



CITY COUNCIL AGENDA January 3, 2023

J. Lloyd Snook, III, Mayor
Juandiego Wade, Vice Mayor
Sena Magill, Councilor
Michael K. Payne, Councilor
Brian R. Pinkston, Councilor
Kyna Thomas, Clerk

4:00 PM OPENING SESSION

Register at www.charlottesville.gov/zoom. The public may view this portion of the meeting electronically by registering in advance for the Zoom webinar or on the City's streaming platforms and local government Channel 10. Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call (434) 970-3182 or submit a request via email to ada@charlottesville.gov. The City of Charlottesville requests that you provide a 48-hour notice so that proper arrangements may be made.

Call to Order/Roll Call

Agenda Approval

Reports

1. Presentation: Move2Health Equity

5:30 PM CLOSED SESSION pursuant to Sections 2.2-3711 and 2.2-3712 of the Virginia Code (Boards and Commissions)

6:30 PM BUSINESS SESSION

This portion of the meeting will accommodate a limited number of in-person public participants in City Council Chamber at City Hall as we employ a hybrid approach to public meetings. Registration is available for a lottery-based seating selection at www.charlottesville.gov/1543/Reserve-a-Seat-for-City-Council-Meeting. Reservation requests may also be made by contacting the Clerk of Council office at clerk@charlottesville.gov or 434-970-3113.

Moment of Silence

Announcements

Recognitions/Proclamations

Consent Agenda*

2. Minutes: December 5 minutes
3. Ordinance: Private drainage easements (2) 2100 Avon Court (2nd reading)
4. Ordinance: Temporary Aerial Easement 1223-1225 Harris Street (2nd reading)
5. Resolution: Resolution of Appropriation to Amend the Fiscal Year 2023 Budget (2nd reading)
6. Resolution: Designation of Park Street site as a Revitalization Area (1 reading)
7. Resolution: Resolution of Support for the Virginia America 250 Commission (VA250) (1 reading)
8. Resolution: Critical Slope Waiver Application request at 0, 208-210, 228 Monte Vista Avenue, and 0 Belleview Street (Azalea Springs Subdivision) (1 reading)

City Manager Report

- Report: January update

Community Matters

Public comment for up to 16 speakers (limit 3 minutes per speaker). Preregistration available for first 8 spaces at <https://www.charlottesville.gov/692/Request-to-Speak>; speakers announced by Noon on meeting day (9:00 a.m. sign-up deadline). Additional public comment at end of meeting.

Action Items

9. Public Hearing/Res.: Approving a Lease Agreement with McGuffey Arts Associates, Inc. for the lease of 201 2nd Street NW (1 reading)

10. Resolution: Establishing days, times and places of Regular Meetings of the Charlottesville City Council during Calendar Year 2023 (1 reading)
11. Resolution: Adopting the Amendment and Re-enactment of the November 15, 2021 Comprehensive Plan for the City of Charlottesville, as amended (1 of 2 readings)
12. Resolution: Initiating a Zoning Text Amendment - Planned Unit Development (1 reading)
13. Resolution: Extending the Dockless Mobility Sharing System Permit for Veo Ride, Inc. (1 reading)
14. Resolution: Expressing support for the TJPDC Allocation Plan for HOME – American Rescue Plan (ARP) funding (1 reading)

General Business

Other Business

Community Matters (2)

Adjournment

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: January 3, 2023

Action Required:

Presenter: Samuel Sanders, Jr., Deputy City Manager, Peter Krebs

Staff Contacts: Samuel Sanders, Jr., Deputy City Manager

Title: Move2Health Equity

Background

Discussion

Alignment with City Council's Vision and Strategic Plan

Community Engagement

Budgetary Impact

Recommendation

Alternatives

Attachments

None

CHARLOTTESVILLE CITY COUNCIL MEETING

December 5, 2022 at 4:00 p.m.

In person: Council Chamber, 605 E. Main Street

Virtual/electronic: Zoom

The Charlottesville City Council met on Monday, December 5, 2022. The meeting was held in hybrid format with Council members and limited public seating in Council Chamber to mitigate health risks related to coronavirus, and electronic participation on the Zoom webinar platform. Mayor Lloyd Snook called the meeting to order at 4:02 p.m. and Clerk of Council Kyna Thomas called the roll, noting the following councilors present: Sena Magill, Michael Payne, Brian Pinkston, Mayor Lloyd Snook and Vice Mayor Juandiego Wade.

On motion by Payne, seconded by Magill, Council voted unanimously to adopt the meeting agenda: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

REPORTS

1. REPORT: FY24 Vibrant Community Fund Update

Misty Graves, Director of Human Services, and Hunter Smith, Human Services Planner, presented the Vibrant Community Fund update. Applications opened on October 5th and closed on November 9th. In-person orientation was offered, office hours were held on multiple occasions, and orientation for the review team (including 16 citizen members) was conducted. There were 50 applications received for FY24 funding, with 12 of those being new or emerging organizations. The total amount requested from applicants was \$4,315,608.01.

Budget Director Krisy Hammill verified previous annual funding amounts and stated that staff looks to Council for guidance in budgeting for priorities.

Councilors discussed the need to increase funding from the approximately \$1.9 Million that has been allocated in previous years, noting an increase in local needs, and potentially building in an incremental increase annually. Several councilors also suggested making the funding process more flexible.

2. REPORT: Report on Annual Financial Audit for Fiscal Year 2022 from City's Auditors

Chris Cullinan, Director of Finance, introduced the city's auditors, Independent Certified Public Accountants at RFC (Robinson, Farmer, Cox Associates, PLLC).

Matt McLearn and Michael Lupton reported on the audit process, the required communications (in a public meeting and in writing), and the clean audit opinion for Fiscal Year 2022. They stated that the city has sufficient controls in place for financial reporting.

Mr. Cullinan reported that the full audit report will be placed on the city website, and the December 19 meeting will include a report of recommendations. He also mentioned a significant fund balance.

CLOSED SESSION

On motion by Pinkston, seconded by Payne, Council voted 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none) to meet in closed session as authorized by Virginia Code Section 2.2-3711(A) (A)(1), for

- Discussion or consideration of applicants for appointment to the Charlottesville Police Civilian Oversight Board;
- Discussion and consideration of the candidate proposed by the City Manager for appointment as chief of police.

On motion by Pinkston, seconded by Payne, Council certified by the following vote: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none), that to the best of each Council member's knowledge only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the Motion convening the closed session were heard, discussed or considered in the closed session.

BUSINESS SESSION

City Council observed a moment of silence.

RECOGNITIONS/PROCLAMATIONS

Councilor Magill thanked city staff for putting on the 25th Anniversary Grand Illumination on December 2nd.

CONSENT AGENDA*

Clerk of Council Kyna Thomas read the following Consent Agenda items into the record:

3. MINUTES: October 17 meeting
4. RESOLUTION: Approving and appropriating grant funds for Virginia Department of Education Special Nutrition Program - Child and Adult Care Food Program - \$50,000 (2nd reading)

RESOLUTION

Virginia Department of Education Special Nutrition Program Child and Adult Care Food Program \$50,000

WHEREAS, the City of Charlottesville, through Parks and Recreation, has received approval for reimbursement up to \$50,000 from the Virginia Department of Education Special Nutrition Program to provide free dinner to children attending select drop-in afterschool centers; and

WHEREAS, the grant award covers the period from period October 1, 2022 through September 30, 2023;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$50,000, received from the Virginia Department of Education Special Nutrition Program is hereby appropriated in the following manner:

Revenue – \$ 50,000

Fund: 209 Internal Order: 1900503 G/L Account: 430120

Expenditures - \$50,000

Fund: 209 Internal Order: 1900503 G/L Account: 530670

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon the receipt of \$50,000 from the Virginia Department of Education Special Nutrition Program.

5. RESOLUTION: Considering a Special Use Permit request for 901 Seminole Trail and 1801 Hydraulic Road

RESOLUTION

Granting a Special Use Permit for Property Located at 901 Seminole Trail and 1801 Hydraulic Road

WHEREAS 901 Seminole Trail LLC (“Applicant”) is the contract purchaser of certain land identified within the City of Charlottesville real estate records by Real Estate Parcel Identification Nos. 41B001000 and 41B002000 (together, the “Subject Property”), which has frontage on Seminole Trail, Hydraulic Road, Hillsdale Drive, and India Road; and

WHEREAS the Subject Property is located in the Highway Mixed Use Corridor zoning district, subject to the Entrance Corridor Overlay district regulations, and according to the Use Matrix set forth within City Code 34-796, restaurants are a permissible use of the Subject Property but a restaurant with a drive-through window is permissible only if authorized by City Council by special use permit; and

WHEREAS the specific development proposed by the Applicant is described in detail within the application materials submitted in connection with SP22-00006, as required by City Code §34-158 (collectively, the “Application Materials”); and

WHEREAS the City Council and the Planning Commission conducted a joint public hearing on November 8, 2022, following public notice given in accordance with applicable law; and

WHEREAS at their November 8, 2022 meeting, the Planning Commission considered and voted to recommend approval of this request, subject to conditions recommended within the Staff Report and modified during their meeting; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that a Special Use Permit is hereby granted, to allow a drive-through restaurant as a permissible use of the

Subject Property subject to the following conditions:

- (1) The drive-through restaurant use shall be allowed only within the current boundaries of the 901 Seminole Trail parcel (41B001000);
- (2) The maximum setback off Seminole Trail, for the 901 Seminole Trail (41B001000) and 1801 Hydraulic Road (41B002000) parcels, shall be 75 feet;
- (3) The maximum setback off Hydraulic Road, for the 901 Seminole Trail (41B001000) and 1801 Hydraulic Road (41B002000) parcels, shall be 75 feet;
- (4) The maximum setback off India Road, for the 901 Seminole Trail (41B001000) and 1801 Hydraulic Road (41B002000) parcels, shall be 75 feet;
- (5) The maximum setback off Hillsdale Drive, for the 901 Seminole Trail (41B001000) and 1801 Hydraulic Road (41B002000) parcels, shall be 50 feet;
- (6) A pedestrian pathway shall be created by the landowner, to provide access to the Subject Property from the intersection of Seminole Trail and Hydraulic Road and such pathway shall be handicapped accessible, or as much so as practically possible; and
- (7) A sit-down dining area for the restaurant, or an alternate “walk-up” window, shall be provided and shall remain open to the public at all times when the drive-through window is in operation.

6. RESOLUTION: Considering a Special Use Permit request at 211 Albemarle Street

RESOLUTION

Granting a Special Use Permit for a Daycare Facility at 211 Albemarle Street

WHEREAS Pilgrim Baptist Church Trustees (“Applicant”) are the owners of certain land identified within the City of Charlottesville real estate records by Real Estate Parcel Identification No. 310025000 (the “Subject Property”), which has frontage on Albemarle Street and West Street; and

WHEREAS the Subject Property is subject to two separate zoning district classifications: the Central City Mixed Use Corridor District and R-1S (Residential Small Lot). According to the Use Matrices set forth within City Code 34-420 and 34-796, a daycare facility is permitted by right in the Central City Mixed Use Corridor, but both zoning districts permit the use of the Subject Property as a daycare facility; however, a daycare facility proposed within the R-1S zoning district requires a special use permit; and

WHEREAS the proposed daycare facility is described in more detail within the application materials dated October 4, 2004, submitted in connection with SP22-00010, as required by City Code §34-158 (the “Application Materials”); and

WHEREAS the City Council and the Planning Commission conducted a joint public hearing on November 8, 2022, following public notice given in accordance with applicable law; and

WHEREAS the Planning Commission considered and recommended approval of this application at their November 8, 2022 meeting, subject to conditions recommended within the Staff Report; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that a Special Use Permit is hereby granted to allow a daycare facility to be established on the Subject Property subject to the following conditions:

- (1) The daycare facility shall not serve more than fifteen (15) students;
- (2) The daycare facility shall adhere to the parking and pickup/drop off plan set forth within the Application Materials. This plan will be kept on file with the City's zoning administrator and may be updated or amended from time to time subject to advance approval by the City's Traffic Engineer of any proposed updates or amendments.

On motion by Pinkston, seconded by Payne, Council by the following vote **ADOPTED** the Consent Agenda: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

CITY MANAGER REPORT

Michael C. Rogers, Interim City Manager stated that the written report will be provided with the December 19 agenda packet.

Sam Sanders, Deputy City Manager of Operations reported on transportation items:

- The Stribling Avenue sidewalk project is not moving forward as quickly as expected because of a lawsuit; however, city staff is still working to ensure readiness to move forward once the legal issue is resolved.
- Ideas regarding the JPA corridor are being considered, some funded and some unfunded, and will require organization and coordination.
- Regarding the dedicated bike lanes suggested along West Main Street, the city is not currently taking on new projects on West Main. Potential reconsideration may result from conversation with the Virginia Department of Transportation; however, funding may need to be prioritized for competing projects.
- The Safe Routes to Schools budget is being reconciled and consideration is being requested for additional funding to address work needed on a section of East High Street.

Ashley Marshall, Deputy City Manager for Racial Equity, Diversity and Inclusion announced the National Community Survey being conducted, and the various methods being used to reach out to residents and stakeholders. She stated that the survey link for the general public would open on December 7.

Mr. Rogers stated that the National Survey results will inform the strategic planning process and he announced the receipt of seven proposals for Strategic Planning Consultants, with an award expected within a week and the strategic planning effort to launch in January.

COMMUNITY MATTERS

Mayor Snook opened the floor for comments from the public.

