accordance with the provisions of this chapter. Every amendment or addition thereto or extension thereof and every other master plan or comprehensive zoning ordinance henceforth adopted shall be in accordance with the provisions of this chapter. Where existing ordinances are at variance with the provisions of this chapter they shall be deemed to be amended in accordance with the provisions of this chapter. (1948, c. 116)

§§ 17.37:1 through 17.37:4. (1987, c. 230; repealed 1998, c. 711)

Chapter 18. Acquisition of Property for Public Purposes.

§ 18.01. Acquisition, ownership and use of property.

The city shall have, for the purpose of carrying out any of its powers and duties, power to acquire by gift, bequest, purchase or lease, and to own and make use of, within and without the city, lands, buildings, other structures and personal property, including any interest, right, easement or estate therein, and in acquiring such property to exercise, within and without the city, the right of eminent domain as hereinafter provided in this chapter. (1948, c. 116)

§ 18.02. Eminent domain.

The city is hereby authorized to acquire by condemnation proceedings lands, buildings, structures and personal property or any interest, right, easement or estate therein, of any person or corporation, whenever in the opinion of the council a public necessity exists therefor, which shall be expressed in the resolution or ordinance directing such acquisition, whether or not any corporation owning the same be authorized to exercise the power of eminent domain or whether or not such lands, buildings, structures or personal property or interest, right, easement or estate has already been devoted to a public use, and whenever the city cannot agree on terms of purchase or settlement with the owners of the subject of such acquisition because of incapacity of such owner, or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because the owner or some one of the owners is a nonresident of the Commonwealth and cannot with reasonable diligence be found in the Commonwealth or is unknown.

Such proceedings may be instituted in the Circuit Court of the City of Richmond, Divisions I or II, if the subject to be acquired is located within the city, or, if it is not located within the city, in the circuit court of the county in which it is located. If the subject is situated partly within the city and partly within any county the circuit court of such county shall have concurrent jurisdiction in such condemnation proceedings with the circuit court of the city. The judge or the court exercising such concurrent jurisdiction shall appoint five disinterested freeholders any or all of whom reside either in the county or city, any three of whom may act as commissioners, as provided by law. (1948, c. 116; 1975, c. 112)

§ 18.03. Alternative procedures in condemnation.

The city may, in exercising the right of eminent domain conferred by the preceding section, make use of the procedure prescribed by the general law as modified by said section or may elect to proceed as hereinafter provided. In the latter event the resolution or ordinance directing acquisition of any property, as set forth in the preceding section, shall provide therein in a lump sum the total funds necessary to compensate the owners thereof for such property to be acquired or damaged. Upon the adoption of such resolution or ordinance the city may file a petition in the

clerk's office of a court enumerated in the preceding section, having jurisdiction of the subject, which shall be signed by the chief administrative officer and set forth the interest or estate to be taken in the property and the uses and purposes for which the property or the interest or estate therein is wanted, or when property is not to be taken but is likely to be damaged, the necessity for the work or improvement which will cause or is likely to cause such damage. There shall also be filed with the petition a plat of a survey of the property with a profile showing cuts and fills, trestles and bridges, if any, and a description of the property which, or an interest or estate in which, is sought to be taken or likely to be damaged and a memorandum showing names and residences of the owners of the property, if known, and showing also the quantity of property which, or an interest or estate in which, is sought to be taken or which will be or is likely to be damaged. There shall be filed also with said petition a notice directed to the owners of the property, if known, copies of which shall be served on such owners or tenants of the freehold of such property, if known. If the owner or tenant of the freehold be unknown or a nonresident of the Commonwealth or cannot with reasonable diligence be found in the Commonwealth, or if the residence of the owner or tenant be unknown, he/she may be proceeded against by order of publication which order, however, need not be published more than once a week for two successive weeks and shall be posted at a main entrance to the courthouse. The publication shall in all other respects conform to §§ [8.01-316](#), [8.01-317](#) and [8.01-319](#) of the Code of Virginia.

Upon the filing of said petition and the deposit of the funds provided by the council for the purpose in a bank to the credit of the court in such proceedings and the filing of a certificate of deposit therefor the interest or estate of the owner of such property shall terminate and the title to such property or the interest or estate to be taken in such property shall be vested absolutely in the city and such owner shall have such interest or estate in the funds so deposited as he/she had in the property taken or damaged and all liens by deed of trust, judgment or otherwise upon said property or estate shall be transferred to such funds and the city shall have the right to enter upon and take possession of such property for its uses and purposes and to construct its works or improvements. The clerk of the court in which such proceeding is instituted shall make and certify a copy of the petition, exhibits filed therewith, and orders, and deliver or transmit the same to the clerk of the court in which deeds are admitted to record, who shall record the same in his/her deed book and index them in the name of the person or persons who had the property before and in the name of the city, for which he/she shall receive the same fees prescribed for recording a deed, which shall be paid by the city.

If the city and the owner of property so taken or damaged agree upon compensation therefor, upon filing such agreement in writing in the clerk's office of such court, the court shall make such distribution of such funds as to it may seem right, having due regard to the interest of all persons therein whether such interest be vested, contingent or otherwise, and to enable the court or judge to make a proper distribution of such money it may in its discretion direct inquiries to be taken by a special commissioner in order to ascertain what persons are entitled to such funds and in what proportions and may direct what notice shall be given to the making of such inquiries by such special commissioner.

If the city and the owner cannot agree upon the compensation for the property taken or damaged, if any, upon the filing of a memorandum in the clerk's office of said court to that effect, signed by either the city or the owner, the court shall appoint commissioners provided for in §§ [25.1-220](#) and [25.1-226](#) through [25.1-230](#) of the Code of Virginia or as provided for in § 18.02, and all proceedings thereafter shall be had as provided in Chapter 2 (§ [25.1-200](#) et seq.) of Title 25.1

of the Code of Virginia insofar as they are then applicable and are not inconsistent with the provisions of this and the preceding section, and the court shall order the deposit in bank to the credit of the court of such additional funds as appear to be necessary to cover the award of the commissioners or shall order the return to the city of such funds deposited that are not necessary to compensate such owners for property taken or damaged. The commissioners so appointed shall not consider improvements placed upon the property by the city subsequent to its taking nor the value thereof nor the enhancement of the value of said property by said improvements in making their award. (1948, c. 116; 1968, c. 644; 1998, c. 711; 2004, cc. 877, 898)

§ 18.04. Enhancement in value when considered.

In all cases under the provisions of § 18.02 and 18.03, the enhancement, if any, in value of the remaining property of the owner by reason of the construction or improvement contemplated or made by the city, shall be offset against the damage, if any, resulting to such remaining property of such owner by reason of such construction or improvement, provided such enhancement in value shall not be offset against the value of the property taken, and provided further, that if such enhancement in value shall exceed the damage there shall be no recovery over against the owner for such excess. (1948, c. 116)

§ 18.05. Unclaimed funds in condemnation cases.

Whenever any money shall have remained for five years in the custody or under the control of any of the courts enumerated in § 18.02, in any condemnation proceeding instituted therein by the city, without any claim having been asserted thereto such court shall direct the same to be paid into the treasury of the city, and a proper receipt for the payment taken and filed among the records of the proceeding. The director of finance shall, in a book provided for the purpose, keep an account of all money thus paid into the city treasury, showing the amount thereof, when, by whom, and under what order it was paid, and the name of the court and, as far as practicable, a description of the suit or proceeding in which the order was made and, as far as known, the names of the parties entitled to said funds. Money thus paid into the treasury of the city shall be paid out on the order of the court having jurisdiction of the proceeding, to any person entitled thereto who had not asserted a claim therefor in the proceeding in which it was held, upon satisfactory proof that he/she is entitled to such money. If such claim is established the net amount thereof, after deducting costs and other proper charges, shall be paid to the claimant out of the treasury of the city on the warrant of the director of finance. No claim to such money shall be asserted after ten years from the time when such court obtained control thereof; provided, however, if the person having such claim was an infant, insane, or imprisoned at the time the claim might have been presented or asserted by such person, claim to such money may be asserted within five years after the removal of such disability. (1948, c. 116; 1970, c. 226; 1998, c. 711)

Chapter 19. Municipal Courts. (Repealed)

§ 19.01. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)

§ 19.02. (1948, c. 116; 1968, c. 644; 1970, c. 226; repealed 1975, c. 112)

§ 19.03. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)

§ 19.04. (1948, c. 116; 1968, c. 644; repealed 1975, c. 112)

§ 19.05. (1948, c. 116; repealed 1975, c. 112)

§ 19.06. (1948, c. 116; repealed 1975, c. 112)

- § 19.07. (1948, c. 116; repealed 1975, c. 112)
- § 19.08. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)
- § 19.09. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)
- § 19.10. (1948, c. 116; 1950, c. 251; repealed 1975, c. 112)
- § 19.11. (1948, c. 116; repealed 1975, c. 112)
- § 19.12. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112).
- § 19.13. (1948, c. 116; repealed 1970, c. 226)
- § 19.13.1. (1970, c. 226; repealed 1975, c. 112)
- § 19.14. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)
- § 19.15. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)
- § 19.16. (1948, c. 116; repealed 1975, c. 112)
- § 19.17. (1948, c. 116; repealed 1975, c. 112)
- § 19.18. (1948, c. 116; 1970, c. 226; repealed 1975, c. 112)
- § 19.19. (1948, c. 116; 1954, c. 42; 1973, c. 348; repealed 1975, c. 112)
- § 19.20. (1948, c. 116; repealed 1975, c. 112)
- § 19.21. (1948, c. 116; repealed 1975, c. 112)
- § 19.22. (1948, c. 116; 1950, c. 241; 1964, c. 120; repealed 1975, c. 112)

Chapter 20. Miscellaneous Provisions.

§ 20.01. School board.

The school board shall consist of nine trustees. One trustee shall be elected from each of the nine council districts and shall be a qualified voter of that district.

The time of election and terms of members of the school board shall be the same as the time of election and terms of the members of the council.

Trustees shall take office July 1 following their election.

Except as provided in this charter the school board shall have all the powers and duties relating to the management and control of the public schools of the city provided by the general laws of the Commonwealth. None of the provisions of this charter shall be interpreted to refer to or include the school board unless the intention so to do is expressly stated or is clearly apparent from the context. (1948, c. 116; 1973, c. 348; 1976, c. 633; 1994, c. 215; 1995, c. 165)

§ 20.02. (1948, c. 116; 1978, c. 78; 1995, c. 165; repealed 1998, c. 711)

§ 20.03. (1948, c. 116; repealed 1998, c. 711)

§ 20.04. (1948, c. 116; 1993, c. 613; repealed 1998, c. 711)

§ 20.05. (1948, c. 116; repealed 1998, c. 711)

§ 20.06. (1948, c. 116; 1950, c. 251; repealed 1992, c. 850).

§ 20.07. (1948, c. 116; repealed 1998, c. 711)

§ 20.08. (1948, c. 116; repealed 1998, c. 711)

§ 20.09. (1948, c. 116; 1975, c. 112; repealed 1998, c. 711)

§ 20.10. Courtrooms for courts of record and office space for constitutional officers.

It shall be the duty of the city to provide suitable courtrooms for the courts of record of the city and suitable offices for the city treasurer and attorney for the Commonwealth. (1948, c. 116;

1978, c. 78; 1981, c. 199; 1998, c. 711)

§ 20.11. Posting of bonds by city unnecessary.

Whenever the general law requires the posting of a bond, with or without surety, as a condition precedent to the exercise of any right, the city, without giving such bond, may exercise such right, provided all other conditions precedent are complied with, and no officer shall fail or refuse to act because the city has not filed or executed the bond that might otherwise be required, and the city shall be bound to the same extent that it would have been bound had the bond been given. This exemption from the requirement of posting a bond shall also apply in cases involving a city employee to whom liability coverage has been granted by the city. (1948, c. 116; 1993, c. 613; 1998, c. 711)

§ 20.12. Code references.

All references in this charter to the Code of Virginia are to such code as amended to May 1, 1947. (1948, c. 116)

§ 20.13. Severability.

If any provision of this charter or the applicability thereof to any person or circumstance is held invalid the remainder of this charter and the applicability thereof and of such provision to other persons or circumstances shall not be affected thereby. (1948, c. 116)

§ 20.14. Meaning of "at the effective date of this charter."

As used in this charter the term "at the effective date of this charter" shall be interpreted to refer to a period immediately preceding the taking effect thereof. (1948, c. 116)

Chapter 21. Transitional Provisions.

§ 21.01. Acts repealed.

There are hereby repealed: the act of the General Assembly of Virginia, approved March 24, 1926, entitled "An Act to Provide a New Charter for the City of Richmond," constituting Chapter 318 of the Acts of the Assembly of 1926, and all acts amendatory thereof; § 5931 of the Code of Virginia; Chapter 90 of the Acts of the Assembly of 1926; and all other acts and parts of acts in conflict with this charter. (1948, c. 116)

§ 21.02. Present ordinances and rules and regulations continued in effect.

All ordinances of the city and all rules, regulations and orders legally made by any department, board, commission or officer of the city, in force at the effective date of this charter, insofar as they or any portion thereof are not inconsistent therewith, shall remain in force until amended or repealed in accordance with the provisions of this charter. (1948, c. 116)

§§ 21.03 through 21.07. (1948, c. 116; repealed 1974, c. 19)

Editor's note: Complete amendments listing for the City of Richmond:

Current charter

Charter, 1948, c. 116.

Amendments to current charter

1950, c. 241 (§ 19.22)

1950, c. 251 (§§ 2.03, 3.05, 5.05, 5.09, 5.11, 6.19, 6.20, 7.05, 8.03, 9.14, 9.15, 12.05, 12.06, 17.12, 19.10, 20.06)
1950, c. 416 (§ 2.05)
1952, c. 182 (§ 9.14)
1954, c. 42 (§ 19.19)
1954, c. 64 (§§ 4.01, 5.13, 6.13, 6.19, 6.20, 6.21, 8.09, 12.03, 13.06, 13.07, 13.07.1 [added], 13.09, 17.20)
1954, c. 73 (§ 17.22)
1956, c. 130 (§§ 5.09 through 5.12 [repealed], 5.13, 5-1.1 through 5-1.5 [added], 11.10, 12.07, 12.08)
1958, c. 185 (§§ 2.03:1 [added], 5-1.1, 6.01, 6.02, 6.11, 9.03, 9.07, 9.09, 11.11 [added], 12.07, 12.08, 14.02, 15.02, 16.06, 17.03, 17.06, 17.07)
1960, c. 7 (§§ 5.07, 13.07.1, 17.11, 17.12, 17.16, 17.17)
1962, c. 65 (§§ 5.07, 6.01, 17.20)
1964, c. 120 (§§ 2.03:2 [added], 4.01, 4.10, 4.16, 5-1.4, 6.19, 7.06, 10.04, 12.07, 19.22)
1966, c. 109 (§ 14.01)
1966, c. 243 (§ 8.05.1 [added])
1966, c. 486 (§ 3.01)
1968, c. 644 (§§ 2.04, 4.01, 5.08, 5-1.1, 7.02, 9.03, 9.07, 9.08, 17.02, 17.03, 17.11, 17.37:1 and 17.37:2 [added], 18.03, 19.02, 19.04)
1970, c. 226 (§§ 6.17, 7.04, 9.03, 9.11, 12.07, 18.05, 19.01, 19.02, 19.03, 19.08, 19.09, 19.12, 19.13 [repealed], 19.13.1 [added], 19.14, 19.15, 19.18)
1971, cc. 84, 245 (§ 3.01)
1971, c. 130 (§ 9.17 [added])
1972, c. 333 (§ 2.04:1 [added])
1972, c. 334 (§ 2.05)
1972, c. 335 (§ 5.13.1 [added])
1972, c. 336 (§§ 2.02, 2.04, 6.17.1 [added], 7.02, 9.03, 9.05, 9.07, 12.07, 17.03, 17.08)
1972, c. 811 (§ 5.13.2 [added])
1973, c. 348 (§§ 2.03:3 [added], 6.17, 6.19, 8.09, 13.07, 13.07.1, 19.19, 20.01)
1974, c. 19 (§§ 2.05, 4.01, 4.16, 5-1.4, 6.17, 6.17.1, 8.06, 8.09, 9.07, 9.16, 12.07, 21.03 through 21.07 [repealed])
1975, c. 112 (§§ 1.02, 2.04, 3.02, 3.04, 3.05, 4.01, 4.12, 4.15, 5-1.2, 7.07, 8.03, 9.04, 9.07, 12.05, 12.06, 17.06, 17.16, 17.22, 17.29, 17.31, 18.02, 19.01 through 19.12 [repealed], 19.13.1 [repealed], 19.14 through 19.22 [repealed], 20.09)
1976, c. 633 (§§ 1.02, 3.02, 3.05, 4.12, 4.15, 7.06, 7.07, 8.05, 8.06, 8.07, 17.02, 17.22, 17.31, 20.01)
1976, c. 745 (§ 3.06 [added])
1977, c. 513 (§§ 3.01, 3.02, 3.03, 3.06 [repealed], 4.04, 4.13, 6.19, 8.10, 9.03, 9.04)
1978, c. 78 (§§ 2.05, 3.05, 5-1.4, 7.06, 8.03.1 [added], 9.03, 9.16, 20.02, 20.10)
1981, c. 199 (§§ 5-1.4, 9.03, 9.10, 12.07, 17.20, 17.35, 20.10)
1982, c. 658 (§§ 3.05, 4.01, 4.09, 5-1.4, 6.01, 6.10, 6.16, 6.17, 7.13, 8.01, 8.03, 8.05, 8.05.1

[repealed], 8.08, 8.09, 8.10, 9.05, 9.06, 9.16, 9.17, 13.02, 13.05, 13.06, 13.09, 17.27, 17.31)
1983, c. 164 (§§ 6.15, 7.05, 9.03 through 9.08, 9.09 [repealed], 9.10, 9.11, 9.12 [repealed])
1984, c. 163 (§§ 2.02, 5.05, 9.07, 14.03, 17.14)
1985, c. 22 (§§ 5-1.4, 6.15:1 [added], 6.16, 9.04, 12.02, 12.07, 15.01 through 15.04, 17.02)
1986, c. 119 (§§ 6.04, 8.06, 9.05, 9.07, 9.10, 16.06)
1987, c. 230 (§§ 2.03, 4.06, 5.13.2, 6.15:2 [added], 6.17, 9.08, 9.13, 9.15:1 and 9.15:2 [added],
17.11, 17.37:3 and 17.37:4 [added])
1988, c. 269 (§§ 2.03, 7.08, 8.03, 8.05 [repealed], 11.01, 11.10, 13.03, 13.05, 13.06)
1989, c. 349 (§§ 2.04:1, 2.05, 4.16, 5.05, 6.03, 6.04, 6.05, 7.01 through 7.05, 7.08, 7.13, 8.01, 8.03,
8.03.1 [repealed], 8.04 [repealed], 8.08 [repealed], 9.07, 13.06.1 and 13.06.2 [added], 13.07,
13.07.1, 13.07.2 [added])
1990, c. 401 (§§ 2.02, 4.15, 5.05, 8.03, 9.07)
1991, c. 396 (§§ 2.06, 6.20, 14.01, 14.05, 14.06 [repealed])
1992, c. 850 (§§ 2.02, 2.03, 2.03:4 [added], 4.01, 4.07, 7.01 through 7.13 [repealed], 7A.01 through
7A.13 [added], 11.01 through 11.11 [repealed], 11A.01 through 11A.05 [added], 11B.01 through
11B.03 [added], 11C.01 and 11C.02 [added], 17.14, 17.16, 20.06 [repealed])
1993, c. 613 (§§ 2.02, 6.01, 6.09, 6.17.1, 9.04, 13.05, 13.06, 17.03, 20.04, 20.11)
1994, c. 215 (§§ 2.03, 12.02, 13.02, 13.06, 13.07, 13.08, 13.09, 13.11 [added], 17.29, 17.30
[repealed], 17.31 through 17.36, 20.01)
1995, c. 165 (§§ 4.12, 6.17, 20.01, 20.02)
1998, c. 711 (§§ 1.02, 2.02, 2.03, 2.04:1, 2.06, 3.02 [repealed], 3.03 [repealed], 3.04, 3.05, 3.06.1
[added], 4.02, through 4.05, 4.10, 4.11, 4.12 [repealed], 4.13 through 4.16, 4.17 [added], 4.18
[added], 5.01, 5.02, 5.03, 5.05, 5.06, 5.07, 5.08 [repealed], 5.13 [repealed], 5.13.1 [repealed], 5.13.2
[repealed], 5-1.1 through 5-1.5 [repealed], 5A.01 through 5A.03 [added], 5B.01 and 5B.02 [added],
6.02, 6.03, 6.04, 6.05, 6.07 through 6.14, 6.15 [repealed], 6.15:1 and 6.15:2 [repealed], 6.16, 6.17
[repealed], 6.17.1 [repealed], 6.18 through 6.21, 7A.01 through 7A.13 [repealed], 7B.01 through
7B.06 [added], 8.01, 8.02 [repealed], 8.03, 8.06 and 8.07 [repealed], 8.09 [repealed], 8.10, 9.01
through 9.08 [repealed], 9.10 and 9.11 [repealed], 9.13 through 9.17 [repealed], 10.01 through
10.04 [repealed], 11A.01 through 11A.05 [repealed], 11B.01 through 11B.03 [repealed], 11C.01
and 11C.02 [repealed], 12.01 through 12.08 [repealed], 13.01, 13.03 [repealed], 13.04 [repealed],
13.05, 13.06, 13.08, 13.10, 14.01 through 14.05 [repealed], 15.01 through 15.04 [repealed], 16.01
through 16.06 [repealed], 17.02, 17.03 [repealed], 17.06, 17.08 [repealed], 17.11, 17.14, 17.17
[repealed], 17.18 [repealed], 17.19, 17.20, 17.27 through 17.29 [repealed], 17.31 through 17.35
[repealed], 17.37:1 through 17.37:4 [repealed], 18.03, 18.05, 20.02 through 20.05 [repealed], 20.07
through 20.09 [repealed], 20.10, 20.11)
2004, c. 514 (§§ 3.01, 4.14, 5.03, 6.18, 6.20, 13.11)
2004, c. 877, 898 (§§ 3.01, 3.01.1 [added], 3.04, 3.04.1 [added], 4.03, 4.05, 4.06, 4.10, 4.14 through
4.17, 5.01, 5.01.1 [added], 5.02 through 5.05, 5.05.1 [added], 5.06, 5.07, 5A.01, 5A.02, 5A.03, 6.02,
6.03, 6.04, 6.06, 6.07, 6.08, 6.11, 6.13, 6.14, 6.16, 6.19, 8.03, 17.02, 18.03)
2005, c. 844 (§§ 3.04, 4.03, 4.04, 4.05, 5.03, 5.05, 5.06, 5B.01, 6.11, 6.14, 7B.06, 17.02)
2006, c. 650, 712 (§§ 4.10, 4.16, 4.17, 5.05, 5.05.1, 6.02, 6.03, 6.06, 6.07, 6.10, 6.11, 6.12, 6.13,

13.06, 13.07, 13.08, 13.09)

2010, c. 218, 476 (§§ 4.02, 5.03, 5.05, 5B.01, 13.11)

Virginia Charters

Newport News, City of

History of incorporation

Cities of Newport News and Warwick consolidated effective July 1, 1958, as City of Newport News.

Warwick City incorporated and charter, 1952.

Newport News incorporated and charter, 1895-96.

Newport News charter, 1895-96, c. 64; repealed 1958, c. 141.

Warwick City charter, 1952, c. 706; repealed 1958, c. 141.

Consolidated charter, 1958, c. 141; repealed 1978, c. 576, except for portions of Chapter 27.

Current charter

Charter, 1978, c. 576.

Editor's note: Amendments are numerous. Please see amendment listing at the end of the document.

Chapter 1. Territory Comprising City.

§ 1.01. Area; boundaries to embrace military and government reservations, etc.

The territory comprising the consolidated city shall consist of all the territories comprising the former cities of Newport News and Warwick, as the same now are or may hereafter be established by law. The boundaries of such city shall be construed to embrace all United States military and government reservations within such city and all wharves, docks and other structures of every description that have been or may hereafter be erected along the waterfront of the city, and any contiguous territory heretofore or hereafter ceded to the Commonwealth of Virginia by any government or agency thereof, and all rivers, creeks, and lakes encompassed within its territory, and to the center line of any body of water located between its territory and any other jurisdiction. (1978, c. 576; 2012, cc. [193](#), [426](#))

Chapter 2. Powers of City.

§ 2.01. General grant.

The city shall have and may exercise all powers which are now or may hereafter be conferred upon or delegated to cities under the Constitution and laws of the Commonwealth and all other powers pertinent to the conduct of a city government the exercise of which is not inconsistent with the Constitution and laws as fully and completely as though such powers were specifically enumerated in this charter, and no enumeration of particular powers in this charter shall be held to be exclusive but shall be held to be in addition to this general grant of powers.

In addition, the powers set forth in §§ 15.1-837 through 15.1-907 of the Code of Virginia as in force on January 1, 1978, and as hereafter amended, are hereby conferred on and vested in the city. (1978, c. 576)

§ 2.02. Relative to finance.

In addition to the powers granted by other sections of this charter, the city shall have the power:

- A. Taxes and assessments generally; licenses, etc. To raise annually by taxes and assessments in the city such sums of money as the council shall deem necessary to pay the debts and defray the expenses of the city, in such manner as the council shall deem expedient. In addition to, but not as a limitation upon this general grant of power, the city shall have power

to levy and collect ad valorem taxes on real estate and tangible personal property and machinery and tools; to levy and collect taxes for admission to or other charge for any public amusement, entertainment, performance, exhibition, sport or athletic event in the city, which taxes may be added to and collected with the bills rendered purchasers of such service; to require licenses, prohibit the conduct of any business or profession without such a license, require taxes to be paid on such licenses in respect of all businesses and professions which cannot, in the opinion of the council, be reached by the ad valorem system; and to require licenses of owners of vehicles of all kinds for the privilege of using the streets, alleys and other public places in the city, require taxes to be paid on such licenses and prohibit the use of streets, alleys and other public places in the city without such license.

B. Borrowing. To borrow money for the purposes and in the manner provided by Chapter 7 of this charter.

C. Appropriations generally. To make appropriations, subject to the limitations imposed by this charter, for the support of the city government and any other purposes authorized by this charter or by the general laws of the Commonwealth. In lieu of an ordinance, and unless otherwise specifically provided for by this charter, the code of the city of Newport News, the laws of the Commonwealth of Virginia or the United States of America, appropriations provided for in this subsection may be passed by a resolution of council with the affirmative vote of a majority of the members of council.

D. Emergency appropriations. To appropriate, without being bound by other provisions of this charter, not more than \$500,000 in any one fiscal year for the purpose of meeting a public emergency threatening the lives, health or property of the inhabitants of the city, provided that any such appropriation shall require at least four affirmative votes of the council and that the resolution making such appropriation shall contain a clear statement of the nature and extent of the emergency.

E. Acceptance or refusal of gifts, etc. To accept or refuse gifts, donations, bequests or grants from any source for any purpose related to the powers and duties of the city government.

F. Public libraries and schools. To provide, or aid in the support of, public libraries and public schools.

G. Military units; charitable, etc., institutions and corporations. To grant financial aid to military units organized in the city in accordance with the laws of the Commonwealth, and to charitable or benevolent institutions and corporations, including those established for scientific, literary or musical purposes or the encouragement of agriculture and the mechanical arts, whose functions further the public purposes of the city.

H. Pensions. To establish a system of pensions for injured, retired or superannuated city officers and employees, members of the police and fire departments, teachers and other employees of the school board, judges, clerks, deputy clerks, bailiffs and other employees of the various courts, and to establish a fund or funds for the payment of such pensions by making appropriations out of the treasury of the city, by levying a special tax for the benefit of such fund or funds, by requiring contributions payable from time to time from such officers or employees, or by any combination of these methods or by any other method not prohibited by law, provided that the total annual payments into such fund or funds shall be sufficient on

sound actuarial principles to provide for the pensions to be paid therefrom, and provided further that the benefits accrued or accruing to any person under such system shall not be subject to execution, levy, attachment, garnishment or any other process whatsoever, nor shall any assignment of any such benefits be enforceable in any court, provided, however, that no vested rights of any person in any of the retirement systems in existence at the time of consolidation in the cities of Warwick or Newport News shall be adversely affected. However, the right to receive payments of retirement benefits from a system of pensions created pursuant to this subsection which have been deemed to be marital property pursuant to Chapter 6 (§ 20-89.1 et seq) of Title 20 of the Code of Virginia, 1950, as amended, or like provisions of the state code of another state, and which are payable to the spouse who is a member of the pension system, may be allocated by a court of competent jurisdiction by direct assignment of all or part of such benefit payments to a spouse or former spouse of the member.

I. Control of fiscal affairs; accounts, etc. To provide for control and management of the fiscal affairs of the city, and prescribe the adoption and keeping of such books, records, accounts and systems of accounting by the departments, boards, commissions, courts or other agencies of the city government provided for by this chapter or otherwise by laws as may be necessary to give full and true accounts of the affairs, resources and revenues of the city and handling, use and disposal thereof. (1978, c. 576; 2003, c. 183)

§ 2.03. Relative to port operation and properties.

In addition to the powers granted by other sections of this charter, the city shall have the power to acquire, construct, own, maintain and operate, within and without the city, landings, wharves, docks, canals and the approaches to and appurtenances thereof, tracks, spurs, crossings, switching, terminals, warehouses and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares and merchandise; perform any and all services in connection with the receipt, delivery, shipment and transfer in transit, weighing, marking, tagging, ventilating, refrigerating, icing, storing and handling of goods, wares and merchandise; prescribe and collect charges from vessels coming into or using any of the landings, wharves and docks, and from persons using any of the landings, wharves and docks, and from persons using any of the facilities above described; provide for the management and control of such facilities or any of them by a department of the city government or by a board, commission or agency specially established by ordinance for the purpose; lease any or all of such facilities or any concessions properly incident thereto to any person, firm or corporation or contract with any person, firm or corporation, for the maintenance and operation of any or all of such facilities on such terms and conditions as the council may determine by ordinance; apply to the proper authorities of the United States to grant to the city the privilege of establishing, maintaining and operating a foreign trade zone within or without the city; regulate the use of other landings, wharves and docks located on any river, stream or body of water within or contiguous to the city; prevent and remove obstructions from the harbor of such river, stream or body of water and in, upon or near the landings, wharves, docks or canals adjacent thereto, and collect from the person or persons responsible for such obstructions, the cost of their removal; close or discontinue the use of any such wharf, dock, landing or canal now owned or hereafter acquired by the city and upon the closing or discontinuance of such use the same shall thereupon be forever discharged from any public use or easement or from any obligation theretofore imposed by reason of such public use or easement by statute or otherwise. (1978, c. 576)

§ 2.04. Licenses and permits where advisable in judgment of council.

Whenever in the judgment of the council it is advisable in the exercise of any of the powers of the city or in the enforcement of any ordinance or regulation, it may provide for the issuance of licenses or permits in connection therewith, establish the amount of the fee to be charged the licensee or permittee, and require from that licensee or permittee a bond and/or an insurance policy of such character and in such amount and upon such terms as it may determine. (1978, c. 576)

§ 2.05. Residency requirement.

The city council shall have the power to adopt by ordinance as a requirement of the position that all heads of city departments or their equivalents be residents of the city during their tenure in such positions irrespective of by whom appointed.

The city council, at the time of the adoption of such an ordinance, may exempt from its operation current nonresident department heads or their equivalents. (1993, cc. 862, 874)

§ 2.06. Land development and site plan.

In order to provide for the orderly and proper development of land within the City of Newport News and to protect the public safety, health, and welfare, the city council shall have the power to adopt by ordinance regulations and restrictions relative to the development of land, except a detached dwelling located on a single lot and designed for or intended to be occupied by one family. Such regulations and restrictions may prescribe standards and requirements which provide for, but are not limited to, the following: access for fire, police, emergency, and service vehicles; width, grade, elevation, location, alignment, and arrangement of streets and sidewalks with relation to existing streets and sidewalks, planned streets and sidewalks, and the comprehensive plan; easements for public utilities; facilities for off-street parking; laying out, constructing, and improving streets, alleys, and sidewalks; access to adjacent land and to existing or proposed streets; water mains for servicing fire hydrants; disposition of storm water; disposition of sewage and waste; control of flooding through site elevation or otherwise; control of slippage, shifting, erosion, accretion, and subsidence of soil; dedication of public streets, alleys, sidewalks, curbs, gutters, sewers, drains, and other public improvements; protection to other land, structures, persons, and property; guarantee of payment by the developer of all costs or a proportionate share of costs for public streets, alleys, sidewalks, curbs, gutters, sewers, and drains; the submission and approval of site plans and plats prior to development of land; and procedures, enforcement, and penalties for violation of any such ordinance or ordinances. The procedures may include, but shall not be limited to, consideration of site plans and plats in light of the regulations and restrictions applicable thereto, and approval or disapproval of site plans and plats in accordance therewith and may include the requirement of dedication of necessary public streets and easements in accordance with the comprehensive plan for the city. The provisions of this section shall in nowise repeal, amend, impair, or affect any other power, right, or privilege conferred by this charter or any other provisions of general law. (1990, c. 653)

Chapter 3. Elections, Etc.

§ 3.01. Election and terms of mayor and members of council.

A. On and after July 1, 2000, the council shall consist of seven members, a mayor and six members of council elected as herein provided. The city shall be divided into such districts as shall be provided by ordinance in accordance with the general laws of the Commonwealth. As

hereinafter provided, the mayor shall be elected at large by the qualified voters of the city and the six members of council shall be elected by the qualified voters of the districts in which they reside, respectively.

Commencing in May 2000, all elections to fill the offices of mayor or member of council shall be for terms of four years, except to fill vacancies which shall be for the remainder of the unexpired term as hereinafter provided. On the first Tuesday in May 2000, there shall be a general election for the election of one member of city council from each city council district by the voters thereof. On the first Tuesday in May 2002, there shall be a general election for the election of one member of city council from each city council district by the voters thereof and for the mayor by the voters of the city at large.

B. The mayor, whether elected or appointed, shall be and remain a resident and qualified voter of Newport News. All other council members, whether elected or appointed, shall be and remain residents of their respective districts and qualified voters of Newport News during the term for which they were elected or appointed. (1978, c. 576; 1988, cc. 612, 631; 1990, c. 305; 1999, cc. 799, 827)

§ 3.02. Printing of names of candidates on ballots in councilmanic elections; nomination by notice of candidacy.

Candidates for member of city council shall be qualified voters of the city and shall file their notice of candidacy and be nominated only by petition in the manner prescribed by law for nonparty candidates and not by caucus, primary, convention or other party-affiliated proceeding.

There shall be printed on the ballots the names of all candidates who have been nominated as provided herein and no others. (1978, c. 576; 1988, cc. 612, 631; 1990, c. 305)

§ 3.03. Party designations on ballots in councilmanic election; conduct of general municipal election under state law as to elections.

The ballots used in the election of councilmen shall be without any distinguishing party name, mark or symbol. The general laws of the Commonwealth relating to the conduct of elections, so far as pertinent, shall apply to the conduct of the general municipal election. (1978, c. 576)

§ 3.04. Vacancies in office of mayor or member of council.

A. Vacancies in the office of member of council, from whatever cause arising, shall be filled within sixty days of the occurrence of the vacancy. Such vacancies shall be filled by the remainder of the council. The person or persons so appointed to fill the vacancy shall be a resident of the district where the vacancy occurs and shall hold office until the qualified voters shall fill the same by election at the next general election and the person so elected shall have qualified. The election to fill such vacancies shall be held as required and provided herein and by the general laws of the Commonwealth of Virginia; provided that nominations for any such vacancy shall be by petition in the manner prescribed by law for nonparty candidates and not by caucus, primary, convention or other party-affiliated proceeding.

B. A vacancy in the office of mayor shall be filled in accordance with the procedures set forth in subsection A above for vacancies in the office of member of council; however, the person appointed must be a resident of the city at the time of his appointment. (1978, c. 576; 1988, cc. 612, 631; 1990, c. 305; 1999, cc. 799, 827)

§ 3.05. Nomination, election, qualification and term of other city officers.

All other city officers required by the laws of the Commonwealth to be elected by the qualified voters of the city shall be elected in November as required and provided by the general laws of the Commonwealth of Virginia. The officers so elected or appointed shall qualify in the mode prescribed by law and shall continue in office until their successors are elected and qualified. (1978, c. 576)

Chapter 4. Council Generally.

§ 4.01. Composition; compensation of councilmen and mayor; appointment of council member to office of profit.

The council shall consist of seven members elected as provided in Chapter 3. The compensation of council members and the mayor shall be established by ordinance within the salary ranges permitted by state statute. The compensation of council members as being paid on the effective date of this charter section shall remain in effect until the appropriate ordinance setting salaries is adopted by council; provided, however, that no such ordinance shall take effect until after the next council election following the effective date of this act. No member of the council shall, during the term for which he was elected and one year thereafter, be appointed to any office of profit under the government of the city. (1978, c. 576; 1982, c. 76)

§ 4.02. Vesting in council of powers of city; council to be policy-determining body; powers of council generally.

All powers of the consolidated city as a body politic and corporate shall be vested in the council except as otherwise provided in this charter. The council shall be the policy-determining body of the city and shall be vested with all the rights and powers conferred on councils of cities of the first class, not inconsistent with this charter. In addition to the foregoing, the council shall have the following powers:

A. Official inquiries and investigations. To have full power to inquire into the official conduct of any office or officer under its control, and to investigate the accounts, receipts, disbursements and expenses of any city employee; for these purposes it may subpoena witnesses, administer oaths and require the production of books, papers and other evidence; subpoenas issued by the council shall be enforced by the circuit court of the city in the manner provided by general law.

B. Performance of governmental functions; creation, etc., of city departments, etc. To provide for the performance of all governmental functions of the city; and to that end, provide for and set up all departments and agencies of government that shall be necessary. Whenever it is not designated by law or by ordinance what officer or employee of the city shall exercise any power or perform any duty conferred upon or required of the city, or any officer thereof, then any such power shall be exercised or duty performed by that officer or employee of the city so designated by the city manager. Any activity which is not assigned by the provisions of this charter to specific departments or agencies of the city government shall be assigned by the council to the appropriate department or agency. The council may further create, abolish, reassign, transfer or combine any city functions, activities or departments.

C. Auditing of accounts. After the close of each fiscal year, the council shall cause to be made an independent audit of the accounts, books, records and financial transactions of the city by the Auditor of Public Accounts of the Commonwealth of Virginia, or by a firm of independent

certified public accountants to be selected by council. The report of such audit shall be filed within such time as the council shall specify and one copy thereof shall be always available for public inspection in the office of the clerk to the council during regular business hours. Either the council or the city manager may at any time order an examination or audit of the accounts of any officer or department of the city government. Upon the death, resignation, removal or expiration of the term of any officer of the city, the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report the results thereof to the city manager and the council. In case of death, resignation or removal of the city auditor, the council shall cause an audit to be made of his accounts. If as a result of any such audit, an officer be found indebted to the city, the council shall proceed forthwith to collect such indebtedness.

D. Schedule of compensation of city officers and employees. The council shall fix a schedule of compensation for all city officers and employees which shall provide uniform compensation for like service. The council may by ordinance define certain classes of city officers and employees whose salaries shall be set by the city manager, except that this provision shall not apply to the constitutional officers, the heads of city departments and judges.

E. Surety bonds of officers and employees. To prescribe the amount and condition of surety bonds to be required of such officers and employees of the city as the council may prescribe. (1978, c. 576)

§ 4.03. Powers and duties of mayor generally; absence or disability of mayor and of vice-mayor.

The mayor shall preside over the meetings of the council and shall have the same right to vote and speak therein as other members. He shall be recognized as the head of the city government for all ceremonial purposes, the purposes of military law and the service of civil process. The mayor shall execute all bonds and notes issued for the purpose of borrowing money, under the direction of the council, and the seal of the corporation shall be affixed and attested by the city clerk. The vice-mayor shall in the absence or disability of the mayor perform the duties of mayor. In the absence or disability of both the mayor and vice-mayor, the council shall, by majority vote of those present, choose one of their number to perform the duties of mayor. The council shall have no authority to choose one of its members to be mayor except to fill a vacancy in the office of mayor as provided in § 3.04. (1978, c. 576; 1988, cc. 612, 631; 1990, c. 305; 1999, cc. 799, 827; 2012, cc. 193, 426)

§ 4.04. Appointment, term, powers and duties and compensation of city clerk; inspection of records; appointment of deputy city clerk.

The council shall appoint a city clerk for an indefinite term. He shall be the clerk of the council, shall keep the journal of its proceedings and shall record all ordinances in a book kept for the purpose. He shall be the custodian of the corporate seal of the city and shall be the officer authorized to use and authenticate it. The city clerk shall be the custodian of all official records of the city. All records in his office shall be public records and open to inspection at any time during regular business hours. He shall receive compensation to be fixed by the council and all fees received by him shall be paid into the city treasury. He shall have such other powers and duties as may be prescribed by this charter or by ordinance. The council may designate a deputy city clerk who shall act during the absence of the city clerk. (1978, c. 576)

§ 4.05. Inaugural meetings; induction of members and election of vice-mayor.