1. Kate Fraleigh, city resident, thanked the Police Civilian Oversight Board members for their work. She expressed concern about the lack of people prepared to address mental health. She made suggestions for use of surplus funds to help with mental health training, education and internships, in addition to proposals in the council legislative agenda proposals.
2. John Hossack, city resident, spoke in opposition to the Mount View special use permit requests on the agenda. He mentioned traffic safety deficiencies and requested consideration of a deferral.
3. James Groves, city resident, recommended that the city eliminate natural gas subsidies.
4. Stuart Walton, city resident, spoke on the Mount View development project on the agenda, stating that the process was rushed, and that there are safety concerns. He requested deferral of the vote on this item.
5. Chris Meyer, city resident, commended the Grand Illumination event and thanked a staff person in the NDS Department who helped with a building inspection process. He made statements about the Buford renovation project moving forward and requested that surplus funds be used to help with cost increases caused by inflation as well as inclusion of updating the auditorium. He spoke in favor of gas utility subsidy elimination.

ACTION ITEMS

7. PUBLIC HEARING/ORDINANCE: Amending the 2018 City/County Courts Memorandum of Agreement and approving a 40-year lease (carried)

Deputy City Manager Sanders provided background information about the existing Memorandum of Agreement for City/County Courts. He stated that this action would not impact Lucky 7 or Guadalajara establishments.

Chris Engel, Director of Economic Development, summarized the proposed ordinance and agreement.

Mayor Snook opened the public hearing.

- Rory Stolzenberg thanked staff for working to arrive at this solution.

Mayor Snook closed the public hearing.

Council unanimously agreed to carry the item to the December 19 Consent Agenda for second reading and vote.

8. RESOLUTION: Consent to City Manager's appointment of Chief of Police

Mr. Rogers described the police chief search process and announced the nomination of Michael Kochis as the next police chief for the City of Charlottesville.

On motion by Wade, seconded by Pinkston, Council by the following vote APPROVED

the resolution consenting to the City Manager's recommendation for appointment of a Chief of Police: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

RESOLUTION

Giving Council's Consent to the City Manager's Appointment of a Chief of Police

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, pursuant to Section 20-2 of the City Code that that the City Manager's appointment of Michael Kochis to the position of Charlottesville Police Chief is hereby approved by the City Council.

Mr. Michael Kochis joined the meeting virtually and provided comments, noting his expected start date of January 16, 2023.

Mr. Rogers thanked Acting Chief Tito Durette for his service to the city and the department.

9. ORDINANCE/RESOLUTION: Police Civilian Oversight Board Matters

a. ORDINANCE: Amending Chapter 2, Article XVI of the City Code (PCOB) (carried)

William Mendez, Chair of the Police Civilian Oversight Board, presented the proposed ordinance amendment, making the authority for investigation of an incident analogous to the investigation of a complaint. The ordinance was developed with approval from the City Attorney and PCOB independent counsel.

Council unanimously agreed to carry the item to December 19 for second reading and vote.

b. RESOLUTION: Approving Operating Procedures for the PCOB (tabled to December 19)

Mr. Mendez presented the revised operating procedures for consideration. The procedure revisions were developed with approval from the City Attorney and PCOB independent counsel.

Mr. Snook expressed concern with voting at this meeting in order to further review recently received feedback.

Council unanimously agreed to table the item to December 19.

10. ORDINANCE: Considering a Zoning Map Amendment for the Mount View PUD (Planned Unit Development) (carried)

Carrie Rainey, Urban Designer/City Planner, summarized the request. The Planning Commission recommended denial of the Planned Unit Development.

Councilor Pinkston noted that the Planning Commission concerns were focused on the affordable housing component of the project. The updated materials presented to Council addresses most of

the concerns.

Kelsey Schlein, Shimp Engineering, answered questions for Council.

Mr. Pinkston expressed concern about transportation and infrastructure to support the development, given other simultaneous projects. He requested input from the city's traffic engineer.

Ms. Magill recommended referring the PUD ordinance back to the Planning Commission to vet the changes.

Mr. Payne requested feedback from the Office of Community Solutions. Alex Ikefuna, Director, stated that the current plan is better than what was presented to the Planning Commission since the developer doubled the affordability period. Ms. Schlein stated that the developer worked closely with the Office of Community Solutions to fine-tune proffer wording. Mr. Payne noted concerns with not holding developers accountable to the draft inclusionary zoning ordinance.

Responding to Mr. Wade, Ms. Rainey stated that public notice was in compliance for this agenda item, and that courtesy emails were sent.

Justin Shimp, applicant, provided additional context to describe project entryways. He also stated that the plan for stormwater management is to have a full onsite retention system.

City Attorney Lisa Robertson provided guidance to Council on ways to move forward with the item. She suggested that a cover sheet should document all changes made since the Planning Commission meeting, including any changes between this meeting and the second reading.

Ms. Schlein stated for the record a 4-1-1 vote for denial from the Planning Commission, whereas Ms. Magill mentioned a 6-0 vote.

Mr. Snook requested feedback from James Freas, Director of Neighborhood Development Services, who stated that issues were clearly communicated at the Planning Commission meeting.

On motion by Pinkston, seconded by Wade, Council by the following vote carried the ordinance to December 19 for second reading and vote with the proviso of updates to proffers: 4-1 (Ayes: Payne, Pinkston, Snook, Wade; Noes: Magill).

11. RESOLUTION: Considering a Sidewalk Waiver Request for the Mount View PUD (Planned Unit Development) (1 reading)

On motion by Pinkston, seconded by Wade, Council by the following vote tabled the resolution to December 19 to consider along with the preceding ordinance: 4-1 (Ayes: Payne, Pinkston, Snook, Wade; Noes: Magill).

12. RESOLUTION: Transferring Capital Funds from City/County fund (P-00834) for renovations to Washington Park Pool - \$350,000 (carried)

Riaan Anthony, Deputy Director of Parks and Recreation, presented the request. The City of Charlottesville, through Parks and Recreation, has funding that was budgeted to install synthetic turf and lights on four rectangular athletic fields at Darden Towe Park in Fiscal Year 2020 (P-00834) in the amount of \$923,963. This Capital Improvement Plan is a joint project fund between the City and County, and the County did not approve the project and recent deliberation confirmed they are not moving forward as originally planned. City staff requested to reallocate funds in order to resurface the Washington Park Pool shell and all the pool amenities, including shade structures and mirror renovation.

Council unanimously agreed to carry the item to the December 19 meeting for second reading and vote.

13. RESOLUTION: Expressing support for a Capital Project to establish Handicapped Access to the Charlottesville Dogwood Vietnam Memorial

Mr. Sanders presented the request. The Dogwood Vietnam Memorial was the first civic/ public memorial in the United States to be dedicated to those who served and sacrificed their lives in service to their country in the war in Vietnam.

On motion by Pinkston, seconded by Magill, Council by the following vote APPROVED the resolution expressing support for a Capital Project to establish handicapped access to the Charlottesville Dogwood Vietnam Memorial: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

RESOLUTION

Expressing Support for a Capital Project to Establish Handicapped Access to the Charlottesville Dogwood Vietnam Memorial

WHEREAS the Charlottesville City Council recognizes the historic significance of the Dogwood Vietnam Memorial as the first Vietnam War Memorial constructed on public property within our country, and Council also wishes to acknowledge the continuing importance of this memorial as a poignant lesson of the sacrifices of many of our local residents during the Vietnam War; and

WHEREAS the Dogwood Vietnam Memorial was originally constructed in the mid-1960s within McIntire Park, a public park owned by the City of Charlottesville, funded entirely by private donations, and City Council desires to take steps to ensure that the Memorial will remain an important, integral component of the City's public park system, for generations to come; and

WHEREAS the Charlottesville City Council respects the unflagging commitment of the Dogwood Vietnam Memorial Foundation, whose members have generously contributed funding and supplies over the course of many years for the care, maintenance, and enhancement of the memorial and surrounding plaza; and

WHEREAS in response to concerns that the Memorial is not easy for handicapped persons to access, City Council appointed a working group in 2019, to discuss pedestrian access to the Dogwood Vietnam Memorial Plaza and identify obstacles to pedestrian accessibility; this working group recommended to City Council the creation of a vehicle parking area with a pedestrian bridge crossing over the John Warner Parkway that would not only improve pedestrian access to the memorial but would also enhance access to the citywide trail system and the eastern portion of McIntire Park; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville THAT the City Council desires to identify a path forward for making a parking lot and handicapped accessible access from the parking lot to the Dogwood Vietnam Memorial Plaza a viable capital construction project, to be undertaken either by the City government, or by the City in conjunction with a third party, following review of options available under applicable procurement or other legal procedures, with the intention that the project will be funded by private donations as well as state or local public funds; and

BE IT FURTHER RESOLVED THAT the City Council hereby requests Senator Creigh Deeds to sponsor a request for state funding to be awarded to the Charlottesville Dogwood Vietnam Memorial Foundation, or to the City of Charlottesville as fiscal agent for the Foundation, such funding to be used solely for construction of a parking lot adjacent to the John Warner Parkway and construction of a handicapped-accessible pedestrian walkway from the parking lot to the Dogwood Vietnam Memorial Plaza.

GENERAL BUSINESS

14. ACTION ITEM: 2023 Local Legislative Positions

Each year, the localities in the Thomas Jefferson Planning District (TJPD) adopt legislative priorities and positions on issues of importance and concern to local governments. These positions form the basis for local advocacy efforts during the General Assembly session each winter. The City Attorney's Office works in conjunction with TJPD's legislative liaison during the session to provide advocacy on behalf of the City's interests. Additionally, City Council establishes a statement of legislative positions as a means of communicating to legislators (i) issues of specific concern and interest to Council, and (ii) requests, if any, for legislative action items.

a. By Motion: Thomas Jefferson Planning District Commission (TJPDC) Proposed Legislative Positions (2023) – David Blount

David Blount, TJPDC, reviewed regional priorities:

1. The Planning District localities urge the State to fully fund its share of the realistic costs of the Standards of Quality (SOQ) without making policy changes that reduce funding or shift funding responsibility to localities.
2. The Planning District's member localities urge the governor and legislature to enhance state aid to localities and public schools, to not impose unfunded mandates on or shift costs to localities, and to enhance local revenue options.

3. The Planning District's member localities urge and support state and federal efforts and financial incentives that assist localities and their communities in deploying universal, affordable access to broadband technology in unserved areas.

The TJPDC report included legislative positions on the Children's Services Act, economic and workforce development, education, environmental and water quality, general government, health and human services, housing, land use and growth management, public safety and transportation.

On motion by Pinkston, seconded by Payne, Council by the following vote AFFIRMED support of the TJPDC proposed legislative positions for 2023 except for sovereign immunity for local governments and their employees, and mandating expansion of the Chesapeake Bay Preservation Act's coverage area: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

b. By Motion: City Council Proposed Legislative Positions (2023) – Mayor Snook and Councilor Magill

Mayor Snook presented the local legislative positions, removing paragraph J-9 from the presented materials as a duplicate. Of the legislative positions, the following items were listed as priorities:

1. Our most important legislative priority is legislation to allow all localities the option to enact a one-cent sales tax increase to provide funding dedicated to the construction or renovation of public-school facilities. If legislation allowing all localities this option is not successful, we would also support any bill that would allow Charlottesville the option.
2. We encourage the General Assembly to authorize localities to require affordable housing set-asides for large developments.
3. We call for state legislation that will require AirBnB, VRBO, and similar short-term rental platforms to disclose information about short term rentals to local government officials, sufficient to allow local officials information necessary to verify that local taxes are being paid and local zoning ordinances are being complied with.
4. We support legislation to change the requirement that a police officer remain with someone who is the subject of an Emergency Custody Order until a bed is found for that person. This requirement is causing Police Departments to take officers off of regular patrol duties for up to 72 hours at a time when Police Departments across the Commonwealth are having trouble hiring enough officers to meet pressing needs.
5. We oppose the efforts of the natural gas industry to tie the hands of the localities in how the localities deal with gas utilities.
6. We encourage the General Assembly to amend §2.2-3711 of the Virginia Freedom of Information Act, to expressly allow police civilian oversight boards the

authority to convene within closed meetings, to protect the privacy of complainants and to deliberate on police officer personnel and disciplinary matters.

7. We support removing barriers for localities seeking to participate in net and virtual net metering through the state's existing municipal net metering pilot program allowing for eligibility of facilities installed and operated pursuant to power purchase agreements (PPAs) and raising or removing system size limits that are inconsistent with state's net metering provisions.
8. Medicaid reimbursement rates – particularly for mental health services – must be significantly increased.
9. We support legislation to abolish the designation of “single-family” zoning areas throughout the Commonwealth. Policies encouraging “inclusionary zoning” would allow for more affordable housing and create more diverse communities.

On motion by Magill, seconded by Pinkston, Council by the following vote AFFIRMED support of the City Council Proposed Legislative Positions for 2023: 5-0 (Ayes: Magill, Payne, Pinkston, Snook, Wade; Noes: none).

COMMUNITY MATTERS (2)

- Marcia Geyer, city resident, thanked Council for the selection of the Chief of Police and acknowledged the acting police chief, Tito Durette.

Mayor Snook adjourned the meeting at 8:53 p.m.

BY Order of City Council

BY Kyna Thomas, Clerk of Council

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approval of Ordinance
Presenter:	Lisa Robertson, City Attorney
Staff Contacts:	Allyson Davies, Senior Deputy City Attorney
Title:	Private drainage easements (2) 2100 Avon Court (2nd reading)

Background

Avon Court Holdings, LLC (“ACH”) is preparing to construct a 79,000 square foot industrial building in Albemarle County. Construction of the proposed building requires two variable width drainage easements from the City. The location of the requested easements will be situated on City owned property located in Albemarle County at 2100 Avon Court, near Moore’s Creek (TMP 77-7). The proposed easements will allow for the construction and appropriate conveyance of drainage from the property. This easement will not impact City services or operations. The proposed easement is for a period of forty years in accordance with the requirements of Va. Const. Art. VII, § 9.

Discussion

The City Council may "dispose" of its interests in City-owned real property, in whole or in part (e.g., by granting an easement to a third party), following a public hearing. See Virginia Code 15.2-1800 (B). In addition to the provisions set forth in that Code section, municipalities are subject to additional legal and procedural requirements, as set forth in Virginia Code 15.2-2100 (B), when a private entity seeks the right to use City property in a manner not permitted to the general public. If the proposed term of an easement is more than five years, the City Council must publicly received bids therefor, in the manner provided in 15.2-2102.

City Council should open a public hearing for this matter, and invite any person(s) who have comment, and any persons who wish to offer bids, to present them during the public hearing. Once the public hearing is closed, the Mayor should declare the bidding closed, and then ask for staff recommendations on any bids presented during the public hearing. If no other bids are received, City Council may proceed to make a decision on the requested easement. If other bids are received, City Council would follow the procedures in Va. Code 15.2-2102 as they pertain to making decisions between competing bids.

Alignment with City Council's Vision and Strategic Plan

Yes

Community Engagement

A public hearing is required by law to give the public an opportunity to comment on the proposed conveyance of the drainage easement (Va. Code Section 15.2-1800(B))

Budgetary Impact

None

Recommendation

Staff recommends approval.

Suggested Motion: "I move the ORDINANCE Granting Private Drainage Easements to Avon Court Holdings, LLC, at 2100 Avon Court, in Albemarle County, Virginia."

Alternatives

Council could decline to grant the easements

Attachments

1. ORD - Drainage easements to Avon Ct. Holdings_
2. Final plat - Avon Court (signed)

**ORDINANCE
GRANTING PRIVATE DRAINAGE EASEMENTS TO
AVON COURT HOLDINGS, LLC**

WHEREAS Avon Court Holdings, LLC (“ACH”) has requested the City of Charlottesville to convey private drainage easements across a portion of the City-owned real estate located at 2100 Avon Court, within the County of Albemarle, each identified on a plat dated August 31, 2022, prepared by Roudabush, Gale & Assoc., Inc. as “New V/W Drainage Easement” (the “Plat”); and,

WHEREAS the proposed drainage easements will allow for the installation and maintenance of drainage pipes for construction of new industrial building, which drainage is required by Albemarle County for and in connection with the proposed private development; and,

WHEREAS in accordance with Virginia Code Section 15.2-1800(B) and Virginia Code §15.2-2100, an advertised public hearing was held to give the public an opportunity to comment on the conveyance of these easements and to allow City Council to receive “bids” in accordance with §15.2-2100; and,

WHEREAS City staff have reviewed the request and have voiced no objection to the approval of the requested easement; now, therefore

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a Deed of Easement granting private drainage easements across City real estate located at 2100 Avon Court, in Albemarle County, Virginia, as identified within the Plat, and the Mayor is further authorized to execute such other documents as may be required to complete this conveyance as approved by Council, said documents to be in a form approved by the City Attorney.

C:\bjamison\bjamison\TMP_PRA\19.0321 and 20.2022 avon court easement\20.2022-AVON COURT-DRAINAGE EASEMENT PLAT.dwg, 10/26/2022 12:28:51 PM

PARCEL INFORMATION:

TMP 76M2-01-D

OWNER:

WILLOUGHBY PROPERTY OWNER'S ASSOCIATION INC
C/O REAL PROPERTY INC
MAILING: 1500 AMHERST STREET
CHARLOTTESVILLE, VA 22902

TMP 77-7

OWNER:

CITY OF CHARLOTTESVILLE VA
PHYSICAL ADDRESS: 2100 AVON COURT
CHARLOTTESVILLE, VA 22902
MAILING: PO BOX 911
CHARLOTTESVILLE, VA 22902

TMP 77-8B

OWNER:

AVON COURT HOLDINGS LLC
MAILING: PO BOX 1467
CHARLOTTESVILLE, VA 22902

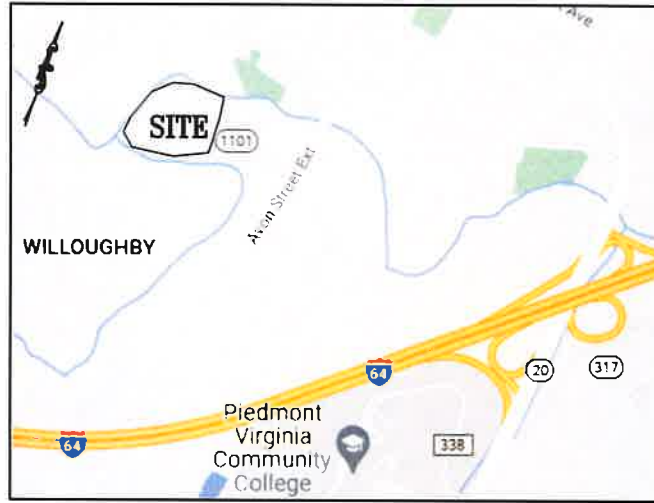
TMP 77-8C

PSALM THIRTY FOUR PROPERTIES LLC
MAILING: 106 LIDE PLACE
CHARLOTTESVILLE, VA 22902

TMP 77-9

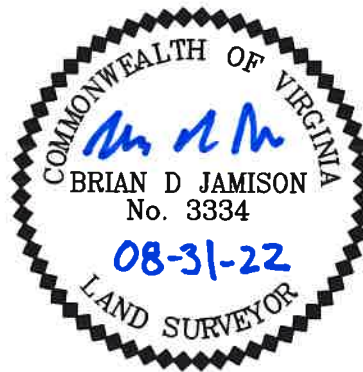
LIGHTHOUSE LAND LLC

PHYSICAL/MAILING: 2050 AVON COURT
CHARLOTTESVILLE, VA 22902



VICINITY MAP

SCALE: 1"=2000'



NOTES:

1. THE PURPOSE OF THIS PLAT IS TO CREATE (2) NEW VARIABLE WIDTH PRIVATE DRAINAGE EASEMENTS ON TMP 77-7.
2. BOUNDARY INFORMATION IS SHOWN AS PER AN ACTUAL FIELD SURVEY OF TMP 77-8B BY THIS OFFICE DATED 03-23-21. A BOUNDARY SURVEY OF TMP 77-7 WAS NOT PERFORMED.

PLAT PREPARED BY: ALLEN CROSS

ROUDABUSH, GALE & ASSOC., INC.



A PROFESSIONAL CORPORATION
SERVING VIRGINIA SINCE 1956

PHYSICAL ADDRESS: 999 SECOND ST SE SUITE 201 435 MERCHANT WALK SQ SUITE 300-159 CHARLOTTESVILLE, VA 22902
MAILING ADDRESS: 999 SECOND ST SE SUITE 201 435 MERCHANT WALK SQ SUITE 300-159 CHARLOTTESVILLE, VA 22902

PHONE: 434-977-0205 WWW.ROUDABUSH.COM

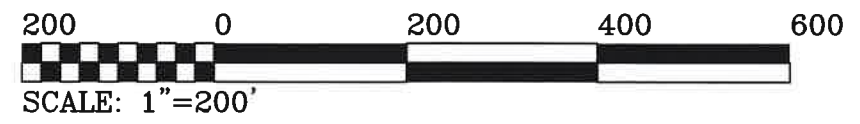
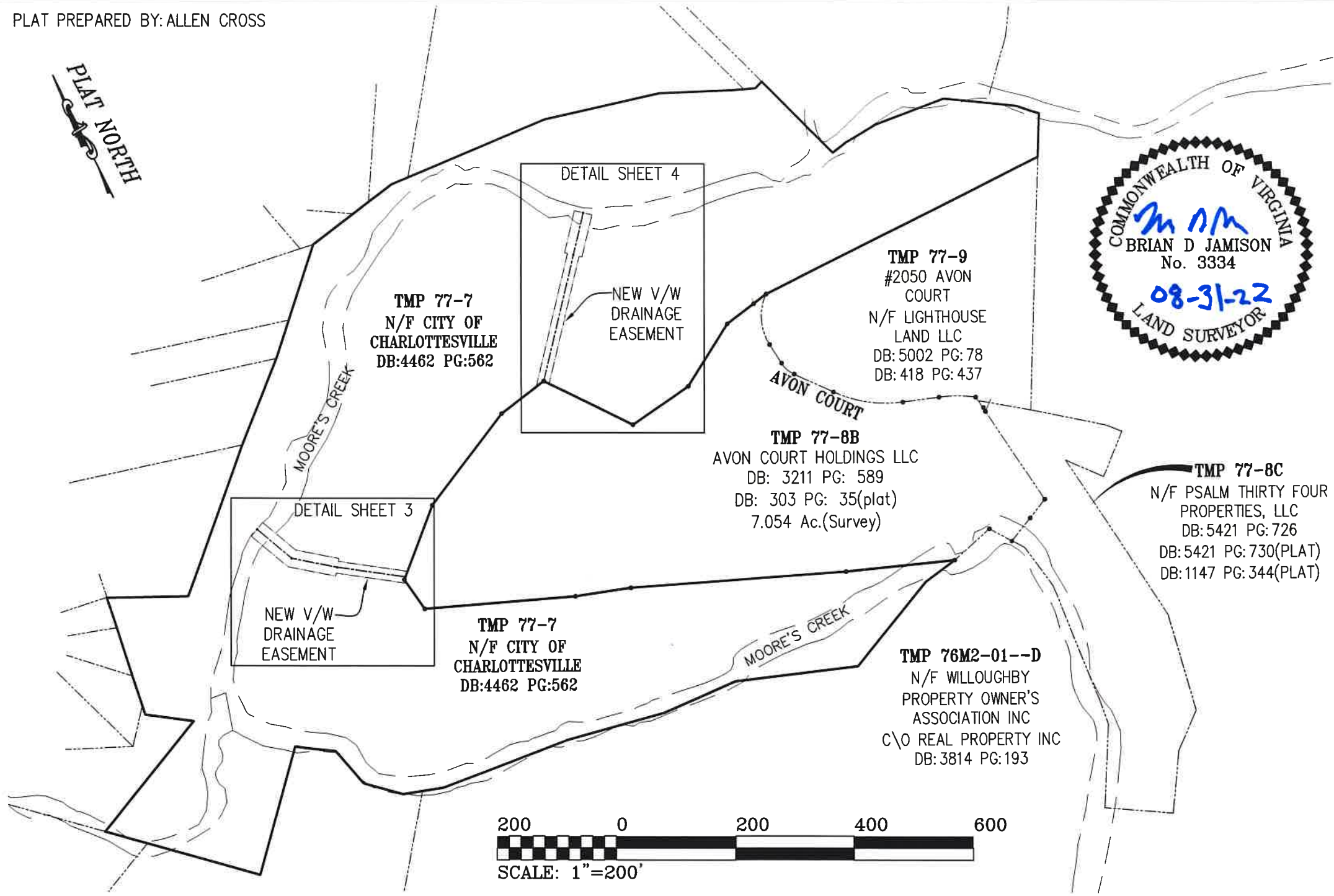
PLAT CREATING PRIVATE DRAINAGE
EASEMENTS
AVON COURT HOLDINGS
TAX MAP 77 PARCEL 7
ALBEMARLE COUNTY, VIRGINIA

COVER SHEET

DATE:	08-31-2022
REV:	
REV:	
REV:	
SCALE:	N/A
JOB:	20.2022
FILE:	20.2022
SHEET:	01 OF 04

PLAT PREPARED BY: ALLEN CROSS

PLAT NORTH



ROUDABUSH, GALE & ASSOC., INC.
 A PROFESSIONAL CORPORATION
 SERVING VIRGINIA SINCE 1956

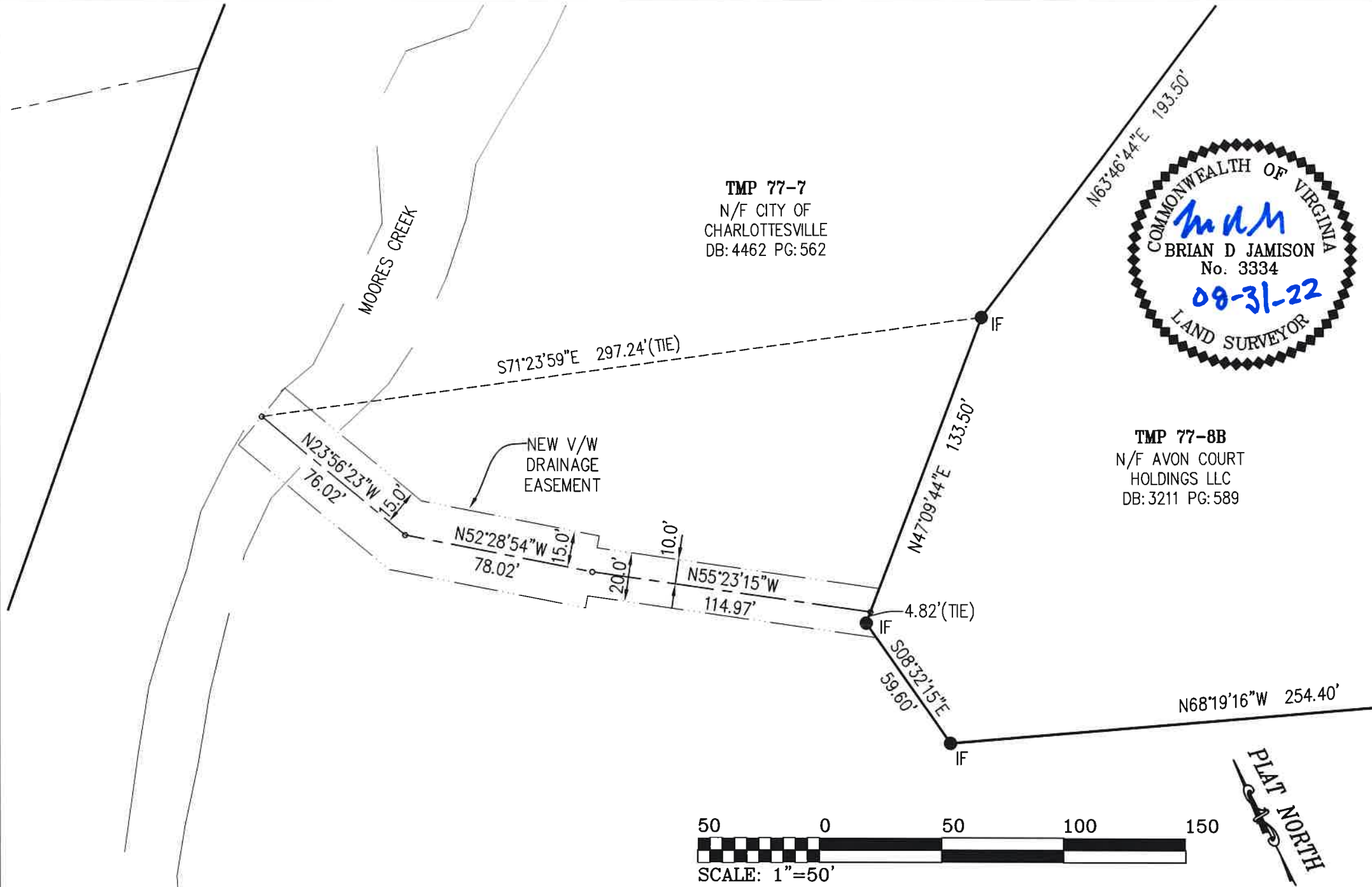
999 SECOND STREET SE
 CHARLOTTESVILLE, VA 22902
 PHONE 434-977-0205 WWW.ROUDABUSH.COM