The first meeting of a newly elected council shall take place on the date of the first regularly scheduled meeting of the city council in the month of July following the election at 10:00 a.m. at a place specified for same in the notice sent to the council members in accord with the manner set forth in § 4.06 of this charter for special meetings. At or before this first meeting, the oath of office shall be administered to the duly elected members as provided by law. In the absence of the mayor, the meeting may be called to order by the city clerk. The first business of the council shall be the election of a vice-mayor and the adoption of rules of procedure. Until this business has been completed, the council shall not adjourn for a period longer than forty-eight hours. (1978, c. 576; 1988, cc. 612, 631; 1990, c. 305; 1999, cc. 799, 827; 2007, c. 319)

§ 4.06. Rules of procedure; notice of special meetings; quorum.

The council shall have power, subject to the provisions of the consolidation agreement and this charter, to adopt its own rules of procedure. Such rules shall provide for the time and place of holding regular meetings of the council which shall be not less frequently than once in each month. They shall also provide for the calling of special meetings by the mayor, the city manager or any three members of the council, and shall prescribe the method of giving notice thereof, provided that the notice of each special meeting shall contain a statement of the specific item or items of business to be transacted and no other business shall be transacted at such meeting except by unanimous consent of all the members of the council. A majority of the members of the council shall constitute a quorum for the transaction of business. (1978, c. 576)

§ 4.07. Action by council at open meetings; voting procedure.

No ordinance, resolution, motion or vote shall be adopted by the council except at a meeting open to the public and, except motions to adjourn, to fix the time and place of adjournment, and other motions of a purely procedural nature, unless it shall have received the affirmative votes of at least four members. All voting except on procedural motions shall be by roll call and the ayes and nays shall be recorded in a journal. (1978, c. 576)

§ 4.08. Certain acts of council to be by ordinance.

In addition to such acts of the council which are required by the Constitution or general laws of the Commonwealth or by this charter to be by ordinance, every act of the council creating, altering or abolishing any department or creating, altering, assigning or abolishing any bureau, division, office, agency or employment, fixing the compensation of any officer or employee of the city, authorizing the borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a fine or penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance. Council may delegate to the city manager the power to create, alter, assign or abolish bureaus, offices and divisions within a department without the necessity of having an ordinance passed by council. (1978, c. 576)

§ 4.09. Effective date of ordinances generally.

Unless another date is specified therein and except as otherwise provided in this charter, an ordinance shall take effect on the tenth day following its passage. (1978, c. 576)

§ 4.10. Procedure for introducing ordinances.

An ordinance may be introduced by any member of the council at any regular meeting of the council or at any special meeting when the subject thereof has been included in the notice for such special meeting or been approved by the unanimous consent of all the members of the

council. (1978, c. 576)

§ 4.11. Submission of propositions to the qualified voters of the city.

The council shall have authority to request by resolution directed to the court of record the submission to the qualified voters of the city of an advisory referendum on any proposed ordinance. Upon receipt of such resolution, the court of record, or the judge thereof in vacation, shall order an election to be held at a regular or special election as provided by the order of the court. The election shall be conducted and the result thereof ascertained and determined in the manner provided by law for the conduct of such elections and by regular election officials of the city. (1978, c. 576)

§ 4.12. Numbering, recordation, codification and printing of ordinances.

Every ordinance, after passage, shall be given a serial number and shall be recorded by the clerk in a properly indexed book kept for that purpose. Within one year after the first day of July, 1958, there shall be prepared under the direction of the city attorney, who is hereby authorized to employ such assistance as he deems necessary for the purpose, a codification of all ordinances in force. Such codification may be passed by the council as a single ordinance and without prior publication. Upon its passage, it shall be published in bound or loose-leaf form. This codification, to be known and cited officially as the city code, shall be furnished to city officers and shall be sold to the public at a price to be fixed by the council. A similar codification shall be prepared, passed, published and distributed, as above provided, at least every five years. It shall be the duty of the city clerk to cause all ordinances adopted to be printed as promptly as possible after their adoption in substantially the same style and format as the codification of ordinances and sold at such prices as the council may establish. (1978, c. 576)

§ 4.13. Required vote in making appointments and removals; procedure for removal of person appointed by council for indefinite term.

The council in making appointments and removals shall act only by the affirmative votes of at least four members. It may remove any person appointed by it for an indefinite term, provided that the person sought to be removed shall have been served with a written notice of the intention of the council to remove him, containing a clear statement of the grounds for such removal and fixing the time and place, not less than ten days after the service of such notice, at which he shall be given an opportunity to be heard thereon. After the hearing, which shall be public at the option of the person sought to be removed and at which he may be represented by counsel, the decision of the council shall be final. (1978, c. 576)

§ 4.14. Emergency ordinances.

The council may by the affirmative vote of four of its members pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health or safety, or providing for the usual daily operation of a municipal department, in which the reasons for the emergency are set forth and defined. Ordinances appropriating money for such emergency may be passed as emergency measures, but no measure for the sale or lease of city property, or making a grant, renewal or extension of a franchise or other special privilege, or the regulation of the rate to be charged for its services by any public utility shall be so passed. (1978, c. 576)

Chapter 5. City Manager.

§ 5.01. Establishment of position of city manager; to be chief administrative officer; provision for assistant city manager or assistant city managers; appointment, term and qualifications; residence requirements.

There shall be a city manager who shall be the chief administrative officer of the city and shall be responsible to the council for the proper administration of the city government. He shall be appointed by the council for an indefinite term. He shall be appointed solely on the basis of his executive and administrative qualifications, with special reference to his actual experience in or knowledge of accepted practice in respect to the duties of his office. There may be one or more assistant city managers as authorized by the council. Such assistant city manager, or assistant city managers, shall be appointed by and responsible to the city manager.

At the time of appointment, the city manager or his assistant or assistants, if any, need not be a resident or residents of the city or the Commonwealth, but during the tenure of their respective offices they shall reside within the city. (1978, 576)

§ 5.02. Appointment and removal of department heads, etc., generally.

The city manager shall appoint for an indefinite term and remove except as otherwise provided in this charter, the heads of all departments and all other officers and employees of the city, provided the city manager may delegate such powers as he sees fit to heads of the departments under his supervision. (1978, c. 576)

§ 5.03. Interference by council in appointments or removals; dealings between council and administrative services.

Neither the council nor any of its members shall direct or request the appointment of any person to, or his removal from, any office or employment by the city manager or by any of his subordinates or in any way take part in the appointment of or removal of officers and employees of the city except as specifically provided in this charter. Except for the purpose of inquiry, the council and its members shall deal with the administrative services solely through the city manager, and neither the council nor any member thereof shall give orders either publicly or privately to any subordinate of the city manager. Any councilman violating the provisions of this section or voting for a motion, resolution or ordinance in violation of this section shall be guilty of a Class 4 misdemeanor and upon conviction thereof, shall cease to be a councilman. (1978, c. 576)

§ 5.04. Temporary transfer of personnel between departments.

The city manager shall have the power, whenever the interests of the city require, irrespective of any other provisions of this charter, to assign employees of any department, bureau, office or agency, the head of which is appointed by the city manager, to the temporary performance of duties in another department, bureau, office or agency. (1978, c. 576)

§ 5.05. Duties.

It shall be the duty of the city manager to:

- A. Attend all meetings of the council with the right to speak but not to vote;
- B. Keep the council advised of the financial condition and the future needs of the city and of all matters pertaining to its proper administration, and make such recommendations as may seem to him desirable;

C. Prepare and submit the annual budget to the council as provided in Chapter 6 of this charter and be responsible for its administration after its adoption;

D. Prepare in suitable form for publication and submit to the council not later than the thirty-first day of December of each year, a concise, comprehensive report of the financial transactions and administrative activities of the city government during the fiscal year ending on the preceding thirtieth day of June, and cause to be printed such number of copies thereof as the council shall direct;

E. Prepare and submit to council quarterly statements of all revenues, expenditures and encumbrances of funds in sufficient detail to show the exact financial condition of the city; council may by ordinance prescribe more frequent financial reporting;

F. Perform such other duties as may be prescribed by the council or which may be required of the chief executive officer of a city by the general laws of the Commonwealth other than the duties conferred on the mayor by this charter;

G. Execute, under the direction of the council, all contracts, deeds and other papers, and the seal of the corporation shall be affixed, and attested by the city clerk; and

H. Have direction of and control over all departments of the city except as otherwise provided by this charter. (1978, c. 576; 1982, c. 76; 1983, c. 45; 2007, c. 319)

§ 5.06. Absence or disability of the city manager; acting city manager; limitation on appointment of council member.

During the absence or disability of the city manager, the council may designate some properly qualified person to perform his duties until his return to duty or the appointment of his successor. Upon the death or resignation of the city manager, the council shall designate an acting city manager to serve until the appointment of a city manager. Provided that in no instance shall a member of council be appointed as city manager or acting city manager. (1978, c. 576)

Chapter 6. Budget, Etc.

§ 6.01. Fiscal year; definition of "budget year."

The fiscal year of the city government shall be established by ordinance. Such fiscal year shall also constitute the budget and accounting year. As used in this charter, the term "budget year" shall mean the fiscal year for which any particular budget is adopted and in which it is administered. (1978, c. 576)

§ 6.02. Submission of general budget.

The city manager, at least sixty days prior to the beginning of each budget year, shall submit to the council a general budget. (1978, c. 576)

§ 6.03. Estimates of revenue and expenditures filed by department heads, etc.

It shall be the duty of the head of each department, the judges of all courts, each board or commission, including the school board, and each other officer or agency supported in whole or in part by the city, including the commissioner of revenue, the treasurer, the sheriff, the Attorney for the Commonwealth and clerks of courts to file with the city manager or with his/her designee

for budget preparation, at such time as the manager may prescribe, estimates of revenue and expenditure for that department, court, board, commission, office or agency for the ensuing fiscal year. Such estimates shall be submitted on the forms furnished by the city manager's designee for budget preparation and it shall be the duty of the head of each such department, judge, board, commission, office or agency to supply all the information which the city manager may require to be submitted thereon. The city manager's designee for budget preparation shall assemble and compile these estimates and supply such additional information relating to the financial transactions of the city as may be necessary or valuable to the city manager in the preparation of the budgets. The city manager shall hold such hearings as he may deem advisable and with the assistance of the city manager's designee for budget preparation, shall review the estimates and other data pertinent to the preparation of the budgets and make such revisions in such estimates as he may deem proper, subject to the laws of the Commonwealth relating to obligatory expenditures for any purpose, except that in the case of the school board, he may recommend a revision only in its total estimated expenditures. (1978, c. 576; 1980, c. 78)

§ 6.04. Contents and form of general budget.

The general budget shall contain:

- A. An estimate of such portion of the general fund balance, if any, at the end of the current fiscal year as it is proposed to use for meeting expenditures in the general budget.
- B. An estimate of the revenues from current ad valorem taxes on real estate and personal property during the ensuing fiscal year.
- C. An estimate of revenues from all other sources of revenue.
- D. A statement to be furnished by the director of finance of the debt service requirements for the ensuing year.
- E. An estimate of the city's general fund balance deficit, if any, at the end of the current fiscal year and of any other obligations required by this charter to be budgeted for the ensuing fiscal year.
- F. An estimate of expenditures for all other purposes to be met in the ensuing fiscal year.

All the estimates shall be in detail, showing revenues by sources and expenditures by operating units, functions, character and object, so arranged as to show revenues and expenditures as estimated for the current fiscal year and actual revenues and expenditures for the last preceding fiscal year in comparison with estimated revenues and recommended expenditures for the ensuing year. At the head of the budget there shall appear a summary of the budget, which need not be itemized further than by principal sources of anticipated revenue, stating separately the amount to be raised by property tax, and by departments and kinds of expenditures, in such a manner as to present a simple and clear summary of the detailed estimates of the budget. (1978, c. 576; 1980, c. 78)

§ 6.05. Balancing of budget.

In no event shall the expenditures recommended by the city manager in the general budget exceed the receipts estimated, taking into account the estimated general fund balance or deficit at the end of the current fiscal year, as provided in the preceding section, unless property

assessments have been raised or unless the city manager shall recommend an increase in the rate of ad valorem taxes on real estate and tangible personal property or other new or increased taxes or licenses within the power of the city to levy and collect in the ensuing fiscal year, the receipts from which, estimated on the basis of the average experience with the same or similar taxes during the three tax years last past, will make up the difference. If estimated receipts exceed estimated expenditures the city manager may recommend revisions in the tax and license ordinances of the city, in order to bring the general fund budget into balance. (1978, c. 576; 1980, c. 78)

§ 6.06. Budget message.

The budget message submitted by the city manager to the council shall be explanatory of the budget, shall contain an outline of the proposed financial policies of the city for the budget year and shall describe in connection therewith the important features of the budget plan. It shall set forth the reasons for salient changes from the previous year in cost and revenue items and shall explain any major changes in financial policy. As a part of the budget message, with relation to the proposed expenditures for down payments and other proposed expenditures for capital projects stated in the budget, the city manager shall include a statement of pending capital projects and proposed new capital projects, relating the respective amounts proposed to be raised therefor by appropriations in the budget and the respective amounts, if any, proposed to be raised therefor by the issuance of bonds during the budget years. (1978, c. 576)

§ 6.07. Appropriation and additional tax ordinances.

At the same time that he submits the general fund budget, the city manager shall present to the council a general appropriation ordinance. The appropriation ordinance shall be based on the general fund budget but need not be itemized further than by administrative units. At the same time, the city manager shall also present any ordinance or ordinances altering the tax rate on real estate and personal property or levying a new tax or altering the rate of any other tax necessary to balance the general fund budget as hereinbefore provided. Nothing contained herein shall prohibit the adoption of an ordinance altering the tax rate on real estate or personal property or the levying of a new tax or altering the rate of any other tax, at a time other than when the general fund budget and general appropriation ordinance is presented to council, when necessary for the efficient operation of the city. The hearing on the budget plan as a whole, as provided in this section shall constitute the hearing on all ordinances presented at the same time the budget is presented. (1978, c. 576; 1980, c. 78)

§ 6.08. Budget, etc., as public record.

The budget and budget message and all supporting schedules shall be a public record in the office of the city manager open to public inspection after the budget has been made public by the city manager; provided, however, that no department or agency, head or judge or board or commission shall divulge details of the proposed budget nor make public statements regarding budget estimates until the budget has been publicized by the city manager and made public by him. Provided, however, that nothing in this section shall be construed as prohibiting the city manager from discussing budget estimates with city council. The city manager on authorization from the council shall cause sufficient copies of the budget and budget message to be prepared for distribution to interested persons. (1978, c. 576; 1980, c. 78)

§ 6.09. Publication of notice of public hearing.

At the meeting of the council at which the budget and budget message are submitted, the council

shall determine the place and time of the public hearing on the budget, which time shall be at least thirty days prior to the beginning of each budget year, and shall cause to be published a notice of the place and time, not less than fifteen days prior to the date of the public hearing. (1978, c. 576)

§ 6.10. Public hearing on budget.

At the time and place so advertised, or at any time and place to which such public hearing shall from time to time be adjourned, the council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard, for or against the estimates or any item thereof. (1978, c. 576)

§ 6.11. Action by the council on general budget.

After the conclusion of the public hearing on the general budget, the council may insert new items of expenditures or may increase, decrease or strike out items of expenditure in the general fund budget, except that no item of expenditure for debt service as required by law shall be reduced or stricken out. The council shall in no event adopt a general budget in which the total expenditures exceed the revenues, estimated as hereinbefore provided, unless at the same time it adopts measures for providing additional revenue in the ensuing fiscal year, estimated as hereinbefore provided, sufficient to make up the difference. (1978, c. 576; 1980, c. 78)

§ 6.12. Adoption of budget.

The budget shall be adopted by ordinance by the votes of at least a majority of all the members of the council. The budget shall be finally adopted not later than the fifteenth day of the last month of the fiscal year. Should the council take no final action on or prior to such day, the budget, as submitted, shall be deemed to have been finally adopted by the council. (1978, c. 576)

§ 6.13. Additional appropriations.

An appropriation in addition to those contained in the general appropriation ordinance, except for the purpose of meeting a public emergency as provided for elsewhere in this charter, may be made by the council, by not less than a majority affirmative vote of the members present, only if there is an available funding source to meet such appropriation. (1978, c. 576; 1980, c. 78)

§ 6.14. Reserve for permanent public improvements.

The council may by ordinance establish a reserve fund for permanent public improvements and may appropriate thereto any portion of the general fund balance not otherwise appropriated at the close of any fiscal year. It may likewise assign to such fund a specified portion of the ad valorem tax on real estate and tangible personal property not to exceed ten cents on the hundred dollars of the assessed valuation thereof or the whole or part of the proceeds of any other tax. (1978, c. 576; 1980, c. 78)

Chapter 7. Borrowing.

§ 7.01. Power of council to issue bonds and notes.

The city council may, in the name and for the use of the city, incur indebtedness by issuing its negotiable bonds or notes for the purposes, in the manner and to the extent provided in this chapter. (1978, c. 576)

§ 7.02. Purposes for which bonds may be issued.

Bonds may be issued for the purpose of financing the whole or any part of the cost of any capital

improvement project, and to refund outstanding bonds. A capital improvement is hereby defined to include any public improvement or utility which the city is authorized to undertake, including the acquisition of any property, real or personal, incident thereto, the construction or reconstruction in whole or in part of any building, plant, structure, or facility, necessary or useful in carrying out the powers of the city, and in the equipment or re-equipment of the same. (1978, c. 576)

§ 7.03. Limitation on indebtedness.

Except as otherwise provided in §§ 7.07 and 7.08 of this chapter, the city shall not issue bonds or other interest bearing obligations to an amount which, including existing indebtedness, shall, at any time, exceed ten percent of the assessed valuation of real estate in the city subject to taxation, as shown by the last preceding assessment for taxes; provided, however, that in determining the limitations to the power to incur indebtedness, there shall not be included the classes of indebtedness especially described in Article VII, Section 10 of the Constitution of Virginia. (1978, c. 576; 1982, c. 76)

§ 7.04. Notes in anticipation of bonds.

Whenever an issue of bonds has been authorized as provided in this charter, the mayor, when authorized by resolution, shall have power to issue notes of the city in anticipation of such bonds, for the purpose of defraying the whole or any part of the cost of such project. Such notes shall be authenticated by the signature of the mayor and the city treasurer and shall mature not later than five years after the date of issue. (1978, c. 576; 1982, c. 76)

§ 7.05. Form of bonds.

All bonds issued pursuant to this charter shall be issued in accordance with the general laws of Virginia relating to the issuance of bonds by municipalities. (1978, c. 576)

§ 7.06. Payment of bonds and notes generally.

The faith and credit of the city and all taxes and revenues paid thereto are hereby pledged for the payment of principal of and interest on all bonds and notes of the city issued pursuant to this charter, except bonds for revenue producing utilities issued pursuant to this charter and which bonds are by their terms payable solely from the revenues derived from such utilities, whether or not such pledge be stated in the bonds or notes or in the bond ordinances authorizing their issue. (1978, c. 576)

§ 7.07. Bond issues for revenue producing utilities.

The city is hereby empowered to issue from time to time in the manner prescribed by Article VII, Section 10 of the Constitution of Virginia, bonds of the city, for the purpose of acquiring, establishing, constructing, improving or enlarging any sewage disposal system, waterworks, gas plant, electric plant, garbage and trash disposal system, incinerator, toll bridge, motor vehicle parking area or building, airport or other public utility, from which the city may derive a revenue; for the purpose of reimbursing the general fund or any other fund of the city for monies paid from such fund or funds for such purposes; and/or for the purpose of funding or refunding any existing indebtedness incurred for such purposes. Such bonds shall not be included in determining the power of the city to incur indebtedness within the limitation prescribed by Article VII, Section 10 of the Constitution of Virginia or § 7.03 hereof; but, from and after a period to be determined by the council, not exceeding five years from the date of the election authorizing such bonds, whenever and for so long as any such revenue producing utility fails to

produce sufficient revenue to pay for cost of operation and administration, including the interest and amortization of such bonds, and the cost of insurance against loss by injury to persons or property, all such bonds outstanding shall be included in determining the limitation of the power of the city to incur indebtedness under any provision of this charter or under the provisions of Article VII, Section 10 of the Constitution of Virginia. The city may, however, issue bonds from time to time for any or all of such purposes, including reimbursement of funds and the funding or refunding of existing indebtedness, in the manner prescribed by Article VII, Section 10 of the Constitution of Virginia, the principal and interest of which bonds shall be payable exclusively from the revenue of such revenue producing utilities and for which payment of principal and interest the full faith and credit of the city shall not be deemed to be pledged, notwithstanding any other provision of this charter, and such bonds shall never be included in determining the limitation of the power of the city to incur indebtedness under the provisions of this charter or under the provisions of Article VII, Section 10 of the Constitution of Virginia. (1978, c. 576)

§ 7.08. Contents of bond ordinance for revenue producing utilities.

The ordinance authorizing the issuance of any bonds for any revenue producing utility shall state either:

A. That the bonds shall be payable from the ad valorem taxes without limitation of rate or amount; the full faith and credit of the city is deemed to be pledged for the payment of principal and interest thereof; and the bonds are to be issued pursuant to the provisions of Article VII, Section 10 of the Constitution of Virginia and are not to be included in determining the power of the city to incur indebtedness within the limitation prescribed by Article VII, Section 10 of the Constitution of Virginia; provided, however, that from and after a period specified in such ordinance not exceeding five years from the date of the election authorizing the bonds, whenever and for so long as such revenue producing utility fails to produce sufficient revenue to pay for the cost of operation and administration, including the interest on bonds issued therefor, the cost of insurance against loss by injury to persons or property, and an annual amount to be placed into a sinking fund sufficient to pay the bonds at or before maturity, all outstanding bonds issued on account of such revenue producing utility shall be included in determining such limitation; or

B. That the principal and interest of such bonds shall be payable exclusively from the revenue of such revenue producing utility, the faith and credit of the city shall not be deemed to be pledged for the payment of such principal and interest; and the bonds are to be issued pursuant to the provision of Article VII, Section 10 of the Constitution of Virginia and are never to be included in determining the power of the city to incur indebtedness within the limitation prescribed by Article VII, Section 10 of the Constitution of Virginia. (1978, c. 576)

§ 7.09. Borrowing to pay judgment.

In the absence of unappropriated available revenues to pay a final judgment for money which may be recovered against the city, the council may by resolution authorize the issuance of a note or notes, the proceeds of which shall be used to pay such judgment, which note or notes may be renewed from time to time, but such note or all such notes of any fiscal year and any renewals thereof shall be paid not later than the last day of the fiscal year next succeeding the budget year in which such judgment was recovered. (1978, c. 576)

§ 7.10. Borrowing in anticipation of property taxes.

In any budget year, in anticipation of the collection of the property tax for such year, whether levied or to be levied in such year, the council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the city, each of which shall be designated "tax anticipation note for the year 19.." (stating the budget year). Such notes may be issued for periods not exceeding one year and may be renewed from time to time for periods not exceeding one year, but together with renewals shall mature and be paid not later than the end of the third fiscal year after the budget year in which the original notes have been issued. (1978, c. 576)

§ 7.11. Borrowing in anticipation of other revenues.

In any budget year, in anticipation of the collection or receipt of other revenues of that year, the council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the city, each of which shall be designated "special revenue notes for the year 19.." (stating the budget year). Such notes may be renewed from time to time, but all such notes, together with the renewals, shall mature and be paid not later than the end of the fiscal year after the budget year in which the original notes shall have been issued. (1978, c. 576)

§ 7.12. Notes redeemable prior to maturity.

No notes shall be made payable on demand, but any note may be made subject to redemption prior to maturity on such notice and at such time as may be stated in the note. (1978, c. 576)

§ 7.13. Sales of notes.

All notes issued pursuant to the provisions of this chapter when authorized by the council, may be sold at not less than par and accrued interest at private sale without previous advertisement by the director of finance, with the approval of the city manager. (1978, c. 576)

§ 7.14. Payment of notes.

The power and obligation of the city to pay any and all notes hereafter issued by it pursuant to the provisions of this chapter shall be unlimited and the city shall levy ad valorem taxes on all the taxable property within the city for the payment of such notes and interest thereon without limitation of rate or amount. (1978, c. 576)

§ 7.15. Supplemental method of borrowing and payment.

In addition to any other indebtedness of the city and certificate of debt, or bonds, which the council of the city has issued, the council of the city, by the affirmative vote of not less than four members thereof, may, from time to time, borrow an additional sum, or sums of money, not exceeding in the aggregate, however, under this authority, the sum of \$500,000 (provided, however, such sum shall not be in excess of the amount fixed by law which it may borrow), and may, in the name and for the use of the city, cause to be issued certificates and notes, evidencing the indebtedness, which certificates and notes, however, shall be payable in not more than five years from their date and upon payment, or redemption of such certificates of debt, or notes, the council may again, by the affirmative vote of not less than four of the members thereof, from time to time, borrow a like sum and issue like certificates, or notes, evidencing the indebtedness thereof, which shall likewise be payable not more than five years from their date. (1978, c. 576)

§ 7.16. Inclusion of certain notes, etc., in determining constitutional debt limit.

All notes or other evidences of debt issued pursuant to §§ 7.09 through 7.15, inclusive, of this chapter shall, unless payable within one year of their issue, or the date of the original obligation if the issue is a renewal, and not past due, be included in determining the limitation on

indebtedness in accordance with Article VII, Section 10 of the Constitution. (1978, c. 576)

Chapter 8. Finance Generally.

§ 8.01. Establishment of department of finance; functions.

There shall be a department of finance, which shall include the functions of accounting and control, and such other functions as may be provided by ordinance. (1978, c. 576; 1980, c. 78)

§ 8.02. Director of finance generally; to be head of department of finance; appointment and qualifications.

The head of the department of finance shall be the director of finance, who shall be appointed by the city manager. He shall be a person skilled in accounting and financial control. (1978, c. 576)

§ 8.03. Same; bond.

The director of finance shall provide a bond with such surety and in such amount as the council may require. (1978, c. 576)

§ 8.04. Same; powers and duties.

The director of finance, under the supervision of the city manager, shall have authority and shall be responsible for the department of finance in order to discharge the following functions:

A. [Repealed.]

B. [Repealed.]

C. Disbursements and expenditures. Supervise and authorize the disbursement of all monies and have control over all expenditures to ensure that budget appropriations are not exceeded.

D. Accounts and accounting. Maintain a general accounting system for the city government and each of its offices, departments and agencies; keep books for and exercise financial accounting control over each office, department and agency; keep separate accounts for the items of appropriation contained in the city budget, each of which accounts shall show the amount of the appropriation, the amounts paid thereon, the unpaid obligations against it and the unencumbered balance; and require reports of receipts and disbursements from each receiving and spending agency of the city government to be made daily or at such intervals as he may deem expedient.

E. [Repealed.]

F. Annual statement and report. Prepare for the city manager, as of the end of each fiscal year, a complete financial statement and report.

G. Certification of unencumbered balance. No appropriation shall be encumbered and no expenditure shall be made unless the director of finance shall certify that there is an unencumbered balance of appropriated and available funds. (1978, c. 576; 1980, c. 78; 1982, c. 76)

§ 8.05. Departmental, etc., work programs and requested allotments.

Before the beginning of the fiscal year, the head of each office, department or agency may be required to submit to the city manager or his/her designee for budget preparation, at such time as

may be set by him, a work program for the year, which program shall show the requested allotments of the appropriations for such office, department or agency, for such periods as may be designated by the city manager, for the entire budget year. The city manager shall review the requested allotments and may revise, alter or change such allotments before approving the same. The aggregate of such allotments shall not exceed the total appropriation available to such office, department or agency for the budget year. (1978, c. 576; 1980, c. 78)

§ 8.06. Approved departmental, etc., allotments as basis for expenditures.

The director of finance shall authorize all expenditures for the offices, departments and agencies to be made from the appropriations on the basis of approved allotments and not otherwise. An approved allotment may be revised during the budget year in the same manner as the original allotment was made. If, at any time during the budget year, the city manager shall ascertain that the available income, plus balances, for the year will be less than the total appropriations, he shall reconsider the work programs and allotments of the several offices, departments and agencies and revise the allotment so as to prevent the making of expenditures in excess of such income. (1978, c. 576)

§ 8.07. Transfer of unencumbered balance of appropriation.

The city manager may at any time transfer any unencumbered appropriation balance or portion thereof within the same general classification of expenditures within an office, department or agency. (1978, c. 576)

§ 8.08. Supervision and control of accounting.

The Director of finance shall have power and shall be required to:

- A. Forms. Prescribe the forms of receipts, vouchers, bills or claims to be used by all the offices, departments and agencies of the city government.
- B. Contracts, etc. Examine and approve all contracts, orders and other documents by which the city government incurs financial obligations, having previously ascertained that funds have been appropriated and allotted and will be available when the obligation shall become due and payable.
- C. Bills, etc. Audit and approve before payment all bills, invoices, payrolls and other evidences of claims, demands or charges against the city government and with advice of the city attorney, determine the regularity, legality and correctness of such claims, demands or charges. (1978, c. 576)

§ 8.09. Certain contracts and expenditures prohibited.

No officer, department or agency shall, during any budget year, expend or contract to expend any money or incur any liability, or enter into any contract which by its terms involves the expenditure of money, for any purpose, in excess of the amounts appropriated for that general classification of expenditure pursuant to this charter. Any contract, verbal or written, made in violation of this charter shall be null and void. Any officer or employee of this city who shall violate this section shall be guilty of a misdemeanor and, upon conviction thereof, shall cease to hold his office or employment. Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for capital improvements to be financed in whole or in part by the issuance of bonds, nor the making of contracts of lease or for services for a period exceeding the budget year in which such contract is made, when such contract is

permitted by law. (1978, c. 576)

§ 8.10. Lapse of appropriations.

All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully encumbered. (1978, c. 576)

§ 8.11. Disposition of fees received by officers or employees.

All fees received by any officer or employee shall belong to the city government and shall be paid to the city treasurer as and when directed by the director of finance, and the officer or employee shall notify the director of finance and pay same to the treasurer as and when directed by the director of finance. (1978, c. 576; 1980, c. 78)

§ 8.12. Contracts for city improvements.

Any city improvement costing more than \$1,000, except where such improvement is executed directly by a city department, shall be executed by contract. All such contracts for more than \$50,000 shall be awarded to the lowest responsible bidder, or if the council should so determine, to such bidder whose bid is more acceptable to the public interest, after such public notice and competition as may be prescribed by ordinance, provided the city manager shall have the power to reject all bids and advertise again. Alterations in any contract may be made when authorized by the council upon the written recommendation of the city manager. (1978, c. 576; 1980, c. 78; 2007, c. 766)

§ 8.13. Effectiveness of bond ordinances prerequisite to execution of certain contracts.

No contract shall be executed for the acquisition of any property or the construction of any improvement or betterment to be financed by the issuance of bonds until the ordinance authorizing the issuance of such bonds shall have taken effect and any contract executed before such day shall be unenforceable in any court of law. (1978, c. 576)

§ 8.14. Periodic independent audits.

After the close of each fiscal year, the council shall cause to be made an independent audit of all accounts, books, records and financial transactions of the city, including the school board, by the Auditor of Public Accounts of the Commonwealth or by a firm of independent certified public accountants to be selected by the council. The report of such audit shall be filed within such time as the council shall specify and one copy thereof shall always be available for public inspection in the office of the city manager during regular business hours. (1978, c. 576)

§ 8.15. Collection of taxes generally; taxes paid by tenant; recordation of list of delinquent real estate taxes.

The city treasurer or city collector, if designated by council, shall have any or all of the powers which are now or which may be hereafter vested in any officer of the Commonwealth charged with the collection of State taxes, and may collect the same in the same manner in which State taxes are collected by any officer of this Commonwealth. No deed of trust or mortgage upon goods and chattels shall prevent the same from being distrained or sold for taxes assessed thereon, no matter in whose possession such goods and chattels may be found. A tenant from whom payment of taxes on his landlord's property shall be obtained by distress or otherwise shall have credit for the same against such person on account of his rent, unless by contract the tenant is to pay such taxes. The council may require a list of all real estate in the city delinquent for the nonpayment of taxes thereon for the preceding year to be recorded in a book of delinquent taxes

to be kept in the office of the director of finance. (1978, c. 576)

§ 8.16. Penalties for nonpayment of taxes; distress; garnishment, etc., after addition of penalty; collection when delinquent taxpayer is or contemplates moving.

The council may impose penalties for the nonpayment of city taxes and levies and for the failure to make any return required by law for the assessment of taxes, and may cause such penalties to be added to the amount of taxes and levies due from taxpayers, as it may by ordinance or resolution from time to time prescribe; and after such penalty has been added, the city treasurer or the city collector if designated by the council shall have the power of distress, garnishment or action and any other power now possessed or that may hereafter be given to any person charged with the collection of State taxes after the penalty for the nonpayment of State taxes has been added. Should it come to the knowledge of the city treasurer or the city collector that any person, firm or corporation owing taxes or levies to the city is moving or contemplating moving therefrom prior to the time such penalty may be added by the council, he shall have the right to collect taxes by distress, garnishment, suit or action or otherwise at any time after such bills for taxes have come into his hands. (1978, c. 576)

Chapter 9. City Auditor.

§ 9.01. Establishment of position; appointment; term; qualifications; powers and duties.

The council may appoint a city auditor for a four-year term. He shall be qualified by training and experience for the duties of his office, and shall have supervision and control of the personnel in his department. The city auditor's duties and responsibilities shall be those set out by council in an ordinance. (1978, c. 576; 1983, c. 45)

Chapter 10. Department of Law.

§ 10.01. Establishment; composition.

There shall be a department of law which shall consist of the city attorney and such assistant city attorneys and other employees as may be provided by ordinance. (1978, c. 576)

§ 10.02. City attorney; to be head of department; qualification; appointment; term.

The head of the department of law shall be the city attorney. He shall be an attorney-at-law licensed to practice law in the Commonwealth. He shall be appointed by the council and shall serve at its pleasure. He shall not engage in the private practice of law. (1978, c. 576; 1988, c. 146)

§ 10.03. Same; powers and duties.

The city attorney shall:

A. be the legal advisor of the council, the city manager and of all departments, boards, commissions and agencies of the city, including the school board, in all matters affecting the interests of the city and shall upon request furnish a written opinion on any question of law involving their respective official powers and duties;

B. at the request of the city manager or any member of the council, prepare ordinances for introduction at the request of the council or any member thereof, shall examine any ordinance after introduction and render his opinion as to the form and legality thereof;

C. draw or approve all bonds, deeds, leases, contracts or other instruments to which the city is a party or in which it has an interest;

D. have the management and control of all the law business of the city and the department, boards, commissions and agencies thereof or in which the city has an interest, and represent the city as counsel in any civil case in which it is interested and in criminal cases in which the constitutionality or validity of any ordinance is brought in issue;

E. institute and prosecute all legal proceedings he shall deem necessary or proper to protect the interests of the city;

F. attend in person or assign one of his assistants to attend all meetings of the council;

G. appoint and remove such assistant city attorneys and other employees as shall be provided by the council, and authorize the assistant city attorney or any of them or special counsel to perform any of the duties imposed upon him in this charter; and

H. have such other powers and duties as may be assigned to him by ordinance. (1978, c. 576)

§ 10.04. Filing of statement of claim prerequisite to maintenance of action for damages against city.

No action shall be maintained against the city for injury to any person or property, or for wrongful death alleged to have been sustained by reason of the negligence of the city or of any officer, agent or employee thereof unless a written statement by the claimant, his agent, attorney or representative, of the nature of the claim and of the time and place at which the injury is alleged to have occurred or been received, shall have been filed with the city attorney or with the mayor or chief executive within six months after such cause of action shall have accrued, except if the complainant, during such six-month period is able to establish by clear and convincing evidence that due to the injury sustained for which a claim is asserted, that he was physically or mentally unable to give such notice within the six-month period, then the time for giving notice shall be tolled until the claimant sufficiently recovers from the injury so as to be able to give such notice. Neither the city attorney or any other officer, employee or agent of the city shall have authority to waive the foregoing conditions precedent or any of them. (1978, c. 576)

Chapter 11. Department of Education.

§ 11.01. Composition; powers and duties of school board, division superintendent of schools, etc.

The department of education shall consist of the city school board, the division superintendent of schools, and the officers and employees thereof. Except as otherwise provided in this charter, the city school board and the division superintendent of schools, and the officers and employees thereof, shall exercise all the powers conferred and perform all the duties imposed upon them by general law. (1978, c. 576)

§ 11.02. Composition of school board; choice, term and qualifications of members; filling of vacancies.

The school board of the city shall be composed of seven members who shall be elected as required by the general laws of the Commonwealth of Virginia pertaining to the popular election of school boards. Any vacancies occurring on the school board shall be filled as required by the general laws of the Commonwealth of Virginia pertaining to the popular election of school boards. All members shall be residents of the city and, furthermore, residents of the district within the city which they represent, if not elected at large. (1978, c. 576; 1999, cc. 799, 827)

Chapter 12. Assessment of Real Estate for Taxation.

§ 12.01. Annual assessment, etc., of real estate for taxation; authority of council.

The council shall have the power, in lieu of the means and methods prescribed by law, to provide by ordinance for the annual assessment and reassessment and equalization of assessments of real estate for local taxation. (1978, c. 576)

§ 12.02. Basis of assessment of real estate for taxation.

Such assessment or reassessment shall be made on the same basis as real estate is required to be assessed under the provisions of the Code of Virginia, except that such assessments or reassessments shall be made annually and the assessments and reassessments so made shall have the same effect as if they had been made under the provisions of the Code of Virginia; provided, however, that nothing contained herein shall prevent the assessment or reassessment of real estate at more frequent intervals when so authorized by the Code of Virginia. (1978, c. 576)

§ 12.03. Board of review; composition; appointment, term and compensation of members; vacancies.

Notwithstanding any provision of §§ 58-895 to 58-902 and 58-914 of the Code of Virginia, as amended, the courts of record en banc of the city or the judges thereof in vacation shall, annually, appoint for the city, a board of review of real estate assessments to be composed of three members, who shall be freeholders of the city for which they serve. The terms of such members shall commence on September 1 of the year in which they are appointed and shall expire on the thirtieth day of November of the year in which they are appointed, unless their terms are extended. Such courts or the judges thereof in vacation may extend the terms of the members of the board of review and shall fill any vacancy therein for the unexpired term. The members of the board shall receive per diem compensation for the time actually engaged in the duties of the board to be fixed by the council of the city, and to be paid out of the treasury of the city, and the council may limit the per diem compensation to such number of days as, in its judgment, is sufficient for the completion of the work of the board. (1978, c. 576)

§ 12.04. Same; powers; procedural regulations.

Such board of review shall have and may exercise the power to revise, correct and amend any assessment of real estate made in the year in which they serve, and to that end shall have all powers conferred upon boards of equalization by §§ 58-903 to 58-912, inclusive, of the Code of Virginia, as amended. Notwithstanding any provisions of such sections, however, the board of review may adopt any regulations providing for the oral presentation, with formal petitions or other pleadings of requests for review, and looking to the further facilitation and simplifications of proceedings before the board. (1978, c. 576)

§ 12.05. Same; appeal.

Any person, or the city, aggrieved by any assessment made by the board of review may apply for relief in the manner provided by §§ 58-1145 to 58-1171, inclusive, of the Code of Virginia, as amended. (1978, c. 576)

§ 12.06. Real estate assessable by State Corporation Commission.

This charter shall not apply to the assessment of any real estate assessable under the law by the

State Corporation Commission. (1978, c. 576)

Chapter 13. Port and Industrial Authority.

§ 13.01. Establishment authorized.

There may be established a port and industrial authority for the consolidated city. (1978, c. 576)

§ 13.02. Grant of powers under Acts 1952, Chapter 46.

All of the provisions and powers set forth in Chapter 46, Acts of Assembly, 1952, as amended, are hereby granted to the consolidated city as though the consolidated city were the city set forth in such chapter. (1978, c. 576)

Chapter 14. Courts of Record.

§ 14.01. Appointment by judges of the court of record.

The judges of the court of record shall act en banc in making appointments to fill vacancies occurring in any office in the city which are filled or to be filled by the judges of the court of record, and, in case of disagreement, the vote of a majority of such judges shall be binding. (1978, c. 576)

Chapter 15. Clerks' Offices of Courts of Record.

§ 15.01. Compensation of clerk; expenses and fees.

The clerk of the court of record of the city of Newport News shall be paid a salary of not less than \$12,000 per annum. Such salary shall be in full compensation for services and shall be in lieu of the retention by such officer of any and all official fees, commissions or compensation of whatever kind or character, and from whatever source derived; and the city council of the city shall provide for the payment of such salary out of the city treasury.

The expenses of office of such officer, including the compensation of deputies and employees, shall be likewise paid out of the city treasury on duly authenticated vouchers, when and as such expenses are incurred, or may become due and payable, or at least twice monthly. The maximum amount of such expenses in the case of the officer shall be fixed by the State Compensation Board, and the State Compensation Board shall fix the number and compensation of the deputies and employees of such officer.

All fees and commission of every kind or character received or collected by such clerk and from whatever source derived, shall be paid into the city treasury by such clerk monthly. All fees and commissions of every kind and character, whether payable by the Commonwealth, the United States, or private persons, firms or corporations, now or hereafter made receivable by law or ordinance by such clerk shall continue to be paid to and collected by him, and shall be paid into the city treasury monthly, except that the city aforesaid shall not be required to pay such clerk any fees or commissions for services performed for such city. (1978, c. 576)

§ 15.02. Location of records.

Commencing on the effective date of consolidation, the clerks' offices, and the records thereof, of the courts of record of the consolidated city shall be located and maintained in or adjacent to the building in which the clerk's office of the circuit court is located. (1978, c. 576)

Chapter 16. Architectural Review Board.

§ 16.01. Creation of the Hilton Village Architectural Review Board.

There may be created by ordinance a Hilton Village Architectural Review Board which shall have the authority and power to review all building and construction plans pertaining to the Hilton Village Historical Zoning District. The architectural review board shall have the power to review all plans pertaining to the Hilton Village Historical Zoning District, notwithstanding any other provision of law to the contrary, and the city council may enact by ordinance such rules and regulations pertaining to the review board as it deems necessary. (1978, c. 576)

Chapter 17. Miscellaneous Provisions.

§ 17.01. Severability of charter provisions.

In the event that any portion, section or provision of this charter shall be declared illegal, invalid or unconstitutional by final judgment of any court of competent jurisdiction, such judgment shall not invalidate any other portion, section or provision hereof, but all parts of the charter not expressly held to be invalid shall remain in full force and effect. (1978, c. 576)

§ 17.02. Maximum length of service for members and trustees of boards and commissions.

No member or trustee of any board or commission of the city, no matter who the appointing authority, shall be eligible to serve more than:

- A. Eight consecutive terms if the term of office is one year.
- B. Four consecutive terms if the term of office is two years.
- C. Three consecutive terms if the term of office is three years.
- D. Two consecutive terms if the term of office is four years.
- E. Two consecutive terms if the term of office is for five years or more.

Notwithstanding the above limitations, no member or trustee of any board or commission of the city shall be appointed so as to serve more than ten years on a board or commission, except that a person who has served on a board or commission may be reappointed to that same board or commission if one year has elapsed since the expiration of his last appointment to the board or commission.

Council is hereby authorized and empowered, but not directed, to provide by ordinance for staggered terms of all members of boards and commissions of the city to the end that there will not result a complete board or commission membership turnover on the same date.

The portion hereof concerning limitation of terms shall apply to regional boards and commissions only in those cases in which all political subdivisions appointing members to such regional board or commission are bound by a like provision.

This section shall be in effect, notwithstanding any other provision in the city code or city charter to the contrary. (1978, c. 576)

§ 17.03. Authority to create library board.

There may be a Newport News Public Library Board, as provided by the council of the city of Newport News, which shall consist of such number of members or trustees as the council may

provide. Vacancies on the library board shall be filled by the council for the unexpired portion of the term. The library board shall have such authority, powers and duties as may be provided by ordinance. (1978, c. 576)

§ 17.04. Power to contract with and receive aid from federal government.

In addition to the other powers conferred by this charter, the city of Newport News shall have the power and authority to accept contributions, grants and other financial assistance from the federal government and other agencies and agency or instrumentality thereof for or in aid of the local federally assisted programs. To these ends, the city of Newport News shall have the power to comply with such conditions and to execute such agreements as may be necessary, convenient or desirable and not in conflict with any other provision of this charter. (1978, c. 576)

§ 17.05. Continuance of Acts 1926, Chapter 530.

All of the provisions, obligations, and directions of Chapter 530, Acts of Assembly, 1926, and all amendments thereto, except as otherwise changed by this chapter, concerning the waterworks system shall continue in full force and effect as though the consolidated city was in the original act the city set forth in such act. (1978, c. 576)

§ 17.06. Continuation of rights, powers, etc., in Regional Redevelopment and Housing Authority for Hampton and Warwick, Virginia, and the Newport News Housing and Redevelopment Authority.

All rights, powers, liabilities and benefits of the former city of Warwick resulting from agreement or arising by law in the Regional Redevelopment and Housing Authority for Hampton and Warwick, Virginia, shall inure to the consolidated city, and the representative of the former city of Warwick to such authority at the time of the effective date of the consolidation shall continue on the commission as if the consolidated city had originally been a party to the agreement and action creating the Regional Redevelopment and Housing Authority for Hampton and Warwick, Virginia; and all the rights, powers, liabilities and benefits of the former city of Newport News resulting from agreement or arising by law in the Newport News Redevelopment and Housing Authority shall inure to the consolidated city and the representatives of the former city of Newport News on the authority at the time of the effective date of the consolidation shall continue as the representatives of the consolidated city as if the consolidated city had originally been a party to the agreement and action creating the Newport News Redevelopment and Housing Authority. (1978, c. 576)

§ 17.07. Courts not of record.

The City of Newport News shall provide suitable quarters for the general district court and its clerk, the juvenile and domestic relations court and its clerk, social services staff and a suitable room or rooms for the sessions of the courts at the places designated for such purpose. The City shall also provide all necessary furniture, filing cabinets and other equipment necessary for the efficient operation of the courts.

All fees, fines and commissions of every kind and character received or collected by the judges or clerks of such courts and from whatever source derived shall be paid promptly to the clerk of the circuit court. All fees, fines and commissions of every kind and character, whether payable by the Commonwealth, the United States, or private persons, firms or corporations, now or hereinafter made receivable by law or ordinance by such judge or clerk, shall continue to be paid to and collected by him, and shall be promptly paid to the clerk of the circuit court, except that the city

aforesaid shall not be required to pay such judge or clerk any fees or commissions for services performed for such city. (1989, c. 654)

Editor's note: The following Chapter 27, as amended, is retained from the Charter of 1958.

Chapter 27. Miscellaneous and Transition Provisions.

§ 27.01. Ownership of commissions, authorities, etc.

All of the ownership, rights, title, interest, powers and obligations of the former political subdivisions comprising this City or of either of them, resulting from law, by agreement, or otherwise, relative to or in any manner connected with (1) the waterworks plant or system of the former City of Newport News, (2) The Peninsula Airport Commission, (3) the Chesapeake Ferry District, (4) the Port and Industrial Authority, (5) any sewerage and sewerage disposal systems, (6) Housing Authorities, and (7) rights and privileges granted by the Commonwealth of Virginia or the United States of America, shall be vested in, enure to and be assumed by this City, and any ordinances or regulations in connection therewith which are in effect at the time of the effective date of this City shall remain in effect unless and until revoked, amended or superseded by ordinances or regulations of this City, except as otherwise provided in this charter. (1958, c. 141)

§ 27.02. Assumption of all debts, obligations.

Upon the effective date of consolidation all of the then outstanding indebtedness, bonded or otherwise, including interest thereon, and all of the then existing contracts, franchises, and any other legal obligations, including but not limited to all legal obligations existing by reason of any retirement plans within the cities in effect at the time of consolidation, or debts of each of the former cities now comprising this city shall become the indebtedness and obligation of this city, and there shall enure to this city in connection therewith all of the rights and privileges therein, or by law provided for, in the same manner and to the same extent as if they were issued, made, entered into or arose, in the original instances directly by or with this city. It is a provision of this consolidation agreement that the payment of the employer's share of the obligation under existing retirement or pensions plans in effect on the date of consolidation in the cities of Warwick and Newport News, and all allowances, annuities, and benefits accruing, granted and to be paid in the future to employees of the cities pursuant to such plans, and all expenses in connection with the operation and administration thereof are hereby made obligations of the consolidated city, to the extent herein specified and in accordance with the ordinances and provisions of the various cities affecting retirement. The consolidation agreement shall be deemed an agreement between the Consolidated City and the employees and retirants covered by such retirement plans as of the date of consolidation, to the end that the right and equities of the employees and retirants, as herein specified, in service or in retirement on the date of consolidation, under the existing retirement plans, in accordance with the provisions of such plans, shall not be diminished, curtailed or impaired for services rendered as of the effective date of consolidation. This obligation on the part of the consolidated city shall include, in accordance with the provisions of the various pension or retirement plans:

- (a) The continuation of retirement allowances or pension payments to retired employees.
- (b) The payment of retirement allowances or pensions, when due, to those former employees who retained "vested rights."
- (c) The retirement and payment of pensions to those employees who are qualified for retirement under any of the existing plans on the effective date of consolidation.

(d) The vesting of service retirement allowances for those employees who are qualified under the terms of existing plans.

(e) The payment of withdrawal benefits, as provided in existing plans, to all employees who do not qualify for pensions or vested service retirement allowances.

(f) The payment of any other benefit provided, including Social Security payments made by any employee, for which the employee has qualified, on the date of consolidation that is in the particular plan applicable to the employee.

(g) The payment of any other benefit provided to retire employees prior to consolidation to any employees receiving the same by special pension benefits not covered by a general plan.

It is also provided that any employee of either of the cities who is employed by the consolidated city, shall be given credit for the years of service already to his credit in Warwick or Newport News in any retirement plan enacted by the consolidated city at a cost not to exceed the withdrawal allowance to the credit of said employee at the date of consolidation.

If any employee who is entitled to retirement, or who has retired from either of the cities, is employed by the consolidated city, he shall not receive his pension during the term of his employment with the consolidated city but shall be entitled to receive such pension when his employment with the consolidated city ends. Provided, however, that independent contractors, substitute teachers, or other nonpermanent or seasonal employees shall not have their pension withheld by the provisions of this paragraph.

This provision applies to all pension or retirement systems of both cities and includes the systems that provide retirement to employees of school boards or other boards or commissions and to the city officers and their employees if such employees were included in retirement systems prior to consolidation.

Such funds, reserves, appropriation, cash and investments in the hands of either of the cities or in hands of trustees of any of the retirement funds of the cities shall, on the date of consolidation, or as soon thereafter as is practicable, be paid over to such officers or boards of the consolidated city, as the council of the consolidated city may designate, to be used to meet the obligations as herein provided.

The consolidated city is hereby authorized and directed to provide and pay such additional money as is necessary to fulfill and carry out the provisions of this portion of the consolidation agreement of the consolidated city.

The full faith and credit of the consolidated city is hereby irrevocably pledged to meet this obligation. (1958, c. 141; 1973, c. 157)

§ 27.03. All assets and property to be owned by consolidated city.

All property, real, personal or mixed, and all other assets of every kind, and wheresoever the same may be situated or located, owned by the political subdivisions comprising this city immediately preceding the effective date of this city shall become the property of this city upon its effective date, and all legal rights or interest of any kind in the aforesaid property which the said political subdivisions had at such time shall fully enure to this city. (1958, c. 141)

§ 27.04. Provisions as to constitutional officers.

Upon the date the consolidation agreement takes effect, there shall be terminated the terms of office of the Commonwealth's Attorney, Commissioner of the Revenue, Treasurer and Sergeant for each of the political subdivisions so consolidated.

On the second Tuesday in April, 1958, an election shall be held to select the Commonwealth's Attorney, Commissioner of the Revenue, Treasurer and Sergeant of the Consolidated City, who will take office July 1, 1958, for a term expiring December 31, 1961. In the general election to be held in November, 1961, these officers will be elected for four (4) year terms, starting January 1, 1962, and each four (4) years thereafter, these offices will be filled at the general elections in November. (1958, c. 141)

§ 27.05. Effects upon members of boards, commissions or any agency.

The terms of all persons holding office as members of any board, commission, agency or authority created by any ordinance of either of the cities or appointed by council pursuant to any law of the Commonwealth shall terminate as of July 1, 1958, except as otherwise herein provided, and the Council of the consolidated city shall have authority and power to make new appointments for an original term as prescribed by any such ordinance or statute. (1958, c. 141)

§ 27.06. Tax levies, funds and assessments.

All levies, both current and delinquent, and all school and other funds which may be held by the State to the credit of the cities of Newport News and Warwick shall become the property of this city. The tax levies, service charges and assessments made for the current or ensuing year or years by the aforesaid cities shall stand as levies and assessments of this city until superseded by levies and assessments made by this city. (1958, c. 141)

§ 27.07. (1958, c. 141; repealed 1978, c. 576)

§ 27.08. (1958, c. 141; repealed 1968, c. 448)

§ 27.09. (1958, c. 141; repealed 1978, c. 576)

§ 27.10. Election of officers and councilmen.

An election shall be held by the combined qualified voters of the cities of Newport News and Warwick in accordance with general law, on April 8, 1958, for the offices of Commonwealth Attorney, Commissioner of Revenue, Treasurer and Sergeant of the Consolidated City. The candidate receiving the highest number of said combined qualified votes for each of such offices shall be declared the holder of such office and their respective terms of office shall commence July 1, 1958.

The said election shall be held within the areas of the cities in all respects in the same manner and subject to the same rules and regulations as if the respective officers were being elected for such city in a general election, and the costs of such elections within the respective areas of such cities shall be borne by each such city.

In the event all matters in any way concerning or governing said election have not herein been provided for, or if any question in connection therewith is raised, the judges of the courts of record of said cities sitting en banc are authorized and directed to enter such orders concerning the same which may be necessary to provide such omission or settle such dispute.

The terms of office of the city councilmen elected by the combined qualified voters of the cities of Newport News and Warwick, in accordance with general law, on Tuesday, November 5, 1957, shall commence June 30, 1958. (1958, c. 141)

§ 27.11. Preliminary meeting of the council elect to choose a city manager and for other purposes.

At any time following the ascertainment of the result of the first election of councilmen for this city, such councilmen-elect are directed and authorized to meet at such places they may select and at such times as they may deem necessary for the purposes of considering the appointment of a city manager, the preparation of ordinances, appointments which are required of them, and all such other matters as may be necessary to effectuate the transition resulting from the consolidation of the cities into this city. All expenses of the council-elect in complying with the above provisions shall be paid by this city upon vouchers signed by such members of the council-elect as they may designate. (1958, c. 141)

§ 27.12. Transfer of books and papers.

If any person having been an officer of the city, shall not, within ten days after he shall have vacated or been removed from office, deliver over to his successor in office all the property, books and papers belonging to the city or appertaining to such office, in his possession or under his control, he shall forfeit and pay to the city the sum of \$500, to be sued for and recovered with costs. All books, records, and documents used in any such office, by virtue of any provision of this charter or of any ordinance or order of the council or any superior officer of the city, shall be deemed the property of the city and appertain to said office, and the chief officer thereof shall be responsible therefor. (1958, c. 141)

§ 27.13. Notary public.

All certificates of acknowledgments to deeds and other writings taken and certified by a Notary Public or other officer originally duly authorized to take acknowledgments in the former City of Newport News, and the former City of Warwick, prior to the normal expiration date of the commission of such Notary Public or other officer, are declared to be valid to the same extent they would have been valid as if such Notary Public or other officers had been commissioned for the Consolidated City. (1958, c. 141)

§ 27.14. (1958, c. 141; repealed 1968, c. 448)

§ 27.15. Peninsula Airport Commission.

All the rights, powers and liabilities of the former City of Newport News, and the former City of Warwick resulting from any agreement or arising by law in the Peninsula Airport Commission shall be acquired by the Consolidated City and the representation of the former Cities of Newport News and Warwick at the time of consolidation shall continue as the representatives of the Consolidated City as if the Consolidated City had originally been a party to the creation of the Peninsula Airport Commission until their successors are appointed by the council of the Consolidated City. (1958, c. 141)

§ 27.16. (1958, c. 141; repealed 1968, c. 448)

§ 27.17. Water, sewerage and sewage disposal systems.

The consolidated city shall acquire all of the rights, privileges, and liabilities of the former City of Newport News, and the former City of Warwick respective to the law under which its interest in any water supply system and any sewage disposal systems have been and are being installed, and

all rights and privileges granted by the Commonwealth of Virginia or by the United States of America to the former Cities of Newport News and Warwick. (1958, c. 141)

§ 27.18. Meaning of "at the effective date of this charter."

As used in this charter, the term "at the effective date of this charter" shall be interpreted to refer to a period immediately preceding the taking effect thereof. (1958, c. 141)

§ 27.19. Saving clause.

In the event that any portion, section or provision of this charter shall be declared illegal, invalid or unconstitutional by final judgment of any court of competent jurisdiction, such judgment shall not invalidate any other portion, section or provision hereof, but all parts of said charter not expressly held to be invalid shall remain in full force and effect. (1958, c. 141)

§ 27.20. (1971, c. 77; repealed 1978, c. 576)

§ 27.21. (1970, c. 647; repealed 1978, c. 576)

§ 27.22. (1970, c. 647; repealed 1978, c. 576)

Editor's note: Complete amendments listing for the City of Newport News:

Current charter

Charter, 1978, c. 576.

Amendments to current charter

1980, c. 78 (§§ 6.03, 6.04, 6.05, 6.07, 6.08, 6.11, 6.13, 6.14, 8.01, 8.04, 8.05, 8.11, 8.12)

1982, c. 76 (§§ 4.01, 5.05, 7.03, 7.04, 8.04)

1983, c. 45 (§§ 5.05, 9.01)

1988, c. 146 (§ 10.02)

1988, cc. 612, 631 (§§ 3.01, 3.02, 3.04, 4.03, 4.05)

1989, c. 654 (§ 17.07 [added])

1990, c. 305 (§§ 3.01, 3.02, 3.04, 4.03, 4.05)

1990, c. 653 (§ 2.06 [added])

1993, cc. 862, 874 (§ 2.05 [added])

1999, cc. [799](#), [827](#) (§§ 3.01, 3.04, 4.03, 4.05, 11.02)

2003, c. [183](#) (§ 2.02)

2007, c. [319](#) (§§ 4.05, 5.05)

2007, c. [766](#) (§ 8.12)

2012, cc. [193](#), [426](#) (§§ 1.01, 4.03)

HEINONLINE

Citation:

Richard C. Schragger, Can Strong Mayors Empower Weak Cities - On the Power of Local Executives in a Federal System, 115 Yale L.J. 2542 (2006)

Provided by:

University of Virginia Law Library

Content downloaded/printed from [HeinOnline](#)

Mon Jun 25 18:43:28 2018

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

THE YALE LAW JOURNAL

RICHARD C. SCHRAGGER

Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System

ABSTRACT. This Essay considers the historic weakness of the American mayoralty and recent reform efforts designed to strengthen it. The mayoralty's weakness has two grounds. First, the office's lack of power is a product of elite skepticism of urban democracy. That skepticism manifested itself in Progressive Era reforms that almost entirely eliminated the mayor's office in favor of a city council and professional city manager; the mayoralty continues to be a ceremonial office in most small- and medium-sized cities. Second, the mayoralty's weakness is a result of a federal system that devalues city – and, by extension, mayoral – power. American-style federalism privileges regional governments rather than local ones; states, not cities, are the salient sites for constitutionally protected “local” governance. This structural fact has political consequences. The city's limited capacity to make effective policy reinforces the parochialism of its leaders; their parochialism, in turn, reinforces the city's subordinate status. The challenge for urban reformers is to alter this “constitutional” weakness of the mayoralty. I argue that the strong mayoralty is a potential instrument for democratic self-government to the extent that it is able to amass power on behalf of the city.

AUTHOR. Professor, University of Virginia School of Law. Special thanks to David Barron, Gerald Frug, Heather Gerken, and N.R. Popkin for comments on initial drafts, and especially to Risa Goluboff, who read a number of versions. I also received innumerable useful comments from participants in faculty workshops at the UCLA School of Law, the University of Oregon School of Law, and the University of Virginia School of Law, and at a colloquium sponsored by the American Political Development Program at the Miller Center for Public Affairs. Finally, for their thoughtful suggestions, thanks to the organizers of *The Yale Law Journal's* Symposium on executive power and to the Symposium participants.

Imaged with the Permission of Yale Law Journal



ESSAY CONTENTS

INTRODUCTION	2544
I. THE STRONG-MAYOR MOVEMENT	2547
II. THE WEAK MAYOR IN THE PAROCHIAL CITY	2555
A. How the Formal Separation of Functions Weakens Cities and Mayors	2556
B. How Vertical Competition Weakens Cities and Mayors	2564
III. THE STRONG MAYOR IN THE DEMOCRATIC CITY	2570
CONCLUSION	2576

Things could be worse. I could be a mayor.
—Lyndon Johnson¹

INTRODUCTION

Mayors have a special status in American political mythology. The institution of the mayoralty is vaguely disreputable yet deeply democratic, often associated with corruption but also lauded for urban civic achievement, an office that gives voice to underrepresented interests but that has often been an organ of elite manipulation. Like the city it represents, the mayoralty embodies the ambivalences of the democratic experiment: the simultaneous attraction and revulsion to the exercise of political power, the professed allegiance to—and deep skepticism of—democratic self-government, especially by and for local people. City government—and municipal affairs more generally—has often been understood as requiring a tradeoff between democratic responsiveness and managerial competence, between politics and administration.² Unlike the presidency or the governorship, the mayoralty has been suspect because it seems to pose the starkest choice between democracy and good government.

The history of the modern mayoralty has tended toward the suppression of the former in favor of the latter. Indeed, the most conspicuous characteristic of the modern mayoralty is its lack of power, which can be attributed in the first instance to the successful municipal reform efforts of the early 1900s. Since 1915, the National Municipal League—the leading instrument of municipal reform—has repudiated the mayoralty. It has instead championed the council-manager form of government, a structure that is designed to divide politics and administration by vesting executive and legislative authority in an elected council and administrative authority in a professional city manager. In this regime, the mayor is normally a figurehead, and political power is purposefully fragmented. In small and medium cities, and some large ones, this reformist vision of expert administration, insulated from democratic control and independent of political power, has dominated.

Mayoral powerlessness is being reconsidered however, at least as a formal matter. A number of cities have recently revised their “council-manager” or “weak mayor” municipal charters in favor of a “strong mayor” structure, giving

1. *Troubled Cities—and Their Mayors*, NEWSWEEK, Mar. 13, 1967, at 38.

2. It has long been asserted that local democratic processes tend to produce inferior administrative results. See, e.g., JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 286-307 (photo. reprint 1994) (1862).

mayors veto powers and increased powers over appointments, and, in some cases, eliminating the city manager. Other cities with traditional “mayor-council” structures have successfully lobbied state legislatures to give the mayor control over important municipal institutions, like the school system, that have traditionally been outside mayoral authority. There are a number of reasons for this centralizing tendency, many of them specific to the politics of particular cities. What strong-mayor movements have in common, however, is the belief that a diffuse constitutional structure creates problems of accountability. Today’s reformers have reversed two assumptions that animated earlier reforms: that politics should or can be screened from administration and that centralized power in an executive invites corruption. Reformers now believe that a more executive-centered institutional structure can yield tangible governance benefits.

This Essay considers the strong-mayor movement in the context of a political and constitutional system in which cities are relatively weak. Scholarly considerations of city government often concern the relative internal advantages or disadvantages of the council-manager or mayor-council structure (or variations on those structures). The strong-mayor movement is just the most recent attempt to address the problems of urban governance through institutional design; it reflects the reformer’s inclination to use procedural fixes to address substantive problems.

But urban governance is highly constrained governance. Cities are simply not significant wielders of power in our political and constitutional system. Thus, the city’s political structure—whether reformed or unreformed—and the strength of the city’s mayoralty may have little to do with city leaders’ ability to pursue desired policy outcomes. The mayoralty is “constitutionally” weak; its power is limited by the same forces that limit city power more generally.

The mayor’s constitutional weakness can be explained in part by America’s history of anti-urbanism, which was early articulated by Thomas Jefferson, reached its reformist heights at the end of the nineteenth century in reaction to the urban political machine, and culminated with the rise of the suburbs and the fall of post-New Deal urban liberalism. Suburbanites continue to embrace the notion that municipal governance is primarily administrative or technical. Indeed, suburban locales—most of which adhere to a weak-mayor or council-manager structure—offer an explicit alternative to the “messy” politics of the city, an image of governance in which executive power—indeed, the exercise of political power of any kind—is submerged and repressed.

A more structural explanation (and the one I want to emphasize here), however, is federalism. The primary form of American political decentralization is regional rather than municipal—states, not cities, are the salient sites for constitutionally protected “local” governance. As a result, cities

and their leaders are three levels down the political food chain and must normally ask the states for whatever powers they have or wish to exercise. This city subservience has an effect on political culture. Mayors have experienced periods of influence in national policymaking, but, except in rare circumstances, mayors are not serious players in national politics and rarely use the mayoralty as a stepping stone to national political prominence. The mayoralty is both a thankless job and often a dead-end one.³

This may explain why almost nothing has been written about the mayoralty in the legal literature. When addressing the issue of executive power, legal scholars tend to think in terms of the presidency and the Federal Constitution's horizontal separation of powers. The executive, however, can assume numerous forms. Indeed, the prevalence in most local governments of a nonunitary executive that exercises both executive and legislative powers indicates that the national model is not at all dominant. And the variety of local charters and the apparent ease with which cities experiment with new ones illustrate the fluidity of constitutional structures.

Mayoral power is a function of the relationship between "formal" and "real" power—between law and politics. Part I of this Essay examines these twin aspects of mayoral power from inside the city, describing the context in which city-charter and other strong-mayor reforms are being pursued. Part II examines how the larger constitutional structure of federalism affects the mayoralty. Mayors are underpowered in part because cities are underpowered, and I argue that federalism is partly to blame. Though the United States has often been characterized as having a highly decentralized political system, that decentralization is often formal or legal rather than informal or political. Mayors may exercise some power within their sphere but their effectiveness is constrained by their lack of a national political role.

Finally, Part III makes a democratic argument for a strong municipal executive. For early-twentieth-century reformers, the strong mayor was too democratic; reform-minded elites feared a municipal government that was too responsive to the urban and ethnic masses. This mistrust of urban democracy continues to the present; strong-mayor reform charters are promoted on the grounds of efficiency, not democracy. Yet, perhaps surprisingly, the democratic argument for strong mayors is much more compelling than the technocratic argument. A strong mayoralty provides accountability and transparency while serving as a potential site of populist political energy. For those who believe that local governments are important components of a federal system intended

3. See ROBERT L. LINEBERRY & IRA SHARKANSKY, *URBAN POLITICS AND PUBLIC POLICY* 196 (3d ed. 1978).

to promote democratic self-government, mayoral power might be a worthwhile vehicle for increasing city power. I conclude with some tentative thoughts about how the strong mayorality might be responsive to the political fragmentation and subordination of the democratic city.

I. THE STRONG-MAYOR MOVEMENT

It may be surprising that mayoral power is so formally constrained in the United States. The notion of the strong executive is deeply embedded in American political culture, at least as applied to the presidency. In municipal government, however, the notion of the unitary, energetic executive has never been dominant.

Indeed, the mayorality itself has generally been a disfavored office except for a brief period at the turn of the twentieth century. In the late 1800s, an era in which city government was characterized by many as a “conspicuous failure,”⁴ the mayorality seemed to hold promise as a possible instrument for reform. Early Progressive reformers like Frank Goodnow, John Bullitt, and Frederic Howe advocated a strong mayorality, arguing that centralizing power in the executive would promote accountability, transparency, and democracy.⁵ The reformers had in mind a mayorality that could act directly for the people, untarnished by the city machines, uncorrupted by the ward leaders and the parochialism of the city councils, and independent of big business interests. An elected, centralized executive with complete authority over appointments and city departments was endorsed by the National Municipal League in its first Model City Charter, adopted in 1900.⁶ An elected city council would serve as the legislative branch, with an independent civil-service commission operating to counter the old spoils system.

In fact, power was shifting to the executive as urban governance became more complicated and executive administration became more salient. As cities began to engage in significant infrastructure investments related to the burgeoning urban population—waterworks, libraries, parks, sewer systems—administration was replacing stewardship. In the late nineteenth century, mayors began to take the reins of city government from the city fathers—the

4. JON C. TEAFORD, *THE UNHERALDED TRIUMPH: CITY GOVERNMENT IN AMERICA, 1870-1900*, at 1 (1984). Teaford recounts this characterization by British observer James Bryce, though he argues that it was unwarranted. *See id.* at 1-7.

5. *See* Russell D. Murphy, *The Mayorality and the Democratic Creed: The Evolution of an Ideology and an Institution*, 22 *URB. AFF. Q.* 3, 8-10 (1986).

6. *See* NAT'L MUN. LEAGUE, *A MUNICIPAL PROGRAM* (1901).

aldermen, city councilmen, and selectmen—who had been the amateur governors of the antebellum city.⁷ The role of the mayor was greater than it had been previously because the role of municipal government was greater than it had been previously.

But the mayor's official ascendancy was short-lived, for competing power bases were emerging—specifically, special-purpose districts and state-created authorities, sometimes responsive to the mayor and sometimes not. A spate of charter activity resulted in the interposition of boards and commissions between the executive and city departments as a means of insulating the departments from cronyism and corruption.⁸ The complicated layering of municipal bodies began almost immediately and mocked the first Model City Charter's efforts to centralize power in an executive.

By 1915, when the National Municipal League published its second Model City Charter, the strong mayor had been completely excised.⁹ In 1900, Galveston, Texas, turned governance over to a special commission charged with responding to the flooding of the city. Subsequently, commission government became popular among municipal reformers. A number of pioneering cities combined the commission form with a professional city manager, analogizing the municipal corporation to the private business corporation. The council-manager plan, in which an elected council placed administrative powers and responsibilities in the hands of an appointed, professional city manager, appealed to business-minded city fathers. The corporate model also dovetailed nicely with Progressive Era reformers' faith in expert administration. As reformer John Patterson argued, "A city is a great business enterprise whose stockholders are the people Our municipal affairs would be placed upon a strict business basis and directed, not by partisans either Republican or Democratic, but by men who are skilled in business management and social science" ¹⁰ The council-manager plan distanced the administration of the city from politics. Reformers assumed that council members would serve part-time and that most municipal undertakings

7. See TEAFORD, *supra* note 4, at 48.

8. See Murphy, *supra* note 5, at 16.

9. See NAT'L MUN. LEAGUE, A MODEL CITY CHARTER AND MUNICIPAL HOME RULE §§ 3-6 (1916).

10. Harold Wolman, *Local Government Institutions and Democratic Governance*, in THEORIES OF URBAN POLITICS 135, 138-39 (David Judge et al. eds., 1995) (citing RICHARD JOSEPH STILLMAN, RISE OF THE CITY MANAGER: A PUBLIC PROFESSIONAL IN LOCAL GOVERNMENT 8 (1974)).

would be committed to a nonpartisan professional answerable to the council but not directly to the voters.¹¹

The council-manager plan became the Municipal League's dominant model. In six subsequent Model City Charters, including the most recent 2003 edition, the League has advocated a council-manager structure. That structure was, and continues to be, attractive, as evinced by the steady increase in the number of cities that have adopted the council-manager plan.¹² Indeed, the mayoralty has become "something of a rarity"; the office does not exist or exists only for ceremonial purposes in a significant percentage of cities.¹³

This is not to say that the mayoralty is entirely absent. Many of the country's largest cities have a directly elected mayor who exercises some significant executive authority. But even in those cities, the mayoralty is often weakened by charters that fragment its authority. The council may have final say over appointments; budget authority may be administrative; department heads or commission boards may be insulated from mayoral control by set terms of office; other executive officials may be elected city-wide; unions may have charter-protected rights; or significant power may be vested in a chief administrative officer who is answerable only indirectly to the mayor. Numerous boards and commissions—mandated by the city charter or by state law—may come between the mayor and the city's executive departments. The mayor may have very little or no control over the administration of the city's schools, the city's land use decisions, or the city's transportation, sewer, water, or electric services. A weak or nonexistent mayoralty means that executive power in municipalities tends to be fragmented, either among council members, between the council and city manager, or among the council and other administrative officials who also exercise executive power.

The recent spate of strong-mayor reforms—and here I include both internal city charter reforms and state-level statutory reforms—is a reaction to this political fragmentation and responds to the perception that city governance structures are outdated. It should be noted that this latter perception seems to be an ongoing feature of urban governance. Cities have been tinkering with their constitutions constantly since the turn of the century. Los Angeles, for example, had modified its charter over 400 times before instituting its latest comprehensive reform in 1999.¹⁴ As for the most recent

11. *See id.*

12. *See id.*

13. Murphy, *supra* note 5, at 15.

14. *See* RAPHAEL J. SONENSHEIN, *THE CITY AT STAKE: SECESSION, REFORM, AND THE BATTLE FOR LOS ANGELES* (2004).

reform efforts, those who study urban governance identify a number of trends. While the council-manager plan remains the primary form of city governance, a number of large- and medium-sized cities have switched to a strong-mayor structure, while some with weak-mayor charters have eliminated barriers to executive authority.¹⁵ There are also some signs of formal convergence. Manager-led cities are increasing the power of their mayors, while some mayor-led cities are embracing professional managers or chief administrative officers who work alongside both the council and the mayor.¹⁶ This embrace of the executive reflects reformers' inclinations to use institutional design to adjust distributions of power.

Remedying the formal, legal weakness of the mayoralty does not necessarily create strong mayors as a political matter, however. For political scientists, the primary constraints on the exercise of urban power come from the nature of city politics itself and only secondarily from formal institutional design. Scholars of urban politics who seek to describe how power is actually exercised within cities tend to treat the mayor's formal powers as just one variable in the political system. This variable has salience, but only in the context of a political system that is characterized by significant complexity.

Thus, when Robert Dahl asked how power was exercised in New Haven, his answer, in 1961, had little to do with the city's formal structure. "Who Governs?" asked Dahl, and his answer, in his classic book of the same name, was that a multiplicity of individuals and groups did.¹⁷ Dahl argued that oligarchy, which had characterized nineteenth-century city governance, had given way to pluralism by the middle of the twentieth century. According to Dahl, New Haven in the 1950s was characterized by a political system in which a plurality of political institutions, elites, organized interests, elected officials, and voters were involved in making decisions. Governing was issue-specific and fluid; no one dominant individual or group explained the patterns of decision-making in areas as diverse as school policy, urban renewal, social welfare, policing, race, and labor relations.¹⁸

Dahl set one pole—pluralist theory—in the debate over the nature of urban politics.¹⁹ Some scholars, writing in the aftermath of the urban crises of the

15. See Victor S. DeSantis & Tari Renner, *City Government Structures: An Attempt at Clarification*, 34 ST. & LOC. GOV'T REV. 95 (2002).

16. See H. George Frederickson et al., *Type III Cities*, in THE FUTURE OF LOCAL GOVERNMENT ADMINISTRATION 85 (H. George Frederickson & John Nalbandian eds., 2002).

17. ROBERT A. DAHL, WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY (1961).

18. See *id.*

19. *Id.*; see also EDWARD C. BANFIELD & JAMES Q. WILSON, CITY POLITICS 243-44 (1963).

1960s and 1970s, argued that pluralism was so rampant that the city was mostly ungovernable.²⁰ Big city municipal policy, beset on all sides by a startling number and diversity of strident interest groups, was fragmented, unstable, chaotic, and reactive. The important question for those who saw city government as highly unstructured was not “Who Governs?” but “Does Anybody Govern?”²¹ The answer for so-called hyper-pluralists was “no.”

Other scholars, however, have asserted just the opposite, arguing that the city, far from being characterized by a rampant pluralism, tends to be dominated by coalitions of local elites. Early elite theorists spoke of an urban “power structure” dominated in many cases by downtown business and media elites.²² More recently, scholars have argued that urban governing coalitions tend to coalesce around a growth strategy.²³ Advocates of the “growth machine” thesis argue that “[c]oalitions of land-based elites . . . drive urban politics in their quest to expand the local economy and accumulate wealth.”²⁴ Others have argued that though growth-related interests are centrally important to the politics of cities, growth coalitions are only one of a number of stable coalitions that can arise in urban political settings.²⁵ Like the elite theorists, so-called regime theorists “accept[] the privileged position of business,” but like the pluralists, they also believe that “politics matters.”²⁶ Cities may experience different long-term “governing regimes,” which may create stable alignments responsive to private and public interests.²⁷

Strong-mayor reform movements are shaped by both elite and pluralistic forms of urban politics. It is noteworthy that the downtown business interests that favored the council-manager model at the turn of the twentieth century

20. See, e.g., DOUGLAS YATES, *THE UNGOVERNABLE CITY: THE POLITICS OF URBAN PROBLEMS AND POLICY MAKING* (1977).

21. David Judge, *Pluralism*, in *THEORIES OF URBAN POLITICS*, *supra* note 10, at 13.

22. See, e.g., FLOYD HUNTER, *COMMUNITY POWER STRUCTURE: A STUDY OF DECISION MAKERS* 8, 81 (1953); LINEBERRY & SHARKANSKY, *supra* note 3; C. WRIGHT MILLS, *THE POWER ELITE* 6-7 (1956).

23. See, e.g., Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 *AM. J. SOC.* 309 (1976).

24. Andrew E.G. Jonas & David Wilson, *The City as a Growth Machine: Critical Reflections, Two Decades Later*, in *THE URBAN GROWTH MACHINE: CRITICAL PERSPECTIVES TWO DECADES LATER* 3, 3 (Andrew E.G. Jonas & David Wilson eds., 1999) (citing Molotch, *supra* note 23).

25. See, e.g., STEPHEN L. ELKIN, *CITY AND REGIME IN THE AMERICAN REPUBLIC* 46-48 (1987); CLARENCE N. STONE, *REGIME POLITICS: GOVERNING ATLANTA, 1946-1988* (1989).

26. Gerry Stoker, *Regime Theory and Urban Politics*, in *THEORIES OF URBAN POLITICS*, *supra* note 10, at 54, 56.

27. *Id.*

are significant supporters of strong-mayor reforms now. Republican mayors of Democratic cities have often been at the forefront of institutional reform. Rudolph Giuliani in New York and Richard Riordan in Los Angeles are the most prominent examples. Mayoral power is a means of bypassing the traditional bases of Democratic city power: ethnic neighborhoods, municipal unions, racial minorities, the leading newspapers, and the city council. Those who object to centralizing power in the executive are wary of this political convergence, fearing—in the words of one opponent of strong-mayor reforms in Cincinnati—“business-backed Republican puppets.”²⁸

Left-right politics is often just below the surface of charter reform, though it would be overly simplistic to understand the strong executive as a tool of any particular party or interest group. Mayors of all political stripes have at one time or another sought increased power, some in pursuit of progressive or reformist objectives.²⁹ As for the current political climate, in many cities, mayoral politics has shifted away from the battles that marked earlier eras. The new mayoralty emphasizes pragmatic—though some would say neoconservative—policy approaches to urban problems. This strategy includes an emphasis on public safety, the creation of a pro-business climate, the bureaucratic streamlining of city services, and a hesitance to adopt new taxes. Many of these approaches have been embraced by policy specialists tired of the failures of 1970s-style social welfarist education, housing, and public safety policies. The left and right now both employ the rhetoric of competition. Cities are competing in a regional environment in which the suburbs are often the dominant economic and political force and in a global environment in which competition between cities and regions for jobs and growth is intense. In this atmosphere, the public features of the city—its politics—tend to be repressed. “Constituents” are turned into “clients” or “customers”; “best practices” replace “policy”; an emphasis on “entrepreneurship” replaces an emphasis on “leadership”; “management” replaces “governing.”³⁰

Strong-mayor reforms have thus coincided with a new executive managerialism. Mayor Michael Bloomberg of New York is sometimes evoked as the model of the managerial mayor. A Democrat turned Republican, a billionaire entrepreneur turned politician, Bloomberg is familiar with the

28. Alan Ehrenhalt, *The Unraveling of a Local Government*, GOVERNING, Oct. 1995, at 7, 8 (quoting a letter to an unspecified Cincinnati local paper).

29. Cf. BARBARA FERMAN, GOVERNING THE UNGOVERNABLE CITY: POLITICAL SKILL, LEADERSHIP, AND THE MODERN MAYOR 146 (1985) (discussing charter reform efforts by mayors in New Haven, Boston, and San Francisco).

30. DAVID OSBORNE & TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (1992).

private-side provision of services to clients. He ran as a technocrat and practices what has been called the politics of “managerial competence,” a nonpartisan, nonconfrontational approach to urban governance.³¹ Bloomberg has succeeded by continuing the public safety and pro-business policies of his predecessor, Rudolph Giuliani, but he has also succeeded in gaining powers that Giuliani, who practiced a more charismatic and confrontational politics, could not. For example, Bloomberg convinced the state legislature to grant him full authority over the city’s schools, a consolidation of power in the mayor’s office that would have been unthinkable only a few years ago.

This concentration of power in the mayor is indicative of a shift away from the urban liberalism that tended to pit business against labor, white against black, incentive-based policies against social-welfarist ones, and development against redistribution. Labor is much weaker in the cities than it once was, and racial politics is not as salient. Many cities are now majority-black, such as Richmond, Oakland, and New Orleans. In those places, racial and ethnic political competition is still relevant, but it is somewhat muted when compared with the white-black competition of the 1970s and 1980s, when cities were experiencing much more dramatic demographic changes.