PLAT CREATING PRIVATE DRAINAGE EASEMENTS
AVON COURT HOLDINGS
TAX MAP 77 PARCEL 7
ALBEMARLE COUNTY, VIRGINIA

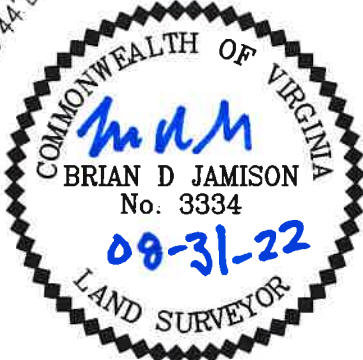
OVERVIEW SHEET

DATE:	08-31-2022
REV:	
REV:	
REV:	
SCALE:	1"=200'
JOB:	20.2022
FILE:	20.2022
SHEET:	02 OF 04

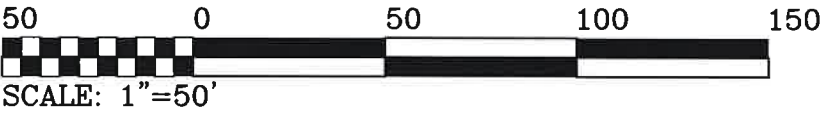
Q:\Bjarnison\Bjarnison\TMP PRU19.0321 and 20.2022 avon court easement\20.2022-AVON COURT-DRAINAGE EASEMENT PLAT.dwg, 10/26/2022 12:29:35 PM



TMP 77-7
 N/F CITY OF
 CHARLOTTESVILLE
 DB: 4462 PG: 562



TMP 77-8B
 N/F AVON COURT
 HOLDINGS LLC
 DB: 3211 PG: 589



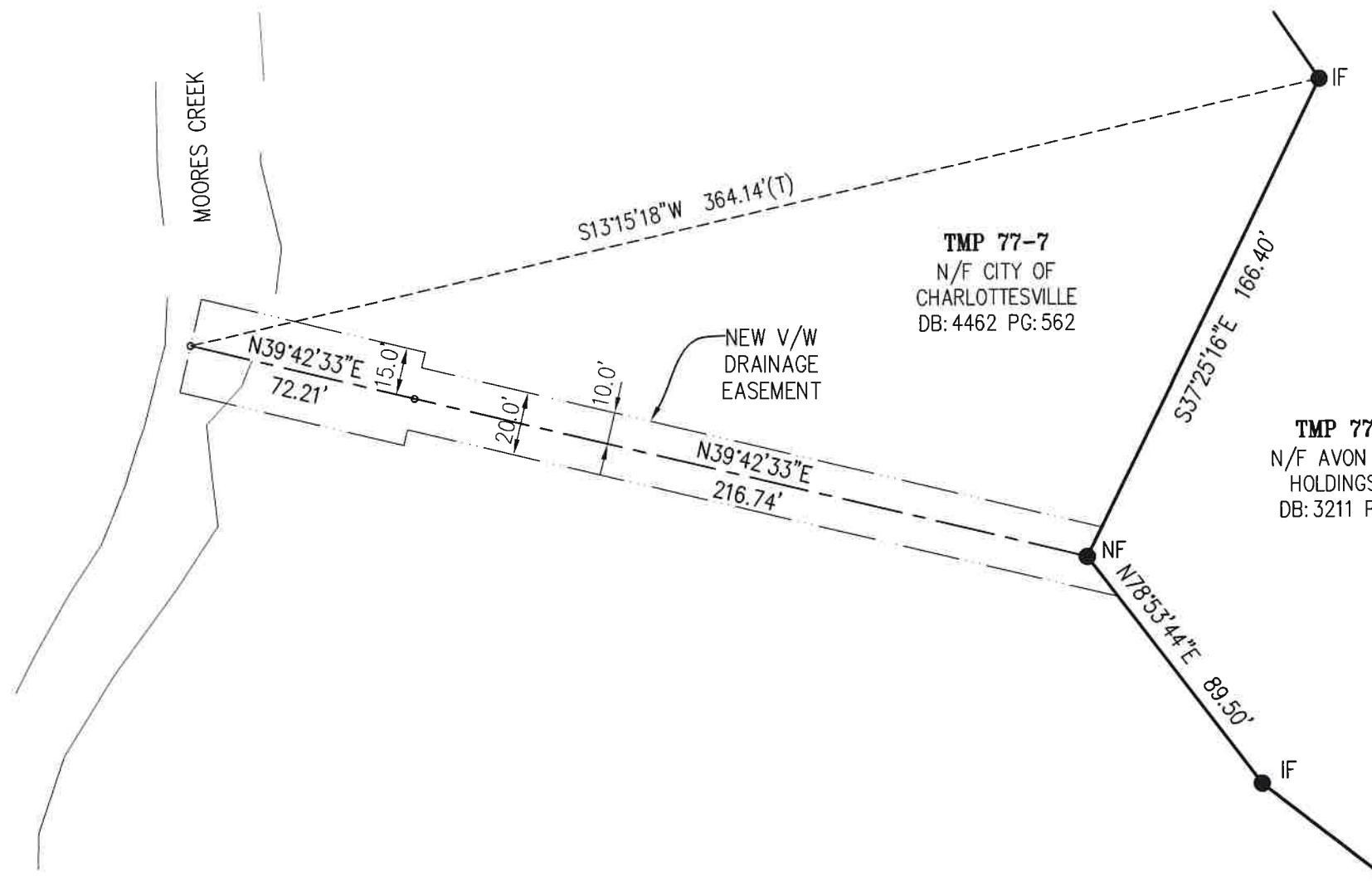
PLAT PREPARED BY: ALLEN CROSS

ROUDABUSH, GALE & ASSOC., INC.
 A PROFESSIONAL CORPORATION
 SERVING VIRGINIA SINCE 1966

998 SECOND STREET SE
 CHARLOTTESVILLE, VA 22902
 PHONE 434-977-0205 WWW.ROUDABUSH.COM

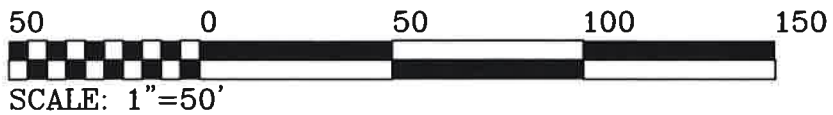
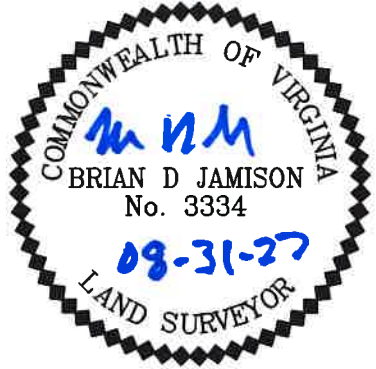
**PLAT CREATING PRIVATE DRAINAGE
 EASEMENTS
 AVON COURT HOLDINGS
 TAX MAP 77 PARCEL 7
 ALBEMARLE COUNTY, VIRGINIA
 NEW EASEMENT**

DATE:	08-31-2022
REV:	
REV:	
REV:	
SCALE:	1"=50'
JOB:	20.2022
FILE:	20.2022
SHEET:	03 OF 04



TMP 77-7
 N/F CITY OF
 CHARLOTTESVILLE
 DB: 4462 PG: 562

TMP 77-8B
 N/F AVON COURT
 HOLDINGS LLC
 DB: 3211 PG: 589



PLAT PREPARED BY: ALLEN CROSS

ROUDABUSH, GALE & ASSOC., INC.
 A PROFESSIONAL CORPORATION
 SERVING VIRGINIA SINCE 1956

999 SECOND STREET SE
 CHARLOTTESVILLE, VA 22902
 PHONE 434-977-0205 WWW.ROUDABUSH.COM

**PLAT CREATING PRIVATE DRAINAGE
 EASEMENTS**
AVON COURT HOLDINGS
TAX MAP 77 PARCEL 7
ALBEMARLE COUNTY, VIRGINIA
NEW EASEMENT

DATE:	08-31-2022
REV:	
REV:	
REV:	
SCALE:	1"=50'
JOB:	20.2022
FILE:	20.2022
SHEET:	04 OF 04

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approval of Ordinance (2 Readings)
Presenter:	Lisa Robertson, City Attorney
Staff Contacts:	Brennen Duncan, Traffic Engineer
Title:	Temporary Aerial Easement 1223-1225 Harris Street (2nd reading)

Background

C-ville Business Park, LLC (“CBP”) is preparing to develop property known as the City’s Edge Apartments Project, located at 1223-1225 Harris Street in the City of Charlottesville. CBP represents that the proposed new building construction will require placement of a temporary tower crane on their property. The boom of the crane will swing over the airspace of the City’s property (TMP 340090100) which is adjacent to CBP’s property. It is anticipated that the easement will not exceed a period of five (5) years.

Discussion

City Council is authorized by Virginia Code 15.2-1800 (B) to "dispose" of its interests in City-owned real estate, in whole or in part (including granting easements to private parties). Prior to approving an easement, City Council must hold a public hearing.

This request does not implicate the requirements of Virginia Code 15.2-2100 because it is not a permanent disposition (equivalent to a sale of a property interest) and the duration of the proposed easement is less than five (5) years.

Alignment with City Council's Vision and Strategic Plan

Yes (quality housing opportunities for residents)

Community Engagement

A public hearing is required by Virginia Code 15.2-1800 (B)

Budgetary Impact

None

Recommendation

Approval

Suggested Motion: "I move the ORDINANCE granting a temporary aerial easement to C-ville Business Park, LLC, for construction of the City's Edge Apartments"

Alternatives

City Council may decline to approve the requested easement

Attachments

1. ORD - Aerial easement to C-vill Bus. Pk. _

**ORDINANCE
GRANTING A TEMPORARY AERIAL EASEMENT TO
C-VILLE BUSINESS PARK, LLC FOR CONSTRUCTION
OF “CITY’S EDGE” APARTMENTS**

WHEREAS C-ville Business Park, LLC has requested the City Council to grant to it a temporary aerial easement, across a portion of the City-owned public right of way for Harris Street, identified as “Temporary Tower Crane Swing Easement (Radius = 183.58’)” on a plat dated May12, 2022, last revised September 22, 2022, prepared by Timmons Group (the “Plat”); and,

WHEREAS the proposed aerial easement will facilitate construction of a new building to be known as the City’s Edge Apartments and construction should be completed within five (5) years; and

WHEREAS in accordance with Virginia Code Section 15.2-1800(B) City Council held a public hearing on the proposed easement following notice as required by law; and,

WHEREAS City staff have reviewed the request and have no objection to the conveyance of said easement; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a deed to convey the aerial easement requested by C-ville Business Park, LLC, as described within the above-referenced Plat, provided that such easement shall commence as of the date on which a building permit is issued for construction of the City’s Edge Apartment and shall extend not more than five (5) years from the date of issuance of the building permit; and further, the Mayor is authorized to execute such other documents as may be required in connection with this conveyance, and all documents shall be in a form approved by the City Attorney.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approve resolution of appropriation to amend the FY23 budget.
Presenter:	Chris Cullinan, Director of Finance
Staff Contacts:	Chris Cullinan, Director of Finance Krisy Hammill, Director of Budget
Title:	Resolution of Appropriation to Amend the Fiscal Year 2023 Budget (2nd reading)

Background

The audit for Fiscal Year (FY) 2022 has been completed. To close the City's financial records for the year, several year-end adjustments to various accounts require City Council action. These adjustments are to carry over unspent funds from the last fiscal year to the current fiscal year. These carry overs are the result of either previous City Council policy direction or requirements associated with the funds.

Discussion

For FY22, the General Fund ended \$22,917,915.01 in excess of its 17% fund balance policy.

The financial foundation for FY22 was laid in late 2020/early 2021, less than one year after the beginning of the COVID 19 pandemic. At the time, COVID vaccines were just beginning to be administered to essential workers and first responders. COVID restrictions and closures were in place with no clear timeframe as to when they would be lifted. It was against this uncertain backdrop that the City adopted a conservative, status quo budget for fiscal year 2022 with modest growth of 0.5%.

But as the fiscal year began in July 2021, vaccines became widely available and restrictions and closures were lifted. The economy reopened and rebounded with several of the City's economically sensitive revenues performed significantly better than expected, namely Sales and Use Taxes, Lodging Taxes, Meals Taxes, Personal Property Taxes, and Business Licenses (note: many of these taxes had performed under budget in the previous fiscal year). Real Estate Taxes also performed much better than expected as a result of continued rising reassessments.