The same can be said for pro- and anti-business divisions. Left-right politics tends not to map onto mayoral attitudes toward business anymore; most mayors will do everything in their power to maintain a pro-business climate. For example, after Hurricane Katrina, New Orleans Mayor Ray Nagin was criticized for paying more attention to the white business owners of that city than to the black constituents of the Lower Ninth Ward.³² Los Angeles Mayor Antonio Villaraigosa, the first modern Latino mayor of that city and a former union organizer, has made it very clear that he will not antagonize business.³³ And Gavin Newsom, now better known for his forays into same-sex marriage, was initially criticized by left-leaning San Franciscans for being too close to business interests.³⁴

31. James Traub, *Bloomberg’s City: Politics in an Era of Anticlimax*, N.Y. TIMES, Oct. 2, 2005, § 6 (Magazine), at 21.

32. Lee Hancock, *Is It Black and White? In a City Split and Sinking Before Storm, Racial Issues Boil*, DALLAS MORNING NEWS, Dec. 4, 2005, at 1A (discussing Nagin’s ties to white business elites).

33. See Jonathan D. Colburn, *Villaraigosa: L.A.’s “Most Business-Friendly Mayor?”*, SAN FERNANDO VALLEY BUS. J., June 6, 2005, at 11 (reporting that Villaraigosa desires to be business-friendly).

34. See Jane Meredith Adams, *Greens Cast Shadow over Mayoral Elections: 3rd Party a Threat in San Francisco*, CHI. TRIB., Dec. 11, 2003, § 1, at 18 (noting that Newsom’s opponents characterized him as too close to business interests).

Few scholars doubt the influence of pro-business elites in urban policy, but many would acknowledge that these elites have to operate within an environment characterized by significant pluralism. City politics is still coalitional, especially as it is conducted through attempts at charter reform. Charter reform requires convincing a majority of the electorate to agree to significant constitutional changes, many of which can be fairly opaque. When reformers have lacked support across the myriad of urban constituencies, strong-mayor reforms have failed. For example, the backing of municipal reformers could not save charter reform in Dallas. An unpopular mayor, lack of African-American support, and lackluster business backing doomed that effort.³⁵ For large-scale charter reform, the necessary coalitions (e.g., good-government groups, downtown business interests, the city's leading newspapers, labor, and ethnic leaders) must coalesce around a popular dissatisfaction with the status quo.

This popular dissatisfaction has combined with elite opinion to generate internal charter or state legislative changes. In some places, citizens believe that mayors should "do something" about essential city services, and mayors have sought to bring their powers into alignment with citizens' expectations. Mayoral takeovers of city school systems in New York, Chicago, and Los Angeles are examples. In other cities, like Oakland, San Diego, and Richmond, the mayor's popularity drives institutional reform. In Oakland and Richmond, in particular, charismatic mayors—Jerry Brown and Douglas Wilder, respectively—asked for and received significantly expanded executive powers on the basis of their reformist credentials and electoral popularity. For municipal reformers on both the left and the right, executive power seems like an ideal tool to disrupt entrenched bureaucracies or corral fractious competing interests.

Of course, whatever their formal powers, mayors continue to operate within existing elite or pluralistic frameworks of urban political power, not outside them. Much will thus turn on the particular leadership qualities of the mayor. In the pluralist world of New Haven, circa 1955, for example, the mayor gained power not by being "at the peak of a pyramid but rather at the center of intersecting circles."³⁶ Mayor Richard Lee of New Haven created an executive-centered governing coalition by centralizing the authority over urban redevelopment. His power was gained through coordination and coalition-building. In Dahl's words, Lee "negotiated, cajoled, exhorted, beguiled,

35. See Emily Ramshaw, *Strong Mayor Trounced: Turnout Unexpectedly High as Proposal Unites South Side, Splits North*, DALLAS MORNING NEWS, May 8, 2005, at 1A.

36. DAHL, *supra* note 17, at 204.

charmed, pressed, appealed, reasoned, promised, insisted, demanded, even threatened, but he most needed support and acquiescence from other leaders who simply could not be commanded.”³⁷ Similarly, Kevin White’s successful run as Mayor of Boston from 1968 to 1984 was attributable in large part to his considerable political skills in manipulating a fractious political system.³⁸

This is not to say that institutional structures do not matter. The ability of any particular actor within the system to bring political resources to bear on policy outcomes may make a difference. To the extent that mayors operate within a charter or state legislative structure that grants them significant authority, that authority serves as a resource in the pursuit of policy. Nevertheless, it should not be forgotten that charter and other procedural reforms have always been a political instrument. Municipal reform is a trope of American urban politics, which historians have often characterized as an ongoing battle between “machine” and “reform” forces. The strong-mayor movement is no exception: The movement both reflects the state of municipal politics in particular American cities and structures that politics going forward.

The fact that institutional reform is a mode of politics—though somewhat different from and more complex than electoral politics—highlights one of the significant limitations on the mayoralty: City charters are relatively easy to amend, at least in piecemeal fashion. The coalitions that are pushing for strong-mayor reforms today may be the coalitions that cabin the mayor in the future (especially if the future mayor turns out to be unpopular). Moving power to the executive is a formal strategy for addressing the internal fragmentation of municipal government, but the political coalition that is able to deliver significant formal powers to one executive official might be unstable in the long term.

II. THE WEAK MAYOR IN THE PAROCHIAL CITY

The conceit of the strong-mayor movement—and all institutional reform movements—is that institutional designers can distribute powers that can then be exercised. Internal accounts of urban political power assume that cities (or, more precisely, certain actors within cities) have interests that they have the capacity to pursue. In other words, cities, like nation-states, are relatively politically autonomous. Whether that political autonomy is exercised on behalf of pro-growth elites, the mayor, a political machine, racial minorities, or

37. *Id.*; cf. RICHARD E. NEUSTADT, *PRESIDENTIAL POWER: THE POLITICS OF LEADERSHIP* 32-57 (1960) (describing presidential power as the power to persuade).

38. See FERMAN, *supra* note 29, at 163-65.

business interests can be determined by studying particular cities; the fact of autonomy, however, is often taken for granted.

But the city operates within a larger political and constitutional framework that significantly shapes the powers of the city and its officials. Strong-mayor reforms tend to address horizontal relationships—between officials at the same level of government—but they do not address vertical ones. The vertical relationship is dominated by federalism, a constitutional structure that recognizes state governments as sovereign but provides no recognition for local governments. States are the primary form of constitutionally protected, sub-national government in the United States, and they exercise plenary power over their political subdivisions. This arrangement, in which cities are formally subservient to states, has significant consequences for local political actors.

In order to determine the effects of federalism on mayors, one must examine both the powers of cities and the relative political influence of city leaders. Two features of American federalism—the formal separation of functions among the three tiers of government and the vertical competition between government officials—have significant consequences for both. Because of the existence of three separate governments, each with its own executive apparatus, the local leader is relatively unimportant when it comes to implementing important state objectives. And because the mayor is only one of a number of political officials who represent local interests, her power tends to be easily diluted.

A. How the Formal Separation of Functions Weakens Cities and Mayors

One of the challenges in assessing the relative power of cities is the contradictory legal status of local governments. Because cities are constitutionally subordinate to states, states are in a position to limit cities' formal powers and often do so. Nevertheless, in most states, cities do have some degree of local autonomy. That autonomy is protected under state constitutions that mimic the state-federal relationship by carving out a separate sphere of authority for local governments. The city thus enjoys a contradictory legal status: It is an instrumentality of the state but it is also politically autonomous within its sphere—it is an administrative unit as well as a mini-sovereign.³⁹

39. Cf. Mike Goldsmith, *Autonomy and City Limits*, in THEORIES OF URBAN POLITICS, *supra* note 10, at 228 (discussing the fluid nature of scholarly attempts to create a typology or schema of comparative local autonomy).

The ongoing debates in the legal literature concerning the relative power or powerlessness of the city reflect this dual status. Those who emphasize city power argue that certain localities, especially suburban ones, exercise significant local autonomy in areas in which they are deemed locally sovereign, mostly those activities that implicate land use, education, and local health and welfare.⁴⁰ By contrast, scholars who emphasize city powerlessness point to the fact that local governments are instrumentalities of their states and enjoy no independent legal status protected by the Constitution. Unlike private corporations, which exercise the autonomy that all private persons may exercise, municipal corporations exercise power at the state's sufferance.⁴¹

These conceptual and descriptive accounts of local power can co-exist. As a formal matter, cities in the United States enjoy a significant amount of legal autonomy, at least as compared with cities in some other western democracies.⁴² Local officials are normally elected by the local electorate, not appointed by a central government. Local governments usually have taxing authority (though it is limited) and thus are not entirely dependent on grants from higher-level governments. And local governments can generally make decisions about what to spend monies on (though again, the state requires certain kinds of expenditures).

Moreover, though cities are constitutionally inferior to states, many states have granted them some modicum of "home rule," which means that they tend to exercise significant authority over local land use decisions, zoning, condemnation, urban redevelopment, and basic local services. State and federal authorities generally do not interfere with local budgeting or fiscal decisions until a city is well into bankruptcy. And cities tend to be politically autonomous; that is, the choice of local officials is generally not dictated by the winning party at the state or national level. Municipal officials can (and do) disagree vociferously with the policy preferences of the party that exercises power statewide or nationally.

That cities enjoy some amount of formal legal autonomy, however, does not mean that city leaders exercise influence over those policies that are in fact most important to their constituents. Indeed, the very character of local

40. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990) [hereinafter Briffault, *Our Localism: Part I*]; Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346 (1990) [hereinafter Briffault, *Our Localism: Part II*].

41. See GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* 17-25 (1999).

42. See generally *COMPARING LOCAL GOVERNANCE: TRENDS AND DEVELOPMENTS* (Bas Denters & Lawrence E. Rose eds., 2005) (comparing local autonomy across counties).

autonomy tends to limit the city's political authority rather than extend it. In large part, this is because central governments are quick to intervene to counter local decisions they disagree with but slow to intervene to take on the responsibility for providing basic municipal services. Cities thus may have significant responsibilities but insufficient resources to meet them.

For example, even in states whose cities enjoy constitutional grants of home-rule authority, the regulatory authority that cities exercise is almost always contingent on grants of authority from the state or subject to revision by the state, often through regular legislation. State legislatures have been aggressive in overruling local decisions with which they do not agree.⁴³ States have also been aggressive in preventing cities from taxing their own citizens for local services and have adopted statewide tax and spending restrictions that often hit cities particularly hard.⁴⁴ For purposes of state intervention, the city is often treated like a subordinate state agency; the city's range of action is quite limited.

Moreover, this state interference with local decision-making does not alter the city's responsibility to provide basic services to its citizens. Cities are primarily responsible for the basic health, safety, and welfare needs of the populace; state and federal elected officials can thus pick and choose when and under what circumstances to intervene. And because the provision of basic municipal services is understood to be a local responsibility, the variations among localities in that provision normally do not concern the state.⁴⁵ This works well for localities that are resource-rich; it tends to work less well for those that are not.

The well-documented gap between cities and suburbs over the course of the twentieth century is in part a product of this formal division of responsibilities.⁴⁶ The discrepancy between poor cities and rich suburbs is a function of political choices about how resources are allocated across the

43. See generally David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255 (2003) (arguing that state laws often restrict the authority of local governments across a range of issues).

44. Proposition 13 in California, CAL. CONST. art. XIII A, is an example of this, as is the Taxpayer Bill of Rights (TABOR) in Colorado, COLO. CONST. art. X, § 20-7.

45. In the education context, however, a number of state courts have ruled that significant inter-local variations in education spending violated state constitutional guarantees. See, e.g., *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 397 (Tex. 1989).

46. Whether one describes localities in the United States as powerful or powerless may depend significantly on whether one is describing suburbs or cities. See Briffault, *Our Localism: Part I*, *supra* note 40 (arguing that suburbs exercise a great deal of local autonomy); Briffault, *Our Localism: Part II*, *supra* note 40 (same). But cf. David J. Barron & Gerald E. Frug, *Defensive Localism: A View of the Field from the Field*, 21 J.L. & POL. 261 (2005) (arguing that suburbs exercise a form of "defensive localism" rather than a form of "local autonomy").

metropolitan area, but it is also a function of the structural constraints on local politics. As Paul Peterson argued over twenty years ago, local governments face economic constraints that mean that local leaders often exercise relatively little direct influence over their municipality's economic fate; city politics is thus "limited politics."⁴⁷

Two characteristics of the city's political economy are salient. First, local government is dependent on property taxes and other territorially specific revenues for its fiscal health. Second, as in all capitalist economies, the welfare of local citizens is primarily dependent on private investment, employment, and production, and capital and labor move easily across city lines.⁴⁸ The twin facts of urban tax-base dependence and the mobility of capital mean that cities cannot engage in policies that alienate private capital, and, indeed, must actively encourage its inward flow. Cities need to avoid significant redistributive policies—such as investments in social welfare or health and human services—while promoting developmental policies that will attract business and wealthier residents. Cities that engage in too much redistribution will see mobile fiscal resources flee to other locales with fewer redistributive policies. The city's fiscal and budgetary priorities are thus significantly limited by the economic realities of cross-border competition; the city has only so much room to maneuver.⁴⁹

Even suburban municipalities, which have been attractive as alternatives to the central city precisely because they tend to avoid redistributive strategies, seem increasingly unable to achieve the outcomes they desire. Suburban municipalities appear to have more control than cities over their tax bases and their service needs. By incorporating independently and gaining control over their property taxes, suburban municipalities can avoid the higher tax costs associated with urban redistribution, namely the provision of services to lower-income populations.⁵⁰ These municipalities also have some ability to control their populations by adopting zoning ordinances that ensure a minimum price for housing, thus setting a price for entry into the community. Incorporation and zoning are two strategies that prevent the inward migration of lower-

47. PAUL PETERSON, CITY LIMITS 104-06 (1981); *see also* MARK SCHNEIDER, THE COMPETITIVE CITY: THE POLITICAL ECONOMY OF SUBURBIA (1989) (arguing that consumer choice and competition limit government taxation and spending powers).

48. *See* SUSAN S. FAINSTEIN ET AL., RESTRUCTURING THE CITY: THE POLITICAL ECONOMY OF URBAN REDEVELOPMENT 1-17 (1983); PETERSON, *supra* note 47, at 106.

49. *See* PETERSON, *supra* note 47, at 106.

50. *See, e.g.*, GARY MILLER, CITIES BY CONTRACT 77-83 (1981).

income arrivals who have high service needs.⁵¹ These strategies permit a suburban municipality to keep taxes low and to provide a relatively high level of services.

Nevertheless, suburban municipalities, like urban ones, also seem to have little control over their ultimate economic and fiscal fates. Mark Schneider has shown that municipal policies designed to encourage growth or development often have little impact on tax-service ratios in the suburbs and that large-scale shifts in employment have more to do with local economic health than do the specific tax and spending decisions of local governments.⁵² Moreover, existing housing stock and the preferences of housing consumers tend to be conditions over which local governments have little influence. In both urban and suburban places, then, municipal budgetary and fiscal priorities and policies, while not irrelevant, have relatively small effects when compared to macroeconomic conditions. Schneider's conclusion is that "local government policies are relatively ineffective in producing the outcomes local actors want."⁵³

This fact should not be surprising. Cities in the Rust Belt and the Northeast once flourished during industrialization; those cities' declines can be explained largely by macroeconomic factors, specifically the demise of heavy industry and the migration of employment and firms to the West and South. Other effects are more local. For example, urban scholars have noted an alarming decline of inner-ring and second-tier suburbs in a number of metropolitan areas.⁵⁴ These suburbs have few resources to battle the ongoing migration toward new housing on the urban fringe. Unlike the central cities, the inner-ring suburbs have little in the way of cultural amenities to offer, their housing stock is often unattractive, and they are beginning to experience the kinds of social ills that formerly afflicted only central cities.⁵⁵

Population and economic migrations are largely out of the control of local governments—city or suburban. Regional or macroeconomic forces are not easily susceptible to policies that can be pursued by municipalities acting alone. Indeed, in a highly fragmented metropolitan region, there are often hundreds of local governments, each asserting control over its portion of regional development but none able to manage it. Cities cannot effectively control their

51. See *FISCAL ZONING AND LAND USE CONTROLS* (Edwin S. Mills & Wallace E. Oates eds., 1975) (describing the relationship between zoning and local government taxation).

52. SCHNEIDER, *supra* note 47, at 145, 173.

53. *Id.* at 210.

54. See, e.g., WILLIAM H. LUCY & DAVID L. PHILLIPS, *TOMORROW'S CITIES, TOMORROW'S SUBURBS* (2005).

55. See *id.*

borders; they cannot print money, engage in countercyclical spending, or entertain other macroeconomic manipulations of the economy; and they are dramatically affected by state and national tax, redistribution, immigration, land use, labor, and industrial policies.

The city's formal authority thus tells us very little about its political influence. A comparison with the French mayoralty is useful. For most of France's modern history, financial power and legal authority were officially concentrated in the hands of the central state, with localities merely fulfilling state mandates.⁵⁶ But "the ability of the central state to achieve its territorial goals depended upon the active consent and co-operation of local elected officials."⁵⁷ In the twentieth century, the French mayor became the "territorial gatekeeper,"⁵⁸ controlling the downward flow of state resources and funneling those resources into urban growth beneficial to the city. Central city mayors exercised power by developing personal relations with central administrators, by lobbying state ministries, and by influencing policy through their representation in parliament and in other national-level councils. The key element of French mayoral power, however, was the dependence of central authorities on local cooperation to accomplish state ends. The French mayor's power was derived in significant part from his ability to exert political control over national directives.⁵⁹

For those who are steeped in the ideology of federalism, the robustness of local influence in a unitary system might seem anomalous. In the United States, formal legal autonomy tends to be equated with the exercise of decentralized power. The assumption is that political power flows from legal authority. This is the essence of categorical or "separate spheres" federalism, according to which the division of political power—the actual exercise of influence over policy outcomes—is assumed to follow from the formal or legal separation of functions.

But, of course, there is no necessary relationship between the formal decentralization of power and the actual exercise of political influence, between

56. See VIVIEN A. SCHMIDT, *DEMOCRATIZING FRANCE: THE POLITICAL AND ADMINISTRATIVE HISTORY OF DECENTRALIZATION* 66-104 (1990). Recent reforms have given cities their own competencies, though much financial authority is still derived from the center. See *French Constitution Amended To Allow Decentralisation*, AGENCE FRANCE-PRESSE, Mar. 17, 2003.

57. Walter J. Nicholls, *Power and Governance: Metropolitan Governance in France*, 42 *URB. STUD.* 783, 788 (2005). See generally SIDNEY TARROW, *BETWEEN CENTER AND PERIPHERY: GRASSROOTS POLITICIANS IN ITALY AND FRANCE* (1977).

58. Nicholls, *supra* note 57, at 789.

59. *Id.* at 788.

“legal localism” and “political localism.”⁶⁰ As a number of commentators have pointed out, the mere existence of a federal system does not itself guarantee political decentralization.⁶¹ A system in which local governments are wholly dependent on funds from a central government, but in which the central government is entirely responsive to powerful local officials, might have a high degree of political localism despite its low degree of legal localism. Conversely, local governments that have the formal powers to tax and spend may have little power to influence state and national policies that make it difficult for them to operate on a sound fiscal basis. These localities may experience a low degree of political localism despite their relatively high degree of legal localism. The question, as Sidney Tarrow famously put it, is whether the center moves the periphery or the periphery moves the center.⁶²

Consider the limited reach of city—and mayoral—power in the aftermath of Hurricane Katrina. It is an understatement to say that the Mayor of New Orleans, Ray Nagin, had significant difficulty moving state and federal bureaucracies to his city’s aid; Nagin was reduced to begging on national television for assistance. Perhaps Nagin’s difficulties stemmed from his position as the mayor of a mostly Democratic and African-American city during a period of Republican dominance of the national government. It is more likely, however, that his failures reflected the inherent lack of power of his office. Indeed, Mayor Nagin’s inability to respond effectively to a natural disaster the size of Katrina reflected his limited ability to respond to his constituents more generally, long before the hurricane hit.

Despite some recent signs of city rejuvenation, urban mayors like Nagin continue to confront some of the country’s most intractable social problems: concentrated poverty, failing schools, high crime rates, racial segregation, and a declining industrial job base. Because cities have limited ability to engage in redistributive policies, urban leaders often do not have the local resources to address these problems. Mayors thus approach the state or federal governments in the position of supplicants.⁶³ Mayors come to Washington to lobby for aid or assistance, but they tend not to have ongoing relationships with federal elected officials or federal bureaucracies. Instead of being direct participants in state and federal policymaking, they are outsiders to it, only as

60. See EDWARD C. PAGE, *LOCALISM AND CENTRALISM IN EUROPE: THE POLITICAL AND LEGAL BASES OF LOCAL SELF-GOVERNMENT* (1991).

61. See, e.g., Richard Briffault, “What About the ‘Ism’?” *Normative and Formal Concerns in Contemporary Federalism*, 47 *VAND. L. REV.* 1303 (1994).

62. TARROW, *supra* note 57, at ch. 1.

63. See, e.g., James Dao, *Lawmakers Question Louisiana Governor on Storm Response and Preparation*, *N.Y. TIMES*, Dec. 15, 2005, at A33.

influential as any other representative of a group or institution seeking government aid might be.

Indeed, the formal independence of the local, state, and federal governments means that state and federal governments rarely need the direct cooperation or assistance of local officials to achieve state or national aims. This form of constitutional departmentalism often undermines local governments' ability to influence policies emanating from the center, as Justice Breyer pointed out in his dissent in *Printz v. United States*.⁶⁴ As Breyer argued, a constitutional system that creates rigid obstacles to intergovernmental cooperation by treating subfederal governments as bureaucratically (and formally) autonomous does not necessarily lead to increased local power. In many European federal democracies, constitutionalists believe that the assignment of centrally mandated duties to local authorities "interferes less, not more,"⁶⁵ with the authority of local government. Preventing the central government from ever requiring local governments to implement federal directives reduces local control by mandating the creation of a centralized implementation bureaucracy, independent from and unaccountable to local authorities.⁶⁶ The formal separation of powers maintains the locality's legal autonomy, preventing interference by central authorities in some (limited number) of cases. But the formal separation of powers also means that local officials might have little influence over policy when central governments do intervene or in cases in which the city would otherwise desire intervention.⁶⁷

This is not to say that a unitary state or a more "cooperative" federal system would necessarily serve cities and their mayors better.⁶⁸ My argument here is not that the American form of federalism always impedes decentralization—though some scholars have made that claim.⁶⁹ The problem for cities is that the ideological and formal commitment to localism is selective. State and federal

64. 521 U.S. 898, 976-78 (1997) (Breyer, J., dissenting).

65. *Id.* at 976.

66. *See id.* at 977.

67. *Cf.* Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1783-86 (2005) (discussing hard versus soft federalism).

68. Roderick Hills, for example, argues that the relationship between mayors and the central government in France is a form of sterile "clientelism." Roderick M. Hills, Jr., *Is Federalism Good for Localism? The Localist Case for Federal Regimes*, 21 J.L. & POL. 187, 215 (2005).

69. *See, e.g.*, Frank B. Cross, *The Folly of Federalism*, 24 CARDOZO L. REV. 1 (2002); Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903 (1994); *see also* Pradeep Chhibber & E. Somanathan, *Are Federal Nations Decentralized? Provincial Governments and the Devolution of Authority to Local Government* (May 2002) (unpublished manuscript, on file with author). *But see generally* Hills, *supra* note 68 (criticizing Cross, Rubin, and Feeley).

officials intervene fairly regularly in local affairs but rarely to take on the baseline social welfare responsibilities of tax-base-dependent local governments.⁷⁰ Indeed, formal localism often checks central interference when it would do certain localities the most good—for example in redistributing monies from richer jurisdictions to poorer ones.

This combination of formal legal autonomy and local political subservience generates a parochial city and parochial city leaders.⁷¹ In the case of New Orleans, for example, the boundaries of formal legal autonomy undoubtedly hindered an effective disaster response. There is significant evidence that federal and state officials had difficulty transcending the formal legal boundaries between local, state, and federal authority.⁷² At the same time, New Orleans's future will depend for the most part on state and federal policies over which the city has limited control or influence.

City leaders are thus constitutionally parochial. The mayor is a “little Caesar”⁷³—the head of a formal municipal bureaucracy that is politically and formally separate from the state and federal bureaucracy. Within her sphere, the mayor may be able to exercise significant authority, but that sphere is limited, and she exercises relatively little authority outside of it.

B. *How Vertical Competition Weakens Cities and Mayors*

For the leader of the limited city, the gap between formal authority and political influence is the arena in which much relevant policy is made. For the mayor attempting to operate within this arena, the problem of departmentalism is compounded by a second feature of American-style federalism: vertical redundancy. City leaders do not have a monopoly on local representation. In addition to other city officials, there are significant numbers of state and federal elected officials—namely, state representatives and members of Congress—who represent local constituents. All of these officials

-
70. See James H. Svara, *The Embattled Mayors and Local Executives*, in *AMERICAN STATE AND LOCAL POLITICS: DIRECTIONS FOR THE 21ST CENTURY* 139, 140-42 (Ronald E. Weber & Paul Brace eds., 1999) (describing the imbalance between city responsibilities and city resources).
71. *But cf.* Goldsmith, *supra* note 39, at 238 (arguing that U.S. local governments enjoy a relatively high political status but relatively moderate legal status); Hills, *supra* note 68 (arguing that local governments in the United States are relatively autonomous compared with local governments in some unitary systems).
72. See, e.g., Jonathan Walters & Donald Kettl, *The Katrina Breakdown*, *GOVERNING*, Dec. 2005, at 20.
73. Megan Mullin et al., *City Caesars?: Institutional Structure and Mayoral Success in Three California Cities*, 40 *URB. AFF. REV.* 19 (2004).

are in competition for political credit and spoils. All are also nominally responsive to local constituencies but not directly to the city as a whole. The result is a political competition for influence and money in which mayors are at a distinct disadvantage.

The most mundane form of competition is the direct competition for credit and avoidance of blame. State and national elected officials have incentives to take popular positions on state and national matters and push any negative consequences onto lower-level officials. State and federal tax “relief”—which often merely displaces the cost of providing essential services onto localities—is an example of this phenomenon, as are unfunded mandates. National and state politicians want credit both for providing services and for cutting taxes; they can do both by adopting laws that shift costs to local governments. The No Child Left Behind Act⁷⁴—a federal enactment that requires states and localities to hew to national education targets—is a primary example of this phenomenon. Another example is the Virginia legislature’s repeal of the unpopular car tax, which had generated revenue for local governments.⁷⁵

The turn of the twentieth century saw a more venal example of this competition, as state legislators co-opted the spoils systems of urban political machines. State-level corruption explains in part why Progressive Era political reformers sought to insulate municipal government from state legislative interference through adoption of constitutional home rule guarantees.⁷⁶ One of the reformers’ concerns was that state legislatures—dominated as they were by representatives of rural areas—were generally hostile to city interests.⁷⁷ But another fear was the corrupt inclination of those legislators who actually represented districts within the city. If state legislators could adopt laws regulating all aspects of municipal government, as they did on a relatively regular basis in the late 1800s and early 1900s,⁷⁸ reform control of municipal government would accomplish little so long as the city’s state legislative

74. Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified as amended primarily in scattered sections of 20 U.S.C.).

75. See Gordon Morse, *Virginia Must Learn the Car-Tax Lesson Over and Over*, DAILY PRESS (Newport News, Va.), Dec. 11, 2005, at H1.

76. This is a simplification. Reformers did urge home rule as a means of protecting cities from state interference, but they also urged other reforms that would have the effect of limiting city power. See Barron, *supra* note 43, at 2289-2334.

77. Whether state legislatures were in fact hostile to city concerns is the subject of some debate. Compare ROBERT H. WIEBE, *THE SEARCH FOR ORDER, 1877-1920*, at 176 (1967), with Scott Allard et al., *Representing Urban Interests: The Local Politics of State Legislatures*, 12 *STUD. AM. POL. DEV.* 267 (1998) (arguing that state legislatures were not hostile toward big cities).

78. See Allard et al., *supra* note 77, at 273; Nancy Burns & Gerald Gamm, *Creatures of the State: State Politics and Local Government, 1871-1921*, 33 *URB. AFF. REV.* 59, 65 (1997).

delegation or the wider state apparatus was controlled by the political machine. Reformers wanted to insulate city government from state government and then work on the political problem of electing local pro-reform candidates within the city.⁷⁹

In addition to their interest in seeking political credit, state and national officials—though locally elected—often have other widely divergent interests from local officials, in part because they have to be responsive to larger state and national interest groups and in part because they are accountable to a different local electorate. Because state legislative districts and U.S. congressional districts are normally not coextensive with municipal boundaries, the city qua city is not represented at these levels of government. State and national elected officials have strong incentives to inject themselves into local politics, often on behalf of the relevant local electorate but only incidentally on behalf of the local polity.

Consider Mayor Michael Bloomberg's efforts to influence the form and pace of commercial development in New York City. His proposal to develop a stadium on the west side of the city in an effort to attract both the Olympics and a professional football team to New York City was stymied by the Speaker of the State Assembly, Sheldon Silver. Silver represented the Sixty-Fourth Assembly District, which includes portions of lower Manhattan. As Speaker of the Assembly, Silver was one of three officials on the Public Authorities Control Board, which also included the Senate Majority Leader and the Governor. To obtain state financing for the stadium, Bloomberg had to obtain Board approval for the issuance of state bonds. But Bloomberg could not convince Silver, who wanted to focus on downtown redevelopment in his district, to support a stadium on the west side.⁸⁰

Consider also how Bloomberg's influence over redevelopment at the former site of the World Trade Center is mediated by state and federal agencies and thus indirectly by state and federal elected officials. The commission nominally in charge of the redevelopment effort is the Lower Manhattan Development Corporation (LMDC), which is governed by a sixteen-member board, half of which is appointed by the Governor of New York and half by the Mayor. Thus, the Mayor has some influence on the Corporation, though no more than the

79. See, e.g., Robert C. Brooks, *Metropolitan Free Cities: A Thoroughgoing Municipal Home Rule Policy*, 30 POL. SCI. Q. 222 (1915). It should be noted that Allard et al. argue that mayors and other local leaders tended to work in tandem with their state legislative delegations, though this latter claim is relatively anecdotal and—as they observe—“tentative.” Allard et al., *supra* note 77, at 294.

80. See Errol A. Cockfield, Jr., *Stadium Plan Gets Sacked*, *NEWSDAY* (Long Island ed.), June 7, 2005, at A7.

Governor. The LMDC is a subsidiary of the Empire State Development Corporation, whose nine members and chair are appointed by the Governor. Another agency, the Port Authority of New York and New Jersey, whose members are appointed by the Governors of New York and New Jersey, owns the World Trade Center site. And finally, the LMDC is funded by a Community Development Block Grant administered and regulated by the Department of Housing and Urban Development, a federal agency. Bloomberg's competitors for influence are thus formidable, and include Governor George Pataki, state legislators like Sheldon Silver, and the congressional delegation from New York City, including New York Senators Hillary Clinton and Charles Schumer. All of them are arguably as influential, or more influential, than Mayor Bloomberg in the rebuilding of the World Trade Center site.

Of course, the rebuilding of lower Manhattan is unusual in its scope and national visibility. Nevertheless, it is indicative of the ways in which state and national officials influence local decisions.⁸¹ These officials often operate through state-created public authorities that control important aspects of city policy.⁸² Specialized agencies, created by both state governments and the federal government, undermine mayoral authority.

Moreover, the intergovernmental grants that fund such agencies often contribute to the competition for political credit. Unlike many other developed industrial nations that use block grants or generalized revenue sharing to help fund local governments, the United States tends to use a system of program-specific or selective grants.⁸³ This style of intergovernmental fund transfer increases state and federal politicians' involvement in local affairs, for it makes every grant a potential political investment and a battleground for conflicting local interests. Because state and national funds are necessary to achieve many city ends and are often program-specific, the city must obtain the cooperation of state and federal elected officials if it is to engage in large-scale public works projects, to fund health, education, and welfare services, or to provide housing or other basic amenities to its citizens. Those state and federal officials' political

81. David Nice and Patricia Fredericksen tell a similar story of state and federal intervention in the construction of the Battery Tunnel between Manhattan and Brooklyn. DAVID C. NICE & PATRICIA FREDERICKSEN, *THE POLITICS OF INTERGOVERNMENTAL RELATIONS* 192 (2d ed. 1995).

82. Robert Moses became the most influential public official in New York City through his control of state-created public authorities. See generally ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* (1974).

83. See PIETRO S. NIVOLA, *TENSE COMMANDMENTS: FEDERAL PRESCRIPTIONS AND CITY PROBLEMS* 120-36 (2002).

interests are not always or even usually aligned with the mayor's. And those officials regularly broker relationships between local constituents and state and federal agencies; they influence the direction and flow of funds to organizations and groups in their districts; and they seek political credit for the results.

Mayors are thus often preoccupied with lobbying state and national government officials, a task that they have undertaken with mixed results. At the height of the New Deal, mayors had a significant voice in national affairs through the United States Conference of Mayors (USCM), which was established in the early 1930s and was an important political component of the New Deal coalition.⁸⁴ Fiorello LaGuardia, the first president of the Conference, was a close personal friend of Franklin D. Roosevelt, and that connection meant that the cities exercised influence in the administration of New Deal programs and the flow of federal resources to the cities.⁸⁵ Post-war mayors, like Richard Lee of New Haven, also had some success in directing the flow of federal resources to their cities, especially during the War on Poverty in the 1960s and early 1970s.⁸⁶ And when mayors controlled the local Democratic machine, as Richard Daley did in Chicago, they had a significant voice in party politics even at the national level.⁸⁷

In all of these instances, mayoral influence tended to turn on the mayor's ability to turn out the vote for state and national politicians. But these urban political coalitions were often short-lived; after LaGuardia (and by the end of the New Deal), the USCM never regained its stature in Washington.⁸⁸ And while the War on Poverty brought significant federal funds to cities, those programs often bypassed local politicians. Indeed, federal government programs were often designed to avoid the mayor's office altogether by mandating the creation of independent local agencies to handle federal funds.⁸⁹

More importantly, suburbanization and the declining strength of local and national political parties reduced the importance of mayors as vote-getters. As Margaret Weir has argued, interest groups have replaced parties as the leading

84. See DONALD H. HAIDER, *WHEN GOVERNMENTS COME TO WASHINGTON: GOVERNORS, MAYORS, AND INTERGOVERNMENTAL LOBBYING* 2-6 (1974); see also SUZANNE FARKAS, *URBAN LOBBYING: MAYORS IN THE FEDERAL ARENA* 35-38, 66-67 (1971) (discussing the influence of the USCM during the New Deal).

85. See HAIDER, *supra* note 84, at 4, 52.

86. See *id.* at 48-75.

87. See generally F. RICHARD CICCONE, *DALEY: POWER AND PRESIDENTIAL POLITICS* (1996) (describing Mayor Richard Daley's national political influence).

88. See HAIDER, *supra* note 84, at 283.

89. See JON C. TEAFORD, *THE TWENTIETH-CENTURY AMERICAN CITY* 138-39 (2d ed. 1993).

instruments of legislation at the state level.⁹⁰ Before the dominance of interest groups, Weir argues, cities had the ability to make legislative deals by playing rural or suburban interests against one another. But in an era of reduced party influence and increased suburbanization, legislators are less responsive to local interests, and the urban mayoralty has lost much of its influence in the state and national political marketplaces.⁹¹ It is notable that since the late 1970s, federal aid to local governments and to programs that serve urban populations has declined significantly and continuously.⁹²

Indeed, American mayors are relatively invisible, at least as a matter of national politics. Again, contrast the status of the American mayor with that of the French mayor. While France has a highly centralized political system, its central city mayors have traditionally been quite powerful nationally. In part, this is because French mayors are often national political figures; in France, elected officials can hold local and national political office simultaneously.⁹³

Unlike French mayors, American mayors enjoy limited national political stature. Rudolph Giuliani's national prominence since September 11 is the exception rather than the rule. Most mayors—even of big cities—have less name recognition outside their cities than do Supreme Court Justices. Moreover, the very departmentalization of local, state, and national government has effects on politicians' career trajectories. In unitary systems it might not be uncommon for politicians to begin their careers at the local level and work their way up through regional administrations, culminating in a career in the central administration.⁹⁴ In the United States, the local, regional, and federal units of government are constitutionally distinct and often politically distinct as well. Local office is not a prerequisite for state or national office, and it may even be a detriment. As one observer of the New York mayoralty noted, "What [mayors] must do to get elected and re-elected are the very things that prevent them from ever moving on to higher office."⁹⁵

90. Margaret Weir, *Central Cities' Loss of Power in State Politics*, CITYSCAPE: J. POL'Y DEV. & RES., May 1996, at 23.

91. See TEAFORD, *supra* note 89, at 127-69.

92. See ANNE MARIE CAMMISA, GOVERNMENTS AS INTEREST GROUPS: INTERGOVERNMENTAL LOBBYING AND THE FEDERAL SYSTEM 6-7 (1995); John Shannon, *The Return to Fend-for-Yourself Federalism: The Reagan Mark*, INTERGOVERNMENTAL PERSP., Summer-Fall 1987, at 34.

93. Nicholls, *supra* note 57. See generally TARROW, *supra* note 57 (analyzing the power of the French mayoralty).

94. See Jeanne Becquart-Leclercq, *Local Political Recruitment in France and the United States: A Study of Mayors*, 8 EUR. J. POL. RES. 407 (1980).

95. HAIDER, *supra* note 84, at 300 (quoting Wallace S. Sayre).

Indeed, except in unusual circumstances, the mayoralty in the United States tends not to be a stepping stone to higher political visibility, state or national executive authority, or even a position in the national legislature. Very few of those who have served in the U.S. House of Representatives or the U.S. Senate have ever had experience as a local elected official.⁹⁶ Only three Presidents began their careers as mayors,⁹⁷ and few who obtain significant posts in the federal administration did so because they performed admirably as mayors.⁹⁸

This political reality reflects a structural one. Mayors tend to be politically salient in constitutional systems that permit cities to be represented at higher levels of government, as in Germany or Russia, or that permit mayors to hold national office, as in France. In the United States, cities are not represented in state or national councils, and one need not hold local office to represent local interests. This is not to say that local political officials cannot influence national and state policy. In some states with large cities and few other population centers, cities can dominate the political landscape. But the layering of political influence in the U.S. federal system tends to fracture the city as a polity and thus to reduce the influence of any one political leader (or of the city as a whole). The city's vertical political fragmentation limits the ability of its leaders to effectuate public policy; the mayor's status is a reflection of this political reality.

III. THE STRONG MAYOR IN THE DEMOCRATIC CITY

A less fragmented city, and therefore a less parochial mayoralty, may be possible, but would entail altering the existing constitutional relationship between the city and state and federal governments—between the periphery and the center. Current strong-mayor reform efforts do not contemplate such a reformation because they focus on political relationships inside the city. More importantly, strong-mayor reforms do not challenge the dominant conceptual model of the city. That model, which we have inherited from Progressive Era reformers, views cities primarily and almost exclusively as sites for the provision of municipal services. Municipal government is, on this account, a

96. See Becquart-Leclercq, *supra* note 94, at 421.

97. Only Andrew Johnson, Grover Cleveland, and Calvin Coolidge had been mayors. See Daniel C. Diller, *Biographies of the Presidents*, in 2 GUIDE TO THE PRESIDENCY 1526, 1534, 1547 (Michael Nelson ed., 3d ed. 2002).

98. Only nineteen of the 1528 presidential appointees covered in a leading biographical database had served as mayor or as a city or local administrator. INTER-UNIV. CONSORTIUM FOR POLITICAL & SOC. RESEARCH, PRESIDENTIAL APPOINTEES, 1964-1984 (1987).

species of administration; its success or failure is measured against a metric of managerial competence and technical expertise. Strong-mayor reforms are well within this dominant paradigm. Those who favor the strong mayor (especially business interests) mostly make arguments about the internal efficiency of the unitary executive; they argue that centralizing power in one office will streamline city bureaucracy and improve administration.

A competing model of the city, however, and one that was also articulated by reformers in the early part of twentieth century, conceives of the city as a site for the expression of popular democratic energy. On this account, the city is not merely an instrument for delivering services, but rather a formative site for the exercise of mass politics—the city is “The Hope of Democracy,” as Frederic Howe put it in the title of his 1905 book.⁹⁹ For Howe—and for many political theorists who came before and after him—the city represents the ideal site for the pursuit of the democratic political life.¹⁰⁰

One can defend and promote the idea of the strong mayor on this latter ground as well. At the turn of the twentieth century, elite opposition to the strong mayor was grounded in paternalistic and nativist sentiments. Elites feared that mass democracy in a city of immigrants would lead to irresponsible rule. Municipal reformers’ inclination to suppress urban democracy by fragmenting executive power and placing authority in elite-run boards and commissions was driven by the reality of municipal corruption, but also by the notion that urban democracy was potentially lawless.¹⁰¹ For Howe and other decentralist progressives, however, the real threat to good government was not the democratic mobs, but state and local elites who suppressed local democratic will. The attraction of the strong mayor for these early reformers was not simply efficiency. Municipal government was to be designed to promote democratic energy, to foster cities that could lead a revolution in good government from the bottom up.

Modern-day scholars and reformers who are democracy-minded—that is, who tend to favor a wider distribution of political power or a more participatory politics—rarely think of the mayoralty as an instrument of political decentralization or as a source of popular political energy. These scholars often favor a strong city council or strong neighborhood governance institutions, both of which tend to disperse political power, moving it away from city hall and toward the ward or neighborhood.