Overall, General Fund revenues performed \$14.3M above budget. Top performing revenues compared to budget include (amounts shown above budget):

- Real Estate Taxes = \$5.0M.

- Meals Taxes = \$3.1M.
- Sales and Use Taxes = \$2.6M.
- Lodging Taxes = \$2.2M.
- Personal Property Taxes = \$2.2M.
- Business Licenses = \$1.7M.

City operations and facilities were limited during the fiscal year. Twice during the fiscal year, the City attempted to reopen but did not due to surges in COVID cases from the Delta and Omicron variants. A number of City departments spent less than budgeted primarily in salaries and benefits from vacant positions. Delays in reopening facilities resulted in reduced operating costs. Some departments also experienced delays in purchases due to supply chain shortages.

Citywide salary and benefit savings totaled approximately \$5.3M with the largest savings coming from Police, Parks and Recreation, and Public Works. Approximately \$2.1M from the FY21 year-end surplus went unused towards mid-year salary adjustments. Transfers to the Comprehensive Services Act and Department of Social Services were under budget by \$635,000 and \$400,000 respectively.

The total combined General Fund fund balance increased from \$53.4 million at the end of FY21 to \$66.3 million at the end of FY22. When restricted uses of fund balance are netted out (including the City's 17% fund balance policy), the General Fund finished with \$22.9 million of unrestricted funds in fund balance.

Staff have several recommendations for City Council's consideration, grouped in to three categories:

City Council considerations from the FY23 budget process = \$11,513,225.00
 City Manager recommendations one-time uses = \$4,742,142.71.
 Transfer to Capital Improvement contingency fund = \$6,662,547.30

TOTAL = \$22,917,915.01

Details for each of these categories are listed below.

1. City Council considerations from the FY23 budget process = \$11,513,225.00

During the FY23 budget process, staff advised City Council that revenues for FY22 were performing well above budget and that a surplus of revenues were likely to be available to fund the below items:

- a. Department of Social Services Software Replacement = \$110,000.
- b. Procurement eSourcing Software = \$100,000.
- c. 2 Additional Buses – Route 6 Equity Initiative = \$1,000,000.
- d. SAFER Grant Match – adjusted for FY22 midyear salary adjustment and FY23 COLA = \$2,109,000.
- e. School Reconfiguration \$54M Bond Scenario (additional cash needed to get to \$68.8M) = \$600,000.
- f. School Reconfiguration \$54M Bond Scenario (year 2 of additional debt service) = \$1,947,112.

- g. School Reconfiguration \$54M Bond Scenario (year 3 of additional debt service) = \$1,947,113.
- h. Meadowcreek Trail – Section 3 = \$700,000.
- i. CAT – additional funding for 30 minute routes = \$2,000,000.
- j. City Manager Fund = \$1,000,000.

2. City Manager Recommendations One Time Uses = \$4,742,142.71.

- a. Council Strategic Initiatives = \$325,000. These funds will be added to the current balance to provide City Council the flexibility to fund opportunities to advance the Strategic Plan.
- b. Upgrade of SAP = \$1,000,000. The City is beginning the process to upgrade the City’s financial management system. These funds will be added to funds that have already been accumulated for this project to ensure sufficient resources to complete the project.
- c. Fuel Price Volatility = \$150,000. The price of fuel continues to fluctuate. These funds will ensure sufficient budget to fuel the City’s fleet of vehicles and equipment.
- d. Language Access Pilot Program = \$100,000. These funds will be used to contract for language translation for City services.
- e. Standards and Design Manual = \$142,142.71. This will restore funds for completion of the Standards and Design Manual.
- f. Pathways Fund = \$575,000. These funds will allow the Pathways Fund to provide financial assistance through the end of the current fiscal year (June 2023).
- g. Emergency Management Mobile Automated External Defibrillators (AED) = \$150,000. These funds will be used by the Emergency Manager to purchase mobile AEDs.
- h. Working Capital Fund for Meadowcreek Golf Course = \$300,000. These funds will be used for capital improvements at Meadowcreek Golf Course at Pen Park to improve the quality of play for patrons.
- i. Class and Compensation Study – One Time Uses = \$2,000,000. The Class and Compensation study will soon be completed. These funds can be used for one-time adjustments or other one-time forms of compensation recommended by the study.

3. Transfer to Capital Improvement Contingency Fund per Financial Management Policy = \$6,662,547.30.

These funds will be added to the contingency fund in the Capital Improvement fund for unforeseen costs or needs.

In addition to these recommendations are several carry over appropriations needed to close the books for the fiscal year. These are detailed in the attached resolution.

Alignment with City Council's Vision and Strategic Plan

This agenda item aligns with Goal 4 of the Strategic Plan, to be a well-managed and successful organization.

Community Engagement

This agenda item includes a public hearing and is the first reading of this appropriation.

Budgetary Impact

Funds from the year-end surplus are considered to be a one-time revenue and should be used for one-time uses or projects. The recommended uses are either one-time in nature or are to be used to facilitate the incorporation of future cost increases into the annual budget.

Recommendation

Staff recommend that Council approve the first reading of the attached resolution amending the FY23 budget.

Alternatives

Amend the recommendations and/or amounts.

Attachments

1. FY22 Year End Appropriation

RESOLUTION

To Amend the City Budget Adopted for Fiscal Year 2023 (“Year End” Appropriation)

WHEREAS the Charlottesville City Council has received and reviewed the results of the year-end audit for Fiscal Year 2022, which identified a surplus of appropriations over expenditures; and

WHEREAS the City Council desires to amend the budget previously adopted for Fiscal Year 2023, to increase the amount of authorized expenditures by a total of \$22,917,915.01 and, since this Budget Amendment exceeds one percent (1%) of the total expenditures shown in the currently-adopted budget, City Council conducted a public hearing on the proposed amendment following public notice given in accordance with Virginia Code §15.2-2507(A); now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the expenditures hereinafter set forth are hereby authorized and appropriated within the accounts of the City for the uses listed below, for the Fiscal Year ending June 30, 2023. The details explaining the purposes for which the following expenditure amounts are authorized, shall be as set forth within the City Council agenda memo dated December 19, 2022, which agenda memo is incorporated into this Resolution by reference.

I. GENERAL FUND.

The following amounts shall be permitted to be carried over and expended in the General Fund’s respective cost centers or internal orders in the following fiscal year and shall remain as continuing appropriations unless further altered by Council:

Department of Social Services Software Replacement.	\$110,000.
Procurement eSourcing Software.	\$100,000.
2 Additional Buses – Route 6 Equity Initiative.	\$1,000,000.
SAFER Grant Match.	\$2,109,000.
School Reconfiguration \$54M Bond Scenario (additional cash needed to get to \$68.8M).	\$600,000.
School Reconfiguration \$54M Bond Scenario (year 2 of additional debt service).	\$1,947,112.
School Reconfiguration \$54M Bond Scenario (year 3 of additional debt service).	\$1,947,113.
Meadowcreek Trail – Section 3.	\$700,000.
CAT – additional funding for 30 minute routes.	\$2,000,000.
New City Manager Fund.	\$1,000,000.
Council Strategic Initiatives.	\$325,000.
Upgrade of SAP.	\$1,000,000.
Fuel Price Volatility.	\$150,000.
Language Access Pilot Program.	\$100,000.
Standards and Design Manual.	\$142,142.71.

Pathways Fund.	\$575,000.
Emergency Management Mobile AEDs.	\$150,000.
Working Capital Fund for Meadowcreek Golf Course.	\$300,000.
Class and Compensation Study – One Time Uses.	\$2,000,000.
Transfer to Capital Improvement Contingency Fund.	\$6,662,547.30.
Total Section I.	\$22,917,915.01.

II. FACILITIES REPAIR FUND.

Courthouse Maintenance (P-00099) - \$7,245.50 - These unspent restricted court fees will be used for future court repair work or records conversion. The amount will be carried over in the Facilities Repair Fund.

Courthouse Construction (P-00783) - \$9,610.98 – These unspent restricted court fees will be used for future renovations or construction projects relating to the courts and will be carried over in the Facilities Repair Fund.

Total Section II.	\$16,856.48.
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III. GRANTS FUND.

These funds were received from outside sources and are being appropriated to be spent by the respective grants:

\$1,375.39 – these funds will be used for additional qualifying State Fire Grant expenditures (1900010).

Total Section III.	\$1,375.39.
---------------------------	--------------------

IV. SCHOOLS GAINSHARING.

In 1998, the School Board and City Council entered into a gainsharing agreement. This agreement mandates that the first \$100,000 to go to facilities for School Capital Improvement Projects, the next \$100,000 is retained by the Schools in the General Fund and then any amount over \$200,000 will be shared equally (50/50) between the School Board and the City.

For the year ending June 30, 2022, the Schools had an operating surplus of \$1,042,414.50. The Schools, with staff concurrence, recommend the full amount be transfer to the FY24 Capital Improvements Program to offset increased costs for the schools reconfiguration project.

Total Section IV.	\$1,042,414.50.
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CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approve the Resolution
Presenter:	Alexander Ikefuna, Director of Community Solutions
Staff Contacts:	Alexander Ikefuna, Director of Community Solutions Brenda Kelley, Redevelopment Manager
Title:	Designation of Park Street site as a Revitalization Area (1 reading)

Background

Piedmont Housing Alliance (PHA) is proposing Park Street Senior Apartments at 1200 Park Street, a residential, affordable housing development. The project proposes a 50-apartment affordable, multifamily community for low-income seniors, behind Park Street Christian Church and its preschool building. The proposed unit mix includes 10 one-bedroom, 37 two-bedroom, and 3 three-bedroom apartment to be leased to individuals and households with incomes between 30% AMI and 60% AMI. Specifically, the affordable unit mix will be 5 homes at or below 30% AMI, 20 homes between 31% and 50% AMI, and 25 homes below 60% AMI. The affordability period will be for more than 30 years. Monthly rents will range from \$489 to \$1,650 based on the unit type and income restrictions for each unit. Park Street Senior Apartments will set aside a portion of homes to meet the needs of residents with disabilities. The project will deliver 5 fully accessible, Section 504 homes for residents with physical impairments and 2 accessible homes for residents with sensory impairments. The remaining rental homes are targeted to meet or exceed Universal Design standards. High energy efficiency standards will ensure low energy costs, and public transportation may be accessed within a quarter of a mile of the site.

As the primary source of project financing, PHA will pursue 9% Low Income Housing Tax Credits (LIHTC) ensuring affordability for a minimum of 30 years. The total development cost is currently estimated at \$16.2 million. Construction is expected to start in the first quarter of 2024.

The Park Street Senior Apartments LIHTC application will be evaluated and scored based on criteria defined in the current Qualified Allocation Plan (QAP), which provides a competitive advantage to properties in a designated revitalization area. LIHTC funding is the critical funding source for the development of deeply affordable housing projects and it is a highly competitive application process.

The final site plan is currently under review by City staff, and an application for LIHTC funding in March 2023 is anticipated.

Discussion

Application for Virginia Housing LIHTC program are due in March 2023. Projects seeking LIHTC support score more competitively if located within a revitalization area as defined by Virginia Code 36-55.30:2.

Alignment with City Council's Vision and Strategic Plan

The overall development of Park Street Senior Apartments supports City Council's visions of Quality Housing Opportunities for All; A Green City; Community of Mutual Respect; and Smart, Citizen-Focused Government.

Approval of this request is also supported by the following:

Strategic Plan Goals:

- Goal 1.3: Increase affordable housing options
- Goal 2.3: Improve community health and safety outcomes by connecting residents with effective resources (aligning health care with provision of housing for the elderly and disabled)

Comprehensive Plan Guiding Principles (2021):

- Equity & Opportunity – All people will be able to thrive in Charlottesville.
- Community Culture & Unity – Charlottesville's rich and diverse culture and form will be celebrated, and the entire community will feel welcomed, valued and respected.
- Local & Regional Collaboration – From the neighborhood to the region, open conversations and partnerships will make the city stronger.
- Environmental Stewardship & Sustainability – The Charlottesville community will demonstrate environmental and climate leadership.
- Connections & Access – The City will consider land use and transportation in complementary ways, creating more accessible and safer mobility options for all.
- (Numerous Goals in the Comprehensive Plan also support this request).

Community Engagement

In conjunction with its rezoning request for the Park Street property, the project team engaged community members, city staff, and the Planning Commission in a series of meetings in order to identify potential impacts of the project and hear the questions and concerns of residents. Public comment was received at a Planning Commission work session on August 24, 2021, and at a public hearing on December 14, 2021. Following the public hearing, the Planning Commission approved the rezoning request to allow the use. The City Council approved the rezoning on January 18, 2022.

Budgetary Impact

This request has no budget impact.

Recommendation

Staff recommends City Council approve the attached Resolution declaring the Park Street Senior Apartments site as being located in a revitalization area based on the following:

1. The industrial, commercial or other economic development of such area will benefit the city or county but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; AND
2. Private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area and will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area.

Alternatives

City Council could choose to not support the revitalization area certification for the Park Street Senior Apartments site, which could have a negative impact on the LIHTC application, as well as the City's goal of creating more affordable housing.

Attachments

1. RES Park Street Revitalization Area

RESOLUTION

Designating Property Located at 1200 Park Street (City Real Estate Parcel No. 470002120) as a Revitalization Area

WHEREAS City Council hereby finds and determines that an area of property located at 1200 Park Street within the City of Charlottesville, further identified by Real Estate Parcel Identification No. 470002120 within the City's real estate assessment records, satisfies the following criteria: **(i)** the industrial, commercial or other economic development of such area will benefit the city, but such area lacks the housing needed to induce manufacturing, industrial, commercial, governmental, educational, entertainment, community development, healthcare or nonprofit enterprises or undertakings to locate or remain in such area; **and (ii)** private enterprise and investment are not reasonably expected, without assistance, to produce the construction or rehabilitation of decent, safe and sanitary housing and supporting facilities that will meet the needs of low and moderate income persons and families in such area, but such construction will induce other persons and families to live within such area and thereby create a desirable economic mix of residents in such area; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, pursuant to the authority set forth within Virginia Code Section 36-55.30:2(A), Virginia THAT the area of property located at 1200 Park Street (Real Estate Parcel Identification No. 470002120) is hereby designated as a Revitalization Area.