99. FREDERIC C. HOWE, *THE CITY: THE HOPE OF DEMOCRACY* (1905).

100. *Id.* at 7.

101. See TEAFORD, *supra* note 4; Murphy, *supra* note 5.

The strong mayoralty, however, offers two benefits to the democrat that a more diffuse structure cannot: accountability and the possibility of dynamism. "The boss," as Howe argued at the turn of the century, "appears under any system, whether the government be lodged with the mayor, the council, with boards, or commissions."¹⁰² But under a strong mayor, the exercise of power is easily identified: "Attention can be focussed [sic] on a single official, whereas it is difficult to follow boards, commissions, or a large council, each member of which is seeking to shift the burden of responsibility on to someone else."¹⁰³ The diffusion of political authority both generates confusion and creates political tension between executive officials. As one weak mayor told his constituents, "The buck doesn't stop here. See the city manager."¹⁰⁴

The strong mayoralty is not without its risks; there is no guarantee that the mayor will exercise power effectively or legitimately. Nevertheless, dispersing political power by lodging it in multiple local institutions or in expert administrators tends to diminish democratic responsiveness. As Barbara Ferman argues in her important study of Boston, a weak mayor leads to policymaking by bureaucracy and promotes "hyper-pluralistic competition for scarce resources."¹⁰⁵ The result may be stalemate, or worse, rent-seeking. The strong mayor can build coalitions, hold them together, and resist capture by unions or by corporations. And a strong mayor can exercise influence over state and federal officials, representing the city in the region, the state, and the nation. "Lack of power," Ferman argues, quoting Theodore Lowi (and echoing Howe), "can corrupt city hall almost as much as the possession of power."¹⁰⁶

Of course, as with all distributions of power, whether the exercise of executive power benefits the city (and which constituents) depends on how it is used and in what context. Consider the mayoralty of New York's Rudolph Giuliani. The Giuliani Administration was autocratic in both substance and style. Giuliani's aggressive leadership style and his emphasis on law-and-order policies accounted for his popularity, but also severely strained it.¹⁰⁷ Indeed, Giuliani's polarizing politics made it difficult for his administration to move beyond the public-safety successes that marked its first term. A series of police

102. HOWE, *supra* note 99, at 185.

103. *Id.* at 180.

104. Matthew Hall, *Strong Mayor System Gains Supporters in Oakland*, SAN DIEGO UNION-TRIB., Oct. 4, 2004, at A1 (describing a sign on the desk of a former mayor of Oakland).

105. FERMAN, *supra* note 29, at 211.

106. *Id.* at 214 (internal quotation marks omitted).

107. See RICHARD M. FLANAGAN, *MAYORS AND THE CHALLENGE OF URBAN LEADERSHIP 188-89* (2004).

brutality scandals, which exacerbated an already strained relationship with minorities, undercut the effectiveness of his administration's second term.¹⁰⁸

After September 11, however, Giuliani was able to “cast aside his polarizing political style, and become a figure of national unity.”¹⁰⁹ As the nation's first “war-time” mayor, Giuliani proved the effectiveness of charismatic executive leadership even to those who had disagreed with his substantive policies. In so doing, he raised the profile of the mayoralty, albeit under unique circumstances.

It is far from clear whether Giuliani's leadership in the wake of September 11 generated any specific long-term benefits for New York City, though his leadership undoubtedly contributed to the city's civic health during a particularly difficult period. Charismatic leadership can generate collective feelings of ownership and belonging and can articulate a city's civic identity. Even the symbolic acts of a strong mayor can alter the popular perception of the city. To the extent that city residents begin to understand themselves as members of a unique polity, they are more likely to demand recognition as an identifiable political constituency.

Consider a second example: Mayor Gavin Newsom's claim that he was enforcing constitutional norms when he ordered the City of San Francisco to issue marriage licenses to same-sex couples in February 2004.¹¹⁰ Newsom argued that state and federal guarantees of equal protection required his city to provide marriage licenses on a gender-neutral basis. Following San Francisco's lead, a number of other cities throughout the country began to issue same-sex marriage licenses as well.

The mayors' actions elicited a predictable response. State officials sued the mayors, demanding that they comply with state statutes. Most courts sided with the states. In California, the state supreme court issued a strongly worded ruling that voided all the marriages performed for same-sex couples in San Francisco.¹¹¹ The opinion is notable for its rhetorical reining-in of wayward local public officials. The city was asking for a determination on the merits—that is, whether it had been acting unconstitutionally in denying same-sex couples marriage licenses—but the court viewed the city's issuance of licenses as akin to civil disobedience. “[T]he scope of the authority entrusted to our public officials,” stated the court, “involves the determination of a fundamental

108. *Id.*

109. *Id.* at 188.

110. See generally Richard C. Schragger, *Cities as Constitutional Actors: The Case of Same-Sex Marriage*, 21 J.L. & POL. 147, 175 (2005) (describing Newsom's actions).

111. *Lockyer v. City & County of San Francisco*, 95 P.3d 459 (Cal. 2004).

question that lies at the heart of our political system: the role of the rule of law in a society that justly prides itself on being a government of laws, and not of men (or women)."¹¹² Rule-of-law values dictate that a local "public official charged with a ministerial duty [cannot] be free to make up his or her own mind whether a statute is constitutional and whether it must be obeyed."¹¹³

Whether a local official must always comply with a state statute that is arguably unconstitutional is a tougher legal question than the majority opinion indicates; at least one of the California dissenters expressed concern about the breadth of the majority's ruling.¹¹⁴ What is noteworthy about the majority opinion, however, is its disinclination to view the mayoralty as anything other than an inferior ministerial office. Mayor Newsom's actions were subversive because he challenged the subordinate posture of cities; he not only laid claim to a role in interpreting the California and Federal Constitutions (thus challenging the authority of the judiciary), but he also asserted a populist vision of the mayoralty that did not accept its relatively weak constitutional status.¹¹⁵

This version of the strong mayoralty—populist, constitutionally self-confident, politically subversive—is more like the strong mayor of Howe's "democratic city"¹¹⁶ than it is like the strong mayor of today's municipal reformers. Certainly Newsom saw himself as a local champion, aggressively pursuing the interests of his urban constituency despite opposition from the state and federal governments. And though Newsom's gambit in San Francisco failed as a formal matter (and perhaps as a political one), it energized a number of other city leaders throughout the country. Increased adoptions of local measures that regulate individual rights, social welfare, and other measures traditionally thought of as within the purview of the states indicate some increased aggressiveness on the part of city leaders.¹¹⁷ Recent declarations by a

112. *Id.* at 463 (internal quotation marks omitted).

113. *Id.* at 499.

114. *Id.* at 510 (Werdegar, J., concurring in part and dissenting in part); see also David J. Barron, *Why (and When) Cities Have a Stake in Enforcing the Constitution*, 115 YALE L.J. 2218 (2006) (discussing *Lockyer*).

115. Cf. Gerken, *supra* note 67, at 1764-65 (describing Newsom's actions as a form of dissent). *But cf.* Barron, *supra* note 114.

116. "Democratic city" is actually Robert Dahl's term. Robert A. Dahl, *The City in the Future of Democracy*, 61 AM. POL. SCI. REV. 953 (1967).

117. See Richard Briffault, *Home Rule for the Twenty-First Century*, 36 URB. LAW. 253, 254-55 (2004) (discussing city adoptions of living wage ordinances, anti-discrimination statutes, gun control ordinances, and local campaign finance laws).

number of cities that they will not participate in enforcing the USA PATRIOT Act may be an example of this newfound voice.¹¹⁸

This is not to say that mayors are either solely responsible for recent city initiatives or the only institutional actors capable of asserting city authority. In cities with a mayor-council structure, the city council may have the potential to generate a political and policy vision for the city, though the council—like all legislative bodies—is hampered by the need to produce political consensus among often fractious interests. The city council has also historically been a significant site of corruption and other forms of rent-seeking. Howe and other early-twentieth-century reformers sought to bypass the council, or at least limit its intrusion into the executive, for precisely this reason.

Of course, mayoral leadership alone is unlikely to generate significant changes in a city's economic and social fate. Mayors may be able to take advantage of political and economic circumstances, but they have little capacity to generate those circumstances on their own. Effective leadership has to occur within an effective administrative and political system; city councils and other urban political institutions are important components of that system.

The mayoralty, however, has the institutional capacity to represent the city as a city, with identifiable interests independent of the preferences of any particular agglomeration of competing interest groups. That does not mean that the mayor will always (or usually) pursue the city's interests; the mayor's office is obviously responsive to particularist interests and is susceptible to their capture. Nevertheless, as with the presidency, executive power is most legitimate and arguably most effective when it is invoked on behalf of the entire polity. This characteristic of the executive makes the mayoralty a better candidate than other city institutions for asserting power within a political system that tends systematically to disadvantage cities.

The democratic argument for the strong mayor is thus not grounded in a pluralist account of urban politics, but rather in an older tradition, which some might call "civic republican." That tradition, derived from the ancients, views the city as the embodiment of the democratic polity (and not merely a reflection of the individuals or groups within it).¹¹⁹ Those who see the city solely as a political space in which interests or groups compete for domination or influence, as the pluralist or elite conceptions of urban politics would have it, tend to be skeptical of any concentration of political power. But if one views the city as a polity with a collective identity and interests independent of the

¹¹⁸. For a list of local declarations, see Bill of Rights Def. Comm., Resolutions Passed by Date of Adoption, <http://www.bordc.org/list.php?sortChrono=1> (last visited Sept. 3, 2006).

¹¹⁹. Dahl, *supra* note 116, at 954.

particular ends of the citizens who inhabit it, then the embodiment of those interests in one executive office becomes more attractive. The articulation of the city's interests by a single executive official is particularly important for urban municipalities, which experience the most significant gaps between resources and responsibilities. But it is also relevant to suburban municipalities facing declining tax bases, aging populations, and deteriorating housing stock. In smaller, more homogeneous communities, the technocratic conception of local government—with its emphasis on the professional manager and the part-time council—dominates.¹²⁰ In part this is because those communities have found ways to insulate themselves from larger economic and demographic dislocations. As economic and demographic circumstances change, however, suburban municipalities will increasingly need political—not just technocratic—governance.

This does not mean that strong-mayor charter reforms alone are likely to encourage the flowering of executive-led local democracy. City power continues to be marginalized in the United States in large part because of the “persistence of elite ambivalence toward democratic politics.”¹²¹ Nevertheless, because of the limitations on the city council and other local political structures, the mayor's office is more likely to be able to assert local democratic prerogatives in a way that challenges the political subservience of the city more generally. In this way, a strong mayoralty derived from a democratic vision of city power is more likely to have substantial effects on city power than one derived from a technocratic understanding of the city and the mayor's role.

CONCLUSION

The weakness of the mayoralty illustrates a number of features of American political organization: the elite skepticism of democracy, a belief in technocracy as a solution to political failures, an emphasis on legal decentralization over political decentralization, and a federal system that fractures local power. More so than the presidency or the governorship, the mayoralty was shaped by an abiding ambivalence about the exercise of political power. Municipal policymakers came to believe that the professionalization of city management would do more to promote city efficiency than its politicization. As Frederic

120. “Reform politics appears in its purest form in affluent suburbs. The homogeneous, middle-class setting produces the least tension between reform institutions and the clientele that those institutions serve.” CLARENCE N. STONE ET AL., *URBAN POLICY AND POLITICS IN A BUREAUCRATIC AGE* 117 (2d ed. 1986).

121. Murphy, *supra* note 5, at 17.

Howe, a dissenter from this strategy, wrote, “Distrust of democracy has inspired much of the literature on the city. Distrust of democracy has dictated most of our city laws. . . . Reform organizations have voted democracy a failure.”¹²²

Distrust of urban democratic power remains apparent today in the dominance of the divided executive—the features of most city governments prove that we have internalized this suspicion. The professional manager provides a comforting image of governance in which executive power—in fact, the exercise of political power of any kind—is submerged and repressed. Weak-mayor charters and the dominance of the council-manager model reflect the widespread notion that municipal government is mainly administrative in nature. This understanding indirectly serves the interests of mayors’ political competitors at the state and federal level, who benefit from mayors’ lack of power. The ideology of municipal technocracy both cabins city power and enhances the power of those at higher levels of government.

In an era in which state and national governments are retreating from a serious urban policy or a social welfarist agenda, cities have to increase their capacity to respond to both the substantive and the participatory demands of their constituents. Though efficiency and democracy are often conceptually at odds, executive power has recently been viewed as a way to move forward along both dimensions. This view, which seems unremarkable at the national level, has been repressed at the municipal level. In part because of the long-running association of municipal politics with the political machine, strength in the executive seems most threatening in municipalities. But the city is directly accountable and accessible to the citizenry in ways that other levels of government are not. Indeed, the mayor contends most directly with citizens’ dissatisfaction with government failures even if those failures are entirely outside her control. For that reason alone, the traditional skepticism of local executive power should be reevaluated.

Of course, city governance may ultimately be impervious to the blandishments of strong leadership. As Douglas Rae observes in his recent book about twentieth-century New Haven, “Cities are among the least agile creatures in America’s system of capitalist democracy—they move slowly, reactively, and awkwardly in response to change initiated by more athletic organizations.”¹²³ Rae argues that it is “consequently possible” to be a strong mayor without having the ability to govern important aspects of a city’s future.

122. HOWE, *supra* note 99, at 1.

123. DOUGLAS W. RAE, *CITY: URBANISM AND ITS END* 24 (2003).

In fact, it may “be impossible for *any* person or coalition within such a city to govern these features of the community’s future.”¹²⁴

Rae’s story of New Haven’s mid-century decline emphasizes the social and economic forces that make city governance intractable: the demise of American industry, the flight of capital from urban centers, the technology that makes it possible to live outside the urban core, and the decline of neighborhood identification. But the city’s weakness (and the mayor’s) is also a product of our constitutional design—of the city’s institutional subordination and fragmentation.

Current strong-mayor reforms address only one aspect of the fragmentation of the democratic city. They do little to challenge the city’s constitutional subordination. And to the extent that strong-mayor charter reforms are grounded in a corporate or administrative model of local government, they are unlikely to alter intergovernmental relationships in the city’s favor. Whether a strong mayoralty derived from democratic norms can alter those relationships is an open question. If cities are worth governing, however, the strong mayoralty in the democratic city may be worth a try.

124. *Id.*



Imaged with the Permission of Yale Law Journal



City Government Structures: An Attempt at Clarification

Author(s): Victor S. DeSantis and Tari Renner

Source: *State & Local Government Review*, Vol. 34, No. 2 (Spring, 2002), pp. 95-104

Published by: Sage Publications, Inc.

Stable URL: <http://www.jstor.org/stable/4355310>

Accessed: 25-06-2018 23:32 UTC

REFERENCES

Linked references are available on JSTOR for this article:

http://www.jstor.org/stable/4355310?seq=1&cid=pdf-reference#references_tab_contents

You may need to log in to JSTOR to access the linked references.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://about.jstor.org/terms>



JSTOR

Sage Publications, Inc. is collaborating with JSTOR to digitize, preserve and extend access to *State & Local Government Review*

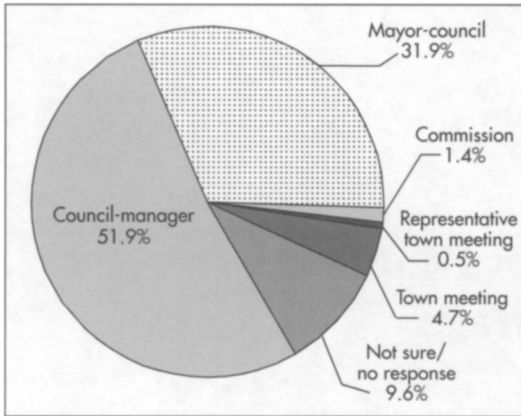
City Government Structures: An Attempt at Clarification

Victor S. DeSantis and Tari Renner

INCREASING EVIDENCE in existing literature—although much of it is impressionistic and anecdotal—suggests that the two major municipal government structures (i.e., council-manager and mayor-council) may be inadequate to describe the various hybrid forms of government that have been evolving. Given the importance ascribed to political structures by academics, practitioners, and activists, it is important to understand the characteristics and consequences of different structural arrangements. Using the latest national Municipal Form of Government Survey (1996) conducted by the International City/County Management Association (ICMA), as reported in the *1998 Municipal Year Book* (Renner and DeSantis 1998), we identify subcategories within the broad political structure that comprises the two major municipal government structures in an effort to more effectively categorize the administrative and policy-making processes in American cities. Before scholars can assess the consequences of contemporary city structures, as past researchers have done for traditional forms (Lineberry and Fowler 1967; Lyons 1978; Dye and Garcia 1978; Morgan and Pelissero 1980; Welch and Bledsoe 1988), it is necessary to have more systematic data on current characteristics.

An Overview of Forms of Municipal Government

Five general forms of municipal government are most common in the United States today: the mayor-council, council-manager, commission, town meeting, and representative town meeting forms. Although each of these forms retains distinct structural characteristics, recent research reports a general convergence of the different forms over the past several decades that is especially apparent between the mayor-council and council-manager systems (Renner 1988; Boynton and DeSantis 1990; Frederickson and Johnson 2001). The most recent (1996) ICMA national Municipal Form of Government Survey indicates that the vast majority of American cities have one of these two structures. As Figure 1 shows, a total of 51.9 percent of responding communities report that they have the council-manager form, and 31.9 percent report having the mayor-council form. Less than 5 percent of municipalities report having the commission, town meeting, or representative town meeting forms. Thus, the ratio of council-manager to mayor-council cities in the 1996 ICMA survey is 60.1 percent to 39.9 percent. Distribution of the two major forms has changed substantially over the last four national sur-

Figure 1: Form of Government Distribution, 1996 ICMA Survey

veys (conducted in 1981, 1986, 1991, and 1996). Table 1 shows that the council-manager form has grown in use from 46.8 percent in 1981 to 60.1 percent in 1996. Although the data indicate a longitudinal trend, the absolute proportion of council-manager cities is probably exaggerated in any particular year, given the greater tendency of these communities to respond to ICMA surveys.

The council-manager form of government came about during the Progressive Era as a solution to the widespread corruption and inefficiency in local government. The council-manager form is actually a hybrid of two previous government structures: the “strong” mayor and commission. The newly formed National Municipal League first supported the strong mayor form in 1898 in an effort to decrease the power of political machine bosses. About the same time, the business community began to support the commission form of government, which unified all power in the hands of a board of commissioners, essentially copying the structure of a private corporation. However, a major fault of the commission form was that it fragmented administrative functions among several members and lacked a true executive (Nolting 1969; Stillman 1974).

To improve on the commission form, Richard S. Childs, a pioneer of municipal government reform during the Progressive Era,

attempted to combine the commission form with a strong administrative component, concentrating all administrative powers in a single official. This new government model, which became known as the council-manager plan, was favorably received by the National Municipal League and was included in its revised model city charter in 1915. Proponents of the council-manager form of government argue that this structure centralizes supervisory and administrative responsibility in one individual, allowing the individual’s expertise and knowledge of administrative activities to be developed while vesting all power in an elected governing body to promote representative democracy.

Lineberry and Fowler (1967) were the first scholars to systematically investigate the direct and indirect effects of reformed city government structures. In their study, they found that reformed structures (i.e., council-manager governments and at-large and nonpartisan elections) tend to tax and spend at lower levels than do so-called unreformed structures (i.e., mayor-council governments and district and partisan elections). They also concluded that political structure is a significant intervening variable affecting the relationship between the socioeconomic characteristics of municipalities and their public policy outputs. Specifically, unreformed jurisdictions tend to be more responsive to the demographic characteristics of their constituencies than are reformed jurisdictions. Two separate cross-sectional studies found that municipal reforms are correlated with the highest levels of aggregate spending and that the relationship between structure and public policy outputs disappears altogether when the number of services provided by municipalities is controlled.

Subsequent longitudinal research, however, failed to resolve whether reformed structures are more efficient than unreformed structures, or vice versa. Lyons (1978) investigated the patterns of bias in forms of government from 1962 to 1972 and found that, as citizen demands and financial resources increase, unreformed jurisdictions tend to increase expen-

Table 1: ICMA Form of Government Survey Results, 1981–96

Form of Government	1981		1986		1991		1996	
	N	percent	N	percent	N	percent	N	percent
Council-manager	1,893	46.8	2,170	54.8	2,175	51.6	2,402	60.1
Mayor-council	2,148	53.2	1,787	45.2	2,042	48.4	1,540	39.9
Totals	4,041	100.0	3,957	100.0	4,217	100.0	3,942	100.0

ditures more rapidly than do reformed jurisdictions. Morgan and Pelissero (1980) studied 11 jurisdictions that changed to reformed structures between 1948 and 1973 and matched them with a group of 11 jurisdictions that retained their unreformed structures throughout this period. In contrast to Lyons, they find no significant differences in spending patterns between the control and experimental groups. Although their research is clearly limited by having a much smaller number of cases than did Lyons', it illustrates a lack of consensus and underscores the empirical reality that structural change is no guarantee of public policy change.

Analytically, it is most useful to conceive of the impacts of political structures as interactive rather than direct or additive. Instead of assuming that different rules and institutions will directly produce particular results or policy outcomes, it should be recognized that different structures serve to translate public opinion and needs into public policies in different ways. In other words, some political structures may facilitate the articulation and advancement of certain political interests more so than others. The conventional hypothesis (which has not been uniformly supported in the academic literature) is that reformed governments will be less responsive to social cleavages in municipalities than will unreformed governments.

The existing research examining either the additive or interactive effects of municipal policy-making structures is limited in that it almost exclusively focuses on the two major forms of government. However, cities have adopted myriad structural arrangements that

cannot easily be considered part of one model or the other. Mayor-council jurisdictions, for example, are increasingly likely to hire chief administrative officers (CAOs) who perform many of the tasks of a city manager, and many reformed structures have moved to strengthen the power of the mayor (Renner and DeSantis 1998; Hansell 1998). If research is to be useful from both a theoretical and practical standpoint, it must reflect and respond to this evolution in forms of government.

Creating a New Typology: Methods and Analysis

As mentioned previously, the data for our study come from ICMA's 1996 Municipal Form of Government survey. The survey was sent to city clerks in 7,331 cities, and a total of 4,552 (62.1 percent) responded. The jurisdictions, which were given two opportunities to respond, include all municipalities with a population of 2,500 or more (the U.S. census bureau's definition of an "urban place"). As well, a small group of 643 communities with populations of less than 2,500 were surveyed, with a total of 331 (51.5 percent) responding. This group of very small communities is included in ICMA surveys because they have applied for and received "recognition" from ICMA for establishing a position of "professional management" in their government. They all have an appointed CAO of some sort, regardless of whether or not they have actually adopted the traditional council-manager plan.

Figure 1 presents the results of ICMA's 1996 Municipal Form of Government Survey for each of the five structural categories included

in the questionnaire. The distribution of the reported forms of city government differs from those reported in the *1998 Municipal Year Book* (Renner and DeSantis 1998). Interviews with ICMA staff in February 2001 indicate that the organization made changes in the data after the *Year Book* was sent to press. Subsequently, ICMA completed an important validity check: cross-tabulating the responses to the general form of government question (the first question on the survey instrument) with the form of government data on ICMA's masterfile of all cities. There were several hundred discrepancies after the few jurisdictions that had reported a change in form of government were eliminated from the data. ICMA staff conducted follow-up phone calls to the responding city clerks to determine which general form of government the community actually had at the time the survey was administered. The primary difficulty occurred in distinguishing between the mayor-council and council-manager categories. Apparently, a large number of city clerks in council-manager cities had checked the first category, mayor-council, without reading the other categories carefully. The data reported in Figure 1 reflect the changes made by ICMA to the first question after the data had been verified, subsequent to the publication of the *1998 Municipal Year Book*. The percentage of mayor-council cities (31.9 percent) is slightly lower than initially reported (35.2 percent), and the percentage of council-manager cities (51.9 percent) is slightly higher (48.5 percent). ICMA did not attempt to re-code questionnaires in which the respondents had left the general form of government question blank or reported that they were "unsure" about which form their community had.

The primary focus of this study is to use ICMA's most recent national survey data to clarify the governance structures that have evolved from the two major forms of city government. Therefore, the commission, town meeting, and representative town meeting forms are eliminated from this analysis. The commission form continues to decline in usage over time (Renner and DeSantis 1998),

and the town meeting and representative town meeting forms are regionally confined to New England. In addition, the smallest group of cities is eliminated because not all communities with less than 2,500 people were given an opportunity to respond to the survey. Moreover, because all of these cities had applied for ICMA recognition by virtue of appointing a professional manager, their inclusion in this study would have introduced bias.

We examined the responses to questions on the survey other than the first question and ICMA's masterfile data to determine the general form of government category for each of the jurisdictions that responded. The 1996 survey was the first in which nonresponses to the general structure question and the "not sure" categories were reported in the *Municipal Year Book*. We attempted to replicate the data-cleanup procedures used by ICMA in previous surveys to recode the nonresponses. For our purposes, nonresponses to the general form of city government question (question 1 on the survey instrument) were eliminated from our data when the ICMA masterfile indicated that a commission, town meeting, or representative town meeting form of government was currently in use. Cities were recoded to council-manager when the jurisdiction reported having a CAO, the mayor was not independently elected, and the ICMA masterfile records indicated that the municipality had a council-manager government and did not indicate a change. Cities were also recoded to council-manager if all of these criteria were met except that the mayor was independently elected, as long as the mayor was not reported to have the sole power both to prepare the budget and to appoint department heads or was not reported to have sole authority in one of these areas and shared authority in the other. Cities were recoded to the general mayor-council structure when they did not report having a CAO, the mayor was independently elected, and the ICMA masterfile indicated that they had a mayor-council system. In addition, cities were recoded to mayor-council when they reported having a

CAO, as long as the mayor was independently elected, had sole responsibility in both appointment and the budgetary process (or sole responsibility in one and shared authority in the other), and the ICMA masterfile indicated that the city had a mayor-council form of government. These procedures reduced the number of missing cases from 437 to 20. Among these jurisdictions, the ICMA masterfile reported that 11 were mayor-council forms and 9 were council-manager forms. All cities in the latter group had reported having an appointed administrator since 1996, even though they did not indicate having a CAO on the 1996 survey. In addition, according to the masterfile, all 9 had received ICMA's highest form of recognition, which is usually reserved for those who adopt a council-manager plan closely approximating the model. None of the responses to the other survey questions indicated that the jurisdictions might not have a council-manager system (such as having a mayor with a veto); therefore, they were all recoded to the general council-manager form. Among the group of 11 that ICMA's masterfile indicated had mayor council systems, none reported having a CAO and none had even the lowest ICMA recognition code for providing for a position of professional management. In addition, none had reported having a professional appointed in other ICMA surveys for the *Municipal Year Book* since 1996. Therefore, these jurisdictions were recoded as mayor-council systems. With the complete recode of the general form of government categories, 60.9 percent (2,402 cities) are included in the council-manager form and 39.1 percent (1,540 cities) are included in the mayor-council form.

Identification of Subcategories of City Government Forms

According to the Executive Director of ICMA, four variations of city governments with appointed professional administrators have recently emerged (Hansell 1999). Cities are considered to have the so-called classic city

manager form if all of the following conditions are met: a council-manager structure exists, there is an appointed CAO, the mayor is not independently elected at-large, and the mayor does not have a veto and is not reported to have any formal role (solely or shared) in either preparing the budget or appointing department heads. Responses indicate that 894 cities, or 37.2 percent of the 2,402 council-manager communities, have the classic city manager form (Table 2).

Cities are considered to be "council-manager with an at-large mayor" if the following conditions are met: a council-manager structure exists, there is an appointed CAO, the mayor is elected independently at-large, and the mayor does not have a veto over council actions and no formal role (solely or shared) in either preparing the budget or appointing department heads. In these cities, the mayor is elected separately but has virtually no structural power. There are 1,125 cities, or 46.8 percent of those in this general structure category, that have the council-manager with at-large mayor form.

The third category is a version of Hansell's "council manager with empowered mayor" form of government. In such cities, a council-manager structure exists, and there is an appointed CAO and an independently elected mayor who has veto power. In these council-manager cities, the mayor not only is elected independently but also has some institutional executive power. The mayor has a formal role in the budgetary preparation process (solely or shared) or in the appointment of department heads (solely or shared), including the authority to nominate a city manager and to review the manager's budget proposals before they are submitted to council. (The survey does not specify the procedures for how a city manager is chosen, however.) Based on these criteria, 345 cities, or 14.4 percent of council-manager communities, have a city manager with empowered mayor form of government.

The total number of cities in these three subcategories of the council-manager form is 2,364. Only 38 cases (1.6 percent of cities with

Table 2: Subcategories of the Council-Manager Form

	Classic council-manager	Council-manager with at-large mayor	Council-manager with empowered mayor	Unclassified council-manager
Number	894	1125	345	38
Percent	37.2	46.8	14.4	1.6
Mayor is independently elected	No	Yes	Yes	No
Executive power	Either 0 or 1	Either 0 or 1	NE 0 (or)	If >1, then No
Mayor has veto power	No	No	Yes	If = 0, then Yes

Notes: Executive power is defined as the combined responsibility of preparing the budget and appointing department heads.
 0 = the mayor was reported to have no formal role in either area
 1 = the mayor shares power with the CAO in either budget preparation or the appointment of department heads
 2 = the mayor either has shared responsibility for preparing the budget and appointing department heads or has sole responsibility in either preparing the budget or appointing department heads (sole responsibility is given two points)
 3 = the mayor has sole responsibility in one area plus shared responsibility in the other
 4 = the mayor has sole responsibility in both budget preparation and appointment of department heads.
 N = 2,402.

the council-manager form) could not be categorized according to the aforementioned criteria. All of the cities in this residual group had mayors who were not independently elected but were reported to have some structural authority. Specifically, 15 reported having a mayoral veto, and 4 of these also reported that the mayor had a shared role with the CAO in the appointment of department heads. The remaining 23 cities have mayors who do not have veto power but who do have some role in the appointment of department heads and/or budget preparation, but in no city was there a mayor who had sole authority. Although there are few cities in this council-manager category that do not fit comfortably into the three subcategories, the findings suggest that some cities have a council-manager system with an empowered mayor who is not elected at-large.

Hansell’s fourth form is a strong mayor form of government with a city manager or appointed CAO (Table 3). In this system, there is a separation of power, and the mayor serves as the chief executive officer and appoints the city manager subject to the approval of the council. As with the city man-

ager with empowered mayor form of government, the survey does not specify how the city manager is appointed. However, the remaining data provide excellent empirical indicators of executive power. Cities are considered to have the strong mayor–council with CAO form when there is a mayor–council structure in which the CAO is appointed and the mayor is independently elected. Moreover, the mayor has veto power and a formal role (solely or shared) in either the budget preparation process or in the appointment of department heads. A total of 262 cities, or 17 percent of mayor council jurisdictions, are designated as having a strong mayor–council with CAO form based on these criteria.

In his typology, Hansell described four substructures that are distinguished by the professional administrator’s role, discretion, and authority (three of which are subcategories of the council-manager form, and one—the strong mayor–council with CAO form—that is a subcategory of the mayor–council form). However, appointed CAOs can and do exist in cities that have a mayor–council structure in which the mayor is structurally “weak.” We therefore expand on Hansell’s typology by in-

Table 3: Subcategories of the Mayor-Council Form

	"Strong" mayor with CAO	"Strong" mayor without CAO	"Weak" mayor with CAO	"Weak" mayor without CAO
Number	262	392	245	298
Percent	17.0	25.3	15.9	19.4
CAO position exists	Yes	No	Yes	No
Mayor is independently elected	Yes	Yes	—	—
Executive power	>0	>0	<3	<3
Mayor has veto power	Yes	Yes	No	No

Note: See the note for Table 2 regarding the definition and operationalization of "executive power."
N = 1,540.

roducing a further subcategory of the mayor-council form. Cities are included in this weak mayor-council with CAO subcategory when the following criteria are met: a mayor-council form of government exists, there is a CAO, the mayor does not have veto power over council actions, and the mayor does not have sole responsibility in both budget preparation and appointment of department heads but could have a shared role in either or both of these duties. Based on these criteria, a total of 245 cities, or 15.9 percent of mayor council communities, have a weak mayor-council with CAO system.

At least two more possible subcategories of the mayor-council form exist, including the strong mayor-council without CAO and the weak mayor-council without CAO. The strong mayor-council without CAO form is defined in the same way in which the strong mayor-council with CAO form has previously been defined, except there is no appointed administrator. Included in this subcategory are jurisdictions in which a mayor-council structure exists, there is no appointed CAO, and there is an independently elected mayor who has veto power and a formal role in the budgetary process and/or the appointment of department heads. Based on these criteria, a total of 392 jurisdictions, or 25.5 percent of mayor council cities, have a strong mayor-council with CAO form.

The weak mayor-council without CAO subcategory includes communities in which

the general form is mayor-council, the mayor does not have veto power, the mayor is not reported to have a formal role in either the budgetary preparation process or appointment of department heads, and no CAO is employed. Based on these criteria, a total of 298 cities, or 19.4 percent of mayor council communities, have a weak mayor-council without CAO form.

The total number of cities included in the four subcategories of the mayor-council structure is 1,197. The total number of mayor-council cities, however, is 1,540, a difference of 343 (22.3 percent) that cannot be categorized according to our typology—substantially more than the residuals for the council-manager form. Many of these residual cities are distinguished by a disjunction between the veto power and budgetary and appointment authority of the mayor (see Table 4), which explains why they do not fit into any of the subcategories. Among the 148 mayors serving in communities in which there is a CAO, 94 had veto power but no formal authority in terms of either the budgetary process or the appointment of department heads; in 54 communities, the mayor had no power of veto but did have some formal authority in the budgetary process and/or appointment of department heads. These cities could not be included in either the strong mayor-council with CAO or weak mayor-council with CAO subcategories. A similar pattern is evident for the 190 residual cities in which there is no CAO. In 91

Table 4: Categories of Residuals: A Cross-Tabulation of Mayoral Power and the Presence of an Appointed Executive (CAO)

	Is there an appointed CAO in the city?		
	Yes	No	Total
Mayor has veto power but no appointment or budget power	94	91	185
Mayor does not have veto power but does have either appointment or budget power	54	99	153
Total	148	190	338

of these cities, the mayor has veto power but no budgetary or appointment authority; in 99, the reverse is true. For the remaining five outliers, either data are missing or there is an inconsistent pattern. For example, in one city, the mayor was reported to have both a veto and some budgetary or appointment authority but was not included in the strong mayor-council form because the city clerk reported that the mayor was not independently elected.

City Forms of Government and Reformed Electoral Systems

The data from ICMA's 1996 Municipal Form of Government survey, as reported in the *1998 Municipal Year Book* (Renner and DeSantis 1998), indicate that the correlation between the broad city structures and reformed election systems is predictable. That is, mayor-council cities are more likely to have district elections and partisan elections than are council-manager cities. Therefore, among the three subcategories of council-manager cities, those that have the so-called classic city manager form should have the most reformed electoral structures. Presumably, there should be less electoral reform in cities in which there is a city manager with a separately elected mayor. Furthermore, cities in which there is a strong mayor should have the least reformed structures.

The data in Table 5, which are disaggregated according to our typology, indicate that these presumptions are incorrect, however. The foregoing expectations are apparent for at-large, district, or mixed election types but are not discernible for nonpartisan and partisan systems. In fact, the cities that have the classic city manager form have the highest percentage of at-large elections (78 percent), followed by those in which there is a separately elected mayor (65.4 percent) and an empowered mayor (46.6 percent). However, the cities in which there is a separately elected mayor have the highest percentage of nonpartisan election systems (89.4 percent), and the "classic" cities actually have the lowest percentage of the three subcategories (77 percent).

Among the four subcategories of mayor-council governments, predictably, cities in which there is a strong mayor-council but no CAO have the highest percentages of district (38.5 percent) or mixed (36.2 percent) elections and the lowest percentage of at-large elections (25.3 percent). However, their reported percentage of nonpartisan elections (62.2 percent) is actually slightly higher than that of cities in which there is a weak mayor-council but no CAO (61.4 percent). Communities in which there is a weak mayor-council and CAO report the highest percentages of reformed electoral structures. Actually, the distributions of their electoral systems are more comparable to the three council-manager subcategories than to the other mayor-council forms. The strong mayor-council with CAO and the council manager and empowered mayor forms of governments are similarly distributed in cities that have at-large, district, and mixed election systems, but the presence of partisanship is 12 percent higher in cities in which there is a strong mayor-council with CAO.

Conclusion

The findings here confirm that contemporary city governments are more complicated than the traditional categories suggest. We

Table 5: Forms of City Government and Election Systems

Form of Government	Type of Election									
	At-large		District		Mixed		Nonpartisan		Partisan	
	N	percent	N	percent	N	percent	N	percent	N	percent
"Classic" council-manager	686	78.0	91	10.3	103	11.7	688	77.0	206	23.0
Council-manager with at-large mayor	731	65.4	106	9.5	281	25.1	1,006	89.4	119	10.6
Council-manager with empowered mayor	160	46.6	99	28.9	84	24.5	273	79.1	72	20.9
"Strong" mayor with CAO	115	44.2	79	30.4	66	25.4	175	66.8	87	33.2
"Strong" mayor without CAO	98	25.3	149	38.5	140	36.2	244	62.2	148	37.8
"Weak" mayor with CAO	160	66.7	50	20.8	30	12.5	174	71.0	71	29.0
"Weak" mayor without CAO	188	64.2	69	23.5	36	12.3	183	61.4	115	38.6

have attempted to clarify the administrative and policy-making processes in American cities by developing a typology of forms of municipal government based on the responses to ICMA's 1996 survey. Our efforts have produced seven different subcategories: classic council-manager, council-manager with at-large mayor, council-manager with an empowered mayor, strong mayor-council with CAO, strong mayor-council without CAO, weak mayor-council with CAO, and weak mayor-council without CAO. In addition, we identified communities that did not neatly fit any of these subcategories, even though a mayor-council structure exists. Specifically, these residuals are a result of the disjunction in many cities between a mayor's veto power and his or her budget and appointment role. The four combinations include mayor-council cities (with and without a CAO), in which the mayor has a veto but no formal role in either the budget process or appointment of department heads; and mayor-council cities (with and without a CAO), in which the mayor has no veto but does have some formal authority in budget preparation and/or the appointment of department heads.

If these hybrid forms of government continue to emerge, the practical and theoretical relevance of the broad types (i.e., the council-manager and mayor-council forms) may be-

come obsolete. Fredrickson, Wood, and Logan (2001) find that recent trends render these categories less meaningful and suggest that the latest attempt to revise the model city charter will have to respond to these changes. Indeed, Svava (2001, 19) wonders if choice among alternative general forms can "be rendered irrelevant by a blending of governmental structures, or are there fundamental distinctions between them that keep choice among alternative forms at the forefront of the debate over model charters?" Our findings indicate that more complete knowledge about the organizational arrangements for the allocation of public resources is needed. Future research should therefore focus on the specific structural elements of city government (e.g., having an appointed CAO, giving the mayor a veto) that affect the efficiency, equity, and effectiveness of city government systems. From a practical perspective, advocates for municipal reform may realign their focus from changing forms of government to adjusting specific structural elements within overall forms.

This research has been limited by the unfortunate and ironic reality that the ICMA Municipal Form of Government Surveys contain more questions on the powers and authority of elected mayors than on those of appointed administrators. ICMA intends to rectify this problem by including a question

regarding the appointment of the city manager or CAO. Moreover, our research probably suffers from an undersampling of mayor-council cities because, historically, they are less likely to respond to ICMA surveys than are council-manager cities. Notwithstanding these limitations, our findings have relevance for scholars, practitioners, and citizens seeking to understand and perhaps improve city policy-making structures.

Victor S. DeSantis is professor of political science and director of the Institute for Regional Development at Bridgewater State College, Massachusetts. His research on the organization and management of municipal and county governments and job satisfaction of public employees and managers has been published in *American Review of Public Administration*, *Public Administration Review*, and *The Municipal Year Book*, among other publications.

Tari Renner is professor of political science and department chair at Illinois Wesleyan University, Bloomington. His work in the areas of state electoral behavior, local election systems, and urban forms of government and their policy and representational consequences has been published in *Comparative State Politics*, *Public Administration Review*, and *State and Local Government Review*, among other publications.

References

- Boynton, Robert P., and Victor S. DeSantis. 1990. Form and adaptation: A study of the formal and informal functions of mayors, managers, and chief administrative officers. *Baseline Data Report* 22, no. 1. Washington, D.C.: International City/County Management Association.
- Clark, Terry N. 1968. Community structure, decision making, budget expenditures, and urban renewal in 51 cities. *American Sociological Review* 33 (August): 576–93.
- Dye, Thomas R., and John A. Garcia. 1978. Structure, function, and policy in American cities. *Urban Affairs Quarterly* 14 (September): 103–26.
- Fredrickson, H. George, and Gary A. Johnson. 2001. The adapted American city: A study of institutional dynamics. *Urban Affairs Review* 36 (July): 872–84.
- Fredrickson, H. George, Curtis Wood, and Brett Logan. 2001. How American city governments have changed: The evolution of the Model City Charter. *National Civic Review* 90, no. 1: 3–18.
- Hansell, Bill. 1998. Is it time to “reform” the reform? *Public Management* 80 (December): 15–16.
- . 1999. Reforming the reform, Part 2. *Public Management* 81 (January): 28.
- Liebert, Roland. 1974. Functions, structure and expenditures: A re-analysis of recent research. *Social Science Quarterly* 54 (March): 765–83.
- Lineberry, Robert L., and Edmund P. Fowler. 1967. Reformism and public policies in American cities. *American Political Science Review* 61: 701–16.
- Lyons, William E. 1978. Reform and response in American cities: Structure and policy reconsidered. *Social Science Quarterly* 59 (June): 118–32.
- Morgan, David, and John Pelissero. 1980. Urban policy: Does political structure matter? *American Political Science Review* 74 (December): 999–1006.
- Nolting, Orin. 1969. *Progress and impact of the council-manager plan*. Chicago: Public Administration Service.
- Renner, Tari. 1988. Elected executives: Authority and responsibility. *Baseline Data Report* 20, no. 3. Washington, D.C.: International City/County Management Association.
- Renner, Tari, and Victor S. DeSantis. 1998. Municipal forms of government: Issues and trends. In *Municipal year book 1998*. Washington, D.C.: International City/County Management Association.
- Stillman, Richard J. 1974. *The rise of the city manager*. Albuquerque: University of New Mexico Press.
- Svara, James H. 2001. Do we still need model charters? The meaning and relevance of reform in the twenty-first century. *National Civic Review* 90, no. 1: 19–34.
- Welch, Susan, and Timothy Bledsoe. 1988. *Urban reform and its consequences*. Chicago: University of Chicago Press.

https://www.richmond.com/news/local/city-of-richmond/years-after-switch-to-an-elected-mayor-richmond-government-still/article_dcc33f52-d6d6-51f7-995b-61eedde46678.html

12 years after switch to an elected mayor, Richmond government still trying to find its footing

By GRAHAM MOOMAW Richmond Times-Dispatch Sep 5, 2015



Mayor Dwight C. Jones

ALEXA WELCH EDLUND/TIMES-DISPATCH

By many measures, Richmond is a city on the upswing. The population is growing, downtown is climbing back, and the city continues to earn accolades as a dining and culture destination. But ahead of a momentous local election next year, most observers agree there's room for improvement in one key area: city government.

It has been 12 years since Richmond voters registered their dissatisfaction by approving a switch to a new political system with a more powerful mayor elected citywide. Driven partly by fresh memories of dysfunction, corruption and City Council members going to jail, the new form of government was favored by an overwhelming 80 percent of voters in a 2003 referendum.

As Mayor Dwight C. Jones approaches what will be the final year in his eight-year tenure, the city's elected officials are still feeling out the finer points of the new system. And plenty of dysfunction seems to have stuck around.

In an interview last week, Jones said the city has progressed under the new system because it allows a "collective vision" that's more difficult in a system beholden to nine council members, each with parochial interests in their districts. But he acknowledged that the relationship between his administration and council members, several of whom have complained about a lack of communication with his administration, has grown complicated.

"It's a political environment," Jones said. "So there are some people who embrace a forward vision, and there are some people who are really stuck in the mode of just taking care of their districts ... even if it means the thwarting of the progress of the entire city."

Jones said council members must recognize "their role is policy, and not administration."

Under the previous system, council members hired a city manager to oversee daily governmental operations and chose a ceremonial mayor from within their own ranks.

Jones said he saw his uncompetitive re-election in 2012 as a validation of what he was trying to accomplish.

"There's a difference between having the whole city elect you and having five people elect you," Jones said. "All the difference in the world."

Others are making direct appeals for City Hall to shape up.

Former Gov. L. Douglas Wilder, who infamously called city government a "cesspool of corruption and inefficiency" before becoming the first mayor under the new system in 2005, said in a recent interview that the city "can and must do better."

"Whoever has been in charge of seeing that it functions properly has not been there," said Wilder, who previously has avoided commenting on city politics and was careful to not single out anyone in particular for criticism.

To some, the people in the system matter more than the system itself.

"It may not be the form of government we have as much as those who lead it," said 1st District Councilman Jonathan T. Baliles, who is considering a run for mayor next year. "Effective leadership requires rolling up your sleeves, being accessible and communicating with people, whether it's good news or not."

In the past decade, the city has built a new jail and several new schools, landed an NFL training camp and lured a major craft brewery. Later this month, the city will be in the spotlight as it hosts an international cycling event, the UCI Road World Championships. Plans are in place to improve public transit by adding a rapid bus system on Broad Street, deconcentrate poverty by redeveloping public housing sites, and bolster the city's main outdoor attraction by providing better access to the James River.

At the same time, officials are struggling to complete a basic audited report on the city's finances, a problem complicated by the flawed implementation of a new computer system and a revolving door of high-level administrators.

The Department of Social Services is rebuilding after a period of mismanagement that the city auditor said jeopardized children's safety. The council has clashed with Jones over priorities and the flow of information, perhaps most openly in the debate over the mayor's failed proposal for a Shockoe Bottom baseball stadium. Gripes about potholes and poor infrastructure, billing problems and lackluster service have not gone away.

The city government recently boosted funding for the troubled public school system, but it will be up to the elected School Board and high-profile Superintendent Dana T. Bedden to translate that extra money into better performance. When the mayor and the council have pressed for a stronger say in school improvement, some School Board members have bristled at what they perceived as intrusions on their turf.

Asked if there are changes he would like to see made to the city charter, Jones pointed to the duality of the city attorney's office, which is hired by the council but performs crucial functions for the mayor's administration.

"Obviously, you're loyal to the people who can fire you," Jones said. "That's a real issue because everything has to go through the legal filter. And if that filter is not being really representative of your need, then that's a huge issue that should probably be addressed."

Jones also said there's an imbalance in the government structure because the mayor is limited to two consecutive four-year terms while council members serve the same four-year terms with no such limitation. One year after voters approved the elected-mayor system, they voted to extend council terms from two years to four years, a change that took effect in the 2008 election.

Under that arrangement, Jones said, there's less incentive to cooperate because council members can adopt a strategy of simply waiting out a mayor they don't like.

"They can lob bombs at the administration, and actually that kind of propels their popularity if the city doesn't perform," Jones said.

Paul Goldman, a former Wilder aide who helped craft the elected-mayor system, voiced a similar position, saying the current council has "essentially given up."

"They would be a lot better off to have two-year terms, because they would be much more accountable to the people and wouldn't be able to sit back for years and do nothing and blame the mayor," said Goldman, a frequent Jones critic.

At their annual retreat Thursday at the University of Richmond, council members were asked to list their main challenges while a facilitator wrote down their responses.

"Communication," said Councilwoman Kathy C. Graziano, 4th District.

"And you can repeat that 10 more times," said Councilman Parker C. Agelasto, 5th District, who has frequently raised concerns about the difficulty of obtaining reliable information from the Jones administration. Agelasto said council members are in a better position to respond to constituent concerns, but the process breaks down if council members don't know what the administration is doing.

Though the mayor-council relationship shapes much of city government, William J. Pantele, a former council president and mayoral candidate, said the city government's biggest problem is "a lack of stability on the professional staff."

"We've got to find a way to stabilize the administration in the professional staff so that finally Richmond can have predictable, solid, well-functioning government operations," said Pantele, who ran against Jones in 2008. "If we don't, we'll continue to be extremely frustrated long into the future."

Byron C. Marshall resigned as chief administrative officer last year after serving in the top City Hall job for five years. Selena Cuffee-Glenn, formerly the city manager in Suffolk, took over the job in May and has begun to assemble a new team. The city has struggled for years with high turnover among its finance officials and other deputies and directors.

Jack Berry, executive director of the downtown advocacy group Venture Richmond, said the "staggering" turnover at the senior executive level has "compromised institutional memory."

"In contrast, the (neighboring) counties benefit from stable, long-term leadership," said Berry, a former Hanover County administrator and Richmond deputy city manager. "Their department heads know their community, they know the organizational norms, and they feel empowered to make decisions."

Berry said the accounting problems in the Finance Department are "beyond scary" and should be the top priority for City Hall.

Jones said the turnover is a matter of getting the right people in place and parting ways with employees who didn't work out.

"I think the people who are doing their job have wonderful job security," Jones said. "Government and bureaucracy, in some instances, does not incentivize industrious work. It's hard to get people to come to work for the state or the city or the federal government and for them to get vested and really work their butts off. It's really hard. But we've got some people here who do that. And those people are invaluable."

Jones said he feels the "strong mayor" label often applied to Richmond's government structure is a misnomer because, contrary to public perception, he doesn't control all the levers of power. Jones noted that he doesn't have the authority to appoint the superintendent of public schools, unlike other mayors, such as Bill de Blasio of New York.

"So when there's a problem with schools, the blame can be laid at his feet because he had the power to make a difference in that regard," Jones said. "But in this form of government, we don't really have that kind of authority."

At the retreat, 3rd District Councilman Chris A. Hilbert raised a similar point.

"I think that the citizenry that voted on the referendum perceived that we were going to have one person in charge and they were going to whip everybody else into shape," Hilbert said. "Ironically, the chief criticism is sometimes that the mayor tries to run roughshod over the City Council."

Voters will elect a new mayor and council in November 2016. Several people are already exploring mayoral runs, but the campaigning is not expected to begin in earnest until early next year.

Wilder denied a recent report that he's backing Council President Michelle R. Mosby for mayor. Wilder said he has not endorsed Mosby and would not support her candidacy.

Wilder, who served as mayor until 2008, said Richmonders regularly ask him to "please consider coming back and straightening out what you started."

"I think that the people of the city are entitled to a better shot," said Wilder, whose time as mayor was perhaps most memorable for his attempt to evict the Richmond School Board from City Hall.

Jones, meanwhile, believes "we're on the right track" with the elected-mayor structure.

"But I think it needs to be refined and defined to make it better."

gmoomaw@timesdispatch.com

(804) 649-6839

Twitter: @gmoomaw

Graham Moomaw

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Vote on Resolution
Staff Presenters:	Jeanette Janiczek, UCI Program Manager
Staff Contacts:	Alex Ikefuna, NDS Director Tony Edwards, Development Services Manager Jeanette Janiczek, UCI Program Manager
Title:	Belmont Bridge Replacement Project – Resolution Approving Design Public Hearing

Background: The Design Public Hearing for the Belmont Bridge Replacement project was held on Thursday, May 24, 2018 at City Space on the Downtown Mall. The meeting was advertised using the following methods:

- 1) Daily Progress Advertisement – Sunday, April 22 and Wednesday, May 16
- 2) Direct Mailing - 870 “Current Residents” + 270 “Owners”
- 3) Certified Mailing to Impacted Property Owners (as well as Invitation to Meet)
- 4) Emailed Citywide mailing list as well as Project mailing list
- 5) Updated Project Website’s Main Page
- 6) Installed Banner on Bridge
- 7) Variable Message Sign used at Community Bikes for one week before meeting
- 8) Posted Notices in Neighborhood Development Services’ lobby
- 9) Emailed first project update report after meeting noting public comment deadline of June 8th and link to posted meeting materials on website

Sixty-one persons attended the hearing. Project plans, detailed displays, environmental documents and other required project materials were available for public review and discussion from 5:00pm until 7:00pm. The displays are included as electronic links to this memorandum (Attachment E). From 7:00pm until shortly after 7:25pm public speakers shared comments that were captured by a court reporter (Attachment C). Five citizens spoke during the hearing, three provided private testimony, 17 provided comment forms and 11 provided written comments via e-mail. All public comments received between May 24, 2018 and June 8, 2018 have been included in a chart with project team responses (Attachment D). All comments have been addressed by the project team and comments and responses will be posted to the project website.

Discussion: After an extensive public involvement process, City Council approved a Preferred Conceptual Design for the Belmont Bridge Replacement project on October 16, 2017 and authorized commencement of final design. As a result, the project team has refined the Preferred

Conceptual Design in preparation of the Design Public Hearing. The hearing was held to solicit public comment on the major design features (bicycle and pedestrian facilities, roadway configuration, bridge) as well as anticipated temporary and permanent impacts on adjacent property owners and the completed environmental document.

No comments were received regarding the environmental document which is not surprising given the existing built environment and that this project is proposing to replace an existing structure. No additional environment impacts are expected with this project and the project team will be producing construction documents to ensure the contractor follows current requirements for proper disposal(ex. lead paint) and maintains proper site controls (ex. erosion and sediment protections).

As for major design features, the following themes emerged from the comments collected:

- 1) Concern over 2 lane bridge and Maintenance of Traffic during construction – Eight people commented solely on this concern with two individuals noting they liked the two lane design. Project team has used actual traffic counts of peak hour of travel in AM and PM – with a growth rate factored in for development – to design turn lanes and signal timing to roughly maintain existing level of service in opening and design year. Both vehicular and pedestrian travel will be maintained on the bridge during construction due to the distance and complexity of any possible detour.
- 2) Elimination of left turn out of Graves Street onto 9th/Avon Street (4) and Removal of At-Grade Crosswalk (7) – Both safety issues have been explored since Open House meeting with survey taken as well as detailed design reports. While the project team appreciates the respondent's request for convenient/direct connections, we are unable to overcome the safety concerns due to the proximity to Levy Avenue intersection. Other alternatives have been included in the design such as new or improved pedestrian crossings (redesigned Levy Avenue signal, new pedestrian passageway, new mezzanine/stairway connection) and a pilot program of changing one- way direction of travel on Monticello Road to allow lefts onto 9th/Avon Street from Levy Avenue signal.
- 3) Pedestrian Tunnel – Concerns over safety of tunnel was voiced by four citizens with another supporting the idea and two others commenting on its aesthetics. The project team has designed the tunnel to be as large as possible – 10' tall, 16' wide, 93' long – and will continue to focus on additional security details such as lighting. The tunnel will be one option for pedestrians to choose to use during the day or evening, but additional crossings are also included in the plan as alternatives.
- 4) Railroad Fencing – Nine respondents requested the removal of the upright security fencing on the bridge. Design team is attempting to negotiate removal of fencing with the railroad with the understanding it may be erected in the future (at City expense) if a documented need arises. However, the fence is a requirement of the railroad, and the railroad company(ies) are the sole decider as to whether a fence will be required. The requirement for a fence over the railroad will be determined during right of way negotiations and plan reviews by the railroad in 2019.

Several adjacent property owners also attended the hearing and provided comments:

- 1) Hubbard Properties, LLC – Requested pedestrian connection from building to pedestrian passageway and removal of railroad fencing.
- 2) Avon Court, LC – Reinstatement of Champion Brewery entrance and relocation of temporary easement entrance.

- 3) 701 Water St., LLC (LexisNexis) – Narrow sidewalk/bike lanes and remove planted, buffer strip on 9th/Avon Street to reduce right of way impact/cost.

The project team appreciates all of the comments offered by the public and has responded to each comment in Attachment D. Several comments complimented the public process, overall project and expressed the feeling that participants were heard during the process.

As a result of the comments received, the project team is suggesting the following changes:

- 1) Re-open access point or driveway entrance to Champion Brewing Company on South Street on Parcel 003. This will result in a loss of greenery and on-street parking spaces (2). When parcel redevelops, all entrances will be re-evaluated and greenery/parking spaces could be re-established by developer along South Street.
- 2) Add a bicycle ramp on corner of Levy Avenue and Monticello Road to create a connection between the neighborhood street and the path leading to the pedestrian passageway.
- 3) Creation of a missing pedestrian path that connects the pedestrian tunnel to new public, off-street parking spaces to Old Avon Street (south of Avon/9th Street).

Alignment with City Council’s Vision Areas and Strategic Plan: Advancing the Belmont Bridge Replacement project upholds the City’s commitment to create “a connected community” by improving upon our existing transportation infrastructure. In addition, it would contribute to Goal 3 of the Strategic Plan, Beautiful Environment; 3.1 Engage in robust and context sensitive urban planning and implementation; 3.2 Provide reliable and high quality infrastructure and 3.3 Provide a variety of transportation and mobility options.

Community Engagement: This agenda item is approving the results of the latest public meeting held for Belmont Bridge Replacement project. The next step in the public process is to seek a Certificate of Appropriateness from the Board of Architectural Review. Going forward, bi-monthly reports will be issue to update the public on project status as final construction documents are produced, right of way secured and construction commences. A Citizen Information Meeting will also be held before construction to provide information on the Maintenance of Traffic plans, Phasing, Points of Contact and other useful information.

To help guide the project, the City Council appointed a project Steering Committee composed of:

- Amy Gardner, Belmont Neighborhood
- John Harrison, Business Community
- Patrick Healy, Ridge Street Neighborhood
- Heather Danforth Hill, North Downtown Neighborhood
- Harry Holsinger, Martha Jefferson Neighborhood
- Scott Paisley, PLACE
- Tim Mohr, PLACE
- John Santoski, Planning Commission
- Lena Seville, CAT Advisory Board
- Fred Wolf, PLACE

The process also involved coordination with the following City Council appointed stakeholder

groups:

- ADA Advisory Committee
- Bicycle and Pedestrian Advisory Committee
- Board of Architectural Review
- Downtown Business Association/Chamber of Commerce
- PLACE Design Task Force
- Planning Commission
- Tree Commission

The City of Charlottesville has provided multiple opportunities for the public to provide input into the plan development process. A project website, two on-line surveys, three community events (Mobility Summit, Design Charrette, and Open House) as well as 21 stakeholder meetings occurred between February 21, 2017 and April 4, 2018. Information presented and gathered at the meetings can be found at www.BelmontBridge.org, however a summary of each event is below:

Project Website: The Project website (www.belmontbridge.org) contains information that has been presented to date as part of the process. Information presented includes:

- Project background
- Project schedule
- A “resource” page that provides access to the traffic analysis, project fact sheet and FAQ, information presented and gathered from community events, and information presented at the stakeholder meetings
- A contact form
- A “get involved” page

As of June 22, 2017, the project website has logged approximately 3,000 unique users, and over 8,000 page views. In the last 30 days (from July 5th), the website has had 1,996 page views.

Community Event 1: Mobility Summit, March 11, 2017: A Mobility Summit was held on Saturday, March 11, 2017 at the Sprint Pavilion from 9:00 AM to 1:00 PM. The event drew nearly 100 people to discuss issues and needs related to the replacement of the Belmont Bridge which resulted in 1,679 data points. Participants provided input on the original design parameters established by City Council and future design objectives/goals through a combination of 6 interactive stations, guided walking tours and biking tour of the study area, and had an opportunity to have one-on-one conversation with the consultant team and City staff. At sign-in, participants received an information handout, a rack card with more detail on upcoming events, and a passport to guide them through various stations.

A summary document provided on www.BelmontBridge.org briefly summarizes the community input data collected at the event and offers stakeholders and community members the opportunity to see the thoughts of others in the community. In addition to data collected in person, the event served as the launch for the MetroQuest survey.

On-Line MetroQuest Survey: The MetroQuest survey was active from March 11, 2017 through April 16, 2017. The goal of the survey was to educate the public about the project and collect feedback on project priorities, tradeoffs to help direct design, and design preferences related to function and aesthetics. Following completion of the survey, an optional question requested how the participant uses the existing bridge to further illustrate the needs of the project. The survey was design to mirror the activities of the in-person activities at the Mobility Summit, and included:

- Priority Ranking
- Tradeoffs, which included categories such as Design, Role, Views, Mobility, and Parking
- Visual Preference Survey, which included categories such as Landscaping, Lighting, Public Spaces, and streets

The results for each category can be found at www.BelmontBridge.org, on the resources page. Additionally, the 771 written comments can be found on the project website as well. The amount of participation captured in the MetroQuest on-line survey is summarized as follows:

- 896 Participants
- 27,677 individual data points
- 771 written comments

Community Event 2: Design Charrette, April 17-19, 2017: Project team members held a collaborative charrette on April 17-19, 2017 at CitySpace in downtown Charlottesville. During the event, conceptual design concepts were developed based on the original City Council design directive that was supported by feedback collected at the Mobility Summit and online survey. The design process throughout the charrette was iterative, with the working studio open to the public throughout the day to encourage engagement with the project team. Pin-up sessions each evening occurred to show the day's progress, and allowed project staff to answer questions, address concerns, and document new ideas.

Additionally, five work sessions were organized around key topics central to the bridge design – Traffic, Bicycle & Pedestrian Facilities, Parking, Community Space and Bridge Design. The outcomes of the topic discussions informed the design process and the selection of preferred alternatives throughout the remainder of the charrette process.

Overall key takeaways from the design charrette include:

- Overall corridor approach
 - New block structure
 - Closing Old Avon St. at Garrett St.
 - Creating new east/west public street at the railroad property line
- Develop a two lane, 62' bridge section with a protected bike lane and wide sidewalks
- Additional vertical circulation (pedestrian) north of the railroad tracks on the east side
- Modern / Funky design features
- Enhanced landscape elements on approaches
- Accent lighting for pedestrian safety (not theatrical)
- Interim / shared parking solutions (in cooperation with property owners)

- Minimize maintenance concerns regarding raised, planted medians

Following the design charrette, concepts were refined and alternatives were developed for various design elements. The concepts and alternatives were presented to the Steering Committee, Technical Committee, and Small Stakeholder groups on May 15th and 16th. A full summary of the event, including a summary of the work sessions is posted on www.belmontbridge.org.

Community Event 3: Open House, June 1, 2017: Project team members held an open house on June 1, 2017. The open house provided an opportunity for the public to provide feedback on the latest design concept for the Belmont Bridge that became the preferred Conceptual design. The design concept were developed from more than 30,000 outreach data points and 1,000 written comments provided through previous public meetings, the project website, and MetroQuest survey. At the open house, a presentation was made that provided a brief overview and the public was requested to visit stations set up with the following focus areas to provide feedback and ask questions:

- Bridge Architecture, which included architectural elements such as fencing, lighting, walls, vertical circulation, and overall 3-dimensional views of the concept. This station also included an interactive 3-D architectural model, giving the opportunity to see alternate views of the design.
- Corridor, which included the recommended corridor concept, and, a potential “future build” concept. Additionally, cross sections of the road and plan views of the intersections were a focus.
- Traffic, which included graphics depicting lane configuration, queue length, delay, level of service, and projected future traffic conditions in a video format.

Stakeholder Meetings: Throughout the process, individual stakeholder groups met to provide input and feedback during the design process. Stakeholder meetings were open to the public. The following groups met on the following dates in 2017 and 2018:

- Steering Committee: 2017 - February 21, March 29, May 15, June 14, August 16; 2018 – April 4
- Bicycle and Pedestrian Advisory Committee: 2017 - February 23, May 16, September 7
- PLACE Design Task Force: 2017 - February 22, May 16, September 14
- Downtown Business Association / Chamber of Commerce: 2017 - February 22, May 16
- Board of Architectural Review: 2017 - February 22, May 16, August 15 (BAR Meeting)
- Tree Commission: 2017 - February 23, May 16, September 5
- Planning Commission: 2018 – August 8, September 12

The ADA Advisory Committee and Planning Commission were invited to attend any of the five stakeholder group meetings. These stakeholder groups provided feedback in their specialized areas of interest and confirmed that design was progressing in keeping with the project’s purpose and need.

Meeting agendas and summaries can be found under the resources tab on the project website www.BelmontBridge.org. Additionally, a Technical committee was formed which is

comprised of representatives from appropriate City departments. The technical committee held meetings on the project on February 22, 2017, March 30, 2017, May 16, 2017, June 13, 2017 and August 16, 2017. The technical committee meetings confirmed input received from the public and stakeholder groups could be technically attained and then maintained

Budgetary Impact: Funded – As disclosed at the Design Public Hearing, the overall budget is \$24,787,399 comprised of \$6,390,524 in federal, \$12,413,617 in state and \$5,983,258 in local funding.

Recommendations: Approval of the major design features as shown at the Design Public Hearing with 3 changes as a result of public hearing comments:

- 1) Re-open access point or driveway entrance to Champion Brewing Company on South Street on Parcel 003;
- 2) Add a bicycle ramp on corner of Levy Avenue and Monticello Road to create a connection between the neighborhood street and shared use path; and
- 3) Creation of a pedestrian path that connects the pedestrian tunnel to new public, off-street parking spaces to Old Avon Street (south of Avon/9th Street).

Alternatives: City Council has several alternatives:

- 1) By motion, take action to approve a Resolution Approving the Design Public Hearing and the major design features of the project as presented at the Hearing;
- 2) By motion, take action to approve the attached Resolution Approving the Design Public Hearing and the major design features of the project as presented at the Hearing with the proposed changes discussed tonight (and contained within this memo);
- 3) By motion, request changes to the attached Resolution Approving the Design Public Hearing and the major design features of the project as presented at the Hearing with some of the proposed changes discussed tonight (and contained within this memo) and/or new design changes resulting from public comment collected at the Hearing;
- 4) Deny approval of the major design features and request project team to evaluate/refine another alternative resulting in a new Design Public Hearing.
- 5) Deny approval of the major design features and remove bridge replacement project from the 6-Year Program.

Attachments: (A) Proposed Design Resolution Approving Major Design Features
(B) Preferred Conceptual Design with Three Suggested Changes as a result of Design Public Hearing
(C) Design Public Hearing Transcript
(D) Design Public Hearing Comments
(E) Design Public Hearing Displays

Attachment A

**BELMONT BRIDGE REPLACEMENT PROJECT
DESIGN PUBLIC HEARING APPROVAL RESOLUTION**

WHEREAS, a Design Public Hearing was conducted on May 24, 2018 in the City of Charlottesville by representatives of the City of Charlottesville and the Commonwealth of Virginia Department of Transportation after due and proper notice for the purpose of considering the proposed design of the Belmont Bridge Replacement project under State project number of 0020-104-101, PE-101, RW-201, C501, B-601 and Federal project number of BR-5104 (159) in the City of Charlottesville, at which hearing aerial photographs, drawings, environmental documentation and other pertinent information were made available for public inspection in accordance with state and federal requirements; and

WHEREAS, all persons and parties in attendance were afforded full opportunity to participate in said public hearing; and

WHEREAS, representatives of the City of Charlottesville were present and participated in said hearing; and

WHEREAS, the Council had previously requested the Virginia Department of Transportation to program this project; and

WHEREAS, the Council fully deliberated and considered all such matters; now

THEREFORE BE IT RESOLVED that the Council of the City of Charlottesville hereby approves the major design features of the proposed project as presented at the Public Hearing with the following changes:

- 4) Re-open access point or driveway entrance to Champion Brewing Company on South Street on Parcel 003;
- 5) Add a bicycle ramp on corner of Levy Avenue and Monticello Road to create a connection between the neighborhood street and shared use path; and
- 6) Creation of a pedestrian path that connects the pedestrian tunnel to new public, off-street parking spaces to Old Avon Street (south of Avon/9th Street).

BE IT FURTHER RESOLVED that the City of Charlottesville will acquire and/or furnish all right-of-way necessary for this project and certify the same to the Virginia Department of Transportation and Federal Highway Administration at the appropriate time.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute, on behalf of the City of Charlottesville, all necessary agreements required in conjunction with acquiring such rights of way, as well as all other associated standard agreements for construction activities.

Adopted this _____ day of July 2018.

City of Charlottesville, Virginia

ATTEST:

CLERK OF COUNCIL

BY: _____
MAYOR

|



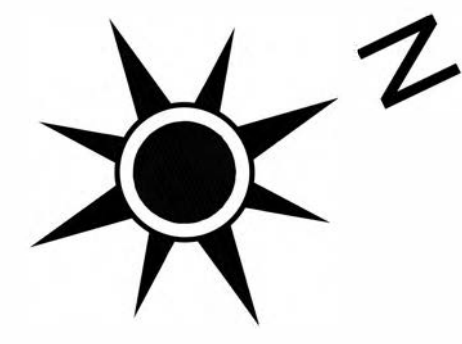
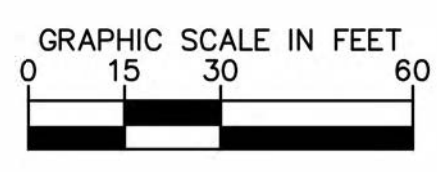
Plan View

Belmont Bridge Replacement (Route 20)

Project Location



North Arrow & Scale



Legend

	Proposed Asphalt		Existing Right of Way
	Proposed Bridge		Proposed Right of Way Line
	Proposed Sidewalk		Proposed Permanent Drainage Easement
	Proposed Concrete Median		Proposed Temp. Construction Easement
	Proposed Biofiltration		Proposed Limits of Construction
	Proposed Staircase		Proposed Curb
	Proposed Green Bike Pavement Marking		Proposed Pedestrian Signal
	Proposed Stamped Concrete Crosswalk / Paving		Proposed Signal
	Proposed Retaining Wall		Existing Bridge Demolition
	Proposed Tree		Lawn
	Existing Tree		Plant Beds (Low-Level Plantings)

Contact Information



Written comments may be sent by June 8 2018 to:

Jeanette Janiczek
City of Charlottesville
610 East Market Street
P.O. Box 911
Charlottesville, Va. 22902

E-mail comments may also be sent to:

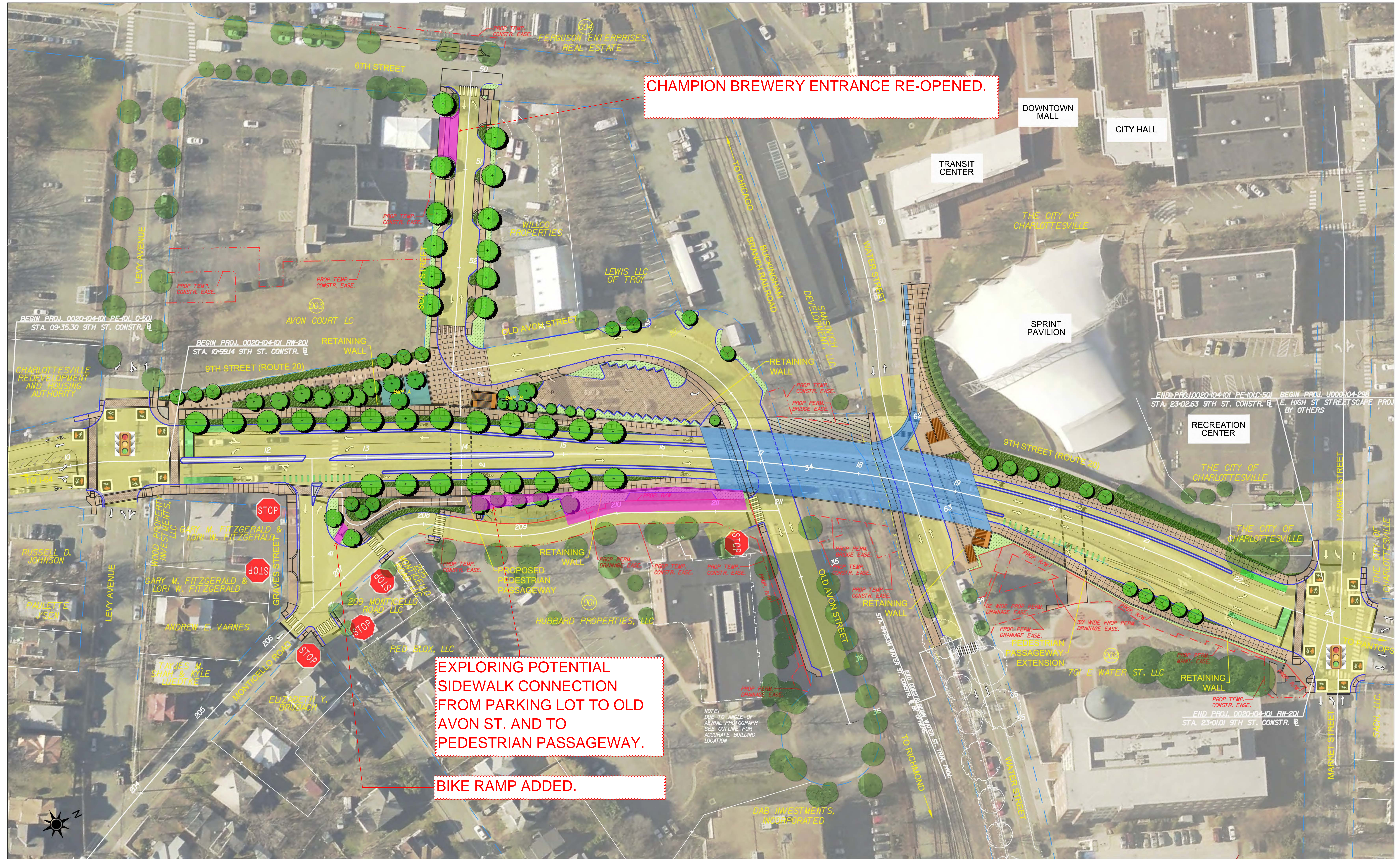
janiczek@charlottesville.org
Visit www.BelmontBridge.org for more information

Belmont Bridge Replacement (Route 20)
Charlottesville, Virginia

State Project : 0020-104-101
UPC 75878

These plans are unfinished and unapproved and are not to be used for any type of construction or the acquisition of right of way. Additional easements for utility relocations may be required beyond the proposed right-of-way shown on these plans.

Imagery Courtesy of the Commonwealth of Virginia copyright 2016



Attachment C - Design Public Hearing Transcript

DESIGN PUBLIC HEARING

BELMONT BRIDGE REPLACEMENT PROJECT

PROJECT NO: 0020-104-101, PE-101, RW-201, C-501

Thursday, May 24, 2018

5:00 p.m. - 7:25 p.m.

City Space

100 5th Street non-equity

Charlottesville, Virginia 22902

Job No. 36774

Reported By: Kurt D. Hruneni, CVR, CCR-VA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I N D E X

INFORMAL PLAN REVIEW COMMENTS

PAGE

JOAN SCHATZMAN	3
EBERHARD JEHL	3
CAROLINE SATIRA	4

* * * * *

PUBLIC HEARING

JEANETTE JANICZEK, UCI Manager, City of Charlottesville

SPEAKERS

PAGE

JEHU MARTIN	6
JEFF HALL	9
TIM FREILICH	12
BARBARA GOEBEL	14
TOMAS RAHAL	15

* * * * *

P R O C E E D I N G S

1
2
3 MS. SCHATZMAN: Hi. My name is Joan
4 Schatzman, and I would have to say that overall I'm
5 really happy with the whole process, and I got just
6 about everything that I wanted.

7 But the one thing that disturbs me is the
8 pedestrian crossing at Graves Street. And they're
9 replaced it with a underground tunnel. I do not want
10 to walk in a tunnel at night. And I often go out at
11 night and walk home.

12 And I have come up with a solution to solve
13 the problem, and that was to put a traffic light
14 coordinated with the traffic light at Levy Avenue that
15 would say "Walk" and "Don't Walk," coordinated with the
16 light. So if it was "Don't Walk," I would wait until
17 it was my turn to cross and Graves at the bridge,
18 period. I would love that if that could be re-
19 incorporated.

20
21 MR. JEHL: All I want to say is I've
22 attended just about every single public event that the
23 consultants has held in the City on the Belmont Bridge,
24 and I like the job you guys have done.

25
26

1 MS. SATIRA: Hello. My name is Caroline
2 Satira. I'm the manager of Avon Court, LC. We are
3 concerned about the project's impact on the businesses
4 of the tenants of Avon Court, LC. We request that the
5 temporary easement adjacent to Old Avon Street not go
6 through the parking lot, and instead enter from South
7 Street.

8 The parking lot is not designed for through
9 traffic like that contemplated by the temporary
10 easement. We are concerned that it will be disruptive
11 and pose safety issues. We would like to make sure
12 that the two entrances from South Street that serve
13 Downtown Family Health Care and Champion Brewing
14 Company, respectively, be maintained. We request that
15 traffic be maintained on South Street during the
16 construction process so as not to disrupt the
17 businesses that utilize that road. Thank you.

18 * * * * *

19

20 PUBLIC HEARING COMMENTS

21

22 MS. JANICZEK: All right. Good evening,
23 everyone. Thank you very much for attending the
24 Belmont Bridge Replacement Project public hearing.

25 I'm Jeanette Janiczek, the UCI Program

26

1 Manager and the project manager for this project for
2 the City. I just want to welcome you all. Thank you
3 for attending. We'd like to open the public hearing
4 noting that it is State Project Number 00020-104-101
5 UPC 75878, with a Federal Project Number of BR-5104.

6 We are coordinating this project with VDOT
7 and FHWA. So you will see state and federal funding
8 mixed with local funding for a total of \$24 million for
9 this project.

10 We hope that you had a chance to attend the
11 informal plan review from 5:00 to 7:00. That's when
12 you had a chance to review the documents as well as ask
13 questions of the project team.

14 These materials will be placed on our
15 website, Belmontbridge.org after the meeting, probably
16 later tomorrow. If you do not have a chance to speak
17 here tonight you are free to submit your comments until
18 June 8th. We are recording all the comments, the
19 verbal comments, through a court reporter. We're
20 accepting comment forms and we're also accepting email.
21 You'll see the email address in the brochure that
22 you've been given tonight.

23 Again, all comments that we receive up until
24 June 8th are going to be compiled in one report. We
25 will be responding to the questions and comments that

26

1 we hear here tonight, and we will be reporting back to
2 City Council for their approval in July of this year.

3 So we'll open up the public hearing. We ask
4 that you state your name and address for the record.
5 We request that you keep your comments to three
6 minutes. I'll be keeping a little stopwatch and notify
7 you as you're approaching your time when you're
8 finished. We currently have seven people that are
9 signed up.

10 I think that is it. And, again, all the
11 comments we hear tonight are also going to be put on
12 our website, Belmontbridge.org.

13 So let's get started with Mr. Martin, if
14 you'd like to come up.

15

16 MR. MARTIN: My name Jehu Martin. What
17 else am I supposed to say?

18 MS. JANICZEK: Your address, please.

19 MR. MARTIN: Oh, 333 2nd Street, S.E.

20 Okay. I received a letter, a lot of my friends
21 received it also on the 21st of April inviting us to
22 fill out a survey online that closed the 15th of April,
23 so it was a little hard to do that. But that happened
24 when they re-bricked the Downtown Mall, too, so I guess
25 we should be used to it.

26

1 I just question why the plans are for a
2 single lane in each direction. The current bridge is
3 inadequate. And one of the City reports that came out
4 several years ago indicated that 27,000 more cars would
5 be using it in the future. That number is probably way
6 higher now because there's about six construction
7 projects that are going to be done in the Downtown Mall
8 area in the next couple years. They're starting
9 already. And the amount of traffic that's going to
10 generate once that's finished, you're going to cut down
11 half the Belmont Bridge for two years. And then when
12 you're finished it's going to be a single lane in each
13 direction, which is totally inadequate for what it's
14 going to need to do, I think.

15 You have the Commonwealth Center's going to
16 be rebuilt. The Omni's going to expand. The Ice Park
17 and Escafe are going to be replaced by new buildings.
18 The Dewberry Hotel will be done if the City stops
19 sabotaging it. And that will go ahead. And that will
20 be beautiful and create a lot of jobs.

21 You also have this very large upscale office
22 building that's going to go on 4th Street. It's going
23 to have about 400 parking spaces and a lot of other
24 rooms. All this is going on. All this will create
25 jobs, bring stuff downtown. But this bridge, which is

26

1 inadequate as it is now. It's like a two lane bridge,
2 but you can only use one lane. I've always liked that.
3 And you're going to say it only feeds into a single
4 lane road. Of course. But if you look at cities like
5 Houston and others that put those type of highways in
6 the middle of their neighborhoods, you can have turning
7 lanes and other lanes that feed out and spread the
8 traffic out as it moves away from the bridge.

9 I know the study area is this. But I know
10 why that's limited, because you have to take into
11 account the entire flow of traffic. Right now if you
12 were driving around town today, any day, try to take
13 Preston Avenue from Downtown to Barracks Road and see
14 if you don't hit every single red light and there's no
15 other traffic. We have a traffic system that's from
16 1950. Algorithms and computers do exist. And cities
17 run by grownups actually have them and the traffic
18 flows. We don't have a traffic problem. We have a
19 traffic management problem. And this bridge -- this
20 bridge, I think, should be postponed. I think it
21 should be put off for a couple of years, wait until a
22 lot of that construction is done, and revisit it and
23 make it more -- a larger capacity instead of less.
24 Because it makes no sense the way it is now.

25 And once we build it we're stuck with it for
26

1 generations to come, or maybe like the last bridge, 40
2 years. Maybe it's just a 40 year bridge. Somebody
3 said that in a comment online. And that's it, and I
4 have 30 seconds left. That's all I have to say. I
5 just wanted to complain, because I want it to be
6 better. I want the town to be better, you know. Thank
7 you.

8 MS. JANICZEK: All right. Thank you very
9 much.

10 Mr. Hall.

11

12 MR. HALL: Jeff Hall, 1121 Dryden Lane. I'm
13 here -- I work for a company here in town, Manchester
14 Capital Management. I run their real estate advisory
15 practice. Five years ago I acquired -- I didn't
16 acquire, but I acquired on behalf of a client this
17 building, 701 East Water Street, also known as the
18 LexisNexis Building.