Approved by Council
January 3, 2023

Kyna Thomas, CMC
Clerk of Council

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Adopt Resolution
Presenter:	Chris Engel, Director of Economic Development
Staff Contacts:	Chris Engel, Director of Economic Development Michael Rogers, City Manager
Title:	Resolution of Support for the Virginia America 250 Commission (VA250) (1 reading)

Background

The Virginia America 250 Commission (VA250) was created in 2020 by the General Assembly for the purpose of preparing for and commemorating the 250th anniversary of Virginia's participation in American independence. A primary goal of the Commission is to convene and facilitate a Commonwealth-wide commemoration and celebration, multi-faceted and inclusive of hundreds of partners and representatives of the wide array of histories, sites, stories, and communities that define Virginia. VA250 has requested that each locality form a committee to aid in planning for the commemoration period.

Discussion

The Charlottesville-Albemarle Convention and Visitor's Bureau (CACVB) has indicated its willingness to convene a VA250 Commission committee for our region (The committee would also include representatives from the town of Scottsville and the County of Albemarle). Staff is requesting the Council's support for the CACVB to form a committee on behalf of the City to aid in the planning for the commemoration period.

By forming a committee, the state commission will provide grant funding opportunities for commemorative events and make available programs to include traveling exhibitions and teacher resources. The CACVB Director will serve as the local liaison to the Commission.

Alignment with City Council's Vision and Strategic Plan

This action aligns with the Council's vision for economic sustainability and arts and culture.

Community Engagement

The action creates an opportunity for community engagement on this important anniversary.

Budgetary Impact

No new funding is being requested.

Recommendation

Staff recommends that the Council support the efforts of CACVB in forming a committee on behalf of the City and adopt the resolution of support to designate the CACVB Executive Director as the local liaison to the Virginia America 250 Commission.

Alternatives

Attachments

1. RES Support VA250

RESOLUTION

**Expressing Support of the City of Charlottesville for the
Virginia America 250 Commission**

WHEREAS the Charlottesville City Council is dedicated to the furtherance of economic development and tourism in Charlottesville;

WHEREAS the Virginia America 250 Commission (VA250) was created in 2020 by the General Assembly, for the purpose of preparing for and commemorating the 250th anniversary of Virginia’s participation in American independence;

WHEREAS VA250 has requested that each locality form a committee to aid in planning for the commemoration period, and Albemarle County, the City of Charlottesville and the Town of Scottsville will form a local VA250 committee (“Local Committee”); and

WHEREAS the purpose of the Local Committee is to plan and coordinate programs occurring within the locality, and to communicate regularly with VA250; and

WHEREAS the City Council wishes to undertake this endeavor with VA250 to promote and commemorate this important historic milestone; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the Council hereby expresses its support for the Virginia America 250 Commission and their efforts to commemorate the 250th anniversary of Virginia’s participation in American independence, and City Council hereby requests the Executive Director of the Charlottesville Albemarle Convention and Visitors Bureau to form a committee on behalf of the City of Charlottesville, Albemarle County, and the Town of Scottsville, to aid in the planning for the commemoration period.

ADOPTED the ___ day of _____, 2023.

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



Agenda Date:	January 3, 2023
Action Required:	Consideration of an application for a Critical Slope Waiver
Presenter:	Matthew Alfele, City Planner
Staff Contacts:	Matthew Alfele, City Planner
Title:	Critical Slope Waiver Application request at 0, 208-210, 228 Monte Vista Avenue, and 0 Belleview Street (Azalea Springs Subdivision) (1 reading)

Background

Stanley Martin Companies, LLC (owner) has submitted a Critical Slope Waiver application in conjunction with a final subdivision and site plan for a development that would include up to forty-five (45) single-family detached dwellings, point six (0.6) acres of community open space and supporting infrastructure. The proposed development is referred to as Azalea Springs. The applicant is proposing to replat the existing eight-eight (88) plus lots along with additional dedication of right-of-way to accommodate a City standard road and to bring the existing lots closer to current regulations in regard to square footage and road frontage requirements. The proposed development is located between Azalea Drive and Monte Vista Avenue and has access from a stub out section of right-of-way from Azalea Drive and is identified as Tax Map and Parcels 200142000, 200126000, 200147000, 200131200, 200125000, 200146000, 200130001, 200122000, 200145000, 200129000, 200121000, 200144000, 200127001, 200148000, and 200143000. To construct the development as presented in the application, the developer will need to disturb 93.1% of the critical slopes on site. Of that 93.1%, 63.7% needs a waiver from City Council. The remaining percentage of critical slopes is exempt per Section 34-1120(b)(7)(c). The Subject Properties are zoned R-1S (Single-family Small Lots) and have a future land use designation as General Residential.

Discussion

The Planning Commission held a hybrid virtual and in-person meeting on December 13, 2022 where this application was deliberated. During their discussions the following points were raised:

- Stormwater and how undergrounding the spring could impact properties downstream.
- Preservation of trees.
- Connection of the proposed development to Jefferson Park Avenue through the existing alley.
- Improvements to the City's sewer system in Monte Vista Avenue.

The Planning Commission heard a presentation from the applicant and detailed overview of the history of the site as it relates to existing nonconforming lots of records. Planning Commission talked through the complexity of the site but felt comfortable with the stormwater management and E&S measures that would be used. Planning Commission wanted to know if the applicant had considered alternatives for the site such as rezoning or SUP. The applicant stated they had, but the proposal they are bring forward is the best use of the site. The applicant also stated they could develop the

site without impacting critical slopes, but that scenario would result in fewer trees being preserved. The fact that development will be on the City's sanitation system was also a topic of conversation.

Staff note: A recording of the meeting can be found at the following link. Discussion starts at the 05:42:00 mark.

[Link to recording of Planning Commission](#)

Staff note: The full application for this project can be found at the following link. Materials start on page 57.

[Link to application and background materials](#)

Alignment with City Council's Vision and Strategic Plan

If City Council approves the Critical Slope Waiver Application, the project could contribute to Goal 3: A Beautiful and Sustainable Natural and Built Environment, 3.1 Engage in robust and context sensitive urban planning and implementation, and the City Council Vision of Quality Housing Opportunities for All.

Community Engagement

Under the City's Zoning Code, a Critical Slope Waiver Application does not require a Public Hearing or community engagement meeting, but public engagement for this project has been achieved through other methods such as meetings related to the site plan(s), emails, and phone calls. Many members of the public have reached out directly to Planning Commission and City Council to voice their concerns. In addition, many members of the public spoke during Matters to be Presented by the Public not on the formal Agenda at the December 13, 2022 meeting and had the following comments:

- Concerned with environmental impacts developing the site will have.
- Concerned with removal of so many trees from the site and the loss of a mature tree canopy.
- Traffic impact to the neighborhood this development will have.

Budgetary Impact

This has no impact on the General Fund.

Recommendation

The Planning Commission voted 6-0 to recommend the application be approved.

Suggested Motion: "I move the RESOLUTION approving a critical slopes waiver for the Azalea Springs Subdivision>"

Alternatives

City Council may deny or indefinitely defer the requested Critical Slope Waiver:

- (1) Denial: "I move to deny the Critical Slope Waiver requested with application P20-00008"
- (2) Deferral: "I move to defer Council action on Critical Slope Waiver P20-00008"

Attachments

1. RES - critical slopes waiver

RESOLUTION

Approving a Critical Slope Waiver for the Azalea Springs Subdivision

WHEREAS Stanley Martin Companies, LLC (“developer”), as the owner of property located at 0, 208-210, and 228 Monte Vista Avenue, and at 0 Belleview Street, and that is further identified within the City’s real estate assessment records by Parcel Identification Nos. 200142000, 200126000, 200147000, 200131200, 200125000, 200146000, 200130001, 200122000, 200145000, 200129000, 200121000, 200144000, 200127001, 200148000, and 200143000, seeks a waiver of the critical slopes requirements of City Code Sec. 34-1120(b)(6) to allow construction of a residential development project referred to as the Azalea Springs Subdivision (the “Project”); and

WHEREAS in order to construct the Project as desired, and presented in their development application, the developer will need to disturb 93.1% of the critical slopes currently existing within the development site (of that 93.1%, 63.7% of the critical slopes require a waiver from City Council; the remaining critical slopes areas are exempt per City Code Sec. 34-1120(b)(7)(c)); and

WHEREAS the Planning Commission held their regular meeting on December 12, 2022 and recommended approval of the request to waive the critical slopes requirements, pursuant to City Code §34-1120(b)(6)(d); and

WHEREAS upon consideration of the information and materials provided by the applicant and the recommendation of the Planning Commission, the City Council finds and determines pursuant to City Code Sec. 34-1120(b)(6)(d)(i) that: the benefits of allowing disturbance of the critical slopes in connection with the Project outweigh the public benefits of the undisturbed slopes, and that a waiver would not be detrimental to the public health, safety or welfare, detrimental to the orderly development of the area or to adjacent properties, or contrary to sound engineering practices; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia THAT a waiver of the critical slopes requirements of City Code Sec. 34-1120(b)(6) is hereby granted, for the residential development Project described within the materials presented to City Council on January 3, 2023, referred to as the Azalea Springs Subdivision.



City Manager's Report

January 2023

UPDATES FROM CITY MANAGER MICHAEL ROGERS

- The Swearing-in Ceremony for Police Chief Michael Kochis will be January 17th at 4:00 PM in the Council Chamber.
- The Labor Relations Manager, Jimmy Morani has been hired and will join the City of Charlottesville in January. The new Manager will be introduced at a future Council Meeting. The role will be critical to the implementation of the new Collective Bargaining Ordinance which is effective January 1. Proposals for the role identified under the ordinance as Labor Relations Administrator, which receives petitions for recognition and conducts elections will be received on January 11. Representatives from labor will serve on the evaluation committee. A selection will be made by the end of January with the capability to receive petitions and conduct elections to be in place in February with an anticipated start of first bargaining in March. A Labor Relations training program for Council is being prepared for a Work Session in February. This training will be conducted by Robin Burroughs of Venable and will focus on Council's role during collective bargaining negotiations.
- City Manager's Office and Department of Human Resources are putting major emphasis on filling the number of vacancies that currently exist. A new recruiter, Victoria Falleck, will join the Human Resources staff in January and will be crucial to reducing the backlog of vacant positions.
- Seven proposals were received for the search for a Strategic Planning consultant. The Evaluation Committee has narrowed the proposers to two. It is expected the final award will be made before the end of January with the work of developing a new strategic plan to take place from February through June.
- With the departure of Lisa Robertson as city attorney, I have asked the senior deputy Allyson Davies to serve as City Attorney while we conduct a search for a new attorney. We have advertised for the City Attorney and will begin to receive resumes over the next month. The target for completing this search is three months.
- In February the leadership team will participate in leadership development and team building training.

UPDATES FROM DEPUTY CITY MANAGER ASHLEY MARSHALL

- **Reminder from Department of Human Services**
 - As winter weather continues to move in, the Charlottesville Department of Human Services would like to remind members of the community who may find themselves in need or may be supporting a neighbor or friend who has lost housing to call the Homeless Information Line at 434-207-2328. The Homeless Information Line also works in partnership with our community nonprofit PACEM and The Haven to add additional access to supportive services including The Haven for day shelter and PACEM for emergency overnight shelter. To learn more about The Haven please go to their website at: <https://www.thehaven.org/>. To learn more about PACEM please go to their website at: <https://pacemshelter.org/>
 - A medida que avanza el clima invernal, el Departamento de Servicios Humanos de Charlottesville les recuerda a los miembros de la comunidad que puedan encontrarse en necesidad de apoyo, o que esten apoyando a un vecin@ o amig@ que ha perdido su vivienda que llamen a la línea de información para personas sin hogar al 434-207-2328. Esta línea también trabaja en asociación con las organizaciones sin fines de lucro PACEM y The Haven para acceso adicional a servicios de apoyo, incluidos el refugio diurno del Haven y refugio nocturno de emergencia en PACEM. Puede encontrar mas informacion de The Haven en su sitio web en: <https://www.thehaven.org/>. Puede tambien obtener más

- **Reminder about Supportive Services**

- The City would like to make sure the community is aware of the supportive services that are available to you, your loved ones, and your neighbors and friends. Specifically, during this time, having safe shelter is critical. Please know that our partners at The Haven will be open and running from 7 am to 12pm and then from 1pm to 5pm Monday-Sunday for any member of our unsheltered community who may need access – however in cases of a medical emergency please still dial 9-1-1 or report directly to the emergency department at UVA Health or Martha Jefferson for assistance.

UPDATES FROM DEPUTY CITY MANAGER SAMUEL SANDERS

- **Belmont Bridge Update**

- **Lighting:** The contractor has ordered 20 solar lights. They are 74” tall with an 8” base. Plan is to start with 100’ intervals for 10 lights to be initially installed. We will evaluate and add if more lighting is necessary. The supply of lights arrived last week and are being prepared for installation.
- **Sidewalk Opening:** the sidewalk on the eastern bridge opened December 20th. Pedestrians will need to use the mid-block crosswalk at Graves Street until the sidewalk is replaced between Graves and Levy. Looking at about another 3 weeks given holidays, low temperatures and work needing to be completed by subcontractors – but this has been raised as high priority to Caton. Then the mid-block crossing will be removed which addressed another complaint of difficulty seeing the flashing lights of crossing.
- **Alternate Route:** Garrett Street to 4th Street to Downtown Mall will be highlighted in weekly Traffic Alert. Walking from 9th/Avon/Levy/Garrett intersection along eastern side of 9th/Avon to East Market/7th Street intersection is 1713 feet. Walking from 9th/Avon/Levy/Garrett intersection along Garrett to 4th Street to middle of Downtown Mall at 4th Street is 1700 feet. This could be a shorter distance for a ped to travel, does require more street crossings but has sidewalk throughout and no lighting has been impacted by the bridge project. Short term solution until we get the solar powered lights installed.