19 So with this new plan in terms of, you know,
20 taking of land and easements, I'm impacted the most.
21 And I mean generally we support, you know, this bridge
22 needs to be rebuilt. And that's very important. But I
23 do have some design concerns I would point out.

24 But I just want to talk a little bit. When
25 we bought this building it was in really bad shape.

26

1 And over the past five years we've re-tenanted it.
2 We've brought in great tenants and we've rebuilt the
3 entire inside.

4 At the moment we've actually designed and
5 are going to make a very substantial investment in
6 redoing the lobby. And the client of my who owns the
7 building daughter's an artist, and she's involved in
8 the project, and we're going to create sort of an art
9 gallery there where we hope to have local artists, you
10 know, display their art and have events there and
11 things like that, because we really want to pull --

12 You know, with all the development going on
13 down here we really want to pull this building into the
14 Mall. Now the second phase, and what's been my vision,
15 and I've done a lot of this. I actually do most of my
16 work in West Coast cities like Seattle and San
17 Francisco. The longer term -- I mean, this area, I
18 don't know if any of you have walked through that. I
19 mean it's awful. It's awful. And I admit that.

20 So the next phase for me, I was going to
21 focus on this and try to create a really sense of place
22 where there's a real connection into the Mall. And
23 I've had some thoughts about getting more trees in
24 there, you know, there's no shade in there whatsoever,
25 but really create a nice connection. And with what's

26

1 going on with the project, you know, my hope is for
2 doing that.

3 And so as I look at this plan, you know,
4 we're going to have very generous sidewalks, very
5 generous sidewalks. From an urban planning viewpoint I
6 don't think that's good planning. You know, the reason
7 this Mall works is because of the density of people.
8 You know we have six foot sidewalks on here now and
9 they're cavernous. So I don't think -- You know, I
10 really think we'd want to create something here. And I
11 guess it's the point about the roads that are a little
12 narrower and have a little more sense of place and are
13 inviting to people. So that would be a more general
14 comment.

15 But I'm going to -- I think the comments I'm
16 going make to the City, I need some relief in here.
17 And I know that there's like -- For example, there's
18 this bunch of trees in here where they have to poke the
19 -- you know, the road and the sidewalk out into my
20 property. And I just think in terms -- As I look at
21 this long term and what the ownership wants to do with
22 the property -- I've got 30 seconds -- You know, I
23 really would hope when we make our comments that we
24 could get some support from the community, because I
25 really think long term this needs to really -- Oh, my
26

1 time's up. It needs to integrate better than what this
2 plan shows. So thank you.

3 MS. JANICZEK: Thank you.

4 Mr. Tim Freilich. I'm sorry if I'm
5 mispronounced it.

6
7 MR. FREILICH: That's all right. Good
8 evening everyone. My name is Tim Freilich. I live at
9 719 Levy Avenue, right there where Levy Avenue and
10 Monticello Road come together. I wanted to thank the
11 committees and the planners for their excellent work,
12 particularly with the bicycle facilities. As a bike
13 commuter I'm really excited about what's shaping up
14 there. So thank you for that work.

15 I also appreciate the focus on safety. I
16 have my two daughters here, six and seven years old.
17 And so that's really important to me. I worry though
18 that the focus on safety on the bridge is shifting some
19 of the danger into our immediate neighborhood,
20 particularly with regard to the left turn out of Graves
21 onto southbound 9th Street. I think right now that's -
22 - you can go either way. I understand the current
23 design is to close off the left turn and reroute
24 traffic up Monticello Road changing direction of flow
25 and then back on Levy Avenue to get people going to the

26

1 light. That's about 13 houses in a residential area.
2 Routing extra traffic through a residential area. We
3 would much rather have it exiting immediately onto the
4 bridge.

5 I think that there are a bunch of
6 improvements in the design, including the fewer lanes
7 of travel in each direction, that are going to make
8 the bridge much more safer than it currently is. And
9 that will allow those left turns in a more safer manner
10 than you currently can.

11 Similarly the at-grade crosswalk at Graves I
12 believe should be preserved in addition to the
13 underpass to give folks the option. I think people
14 will have a really good sense, particularly at night,
15 of whether they would rather remain above the bridge
16 rather than heading through an underpass. I don't
17 really care how well lit an underpass is at night, I
18 just know from my own experience I would much rather be
19 above the surface rather than heading underneath
20 anything at night, regardless of how well lit it is.
21 And I'm sure other people feel that way as well. So I
22 urge that both of those be preserved, the crosswalk and
23 the addition of a nice underpass. That's all.

24 I just -- The main focus is please recognize
25 that the safety improvements that are being put in
26

1 place will allow for that crosswalk and will allow for
2 those left turns out of Graves. Don't shift those into
3 the neighborhood. And I understand it's outside of the
4 scope, the pilot project that's being considered to
5 reverse flow on Monticello Road, but it's clearly part
6 of the project. It's the overflow impact from the
7 project. So please don't just shift the danger into
8 our residential neighborhood. Thank you.

9 MS. JANICZEK: Wendy or Tom Hubbard? You
10 both can speak, or one of you can speak.

11 (No response.)

12 Wendy or Tom Hubbard? I believe he left.

13 So now we're to Barbara --

14

15 MS. GOEBEL: Goebel. Barbara Goebel, 705
16 Graves Street. And I also want to go the same
17 direction as my neighbor.

18 First of all I want to thank you to actually
19 cut the traffic down to one lane in each direction,
20 because I think that will make the whole bridge a lot
21 safer, and I think it's a little more forward-looking
22 to changing transportation concepts. I think overall
23 the City needs a better public transport concept and
24 bike path concept for the future with all the density
25 we're increasing.

26

1 I also think the underpass is a waste
2 because I don't think pedestrian underpasses are safe
3 at night. And I don't think this will be used very
4 much. I would urge you to at least give it a try to
5 have the crossing on Graves Street and see how it goes
6 with the traffic -- with the one lane traffic. And I
7 share the same concerns with the -- because the
8 intersection is really steep with the whole change of
9 traffic going down -- going up Monticello and down
10 Levy. But other than that I want to compliment you all
11 for a good public engagement process, and I look
12 forward to having these wide sidewalks, wide bike
13 paths, and have this thing built ASAP. Thank you.

14 MS. JANICZEK: All right. Thank you.
15 Tomas Rahal.

16
17 MR. RAHAL: Hi. I'm Tomas Rahal, 404
18 Commerce. I'm also a business owner at Quality Pie on
19 the corner of Avon and Graves.

20 A couple notes. I mean obviously this is
21 going to be a long process. I would disagree with Jehu
22 about the Dewberry project. I think the quicker we
23 reduce that to rubble and we start all over again the
24 better and the safer.

25 Also I would just preface all of this by
26

1 saying that while we are eager to get on with this
2 project and produce something that is better than what
3 exists there, I think fundamentally the density and the
4 increasing traffic patterns I think should cause us to
5 pump the brakes here and think about a more
6 comprehensive and integrated pedestrian, bike, running,
7 walk, business concept, because this is going to be
8 very disruptive, even in the abbreviated time that
9 you've assigned for it. And I feel like most of the
10 time during these type of projects the businesses that
11 are most impacted are the ones adjacent to it, which
12 would be my business, which would be Lampo, which would
13 be Champion, Fox's, and the bridge, not to mention the
14 two bigger businesses behind us, Tom and Wendy Hubbard
15 mainly representing those.

16 So I would look for a more integrated and
17 profound concept that sought to address reducing the
18 traffic. Shortening or limiting the lanes isn't going
19 to really change those habits for people. I think we
20 need to take people maybe along Monticello Avenue more
21 frequently and turn that into the gateway, rather than
22 taking them over this bridge, if we're not going to
23 consider this bridge a gateway and give it the due that
24 it richly deserves.

25 I would also say that repairing while we
26

1 process this redesign would not be a bad idea at this
2 point, since the side that's crumbling is still just
3 sort of boarded off or fenced off, and people still try
4 to transgress that. I watch people every single
5 morning try and cross that at-grade crossing at great
6 peril, including with children in carriages, on
7 bicycles. It's not a good crossing. I think we need
8 to rethink that. And I think that Levy Street
9 intersection is the natural place to do that. But I'm
10 obviously open for anything that people can think of,
11 including why don't we have a more enhanced satellite
12 parking project where we can bring commuters into town
13 either through jitneys or small buses and drop them
14 off. We're headed in that direction anyhow with
15 parking lots and parking garages attached to buildings.
16 Why not do it just a little bit further out down the
17 road and then bring them in without having to bring in
18 a single person in a SUV or a pickup truck or wherever
19 they're coming from whatever vehicle they bring with
20 them and all the problems with that.

21 So narrowing the bridge isn't going to
22 change those habits for people. And we need clearly
23 more safe pedestrian and bike and running paths in the
24 Downtown core as we bring more people into the
25 neighborhood. That's all I have to say. Thank you.

26

1 MS. JANICZEK: That's all that we have
2 signed up for talking or giving comment. Does anyone
3 else want to speak? Does anyone else that I gave three
4 minutes to want more time up here to provide comments?

5 MR. RAHAL: I would just add that with
6 Barbara and Peter and several of the other people here,
7 you have so many great talented designers in the
8 neighborhood, right in the footprint. And I just
9 wonder what kind of feedback you've been eliciting from
10 them as well. Not that you guys aren't doing a great
11 job. But I just feel like that really is missing
12 maybe.

13 MS. JANICZEK: Okay. And all of the
14 comments we've received to-date, all of the comments
15 that you give us here tonight whether they're written,
16 verbal, et cetera, it's all going to be on
17 Belmontbridge.org. So you can see the history. You
18 can see a brochure, et cetera.

19 So we were here to listen to you all
20 tonight. And thank you very much for sharing your
21 comments. Again, all of these comments are going to be
22 compiled and reported back to you. Please stay tuned.
23 If you leave me your contact information you'll be
24 included in the project mailing list.

25 So, again, thank you all very much.

26

1 MR. FREILICH: Jeanette, I'm sorry. Can I
2 add one more piece? And that is -- Tim Freilich, 719
3 Levy Avenue. Just to stress again the topography of
4 Levy Avenue and the turn that would be hairpin turn if
5 the pilot project to reverse Monticello Road is put in
6 place. That's the first part. The second part is
7 actually the huge hump that is Levy Avenue. It's not a
8 straight sight line down to the intersection. So there
9 are other safety issues being raised with the
10 topography of Levy Avenue as well. Thank you.

11 MS. JANICZEK: All right, great.

12 MS. GOEBEL: And I have one more comment?

13 MS. JANICZEK: Yes.

14 MS. GOEBEL: I think before -- is whether
15 the fence could actually be horizontal I think it would
16 have to span for the cantilever, and even if it had to
17 expand 15 feet I think that the eight foot high
18 railroad fence is just horrible. And I know a lot of
19 bridges throughout the country have these horizontal
20 fences for suicide prevention, and I think that would
21 be a lot more aesthetically pleasing. So please bring
22 that up with the railroad and the engineers.

23 MS. JANICZEK: Okay, great. Thank you. Is
24 there any other comment?

25 MR. MARTIN: Just that an example of
26

1 narrowing down the roadway is that fiasco called the
2 John Warner Parkway. We built the parkway, a single
3 lane parkway, 35 mile an hour speed limit. No
4 shoulder. And it's a lovely ride for a bike. It's a
5 nice ride for a car. And it takes you to Cville Coffee
6 and Circa's. If you want a used piece of furniture
7 it's your highway. And it creates traffic jams at the
8 very end of it, three or four of them by the lights. I
9 don't know where it was supposed to bring anybody, but
10 it's not bringing anybody to downtown. And then to
11 balance that they put these stop lights on Park Street.
12 So in the middle of the afternoon there's a six block -
13 - four to six block backup. So we created artificial
14 traffic jams. I don't know what the purpose of that
15 was. I don't know why somebody -- If I still lived
16 there I'd be screaming because there's no reason for
17 that.

18 And so narrowing roadways -- The way you
19 take care of traffic is you give it an easy smooth way
20 to move on its way and get out of your way.
21 Restricting it and cutting it down just creates traffic
22 jams. With all the construction that's going to go on
23 we're going to have a bit of a nightmare for a couple
24 of years to come.

25 And your project says two years. But I

26

1 don't know any construction project that ever finished
2 -- you know, it's not your fault. That's the nature of
3 the business. So that should be more like -- probably
4 be more like four.

5 MS. JANICZEK: Okay. Tomas.

6 MR. RAHAL: Well, I just -- I'm sort of
7 catching up. But what dialogue do you have with the
8 railroad as far as transgressing their tracks with a
9 foot bridge or a pedestrian bridge?

10 MS. JANICZEK: We are going to have to go
11 through the right-of-way phase with them already with
12 an easement. So adding an additional crossing would be
13 quite difficult. You all are pushing me into
14 responding and getting into Q and A, and we're trying
15 to keep this to a public hearing.

16 So you can keep asking me questions, but
17 could we -- But I reserve the right to not answer at a
18 later date so we can close this meeting.

19 Are there any other comments or questions?

20 (No response.)

21 MS. JANICZEK: All right. I want to thank
22 you very much. Please, if you haven't submitted a
23 comment, please do so by June 8th. If you know anyone
24 that's interested or you could interest them, let them
25 know that June 8th is the deadline and to go to

26

1 Belmontbridge.org for more information. Thank you
2 again.

3 (Hearing concluded, 7:25 p.m.)

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 CERTIFICATE OF COURT REPORTER

2 I, KURT D. HRUNENI, a Certified Verbatim
3 Reporter, do hereby certify that I took the notes of
4 the foregoing proceedings and thereafter reduced the
5 same to typewriting; that the foregoing is a true
6 record of said proceedings to the best of my knowledge
7 and ability; that I am neither counsel for, related to,
8 nor employed by any of the parties to the action in
9 which these proceedings were held; and further, that I
10 am not a relative or employee of any attorney or
11 counsel employed by the parties hereto, nor financially
12 or otherwise interested in the outcome of the action.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this 10th day of June, 2018.

15
16
17
18
19 _____
KURT D. HRUNENI, CVR, CCR-VA
20
21
22
23
24
25

**Comment Sheet Summary, Belmont Bridge Replacement Project
Public Hearing Comment Response Sheets Summary
Thursday, May 24, 2018**

Attachment D - Design Public Hearing Comments

Total Respondents

Question #1 - Do the design features adequately address the needs of bicyclists, pedestrians and motorists?					
	Yes	No	Not Sure	No Response	Total
1	10	4	2	1	17
Explain Why:					
#					
Too much width is allocated to the pedestrian and bicycle paths, a total of 40 feet.					
Concerns with only one lane in each direction bridge.					
Consider passageway portals being scalloped versus flush with wall face.					
Maintain at grade crossing of 9th Street north of Graves.					
Make the staircase north of the passageway smooth, elegant and intuitive					
Question #2 - Do you agree that the following project features are attractive while appropriately connect the Downtown Mall and surrounding neighborhoods?					
	Agree	Neutral	Disagree	No Response	Total
2a - Landscaping	10	3	3	1	17
Question #2A - Concerns/Comments on Landscaping					
#					
A little basic suggest more landscaping					
Use a variety of tree species native to the area					
Separate walkway to Downtown Mall from Pavilion					
Obtain a variance from BBRR for no fence on the bridge.					
Concerned about losing street trees on Water Street due t Knuckle Plaza					
2b - Lighting	7	6	1	3	17
Question #2B - Concerns/Comments on Lighting					
#					
Less is more in regards to lighting except in the passageways. Don't uplight or downlight bridge.					
Create a skylight in median of 9th Street for the pedestrian passageway.					
Ensure adequate and safe lighting in the passageways and beneath the bridge.					
Do not agree with use of W. Main lighting and street furniture (benches, racks, etc.) on project.					
2c - Surf. Treatment	4	5	6	2	17
Question #2c - Surface Treatments (sidewalk, crosswalks, walls)					
#					
A lot of concrete.					
Bridge rail looks like a highway rail.					
Simple and easy to maintain.					
Add stone veneer like retaining walls to bridge piers					
2d - Public Spaces	8	4	1	4	17
Question #2d - Public Spaces					
#					
Knuckle plaza is unnecessary and detrimental to street trees and street scene on Water Street					
Old Avon Plaza area is a good repurposing of closed street.					
Need more benches					
Question #3 - Did the visual information (typical sections, plans, etc.) on display at the hearing help your understanding of the project?					
	Yes	No	Not Sure	No Response	Total
3	11	3	2	1	17
Question #3 - If No, why?					
#					
Question #4 - Do you have any comments on the draft environmental document or comments regarding potential environmental issues?					
#					
None					
Question #5 - Please use the following space for any additional comments.					
#					
Add crosswalk on Monticello Road (private) at 209+75 RT.					
Convert pubic parking on Monticello Road (private) to be angled in SB.					
Do not include a fence or the selected fence design is inadequate.					
Do not agree with use of W. Main lighting and street furniture (benches, racks, etc.) on project.					
Pedestrian passageway will not be used.					
Design does not improve access during Pavilion events to the Downtown Mall					
Provide more roadway capacity/travel lanes					
Preserve the parking lot under the existing bridge					

Name / Address	R/W Parcel Number	Comment Source			Support Project	Comment	Response	Potential Plan Change	
		Comment Sheet	Oral Comment	Email / Letter / Telephone / Transcript				Neutral	Yes
Sean Miller (No Address Specified)	N/A			E-mail		One of the most pathetic city projects in sometime. What idiocy mandates a single lane in each direction when by your own studies 27,000 plus more cars will be using the bridge moving forward. And that anemic estimate was made with out taking into account all the new construction and upgrades scheduled to begin soon. It might also be helpful to add that you are -planning to operate with half a bridge for 2 years minimum while all the new work is going on- what a recipe for a total mess. Great planning as usual.	The project team has been conducting traffic analysis and presenting their findings at various public meetings. You may review these materials at https://www.belmontbridge.org/resources/ for the Design Charrette and Open House. A Traffic Analysis Report can also be found at https://www.belmontbridge.org/wp-content/uploads/2018/04/Belmont-Bridge-Traffic-Report_032618_ADA.pdf . Based on the latest (2015) published VDOT traffic data, the approximate annual average daily traffic (AADT) on Avon Street between Monticello Avenue and E. Market Street is 14,000 vehicles per day. The City has provided a growth rate of future vehicle, bicycle, and pedestrian activity to account for redevelopment which increased the AADT to 14,700 in 2041. However, level of service or delay analysis has been performed for the highest volume peak hour travel in both the AM and PM to ensure the efficiency, or amount of vehicles proceeding through the signals, can be maximized making traffic slightly better in the short-term and the same or slightly worse in the long-term. The design team also reviewed options for maintenance of traffic. Only two viable options were identified: 1) maintenance of a sidewalk and one lane of traffic in each direction or 2) full closure of the bridge. Potential detours were previously explored that extended to Monticello Avenue to either Ridge Street or Carlton Road to travel over the railroad, but rejected due to their length and complexity of rerouting. Input from the steering committee and City stakeholders led to the decision that access across the bridge must be maintained throughout construction.		X
Jehu Martin 333 2nd Street, S.E Charlottesville, VA 22902	N/A			E-mail		Bridge Plans: Why are the plans for a single lane in each direction -when 1)- the current bridge is inadequate as is and over 30,000 more cars are expected to use it in the coming years 2) In addition there are at least 5 major construction projects that will significantly increase personnel and traffic in the coming years and nothing has been done to account for this Scheduling: You plan to begin construction that will involve shutting down half of the already inadequate bridge for 2 years while multiple construction projects are underway. This should create a massive 2-3 year long traffic jam that will affect the entire city plus negatively impact downtown businesses.	The project team has been conducting traffic analysis and presenting their findings at various public meetings. You may review these materials at https://www.belmontbridge.org/resources/ for the Design Charrette and Open House. A Traffic Analysis Report can be found at https://www.belmontbridge.org/wp-content/uploads/2018/04/Belmont-Bridge-Traffic-Report_032618_ADA.pdf . Based on the latest (2015) published VDOT traffic data, the approximate annual average daily traffic (AADT) on Avon Street between Monticello Avenue and E. Market Street is 14,000 vehicles per day. The City has provided a growth rate of future vehicle, bicycle, and pedestrian activity to account for redevelopment which increased the AADT to 14,700 in 2041. However, level of service or delay analysis has been performed for the highest volume peak hour travel in both the AM and PM to ensure the efficiency, or amount of vehicles proceeding through the signals, can be maximized making traffic slightly better in the short-term and the same or slightly worse in the long-term. The design team also reviewed options for maintenance of traffic. Only two viable options were identified: 1) maintenance of a sidewalk and one lane of traffic in each direction or 2) full closure of the bridge. Potential detours were previously explored that extended to Monticello Avenue to either Ridge Street or Carlton Road to travel over the railroad, but rejected due to their length and complexity of rerouting. Input from the steering committee and City stakeholders led to the decision that access across the bridge must be maintained throughout construction.		X
Kathleen Mair (No Address Specified)	N/A			Email		Is this true that there will be one lane each way? With increase development in Belmont? This has been questioned by the neighborhood and I wonder what their voices have not been heard?	Yes, the Belmont Bridge Replacement project team is proposing a two-vehicular-lane bridge (one lane in each direction). The project team has been conducting traffic analysis and presenting their findings at various public meetings. You may review these materials at https://www.belmontbridge.org/resources/ for the Design Charrette and Open House. A Traffic Analysis Report can be found at https://www.belmontbridge.org/wp-content/uploads/2018/04/Belmont-Bridge-Traffic-Report_032618_ADA.pdf . In summary, the project area is surrounded and being fed by a series of two-lane streets. Avon Street/9th Street is two lanes south of Levy Avenue where it turns into a four lane section for approximately 0.36 miles until it terminates at East High Street. No future roadway projects are currently proposed for Downtown Charlottesville to widen any of the surrounding two lane roadways into four lane roadways. By focusing on the length and configuration of the turning lanes on both ends of the bridge, the efficiency, or amount of vehicles proceeding through the signals, can be maximized making traffic slightly better in the short-term and the same or slightly worse in the long-term. By maximizing the efficiency of the signals, previous vehicle lane width that was used for queuing vehicles can be re-purposed to encourage and enhance bicyclist and pedestrian facilities. Since the project area is urban in nature, we provided a growth rate of future vehicle, bicycle, and pedestrian activity to account for redevelopment.		

Name / Address	R/W Parcel Number	Comment Source			Support Project	Comment	Response	Potential Plan Change	
		Comment Sheet	Oral Comment	Email / Letter / Telephone / Transcript				Neutral	Yes
434-531-5311	001			E-mail		<p>We own the Inova Solutions building, and we ask that you improve access from our property to the pedestrian tunnel. On the private section of Monticello Road, at location 209.75, please add a crosswalk connecting our sidewalk to a new paved path from the street to the pedestrian tunnel. Also, please consider modifying the alignment of the parking spaces at location 209 so that cars enter/exit at an angle. (Most cars will enter from the south.) Additional comment: please remove the steel screen that blocks the view from the walkways across the bridge. Thank you for considering our comments.</p>	<p>The area along private Monticello Road (from 9th Street station 208 to 210) that has a public access easement will be redesigned to include a walkway to connect the new public parking spaces to the pedestrian tunnel, shared use path to Avon Street and the sidewalk along Old Avon Street. The parking layout of the perpendicular lot on Monticello Road was reviewed. The current design maximizes the number of spaces and allows for utilization by both northbound and southbound traffic. Reconfiguration of this parking area to angled parking would result in less spaces, insufficient width between the roadway curb and retaining wall or inability to prevent the possible southbound approach to utilize the parking. It is noted that a fence along both sides of the bridge over the railroad is not desirable. However, Buckingham Branch Railroad/CSX Transportation standards require fencing. The design team is actively working with the railroad to obtain a waiver for the fence to be installed with construction of the project. However, the decision of whether there is a fence or no fence is at the sole discretion of the railroad. If fencing is required, the fence was designed to minimize disruption from the views from the walkways.</p>	X	

Attachment E - Design Public Hearing Displays

All of the below materials are linked to the project website, www.belmontbridge.org, and are available under the Resources tab in an accessible format using the following links:

- **Notice**
 - [Design Public Hearing Notice May 24, 2018 \(PDF\)](#)
- **Meeting Material**
 - [Environmental Documentation \(PDF\)](#)
 - [Stage 1 Report \(PDF\)](#)
 - **Boards**
 - [Public Hearing Plan \(PDF\)](#)
 - [Roadway Typical Sections \(PDF\)](#)
 - [Roadway Furnishings \(PDF\)](#)
 - [Pedestrian Access \(PDF\)](#)
 - [Pedestrian Access in Construction Board \(PDF\)](#)
 - [Bridge Architecture: Walls and Railings \(PDF\)](#)
 - [Bridge Architecture: Fencing \(PDF\)](#)
 - [Lighting \(PDF\)](#)
 - [Pedestrian Passageway/Plaza \(PDF\)](#)
 - [Present and Future Aerial Rendering \(PDF\)](#)
 - [Environmental Findings \(PDF\)](#)
 - [Getting Involved \(PDF\)](#)
 - [Traffic Queue and Delay \(PDF\)](#)
 - [Lane Configuration Scrolls \(PDF\)](#)
 - [Budget Breakdown \(PDF\)](#)
 - [Public Hearing Brochure and Comment Form \(PDF\)](#)
 - [Project Funding Summary \(PDF\)](#)

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Approval of Resolution
Presenter:	Stacy Pethia, Housing Program Coordinator Neighborhood Development Services (NDS)
Staff Contacts:	Stacy Pethia, Housing Program Coordinator
Title:	Charlottesville Affordable Housing Fund (CAHF) Assistance for the Mountainside Senior Living Memory Care Unit – \$50,000

Background:

The Jefferson Area Board of Aging (JABA) has requested Charlottesville Affordable Housing Fund (CAHF) assistance to support the construction of the new Mountainside Senior Living Memory Care unit. The total amount of assistance being sought for the project is \$50,000 (see JABA’s proposal dated January 5, 2018 - attached).

Discussion:

Mountainside Senior Living is the Charlottesville area’s most affordable assisted living community, providing a safe and welcoming home to 100 low-income seniors and disabled adults. Mountainside provides a ranges of services for its residents and the community, including medical care, transportation for outings, three daily meals, an activities program, and short-term respite care. Recognizing a large unmet need in central Virginia for assisted living dementia care (a recent market study identified more than 400 individuals are in need of a secure residential setting), Mountainside has recently expanded its services to include a secure Memory Care unit for residents in need of a higher level of care.

To accommodate the new unit, JABA renovated the third floor of the Mountainside facility. Known as the Blue Ridge Neighborhood, the new unit includes beds for 20 residents, a common room for social interaction, a dining room, and a therapeutic room equipped with a multi-sensory environment that encourages relaxation and decompression away from the loud noises and bright lights associated with the daily activities in the facility. To help support the cost of this renovation, JABA is requesting CAHF assistance, in the amount of \$50,000. The total cost of the renovation is \$400,000 (see Table 1 for a cost breakdown). At the time JABA submitted their request, they had raised a total of \$175,000 from private donations and grant awards. Additionally, Albemarle County approved an allocation of \$50,000 of FY 2019 budget dollars towards the project. With a matching allocation of CAHF dollars, JABA will have secured 68% of the total cost of the renovation.

Table 1: memory Care Unit Budget

Construction	\$325,000
Architect	\$ 20,000
Security	\$ 10,000
Construction Contingency Allowance	\$ 19,000
Fees and Permits	\$ 5,000
Furniture, Fixtures & Equipment	\$ 24,700
Marketing	\$ 5,300
Miscellaneous	\$ 10,000
Total	\$400,000

Alignment with Council Vision Areas and Strategic Plan:

Approval of this agenda items aligns the City Council Vision for Charlottesville to provide quality housing opportunities for all.

Community Engagement:

N/A

Budgetary Impact:

This project requires \$50,000 from FY 2018 CAHF funds. If this request is approved, the amount of CAHF funds available for the remainder of this fiscal year will equal \$126,439.44.

CAHF Balance as of 6/28/2018 (reconciled with SAP)	\$176,439.44
Mountainside Memory Care unit	- \$ 50,000.00
CAHF Balance	\$126,439.44

Recommendation:

Staff recommends approval of the attached resolution.

Alternatives:

Council could elect not to fund this request and/or to reduce the amount funding allocated to the project.

Attachments:

- City Council Resolution
- JABA proposal

RESOLUTION
Charlottesville Affordable Housing Fund Assistance for the
Mountainside Memory Care Unit
\$50,000

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlottesville, Virginia that the sum of \$50,000 be allocated from previously appropriated funds in the Charlottesville Affordable Housing Fund to the Jefferson Area Board of Aging for the construction of the Mountainside Memory Care unit in the following manner:

Fund: 426

Project: CP-084

G/L Account: 599999

Jefferson Area Board of Aging \$50,000



674 Hillsdale Drive Suite 9, Charlottesville VA 22901
Phone: (434) 817-5222 Fax: (434) 817-5230 www.jabacares.org

July 16, 2018

Dear Members of Charlottesville City Council,

Affordable housing is a critical issue for area residents, but especially for frail, vulnerable older adults in need of specialized memory care. We thank you for considering an investment of \$50,000 in Mountainside Senior Living's new memory care floor, known as the Blue Ridge Neighborhood. To summarize a few key points from our request:

- The third floor of Mountainside's building was recently renovated to serve residents living with Alzheimer's and other dementia related diseases. It provides a **safe and secure environment for 20 individuals**, special common rooms with dining and activity centers, and living quarters that meet the design standards for memory care units.
- Specialized memory care in a secure and social environment is much needed in our community. A recent market study revealed that **400 individuals in our community are in immediate need of such care**. With an aging baby-boomer population, the need will only grow.
- As a nonprofit organization, **Mountainside provides affordable housing for residents, at 66% to 80% of the local market rate**. It is often difficult for families to place their loved ones in a secure and stimulating environment because of the cost.
- We are asking for support from the City of Charlottesville to help with the renovation cost since **we continue to serve city residents at Mountainside**. Albemarle County has already committed and invested \$50,000 toward this renovation. Local philanthropists have also stepped forward with generous gifts.
- We moved forward with construction this past winter due to market demand and opened in March 2018. But JABA still has a line of credit to pay off. **Support from the City of Charlottesville will ensure that this valuable community resource will continue to serve future generations of local families.**

Thank you for your consideration.

Marta M. Keane



674 Hillsdale Drive Suite 9, Charlottesville VA 22901
Phone: (434) 817-5222 Fax: (434)817-5230 www.jabacares.org

JABA, Inc.
BOARD OF DIRECTORS

January 5, 2018

Albemarle County

Sue Friedman
Robert Gest, III
Dr. Richard Lindsay
Dr. Martin Silverman

Stacy Pethia
Housing Program Coordinator
City of Charlottesville
P.O. Box 911
Charlottesville, VA 22902

City of Charlottesville

Richard Brugh, Treasurer
Bob Fenwick
Dr. Elayne Phillips
Brian Jackson

Via email: pethias@charlottesville.org

Dear Stacy,

Fluvanna County

Mozell Booker, Vice-Chair
Paul Bevins

Thank you for meeting with me recently to discuss the Charlottesville Affordable Housing Fund and its role in providing support for housing-related projects that benefit the residents of Charlottesville. I appreciate this opportunity to submit a proposal in support of the renovation of the new Memory Care unit at Mountainside Senior Living, JABA's assisted living community.

Greene County

Eugene Sullivan
Robert Murphy

JABA respectfully requests an investment in the amount of \$50,000 from the Charlottesville Affordable Housing Fund because of its commitment to providing safe, secure and affordable housing for elders, especially those living with Alzheimer's Disease or other forms of dementia. The construction of this unit at Mountainside Senior Living aligns with the City's stated goal of increasing the production and preservation of affordable housing for its citizens.

Louisa County

Willie L. Gentry Jr.
Stephanie Koren

Nelson County

Constance Brennan
Diane Harvey

Thank you for your consideration. Along with the proposal, I have included some drawings and construction photos that may be helpful. I welcome your questions and look forward to hearing from you.

At-Large Members

Tod Allen
Dr. F. Michael Ashby
Rod Gentry
M. E. "Dick" Gibson, Jr., Chair
Satyendra Huja
Christina Lester
Diantha McKeel
J. W. "Rick" Richmond, Jr.
Margaret Short, Secretary

With appreciation,

Marta M. Keane
Chief Executive Officer
(434) 817-5238
mkeane@jabacares.org

Emeritus Member

Milton T. Edgerton, MD

Chief Executive Officer

Marta Keane

Chief Financial Officer

Larry Paxton

Director of Philanthropy & Communications

Kim Peel

att: Proposal for Mountainside Memory Care Unit, Floor Plan, Exterior Elevation, Interior Drawing and Photos



Charlottesville Affordable Housing Fund
Proposal for Investment in the
Memory Care Unit at Mountainside Senior Living
January 5, 2018

PROJECT SUMMARY

The Jefferson Area Board for Aging (JABA) respectfully requests an investment of \$50,000 from the City of Charlottesville's Affordable Housing Fund toward the construction of Mountainside Senior Living's new Memory Care unit. The third floor of the building, which encompasses approximately 10,000 square feet, is being structurally renovated to serve residents living with Alzheimer's and other dementia related diseases. It will provide a safe and secure environment, special common rooms with dining and activity centers, and living quarters that meet the design standards for memory care units. The new Memory Care floor will be staffed with those specially trained in caring for people with memory care needs.

The City of Charlottesville has worked diligently to increase its support for affordable housing, recognizing that the preservation of existing housing that serves low-income families is just as critical as increasing the number of units. The construction of the Memory Care unit at Mountainside aligns with the City's goal, as it provides a way for our elderly and disabled residents to remain living affordably in their home of choice, even if their dementia progresses over time. It also provides an affordable housing option for families seeking assisted living care for their loved ones, providing the comfort of knowing that memory care is available should it ever be needed, reducing the need for a future move to a long-term care facility.

ABOUT MOUNTAINSIDE SENIOR LIVING

Mountainside Senior Living is the Charlottesville area's most affordable assisted living community, providing a safe and welcoming home to 100 low-income seniors and disabled adults. Located in the quaint historic town of Crozet, Virginia, just 15 miles west of Charlottesville, Mountainside provides a warm and welcoming environment, medical services, transportation for outings, three daily meals prepared by an in-house chef, a vigorous activities program, and plenty of community involvement. Short-term respite care is also available and in early 2018, services will expand to include a secure Memory Care floor for residents in need of a higher level of care.



Mountainside's building dates back to the 1920's, when the original structure served as a cold storage facility for the local apple growing industry. In the 1970's, the building was transformed by a developer into a home for seniors. In 2002, the facility was in danger of closing and Jefferson Elder Care, a non-profit organization affiliated with JABA, stepped in and assumed ownership of the operation to prevent

residents from losing their home. Mountainside, under the direction of Jefferson Elder Care and managed by JABA, was honored with the **2007 Governor's Housing Award** and the **2010 Commonwealth Council on Aging Best Practice Award**.

THE NEED FOR AFFORDABLE ASSISTED LIVING AND MEMORY CARE

There is a large unmet need in central Virginia for assisted living dementia care, which Mountainside has seen with its own residents. A recent market study demonstrated that more than 400 individuals are in need of a secure residential setting. Elders are living longer, making them more likely to get dementia at some point during their aging process. In the past, individuals with dementia – who otherwise could be relatively healthy for their age – had no choice but to transfer from assisted living to long term nursing facilities because of their need for increased care. Given the large unmet need in the area, Mountainside has made the decision to convert the third floor of our building to a 20-bed Memory Care unit. This will allow us to transition current residents to memory care when they need it, as well as accept new residents who require this level of care right away.

JABA, as a nonprofit organization, has worked hard over the past 15 years to transform Mountainside into the area's most affordable assisted living community. To make this possible, we have to fundraise for capital needs and keep operational costs down while emphasizing high quality of care.

Over the past several years, we have implemented many capital improvements to update and maintain Mountainside's 95-year old building. Some of these improvements have been made to maintain the integrity of the building itself while others have improved the safety and quality of life of our residents. Through our capital budget and with support from local funders, we have completed key projects including new elevators, state-of-the-art emergency call system, roof replacement, phone system, automatic doors, renovated first floor and a gated gazebo/garden area enjoyed by residents and their guests. An expensive capital outlay like the new Memory Care floor is more difficult to achieve within JABA's normal fundraising activities, so we seek the assistance of the Charlottesville Affordable Housing Fund.

MOUNTAINSIDE'S RESIDENTS

Mountainside is a wonderful and diverse community of residents from all walks of life – former nurses, teachers, police officers, homemakers, business owners and more. The one thing they have in common is that Mountainside is their home of choice as they age with dignity and as much independence as possible. The majority of residents come from Charlottesville and Albemarle County, and those who have moved from further away have relationships with family members in the area. So there is – and has always been – a connection to the City since JABA's involvement in Mountainside.

Nearly half of our residents live on incomes below \$10,000 per year and qualify for the Auxiliary Grant (AG) program through Medicaid, which helps low-income individuals with the cost of assisted living. But, with a monthly reimbursement rate of only \$1,221, the AG program pays for only a small fraction of the actual cost of care. In fact, most assisted living facilities in our area do not accept individuals on the AG program due to the low reimbursement rate. Of those that do, Mountainside provides care for the greatest number by far. If it were not for Mountainside, many residents receiving AG subsidies would have to move far away from family and friends to other assisted living facilities or face premature placement in nursing homes, a very costly alternative for the healthcare system.

When JABA first assumed management of Mountainside over 15 years ago, the City of Charlottesville and Albemarle County agreed to assist with the reduced reimbursements for their residents on Auxiliary Grants. Each jurisdiction provided funding that decreased over a 10-year period to help financially support their respective AG residents, and ensure the long-term viability of the entire facility.

Mountainside also provides rent subsidies to residents who would otherwise fall between the cracks. These seniors and adults with disabilities are not eligible for Auxiliary Grants, yet have very limited incomes from Social Security and retirement savings that have dwindled significantly over time. We currently provide financial assistance to approximately 10 residents in this group.

For residents who have the means to pay privately, we offer a rate that is about 20% lower than other assisted living facilities in our area. Our operating budget is based on a delicate balance of Auxiliary Grant reimbursement, private pay revenue and philanthropic support, which allows Mountainside to meet the basic daily needs of its residents.

PROJECT TIMELINE

Preparation for the Memory Care unit began in April 2017. After attaining approval from the Department of Health and Human Services, Johnson, Craven, & Gibson Architects was hired to complete the architectural designs and Staengl Engineering was selected for the engineering design work. A Request for Proposal resulted in multiple bids, with Homeworx, LLC chosen as the contractor. The third floor is currently vacant and demolition work began in late September. Construction will continue over the next few months, with anticipated completion in early March 2018. Fundraising efforts will continue in order to pay off the construction loans that were incurred during this major renovation.

OUR REQUEST

JABA respectfully requests an investment of \$50,000 from the Charlottesville Affordable Housing Fund toward the renovation of Mountainside Senior Living's new Memory Care unit. Fully 100% of the requested funding will be applied to this renovation. The total project cost is \$400,000, as outlined in the budget shown below.

Memory Care Unit Budget

Construction	325,000
Architect	20,000
Security	10,000
Construction Contingency Allowance	19,000
Fees and Permits	5,000
Furniture, Fixtures & Equipment	24,700
Marketing	5,300
Misc.	10,000
Total	400,000

- **We are pleased to share that JABA has attained a lead gift in the amount of \$125,000 from Twice Is Nice, a Charlottesville resale boutique that has generously supported Mountainside over the years..**

- The Genan Foundation has also donated \$50,000.
- We have had preliminary discussions with representatives from Albemarle County, who expressed interest in supporting the project. We have requested \$50,000 from Albemarle County through the jurisdictional application.
- We will continue to seek philanthropic support from individuals and foundations in order to reach the project goal of \$400,000.

Since construction is underway, it is our hope to secure the City's commitment as soon as possible, with final payment by early March 2018. Support from the Charlottesville Affordable Housing Fund will bear dividends for years to come and will ensure that a valuable community resource will continue to serve future generations of families in the greater Charlottesville area. Thank you for your consideration of this request.

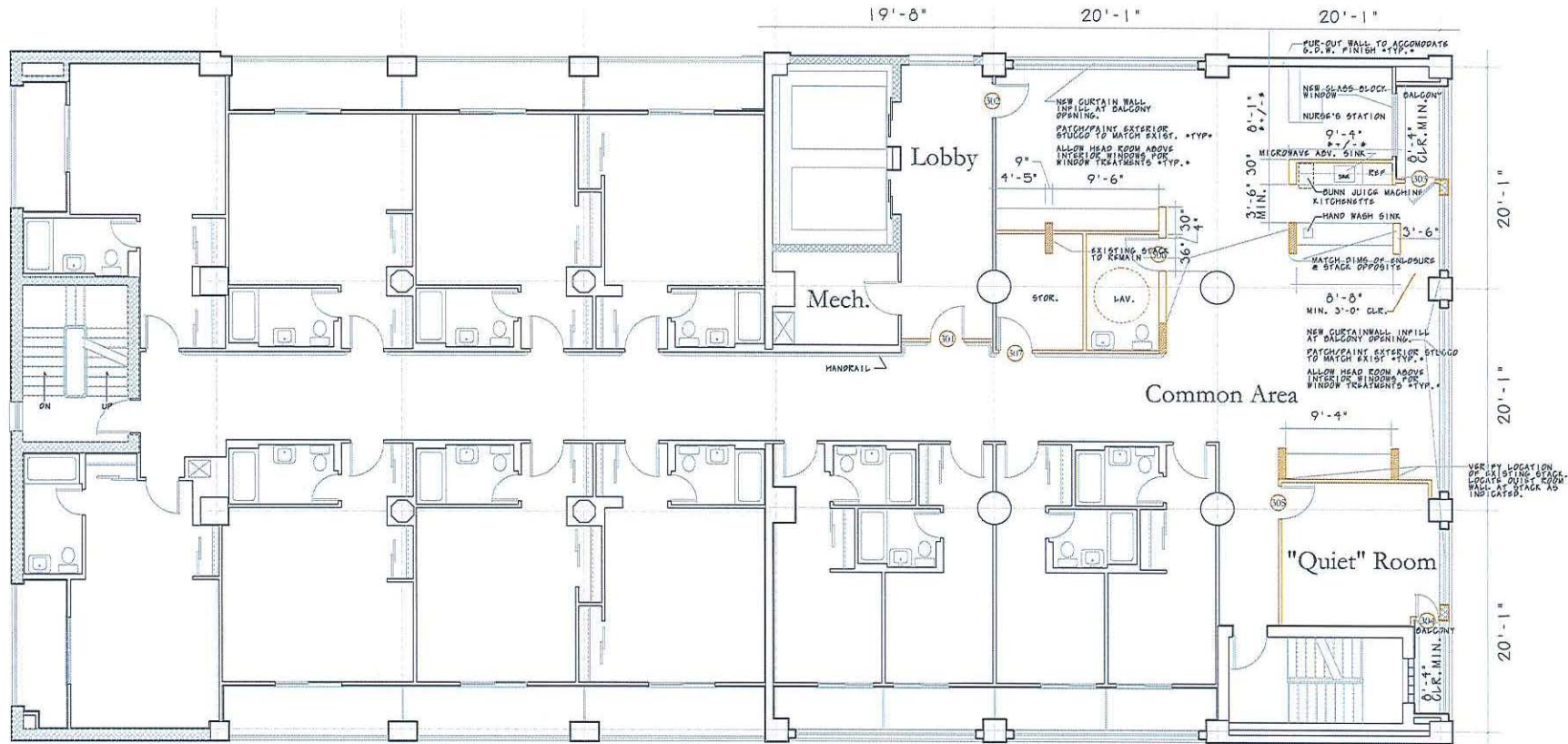
NOTE 1

EXISTING STACKS WILL DETERMINE ALL FINAL DIMENSIONS. WALLS TO ALIGN AS INDICATED ON PLANS BASED ON EXISTING LOCATIONS OF STACKS.

SEE DOVETAIL DESIGN & CABINERY DRAWINGS FOR PLANS AND ELEVATIONS OF KITCHENETTE, NURSE'S STATION AND OTHER CABINERY & CASEWORK.

ALL INTERIOR SPACES TO HAVE G.D.W. FINISH. PUR-OUT WALLS AS REQUIRED TO ACCOMMODATE.

MSL TO PROVIDE MODEL AND MANUFACTURE OF EXIST DOORS. NEW INTERIOR DOORS TO MATCH EXIST. *TYP.*



Third Floor Plan

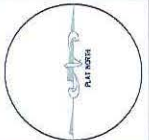
Scale: 1/4" = 1'-0"

Third Floor Plan

PROJECT NO.	17894	DATE	07.26.17	AS NOTED	DATE	07.26.17	BY	AS NOTED	DATE	07.26.17	BY	AS NOTED
NOTE: The contractor shall check all dimensions at the building. He shall report all inconsistencies to the architect.												

A-2
2 of 5

Additional & Alterations to
Mountainside Senior Living
Crozet, Virginia

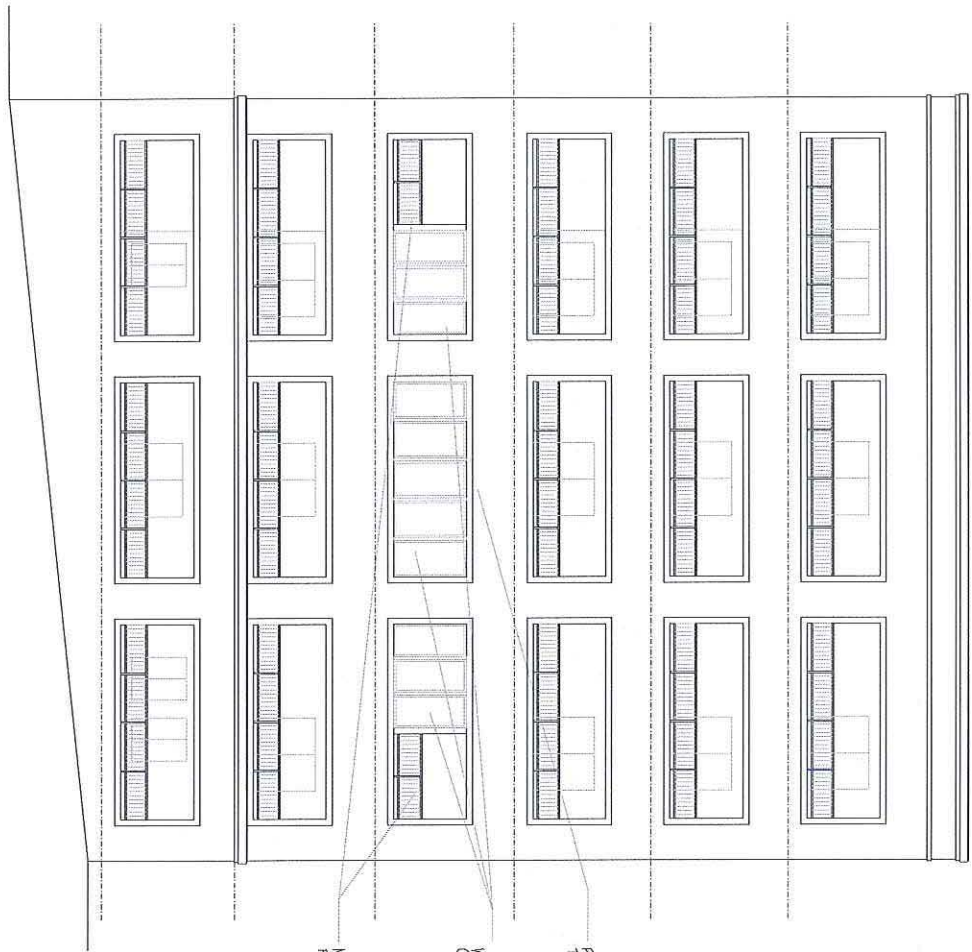


301 E High Street
Charlottesville, Virginia
PH: 434.286.6107

info@jegarchitects.com
www.jegarchitects.com



Johnson, Craven & Gibson
Architects



PATCH/PAINT EXTERIOR FINISHES TO MATCH EXIST. *TYP.

INFILL EXIST. THIRD FLOOR/BALCONY OPENINGS WHERE INDICATED ON PLAN W/ NEW FIXED CURTAIN WALL SYSTEM.

MATCH EXIST. RAIL WHERE MODIFIED FOR NEW WINDOW SYSTEM

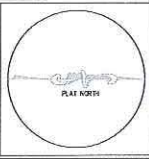
Front Elevation

Scale: 1/4" = 1'-0"

Front Elevation

DATE PLOTTED	DATE	SCALE	REVISIONS	ISSUE NO.
17894	07.26.17	AS NOTED		A-5
NOTE: The contractor shall check all dimensions at the building. He shall report all inconsistencies to the architect.				5 of 5

Additions & Alterations to
Mountainside Senior Living
 Crozet, Virginia



301 E High Street
 Charlottesville, Virginia
 PH: 813.256.6107
 info@johncornier.com
 www.johncornier.com



Johnson, Cornier & Cornier
 Architects

**Mountainside Senior Living
Memory Care Unit – A Work in Progress**

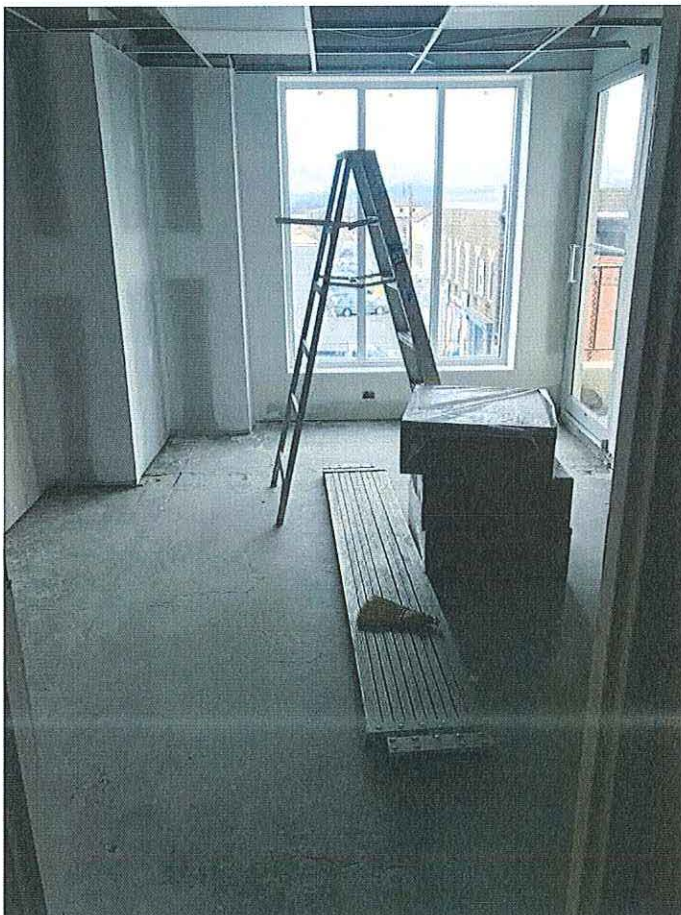


View of Common Area
Top: Nurse's Station, Food Service Area, Dining Area
Lower: Seating Area, Bathroom, Storage Room

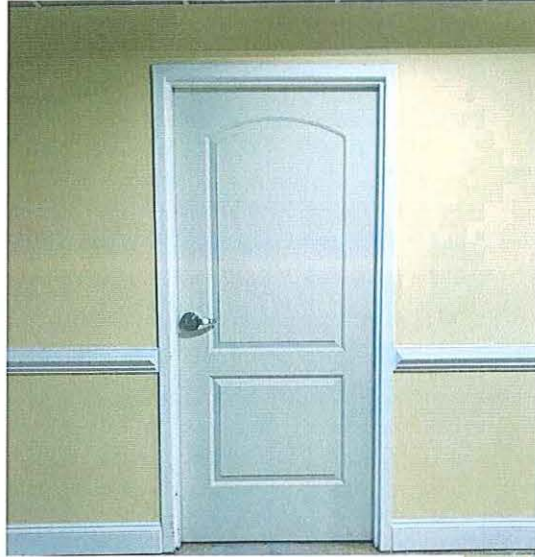
Not Shown: Quiet "Snozelen Room" (to right of dining area), Mechanical Room and Lobby to Elevators (next to storage room) and 12 resident rooms (for 20 people)



New windows now enclose the balcony area in the Common Area.



The quiet “Snazelen Room” will be a multi-sensory environment that is both soothing and stimulating for residents.



New doors!



New floors are going in next!

**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 16, 2018
Action Required:	Report
Presenter:	Alex Ikefuna, NDS Director
Staff Contacts:	Alex Ikefuna, NDS Director, Lisa Robertson, Interim City Attorney, Paul Oberdorfer, Public Works Director, Brian Daly, Parks and Rec Director, Lauren Hildebrand, Public Utilities Director, Brennen Duncan, Traffic Engineer
Title:	Alley Policy Development

Background:

The City Council has asked staff to evaluate and provide background information on what it would take to develop or revise existing alleys/paper streets policy. For the purpose of this task, appropriate City departments were contacted regarding the existing conditions, scope of work, and timeline for completion.

Discussion:

Existing Conditions: The City currently has adopted policy and procedure for the vacation, closing, abandonment, etc., of Certain Streets and alleys. The policy has two parts: Part 1: Streets and Alleys Created by Subdivision Plat Pre-1946 (not accepted by the City); and Part 2: Streets and Alleys Created by Subdivision Plat (Post December 31, 1946), and Streets and Alleys Accepted into the City System.

Par 1 Requirements (Pre-1946 Subdivision Plat): This has two options – Section A: Administrative approval, pursuant to Virginia Code 15.2-2272(1): Deed signed by affected property owners. This is usually handled through the City Attorney’s Office and requires two weeks public notice and Council action in accordance with Section B.

The second option is Section B: Approval of an Ordinance enacted by the City Council, pursuant to Virginia Code Section 15.2-2272(2). This requires application through the Neighborhood Development Services. This process requires public notice and public hearing before action by the City Council. City Council action can be appealed in the City’s Circuit Court, within thirty days after adoption. If no appeal is received, the Clerk of Court may record a certified copy of the ordinance.

Part 2 Requirements (Post December 31, 1946 Subdivision Plat):

Part 2 requires submission of application to the Neighborhood Development Services for review with recommendations to the Planning Commission. The Planning Commission reviews and makes its

findings upon which the City Attorney prepares an Ordinance for City Council consideration.

Proposed Scope of Work

1. Inventory of existing alleys, those dedicated to, and maintained by the City; non-dedicated alleys. This would require pulling deeds and legal research on the alleys.
2. Identification of alleys with connectivity opportunity, easements, or can be used for affordable housing, etc.
3. Estimation of potential acquisition and future maintenance costs for the alleys and paper streets, stormwater pipes/systems that are currently privately-owned to the City.
4. Evaluation of potential benefits of allowing adjacent property owners to split the alley in-between them.
5. Recommendations and proposed changes to the existing policy and procedure.

Challenges

- Difficulties in locating easements for utilities currently in alleys (historically record keeping issues)
- Access for the maintenance of utilities in alleys (often narrow), while at the same time allowing safe traffic flow for residents.
- The idea of retention, reacquisition and reactivation for public use of existing alleys, local and “paper” streets presents the following issues:
 - a. Does this mean that we are to go back historically and reverse all of the closures that have happened?
 - b. What if someone has built on top of the property?
 - c. Do we have to pay market value for this property now in order to reacquire it?
 - d. Even without doing the official inventory, it’s safe to assume that there are hundreds of alleys/paper streets or even low thousands. This will have a significant initial cost to the city to go in and pave them, and bring them up to City standards. Then there is the ongoing cost of maintenance that the city will take on with no re-imbusement or assistance from the state because they will not be wide enough to qualify for state maintenance money.
 - e. Many of these paper streets were laid out in a grid on a flat sheet of paper without any consideration of the topography. How are these to be treated if they are not constructible?

Timeline for Completion

Staff estimates that the project will be completed by February 2019. This estimate is based on inter-departmental consultations.

Alignment with City Council’s Vision and Strategic Plan:

The proposed project aligns with the City Council Vision of - A Connected Community where citizens of all ages and incomes can easily navigate through their neighborhoods.

Community Engagement:

This is a report and there has not been any community engagement. However, if there is a revision of the existing policy, or a new policy created, there will be community engagement.

Budgetary Impact:

Additional resources may be needed to undertake the inventory which would require pulling the deeds and legal research.

Recommendation:

Staff recommend evaluating the existing program, inventorying and mapping the alleys and proposing changes to existing policy.

Alternatives:

The City Council may decide to request staff not to undertake the project and to leave the existing policy unchanged.

Attachments:

Existing Policy Providing Procedures for the Vacation, Closing, Abandonment, etc., of Certain Streets and Alleys.

Status Memo and List of City-accepted Alleys

Councilor Galvin's proposed resolution to develop new policy on the public right-of-way (ROW) as it pertains to alleys, local and "paper" streets

STREET CLOSING POLICY

Approved by City Council February 7, 2005

**CITY COUNCIL POLICY
PROVIDING PROCEDURES FOR THE VACATION, CLOSING,
ABANDONMENT, ETC., OF CERTAIN STREETS AND ALLEYS**

**PART ONE:
STREETS AND ALLEYS CREATED BY SUBDIVISION PLAT
PRE-1946 (NOT ACCEPTED BY CITY)**

**SECTION (A) - ADMINISTRATIVE APPROVAL BY CITY, PURSUANT TO VA. CODE §15.2-2272(1):
DEED SIGNED BY AFFECTED PROPERTY OWNERS**

(1) Application (*Submit to City Attorney*) may be made by the owner of any lot adjacent to the area proposed to be vacated, accompanied by:

(a) Application Fee in such amount as may be specified within the most recent fee schedule approved by City Council, payable to the City of Charlottesville.

(b) Certification by applicant's attorney, a title company, or a licensed surveyor, that (i) vacation of the street will not impede or alter access for any lot owners other than those who have signed the deed, and (ii) that the Area proposed to be vacated is not currently used for ingress or egress, by any individuals other than those who have signed the deed.

(c) Certification as to whether there are any public utility lines located in the Area proposed to be vacated [*applicant may obtain this information in writing from City engineering or public works staff, prior to making application*]

(d) A copy of the original Subdivision Plat showing the Area proposed to be vacated, including Deed Book/Page Reference and date of recordation, and a copy of any deed(s) containing reference to the Area

(e) Deed, prepared by applicant's attorney:

- (i) signed by all lot owners immediately adjoining or contiguous to the vacated area
- (ii) signed by all lien creditors whose debts are secured by a recorded deed of trust or mortgage, and
- (iii) reserving to the City an easement for any existing City utility lines or drainage improvements located within the Area to be vacated.

(f) Certification that the area proposed to be vacated has been posted with signs for a period of not less than two (2) weeks prior to the application, notifying interested persons

STREET CLOSING POLICY

Approved by City Council February 7, 2005

of the proposed vacation. The signs shall be in a form approved by the City's Director of Neighborhood Development Services.

(2) Upon receipt of all required application materials:

(a) The City Attorney's Office will:

- Review the Deed as to Form
- Upon a determination that any person, other than those who have signed the proposed deed of vacation, has indicated that he would be irreparably harmed by the proposed vacation, the City Attorney's office shall refer the proposed deed for review by City Council in accordance with the procedures set forth in Section (B), below.
- Upon a determination that there currently exist any public easements or property rights in the street or alley (*for instance, if the City has exercised dominion and control over the area by maintaining it through the years, or by constructing street improvements or other acceptance of another portion of such area*) then City Attorney's Office shall refer the application for review by City Council and the Planning Commission pursuant to Part Two of this policy.

(b) The Mayor will sign the deed on behalf of the City, upon confirmation that (i) compliance with all application requirements has been achieved, and (ii) there is no determination by the City Attorney's office that review pursuant to a public procedure is required.

(3) The Applicant shall bear the cost of recording the fully-executed deed in the land records of the Charlottesville Circuit Court.

SECTION (B) - APPROVAL OF AN ORDINANCE ENACTED BY COUNCIL, PURSUANT TO VA. CODE §15.2-2272(2)

(1) Application may be made by any interested person (*Submit to Neighborhood Development Services*) accompanied by:

(a) Application Fee of in such amount as may be specified within the most recent fee schedule approved by City Council, payable to the City of Charlottesville.

(b) Copy of original Subdivision Plat showing the Area proposed to be vacated, including Deed Book/Page Reference and date of recordation, and a copy of any deed(s) containing reference to the Area

(c) List, by address, City tax map parcel number and name, of all lot owners immediately adjoining or contiguous to the vacated area

STREET CLOSING POLICY

Approved by City Council February 7, 2005

(d) Certification as to whether there are any public utility lines located in the Area proposed to be vacated [*applicant may obtain this information in writing from City engineering or public works staff, prior to making application*].

(e) Plat or drawing, suitable for recording in the City's land records, showing the location of any existing utility lines and necessary utility easements to be reserved following the proposed vacation.

(f) A narrative statement addressing the issues for consideration by Council, as set forth in Section 2(b), following below:

***(2)** Neighborhood Development Services will reject any application that does not contain all of the information and materials required by Section (1), above. Upon acceptance of a completed application package, NDS shall refer the package to the City Attorney's Office. Upon receipt of all required application materials, the City Attorney's Office will prepare an Ordinance of Vacation, and the Clerk of Council will schedule the ordinance for a public hearing before City Council, as required by Va. Code §15.2-2272(2); except, however, that in the event the City currently maintains the street or alley or has previously improved any portion thereof, the application shall be referred for review following the procedures set forth in Part Two, below.

(a) Any person may appear at the public hearing for the purpose of objecting to the adoption of the ordinance

(b) Questions for City Council:

- Will vacating the street or alley impede any person's access to his property, or otherwise cause irreparable damage to the owner of any lot shown on the original subdivision plat? *Reference Va. Code §15.2-2272. and*
- Are there any public utilities currently located in the area proposed to be vacated? If so, is the applicant offering to allow the City to reserve a public utility easement? **and**
- Will vacation of the street or alley result in an adverse impact on traffic on nearby public streets, or result in undesirable circulation conditions for vehicular movements in and through the subdivision?

The applicant shall bear the burden of providing information to Council relevant to the above-referenced questions, and other information requested by staff or Council in order to facilitate Council's consideration of the proposed ordinance.

***(c)** The approval of a vacation under the authority of this section shall not be conditioned upon any requirement other than one directly related to a legitimate public interest in the

STREET CLOSING POLICY

Approved by City Council February 7, 2005

proposed vacation of the area that is the subject of the application (examples of such interests are control of traffic, control of access to public streets, etc.).

(d) An appeal from the Council's enactment of an ordinance pursuant to Va. Code §15.2-2272(2) may be filed in the City's Circuit Court, within thirty days after adoption. If no appeal is filed within the 30-day time period, the Clerk of Council may then record a certified copy of the ordinance in the Circuit Court Clerk's Office.

**PART TWO:
STREETS AND ALLEYS CREATED BY SUBDIVISION PLAT (POST DEC. 31, 1946)
AND
STREETS AND ALLEYS ACCEPTED INTO CITY SYSTEM**

(A) Application may be made by any interested person (*submit to Neighborhood Development Services***) accompanied by:

- (1) Application fee of in such amount as may be specified within the most recent fee schedule approved by City Council, payable to the City of Charlottesville.
- (2) All application materials and information required within Part One, Subsection (B)(1), above.
- (3) A written statement as to whether the vacation is proposed in order to accommodate the expansion or development of an existing or proposed business. If so, the applicant should provide a narrative identifying *why* the vacation is necessary, and how soon the expansion or development is likely to commence (a specific time period).

****NDS shall *reject* any application which does not contain all of the required materials and information.**

(B) Upon receipt of all required application materials, the Department of Neighborhood Development Services will prepare a Staff Report, and submit the report to the office of the City Attorney for review (together with all of the application materials). The staff report shall specifically answer the following questions:

- (1) Is the Subject Area part of a street that is specifically shown as a feature on the Comprehensive Plan? (Identify the specific portion of the Plan that features or discusses the Subject Area).

STREET CLOSING POLICY

Approved by City Council February 7, 2005

(2) Following receipt of the Planning Commission's findings, the City Attorney shall prepare an ordinance of vacation for final consideration by City Council. In rendering its final decision:

- *Public Inconvenience:* Council will consider whether vacation of the Subject Area will result in any public inconvenience, or would deprive the City of property planned for future public use.
- *Harm to Public Interests.* Council will consider whether vacation of the Subject Area will impede access by any person to nearby public streets, or will adversely impact traffic on adjacent public streets.
- *Accommodation of Existing or Proposed Business.* Where the vacation is proposed to accommodate the expansion or development of an existing or proposed business, Council may condition the vacation upon the commencement of the expansion or development within a specified period of time. *Reference Va. Code §15.2-2006.*
- *Reservation of Utility Easement(s).* Where existing City utilities or drainage facilities are located within the Subject Area, Council may reserve an easement to itself for those items.
- *Compensation to the City.* Council may require the fractional portion(s) of the Subject Area to be purchased by abutting property owner(s). The price shall be no greater than: (i) the fair market value of the Subject Area; or (ii) the contributory value of the Subject Area to the abutting property. *In the alternative,* Council may approve alternate compensation mutually agreeable to it and the applicant. *Reference Va. Code §15.2-2008.*

City of Charlottesville

Office of the City Attorney



Date: February 7, 2005
TO: City Staff
FROM: Lisa Kelley, Deputy City Attorney
Barbara Ronan, Paralegal
RE: **Determining the Status of Alleys Within the City**

Our office is frequently asked by staff and citizens to determine the status of "paper" streets and alleys shown on City tax maps. A "paper" street or alley is one that has been created by a dedication indicated on a recorded subdivision plat, but which has never been actually established and accepted by the City. Typically, these inquiries arise out of problems with illegal parking, trespassing, blocking access, or a landowner's desire to use the property for his own exclusive purposes (e.g., a driveway, patio, access to a proposed development, etc.). This memo is intended to give general information to City staff about ownership, maintenance and use of alleys or unaccepted streets.

How was the Street/Alley Created?

When a question arises about a specific alley or street, it must first be determined when and how the street or alley was established. This requires researching the City's deed book records located in the Circuit Court Clerk's Office, to find the original subdivision plat or deed by which the street or alley was established. This can be a time-consuming search (many of these paper alleys were created in the early 1900s) and our office cannot take on this task except in circumstances where staff requires the information for a City project, or to analyze an application pending before the planning commission or city council. Our office cannot issue legal opinions as to who may hold title to private property, and citizens/developers who desire confirmation of legal title or private rights to use these paper streets or alleys should be advised to contact a private attorney or title company. Alternatively, if interested in obtaining the exclusive right to use the area, the citizen may simply initiate a proceeding to partially vacate the original subdivision plat, pursuant to the procedures set forth within Va. Code §15.2-2272.

NOTE. There are only six (6) alleys which the City has specifically agreed to maintain:

- (1) The alley connecting Avon Street to 6th Street, NE between Belmont Avenue and Monticello Avenue (TM 58, Block 10);
- (2) The alley connecting Avon Street to 6th Street, NE between Monticello Avenue and Bolling Avenue (TM 58, Block 16);
- (3) The alley connecting 4th Street, NE to 5th Street, NE between East Market Street and the Downtown Mall (TM 53);
- (4) The alley connecting Elliott Avenue to Altavista Avenue between Avon Street and Rialto Street (TM 59, Block 40);
- (5) The alley connecting Page Street to West Street between 10th and 10[□] Street, NW (TM 4);
- (6) A portion of the alley connecting 10[□] Street, NW to 10th Street, NW between Preston Avenue and Grady Avenue (TM 4).

All other alleys, whether originally dedicated for public or private use, are NOT maintained by the City.

We can provide you with the following general information about rights and responsibilities with respect to the City's various "paper" streets and alleys:

A. PRE-1946 PAPER STREETS AND ALLEYS

If a street or alley was created by a subdivision plat recorded prior to 1946, the next question to be answered is whether the land records indicate the original developer's intent to create a private or public access.

1. Public Right of Access ("ROW"). If the land records clearly indicate the developer's intent to dedicate a street or alley for future public use, then at the time the original subdivision plat was recorded the City acquired an easement for right-of-way over the property ("ROW"), but not legal title. Unless and until the City formally accepts that original dedication, by establishing a public street or sidewalk within the dedicated area, then title to the underlying property remains with adjacent property owners. Each adjacent property owner has the right to utilize this area in connection with his property (as well as an obligation to maintain it, including, without limitation: mowing grass; removing weeds, trash and debris; preventing erosion, etc.). However, no private use may block or substantially interfere with the public easement (e.g., building a house within the ROW) or interfere with the private rights of other adjacent property owners. Matters related to trespassing, parking of motor vehicles, blocked access by others, etc., are matters involving private property rights and must be resolved through private agreements or other remedies among the adjacent owners. The City has no ability to intervene in these types of disputes, and has no right or ability to give any property owner permission to use the ROW, or any portion thereof, to the exclusion of others. The ROW may be closed, in whole or in part, through a procedure to partially vacate the original subdivision plat.

2. Private Right of Access. Occasionally our research will show that a paper street or alley was created to provide a private right of access to all adjacent property owners. If the original subdivision plat states that a streets or alley is "reserved for the use of the adjoining property owners," or similar language, then it is a private way and there are no public rights, interests or obligations therein. All property owners who own lots adjacent to any paper such street or alley are presumed to have a continuing right and interest in the use of the entire area dedicated for the private access. If any one or more of them wishes to close the street or alley (in whole or in part) he/they may initiate a procedure to partially vacate the subdivision plat.

3. Uncertain Intent. In the event the original subdivision plat and associated documents fail to indicate the developer's original intent to establish a public or private right of access, then public versus private rights with respect to title and use of the street or alley will remain uncertain. The only way for an adjacent property owner to clear this up is to initiate a procedure to partially vacate the subdivision plat, by "erasing" the street or alley (in whole or in part). We usually recommend conducting any such vacation procedure as if a public interest had been established upon recordation of the original subdivision plat.

NOTES: For all Pre-1946 Paper Alleys

Weeds: The City will cite adjacent property owners if grass or weeds in the alley exceed 18" in height. *City Code Section 5-149*. The adjacent owners are responsible for property maintenance of that portion of the alley along which their property has frontage.

Towing of Vehicles: The City may cite adjacent property owners for the unlawful keeping of inoperable vehicles in an alley (a property maintenance issue, pursuant to *City Code Section 5-150*). If the property owner fails to remove such vehicles the zoning/building code enforcement officials may arrange for them to be towed away. Otherwise, City police or other officials cannot authorize towing of vehicles which happen to be blocking an alley (unless it is one of the City-maintained alleys) or which are otherwise parked within the alley without the permission of the adjacent property owner.

B. POST-1946 ALLEYS

After 1946 (the advent of modern subdivision laws) the recordation of a subdivision plat transfers title to the City, in fee simple, any premises shown on the plat as being set apart for public streets, public alleys or other public use, and also transfers to the City any easements indicated on the plat, to establish a public right of passage over the land. See Va. Code §15.2-2265. *HOWEVER*, unless and until such streets or alleys have been established and formally *accepted* by the City into its road system,¹ the obligation to maintain those rights-of-way remains with the original developer of the subdivision (not the adjoining property owners).

C. VACATION OF PAPER STREETS AND ALLEYS

Property owners may petition City Council to partially vacate a subdivision plat, and thereby to “erase” (in whole or in part) any paper street or alley. An application form must be submitted to Neighborhood Development Services. The procedure(s) differ somewhat, depending on the nature and status of a particular paper street or alley. See the Street Closing Policy adopted by City Council February 7, 2005. Once a paper street or alley is vacated, then title (free and clear of any public easements and private rights) reverts to the adjacent property owners, with each owner getting one-half of that portion of the alley which adjoins their property.

¹ Once the developer builds a street, it may no longer, technically, be a “paper” street, but it will not become part of the City’s street system until formally accepted by City Council.

RESOLUTION to develop new policy on the public right of way (ROW) as it pertains to alleys, local and “paper” streets.

Whereas, the Charlottesville Streets that Work (STW) Plan identified that frequency and steep cross slopes of driveways can make walking along the street challenging (and sometimes unusable), particularly for pedestrians who are sight impaired, using a wheelchair or pushing strollers; and

Whereas, the National Association of City Transportation Officials’ (NACTO) Urban Street Design Guide (referenced in the STW Plan) states that alleys provide direct property access and eliminate the need for driveways along main roads where people are walking and biking; and

Whereas, Charlottesville City Council’s September 6, 2016 work plan resolution, specifically called for the *“Review and update of the Standards and Design manual (SADM) so it will align with the STW Plan and address zoning ordinance issues that relate to the inclusion of new streets and alleys such as block sizes, curb cuts, green infrastructure strategies, others.”*

Be it Resolved, that the Charlottesville City Council shall deny the adoption of formal ordinances to vacate alleys in general as they still serve a public interest, until such time as a new policy is developed; and

Be it Further Resolved, that the Charlottesville City Council directs the PLACE Design Task Force, legal counsel, staff and City consultant to revise and create policies and procedures for the vacation, preservation and creation of the public right of way (ROW) as it pertains to alleys, local and “paper” streets including but not limited to the:

- definition, metrics, purpose and inventory of alleys, local and “paper” streets (both public and private);
- retention, reacquiring and reactivation for public use of existing alleys, local and “paper” streets;
- design with construction standards of new public alleys, within a block network;
- determination of when the vacation of existing alleys, local and paper streets may be warranted; and
- incorporation into other important City documents, such as the Standards and Design Manual (SADM), and other City Council policies and procedures for the vacation, closing and abandonment of streets and alleys.

Be it Further Resolved, that the PLACE Design Task Force, legal counsel, staff and City consultant will submit draft policies and procedures for the vacation and preservation of the public right of way (ROW) as it pertains to alleys and “paper” streets for City Council review and adoption, within 6 months of the adoption of this resolution on December 2018 whichever is sooner.

This page intentionally left blank.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	July 16, 2018
Action Required:	Adoption of Ordinance (With Waiver of Second Reading)
Presenter:	Lisa Robertson, Chief Deputy City Attorney
Staff Contacts:	Lisa Robertson, Chief Deputy City Attorney
Title:	Amendment of Special Event Ordinance to Allow Additional Safety Measures

Background:

Earlier this year, City Council adopted an ordinance to establish certain standards to be adhered to by individuals and organizations engaged in activities during special events and demonstrations (“Events”). One of those standards (see §18-25(i)) states that no person can be in possession of any “prohibited items” within the area where a permitted event is taking place.

Discussion:

Previously, upon adoption of the ordinance, it was believed that we had provided the necessary wording to ensure that “Prohibited Items” could be kept out of events which present a particular security concern. However, last week the Commonwealth’s Attorney indicated that the Ordinance should be revised to clarify that “Prohibited Items” cannot be present within a defined area that has been reserved in connection with a Permit that has been issued, but also that, in the event that City Police establish a defined security area for the protection of individuals attending an Event, Prohibited Items will not be allowed within that security area.

The attached Ordinance provides amendments to the current Ordinance, to accomplish this clarification.

Community Engagement: N/A

Budgetary Impact: N/A

Recommendation:

Staff recommends that City Council adopt these proposed ordinance amendments, and that Council waive the requirement for a second reading of the ordinance, so that the changes can be in place prior to August 2018.

Alternatives:

Council can decline to approve the changes.

Attachments:

Proposed Ordinance

**AN ORDINANCE
AMENDING AND REORDAINING SECTION 18-25 OF
ARTICLE III OF CHAPTER 18 OF THE CODE
OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
RELATING TO PERMITS FOR SPECIAL EVENTS AND DEMONSTRATIONS**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that:

1. Article III (Permits for Special Events and Demonstrations) of Chapter 18 (Parks and Recreation) is hereby amended and reordained, as follows:

Sec. 18-21. Purpose.

The purposes of this article are to:

(a) To establish procedures and standards governing the use of public property by non-city organizations and individuals for the purpose of conducting events, and to ensure the preservation of public convenience in the use of city streets and outdoor areas, the preservation of public order and safety, and the defraying of administrative expenses associated with certain types of uses; and,

(b) To protect the right of persons and groups to organize and participate in peaceful assemblies to express their political, social, religious, or other views on city streets, sidewalks, other public ways, parks, and other public lands, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in such assemblies in not having their ability to use city streets, sidewalks, and other public ways to travel to their intended destinations, city parks for recreational purposes, and other city lands for their intended purposes unreasonably impaired.

(c) The application of the provisions of this article, and any rules and regulations adopted pursuant to these provisions, shall be without regard to the content of the beliefs expressed or anticipated to be expressed during any permitted event.

Sec. 18-22. Definitions.

Community event means the events listed in section 28-29(c) of this Code, and such other events designated by city council as "community events" from time to time.

Demonstration means an event involving non-commercial expression protected by the First Amendment of the United States Constitution (such as picketing, political marches, speechmaking, vigils, walks, etc.) conducted on public property, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual activity by persons which does not have an intent or propensity to attract a crowd or onlookers. The term "demonstration" shall exclude:

- (1) Any events conducted by tenant of the Economic Development Authority of the City of Charlottesville ("CEDA") under the Pavilion lease dated September 20, 2004 (i.e., all "operator events" as that term is defined within that Pavilion lease); and
- (2) Any events conducted by the Thomas Jefferson Center for Freedom of Expression within the area leased to it for and in connection with the First Amendment Monument.

Event may refer either to a demonstration or a special event, or to demonstrations and special events, collectively.

Open burning and *open fire* have the same meaning as set forth in this Code section 12-2.

Open flame means fire whose flame is supported by a wick, oil or other slow-burning means to sustain itself. "Open flame" includes, but is not limited to, flame producing devices such as candles, torches, and juggling or other fire artist equipment; provided, however, that "open burning and open fire" and "open flame" shall not include handheld candles when used for ceremonial purposes, provided that they are not held or used in an intimidating, threatening, dangerous or harmful manner.

Prohibited items shall mean:

- (1) All items prohibited by law from being held, carried, displayed, worn or otherwise used in public;
- (2) Items banned from public or park lands;
- (3) Any BB guns, pellet guns, air rifles or pistols, paintball guns, pellet guns, nun chucks, tasers, stun guns, heavy gauge metal chains, lengths of lumber or wood, poles, bricks, rocks, metal beverage or food cans or containers, glass bottles, axes, axe handles, hatchets, ice picks, acidic or caustic materials, hazardous, flammable, or combustible liquids, dogs (except service dogs), skateboards, swords, knives, daggers, razor blades or other sharp items, metal pipes, pepper or bear spray, mace, aerosol sprays, catapults, wrist rockets, bats, sticks, clubs, drones, explosives, fireworks, open fire or open flames, or other item considered an "implement of riot";
- (4) Any items capable of inflicting bodily harm when these items are held or used in an intimidating, threatening, dangerous or harmful manner; and
- (5) Law enforcement or military-like uniforms or uniform-like clothing, badges, insignia, shields, hats, helmets, masks, equipment and other items that when held, carried, displayed or worn tend to suggest or imply that the wearer is a current member of law enforcement, the military, a private militia, or other public safety organization, such as a fire department or emergency medical services agency.

Special event means sports events, pageants, celebrations, historical reenactments, carnivals, music festivals and other entertainments, exhibitions, dramatic presentations, fairs, festivals, races (i.e., runs/walks), block parties, parades and other, similar activities, conducted on public property, which (i) are not demonstrations, and (ii) are engaged in by fifty (50) or more persons. The term "special event" shall be construed to include a community event or private organization celebration held in or on city-owned property and is attended by more than fifty (50) people. The term "special event" shall *exclude* (i) any events conducted by CEDA's tenant under the Pavilion lease dated September 20, 2004 (i.e., all "operator events" as that term is defined within the Pavilion lease), and (ii) any events conducted by the Thomas Jefferson Center for Freedom of Expression within the area leased to it for and in connection with the First Amendment Monument; and (iii) gatherings of ten (10) or more people in a park for general recreational or sports activities.

Sponsor means the person (as defined above) or persons who sign, or whose authorized representative(s) sign, an application for an event permit and who will be responsible under the permit, if issued, for ensuring that the event will be conducted in accordance with these regulations. Where a purported sponsor is not a legal entity, the sponsor shall be the individual(s) signing the permit application.

...

Sec. 18-25. Violations and penalties.

The following conduct is declared to be unlawful and shall be, upon conviction, punishable as a class IV misdemeanor, unless a greater penalty is authorized and imposed in any other chapter of this Code or by the laws of the Commonwealth of Virginia:

- (a) Sponsoring, holding or conducting an event for which a permit is required, without first obtaining a permit;
- (b) Sponsoring, holding or conducting a permitted event on days or at times not authorized by the permit;
- (c) Intentionally providing false, misleading or incomplete information in a permit application;
- (d) Failing to comply with any terms or conditions placed on a permit;
- (e) The failure to comply during an event with any lawful directive of a law enforcement officer, or with any lawfully posted public sign, direction or instruction;
- (f) Climbing, during an event, upon any tree, or any wall, fence, shelter, fountain, statue, or any other structure not specifically intended for climbing purposes;
- (g) Rendering any part of an event venue dangerous, unsafe or unsuitable for use by others;
- (h) Closing any street or public right-of-way during an event, or using any street or right-of-way in a manner that obstructs vehicular or pedestrian passage during an event, without first obtaining a street closing permit;
- (i) Holding, carrying, displaying or using any prohibited item as defined herein within an ~~the~~ area where an permitted event is taking place with a permit;
- (j) Holding, carrying, displaying or using any prohibited item as defined herein within a restricted area established by police officers as a security measure for or in connection with any event ~~without the prior written consent of the city manager or his or her designee~~;
- (~~k~~) Throwing or propelling objects of a potentially dangerous nature during an event, including but not limited to rocks, bottles, sticks, staffs, glass objects or cans;
- (~~l~~) Engaging in a course of conduct or committing any act that endangers the public welfare or safety of others during an event;
- (~~m~~) Damaging landscaping, plantings, improvements, equipment or structures located on city property where an event is being held.

In addition to the criminal sanctions authorized herein, any person engaging in the unlawful conduct proscribed by this section, or who violates any section in this article, may also be held civilly liable for any damages or loss, and may be banned from the future use of city-owned property for a specified period of time.

2. This ordinance shall be effective immediately upon adoption by City Council.

This page intentionally left blank.