- **East High Temporary Bus Stop**

- The bus stop on East High is temporary in its current placement and configuration as a moveable sign. That is because the sidewalk improvement in front of the AT&T building is going to be constructed and the stop will be permanently affixed to that that new location upon completion. The reason for moving the bus stop was to immediately address the safety concern that existed with the stop being in located between Charlottesville Glass & Mirror and Jack & Jill’s as drivers were illegally cutting through the parking lot to avoid waiting behind a stopped bus. That posed a serious safety concern and with the increased attention to safe routes to schools, we moved the bus stop as an urgent intervention.

- **Little High Traffic Improvements**

- The items mentioned regarding changes to parking restrictions on fairway and Caroline are being worked as a comprehensive request and today are not fully submitted as discussed. The traffic engineer will be processing all the requests and reviewing the petitions for changes for consideration as a packaged implementation because the conditions in the area are outside current design standards and will require a full look at impact with certain changes being requested.

- **Plastic Bag Tax**

- The Plastic Bag Ordinance goes into effect on January 1, 2023. The city has ordered a supply of bags to be distributed to SNAP and WIC eligible households, but the recent weather has delayed delivery. As

soon the bags have been received and prepared for distribution, the Department of Social Services will disburse to their clients.

- There are also two locations where you can drop off Reusable Grocery Bags that can be provided to members of the community free of charge. The locations are:
 - Refill Renew, 1717 Allied Lane off Harris Street, Charlottesville
 - Dogwood Refillery at 190 Zan Road, Charlottesville



PLASTIC BAG TAX

Beginning January 1st, 2023

The Virginia Disposable Plastic Bag Tax Ordinance will be in effect in Charlottesville at grocery stores, convenience stores, and pharmacies.

The City of Charlottesville is moving to reduce plastic pollution in our community. As authorized through Virginia Code § 58.1-1745, retailers will be required to charge \$0.05 per disposable plastic bag provided to customers at checkout. For questions about administration or enforcement, please contact Virginia Tax at (804) 367-8031.

While this does not eliminate the use of all plastic bags, it incentivizes the use of recycled materials and reusable containers such as bags, boxes, and baskets for transporting purchased items.

What is the Plastic Bag Tax

A 5-cent tax on applicable plastic bags, aimed at reducing plastic pollution

How will the revenue from the tax be used?

The revenue must be used to purchase and distribute reusable bags to vulnerable populations and fund environmental education and litter clean-up programs.

What Type of Plastic Bags will be Impacted?

Plastic bags subject to the tax are disposable, plastic bags provided to shoppers in grocery stores, convenience stores, or pharmacies at checkout.

Plastic bags that **ARE NOT** subject to the tax:

- ✓ 4mm thick plastic bags with handles designed for multiple uses.
- ✓ Plastic bags solely used to wrap, contain or package goods to prevent damage or contamination.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approve the Resolution following Public Hearing
Presenter:	Brenda Kelley, Redevelopment Manager
Staff Contacts:	Samuel Sanders, Jr., Deputy City Manager Allyson Davies, Senior Deputy City Attorney
Title:	Approving a Lease Agreement with McGuffey Arts Associates, Inc. for the lease of 201 2nd Street NW (1 reading)

Background

The City of Charlottesville and McGuffey Arts Associates, Inc. formed a dynamic relationship in 1975, whereby this co-operative arts organization leases the former McGuffey Elementary School from the City. McGuffey Art Center, one of the oldest artist-run cooperative art centers in the country, rents more than 45 studio spaces to artists, has more than 100 artists within the art center’s association, and has 4 incubator residency members. The artists within the community participate in varying ways to support McGuffey Art Center’s growth through teaching classes and workshops, showcasing works in exhibitions, participating and holding events and doing community outreach. This organization and the services it provides have proven to be of great benefit to the Downtown business corridor and local art scene.

The most recent Lease Agreement with McGuffey (“Tenant”) was effective for five (5) years from November 3, 2015 through October 31, 2020. Because this lease expired on October 31, 2020 and was not extended through a new lease agreement and the Tenant remained in the property, the lease effectively became a holdover, month-to-month lease. A Lease Extension was recently entered into and expires December 31, 2022. Currently, McGuffey leases the building and property from the City for \$2047.00 per month.

Discussion

According to a summary of the Arts & Economic Prosperity IV for the Greater Charlottesville Area, VA report Copyright 2012 Americans for the Arts:

Arts & Economic Prosperity IV provides compelling new evidence that the nonprofit arts and culture are a significant industry in the Greater Charlottesville Area—one that generates \$114.4 million in total economic activity. This spending—\$49.5 million by nonprofit arts and culture organizations and an additional \$64.9 million in event-related spending by their audiences—supports 1,921 full-time equivalent jobs, generates \$48.9 million in household income to local residents, and delivers \$9.2 million in local and state government revenue. This economic impact study sends a strong signal that when we support the arts, we not only enhance our quality of life, but we also invest in the Greater

Charlottesville Area's economic well-being.

McGuffey's Annual Report 2020-2021 highlights their efforts to realize their arts vision. This Annual Report also shows Net Income of approximately \$26,400. The proposed lease is consistent with the spirit of past agreements in terms of the fiscal and legal relationship between our organizations, over a five-year lease period. McGuffey's Annual Report 2020-2021 can be found:

https://static1.squarespace.com/static/5ff7aec66a12bf007985d03a/t/6215232e49f18e77c81c1e0d/1645552436108/MAC_AR2021.pdf

City staff provides the following information relative to this lease approval request:

McGuffey building space (square footage):	34,217
Assessed Value (includes McGuffey Park site):	\$8,374,200
Current Lease Rate:	\$2,047/month*
*would be \$2,517.55/month if City had exercised its right to 3% annual rent increase	
Current Lease Rate per square foot:	\$0.72 +/-
Potential Annual Lease Value:	\$15-20 / SF \$42,771 - \$57,028 / month

Comparable Market Rent (per square foot):

(NAR Commercial Real Estate Metro Market Report, Q1/2022 for Charlottesville, VA)

Office:	\$24.7
Retail:	\$20.6

The general terms of the Lease Agreement are:

Lease period:	5 years (expires December 31, 2027)
Lease rate:	\$2,593.00/month, with no more than 3% annual increase
Security Deposit:	\$5,186.00
Tenant Responsibilities:	grass mowing, maintenance of exterior light fixtures; janitorial services; cost of utilities, insurance; Tenant accepts Premises "as-is"
City Responsibilities:	maintenance of structural elements; some landscape services

Alignment with City Council's Vision and Strategic Plan

The provision supports City Council's visions of Economic Sustainability; and C'ville Arts & Culture. This program aligns directly with Strategic Plan Goal 3.5: Protect historic and cultural resources; Goal 4.2 Attract and cultivate a variety of businesses; and Goal 4.4 Promote tourism through effective marketing.

This program also supports the 2021 Comprehensive Plan's:

Guiding Principle: Community Culture & Unity: Charlottesville's rich and diverse culture and form will be celebrated, and the entire community will feel welcomed, valued, and respected. The City will protect, celebrate, and enhance the people and places that have added to the uniqueness and cultural diversity of the community.

Land Use, Urban Form, and Historic & Cultural Preservation; Goal 11. Historic Resource Protection: Provide effective protection of Charlottesville's historic resources, including through recognition and incentives.

Economic Prosperity & Opportunity; Goal 3. Innovation and Growth: Create an entrepreneurial environment that fosters the creation and success of businesses.

Community Engagement

This Lease Agreement has been reviewed by McGuffey Arts Associates, Inc. representative(s).

Budgetary Impact

This request does not require any funding from the City budget. It is assumed that maintenance costs may be offset by rent payments.

Recommendation

Staff recommends that City Council approve the attached Resolution following Public Hearing.

Suggested Motion: "I move the RESOLUTION approving a 5-year lease of City property to McGuffey Arts Associates, Inc."

Alternatives

City Council could choose to not approve this Resolution which will result in the current lease extension to expire. The terms of the lease extension specifically states that the terms may not be renewed through additional addendum after this current extension period expires.

Attachments

1. Resolution McGuffey Lease Agreement 010323
2. McGuffey Lease finalJan2023vrs3

Suggested motion: “I move the Resolution approving the Lease Agreement with McGuffey Arts Association, Inc.”

RESOLUTION

Approving a lease of property at 201 2nd Street, NW to the McGuffey Arts Association

WHEREAS, the McGuffey Arts Association, Inc., desires to lease certain City-owned property for a term of five (5) years, and City Council has considered the terms of the proposed lease, and has conducted a public hearing in accordance with the requirements of Virginia Code Sec. 15.2-1800(B); NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the lease of City-owned property located at 201 2nd Street, N.W., Charlottesville, Virginia, to the McGuffey Arts Association, Inc., presented to Council this same date for consideration, is hereby APPROVED and the City Manager is hereby authorized to execute the approved lease on behalf of City Council.

Approved by Council
January 3, 2023

Kyna Thomas, CMC
Clerk of Council

CITY OF CHARLOTTESVILLE LEASE AGREEMENT

(City-owned building)

THIS LEASE AGREEMENT (hereinafter, “Lease” or “Lease Agreement”) is made and entered into this ____ day of _____, 20____, by and between THE CITY OF CHARLOTTESVILLE, VIRGINIA, a Virginia municipal corporation, herein referred to as “Landlord,” and MCGUFFEY ARTS ASSOCIATION, INC., a nonprofit arts organization organized and operating under the laws of the Commonwealth of Virginia herein referred to as “Tenant”.

WITNESSETH:

ARTICLE I. DEMISED PREMISES

- A. For and in consideration of the payment by Tenant of the rent hereinafter reserved and the performance by Tenant of the covenants and agreements hereinafter agreed to be performed by it, in accordance with all of the provisions hereinafter set forth, Landlord does hereby lease, let, and demise unto Tenant, its successors and assigns, and Tenant does hereby take, lease and hire from Landlord, a building, and land and various appurtenances thereto pertaining, located at **201 2nd Street, N.W., Charlottesville, Virginia** (the “Property”), the premises subject to this Lease being as more particularly described within **Exhibit A**, attached and incorporated herein by reference (collectively, the “Demised Premises”).
- B. Tenant acknowledges that it has had an opportunity to inspect the Demised Premises, and that the Demised Premises are in good order and repair, unless otherwise indicated within a written Inspection Report attached to this Lease Agreement as **Exhibit D**, and signed by both Landlord and Tenant. Tenant accepts the Demised Premises “as-is”. Tenant acknowledges that, based on its own inspection of the Demised Premises, the Demised Premises are suitable for its intended purposes. Landlord makes no warranties or representations as to the suitability of the Demised Premises for Tenant’s intended purposes.

ARTICLE II. TERM

The term of this Lease shall be for a period of five (5) years (“Term”), commencing on the 1st day of January, 2023 (“Commencement Date”), and expiring at midnight on the 31st day of December, 2027 (“Expiration Date”) unless sooner terminated by the parties in accordance with this Lease.

By written request submitted to the Landlord at least ninety (90) days in advance of the Expiration Date, Tenant may request a lease agreement for an additional term of years. Upon receipt of

Tenant's request, the City's Representative will prepare a new lease document and, upon confirmation by the Tenant that the terms of the new lease document are satisfactory, the proposed lease for a new term of years shall be presented to City Council or a City official to whom City Council has delegated authorization to grant such approval.

ARTICLE III. COMMON AREAS AND PARKING

The Landlord agrees that Tenant and Tenant's customers, employees, and/or visitors, shall have the right throughout the Term of this Lease to use, in common with others entitled to similar use thereof, all of the interior common areas of the Property of which the Demised Premises are a part, including (i) all hallways, stairways, and doorways for ingress to and egress from the Demised Premises, and (ii) exterior common areas such as onsite parking spaces, walkways located on the Property, driveways, alleys, and any other means of ingress to and egress from the Demised Premises. Maintenance of the Common Areas shall be as set forth in Article XIII.

ARTICLE IV. USE OF DEMISED PREMISES

- A. **Tenant to maintain ongoing business.** The Tenant shall occupy Demised Premises throughout the Term of this Lease and shall conduct an ongoing business (whether for-profit or not-for-profit) throughout the entire term. Failure to maintain an ongoing business, except for shutdown for reasonable vacations of no more than one month per year, shall be deemed a breach of this Lease. Tenant shall pay all business license taxes and business personal property taxes which may be imposed by the Commonwealth of Virginia or the City of Charlottesville.
- B. **Specific uses authorized.** The Demised Premises shall be used by the Tenant primarily as an art center, which may include any of the following uses or activities, as defined in the City's zoning ordinance: "art gallery", "art studio", or "art workshop". Tenant may sublease spaces within the Demised Premises to others engaged in such uses ("subtenants"), subject to all the same terms and conditions, but no sublease shall extend beyond the term of this Lease. No other use or sublease may be made of the Demised Premises without the advance and express written consent of the Landlord.
- C. **Rules and regulations.** Tenant agrees to observe all reasonable rules and regulations from time to time promulgated by Landlord, which in the Landlord's judgment (to be reasonably exercised) are needed for the general well-being, safety, care and cleanliness of the Demised Premises and the Property of which they are a part; provided, however, that any such rules and regulations shall be of general application to all other tenants and occupants of said Property. Such rules and regulations are incorporated herein as if fully set forth. A breach of a rule or regulation shall constitute a breach of this Lease. The rules and regulations may, in the sole discretion of the Landlord, be modified from time to time, so long as they do not affect a material change in this Lease. Such rules shall include, but are not limited to, the following:
 - 1) The sidewalks, entries, passages, elevators, public corridors and staircases and other parts of the Property which are not occupied by the Tenant shall not be obstructed or used for any other purpose other than ingress and egress.
 - 2) The Tenant shall not install or permit the installation of any awnings, shades, and the like, other than those approved by the Landlord in writing.

- 3) No additional locks shall be placed upon any doors in the Demised Premises unless keys therefor are given to the Landlord for use in emergencies; and the doors leading to corridors or main halls shall be kept closed during business hours except as they may be used for ingress and egress.
- 4) Tenant shall not construct, maintain, use or operate within the Demised Premises (or elsewhere in the Property of which said Demised Premises form a part, or on the outside of the Demised Premises) any equipment or machinery which produces music, sound or noise which is audible beyond the Property, unless otherwise permitted by event approval.
- 5) Electric, cable and telephone floor distribution boxes must remain accessible at all times.
- 6) No animals shall be kept by Tenant in or about the Leased Premises and the Tenant shall not suffer any animal(s) to be kept in or about the Leased Premises. Service animals shall be permitted.
- 7) No vehicles of any kind, including but not limited to electric scooters, shall be brought into the lobby or elevators of the Property or into the Demised Premises. Bicycles shall not be left stored in any common areas or within a studio area that could obstruct free egress during an emergency.
- 8) Tenant shall not utilize in the Demised Premises equipment requiring electrical energy other than ordinary office equipment (including desktop computers, telephones, fax machines, copying, printing and scanning equipment). Existing equipment (such as kiln(s)) and hand held power tools specifically used to engage in the specific uses authorized, shall be allowed provided Tenant provides Landlord with equipment description and picture prior to use. All industry, electrical and City/State codes must be complied with at all times for use of equipment and hand held power tools.
- 9) Onsite parking shall be for use only of the Tenant, subtenants, and their visitors.
- 10) Tenant shall comply with the "Facility Terms of Use; Facility Site Use and Maintenance Definitions and Facilities Operations and Maintenance" established by Landlord, attached hereto as **Exhibit B**, and incorporated by reference, as such document may be modified by Landlord from time to time. In the event of a conflict between any provision of this Lease and the contents of **Exhibit B**, and any future modification thereof, the provision most favorable to the Landlord shall govern.

ARTICLE V. RENT

- A. **Basic monthly rent.** The Tenant hereby covenants and agrees to occupy the Demised Premises as Tenant of the Landlord for the term hereinabove set forth, and agrees to pay to the Landlord rental therefor without offset or deduction therefrom, the sum of thirty-one thousand one hundred and sixteen Dollars (\$31,116.00) in U.S. currency, **per year ("basic annual rent")**, payable in monthly installments (hereinafter referred to as the "Basic Monthly Rent").

The Basic Monthly Rent estimated to be due is two thousand five hundred ninety-three Dollars (\$2,593.00), payable on the 1st day of January, 2023 and the first day of each calendar month thereafter throughout the Term of this Lease.

Rent payments shall be delivered by check, cash or wire transfer to:

Mail Check:

Office of the City Manager
City of Charlottesville
P.O. Box 911
Charlottesville, VA 22902
Attn: Lease - McGuffey

In Person (cash or check):

City of Charlottesville
Customer Service, 1st Floor
600 E. Main Street
Charlottesville, VA 22902
Attn: Lease – McGuffey

Wire Transfer:

Information provided upon request.

Tenant is responsible for ensuring that payment is received by the City by the Due Date.

The Fair Market Rent for the Demised Premises is \$598,797.50. The difference between the basic annual rent and the Fair Market Rent is at least \$567,681.50 annually, which shall be deemed an in-kind financial contribution by Landlord to Tenant.

- B. **Adjustment in basic annual rent.** The basic annual rent shall be subject to adjustment for increases as follows: At the end of the first year (twelve (12) months) during the term of this Lease, and thereafter at the end of each succeeding year, and effective simultaneously with the date of each such adjustment, the basic annual rent (and the Basic Monthly Rent installments thereof) shall be adjusted by no more than three percent (3%) per annum of the basic annual rent for the immediate preceding year.
- C. **Additional Rent-**
- 1) **Taxes.** During the term of this Lease, Tenant shall be solely responsible for, and shall pay to the City, in addition to the basic annual rental as aforesaid, as additional rent, any real estate taxes and assessments imposed on its leasehold interest, and Tenant's Proportionate Share of any stormwater utility fees.
 - 2) **Tenant's Proportionate Share.** "Tenant's Proportionate Share" means a percentage determined by dividing the square footage of the Demised Premises by the total square footage of rentable space available on the Property.
 - 3) **Reconciliation of Additional Rent.** After the end of each calendar year or partial calendar year during the Term, Landlord shall deliver to Tenant a report setting forth the actual amount of Additional Rent that is by Tenant payable for such calendar year.

ARTICLE VI. LATE CHARGES; INTEREST

- A. *Late Charges.* Tenant shall pay Landlord a late charge equal to five percent (5%) per month or any portion of a month, of the amount of rent which was not paid when due.
- B. *Interest.* Any payment other than rent due from Tenant to Landlord which is not paid when due shall bear interest from the date due until the date paid at the prevailing prime rate of interest (defined as the base rate on corporate loans posted by at least one percent (1%) per month), beginning on the due date and continuing until paid.

ARTICLE VII. SECURITY DEPOSIT

Concurrently with Tenant's execution of this Lease, Tenant shall deposit with Landlord an amount equal to \$5,186.00 as security for damage due to Tenant's failure to pay sums due hereunder, misuse of the Demised Premises, etc. (hereinafter, the "Security Deposit"). Landlord shall not be required to pay interest on the Security Deposit or to maintain it in a separate account. Within three (3) days after written notice of Landlord's use of the Security Deposit, Tenant shall deposit with Landlord cash in an amount sufficient to restore the Security Deposit to its prior amount. Within ninety (90) days after (a) the expiration or earlier termination of the Lease Term, or (b) Tenant's vacating the Demised Premises, Landlord shall return the Security Deposit less such portion thereof as Landlord may have used to satisfy Tenant's obligations. If Landlord transfers the Security Deposit to a transferee of the Lease or Landlord's interest therein, then such transferee (and not Landlord) shall be liable for its return. The holder of any Mortgage shall not be liable for the return of the Security Deposit unless such holder actually receives the Security Deposit.

ARTICLE VIII. DAMAGE OR DESTRUCTION BY CASUALTY

- A. *Casualty renders entirely untenable.* If during the term of this Lease, the Demised Premises are damaged by fires, floods, windstorms, earthquakes, explosions, hurricanes, tornadoes, strikes, acts of public enemy, incidences of terrorism, wars or riots, civil disturbances, acts of God, or other casualty, so that the same are rendered untenable, or unsuitable for Tenant's uses, and if said Demised Premises cannot be repaired by Landlord within ninety (90) days from the time of said damage, then this Lease shall terminate as of the date of such damage. In such case, Tenant shall pay the rent apportioned to the time of damage and shall immediately surrender the Demised Premises to Landlord who may enter upon and repossess the same and Tenant shall be relieved from further liability hereunder.
- B. *Casualty renders partially untenable.* If said Demised Premises shall be partially damaged by any of the above casualties as to be partially untenable, or partially unsuitable for Tenant's uses, Landlord shall repair the Demised Premises promptly and during the period from the date of such damage until the repairs are completed, the rent shall be apportioned so that Tenant shall pay as rent an amount which bears the same ratio to the entire monthly rent as the portion of the Demised Premises which Tenant is able to occupy during such period bears to the entire area of the Demised Premises. If the damage by any of the above casualties is so slight that Tenant is not disturbed in his possession and enjoyment of the Demised Premises, then Landlord shall repair the same promptly and in that case the rent accrued or accruing shall not abate.
- C. *Exclusions from Landlord's repairs.* If Landlord undertakes repair of the Demised Premises under this Section, Landlord shall not be obligated to repair, restore or replace

any of Tenant's furniture, fixtures or any other personal property owned by or in the possession of Tenant, and Landlord shall not be under any obligation to repair, restore or replace any alterations to the Demised Premises made by or on behalf of Tenant.

- D. *No diminution of rent for inconvenience.* No compensation or claim or diminution of rent will be allowed or paid by Landlord by reason of inconvenience, annoyance, or injury to business arising from the necessity of repairing the Demised Premises or any portion of the real estate of which the Demised Premises are a part, however the necessity may occur. Tenant understands and agrees that for this reason it is the Tenant's sole responsibility to obtain adequate insurance available to protect its interest in the event of such a casualty.
- E. *Termination if repairs are prohibited by law.* Notwithstanding any provision of this Lease to the contrary, Landlord may terminate this Lease in the event any local ordinance, or any state or federal statute or regulation, prohibits or inhibits any rebuilding, restoration or repair of the Demised Premises. Landlord shall deliver such written notice of termination to Tenant within thirty (30) calendar days after the event causing damage or casualty.
- F. *Termination if Landlord's insurance proceeds are inadequate.* Notwithstanding any provision of this Lease to the contrary, Landlord may terminate this Lease in the event that Landlord's insurance coverage fails to cover the event causing the damage or casualty and/or the costs of rebuilding, restoring or repairing the Demised Premises. Landlord shall provide to Tenant a copy of the determination from the insurance company within fifteen (15) calendar days after receipt of the notice of denial of coverage.
- G. *Landlord's Option to Terminate and Not to Restore.* Notwithstanding any provisions of this to the contrary, if there is substantial damage to the Demised Premises due to a fire or other casualty, then Landlord may elect to terminate this Lease, by delivering written notice of such termination to Tenant, within thirty (30) days of such casualty, the notice to specify a termination date of not less than thirty (30) days after its transmission.
- H. *Mutual Right to Terminate.* Notwithstanding anything herein to the contrary, if the Demised Premises are damaged by casualty during the last six (6) months of the Lease Term, Landlord and Tenant shall each have the right to terminate this Lease by giving the other notice within thirty (30) days of such casualty.

ARTICLE IX. FORCE MAJEURE

- A. *Effect of Events of Force Majeure.* Except as otherwise expressly set forth herein, in the event either Landlord or Tenant shall be delayed or hindered in, or prevented from, the performance of any act or rendering of any service required under this Lease, by reason of strikes, inability to obtain materials, failure of power or other utilities, restrictive governmental laws or regulations, acts of God, incidences of terrorism, wars or riots, civil disturbances, floods, earthquakes, volcanic activity, fire, explosions, epidemics, hurricanes, tornadoes, or other reasons of a similar or dissimilar nature which are beyond the reasonable control of the Landlord or Tenant (collectively known as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period of the resulting delay and the period of the performance or the rendering of the service shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, this paragraph shall not be applied so as to excuse or delay payment of any monies by one party to the other, including any rent.
- B. Except as specifically contained herein or unless otherwise expressly provided in this Lease, nothing contained in this Article shall be applied so as to: (a) permit any delay or

time extension due to shortage of funds; or (b) excuse any nonpayment or delay in the payment of rent; or (c) limit either the Landlord's or the Tenant's rights under this Lease to cure the other party's default.

- C. It shall be a condition to either party's claim of the benefit of this Article, that such party seeking the benefit of this Article give notice to the other party in accordance with Article XXVI within twenty-four (24) hours after the occurrence of any Event, and within forty-eight (48) hours after request shall advise the other party in writing of its good faith estimate of the time required until the delay is ended. The party seeking the benefit of this Article shall have no liability to the other party in the event the good faith estimates of the time needed to cure the delay is not met, however, the party seeking the benefit of this Article shall advise the other party in writing whenever such party learns that the additional time may be required to cure the delay. Upon the request of the other party, the party seeking the benefit of this Article shall advise the other party as to the latest estimate of time needed to cure the delay, and the actions being taken to cure the delay. In case of interruption of all methods of giving notice set forth in this Article, notice shall be deemed given on the second day of reasonably prominent news coverage of the Event reasonably able to be recognized as affecting the Demised Premises.

ARTICLE X. INSURANCE

- A. *Required insurance coverage.* Tenant shall maintain throughout the term, with a company licensed to do business in the Commonwealth of Virginia, approved by the Landlord, and having a rating satisfactory to Landlord: (a) broad form comprehensive general liability insurance (written on an occurrence basis, including contractual liability coverage insuring the obligations assumed by Tenant pursuant to the following paragraph entitled "Indemnification of Landlord," and an endorsement for personal injury), (b) all risk property insurance, and (c) comprehensive automobile liability insurance (covering automobiles owned by Tenant).
- 1) The broad form comprehensive general liability insurance shall be in the minimum amount typically carried by prudent tenants engaged in similar operations, but in no event shall be in an amount less than one million Dollars (\$1,000,000) combined single limit per occurrence, including a minimum limit of \$100,000 Fire Damage Legal.
 - 2) Tenant's property insurance shall be in an amount not less than that required to replace all fixtures, betterments and improvements and other contents located on the Demised Premises.
 - 3) Tenant's automobile liability insurance shall be in an amount not less than One million Dollars (\$1,000,000).

Landlord reserves the right from time to time to require Tenant to obtain higher minimum amounts of insurance.

- B. All such insurance shall name Landlord as an additional named insured, contain an endorsement that such insurance shall remain in full force and effect notwithstanding that the insured may have waived its claim against any person prior to the occurrence of a loss, provide that the insurer waives all right of recovery by way of subrogation against Landlord, its partners, agents and employees, and, contain an endorsement prohibiting cancellation, failure to renew, reduction in amount of insurance or change of coverage (1) as to the interests of Landlord by reason of any act or omission of Tenant, and (2) without

the insurer's giving Landlord thirty (30) days' prior written notice of such action. Tenant shall deliver evidence of all required insurance and receipts evidencing payment of the premium for such insurance (and, upon request, copies of all required insurance policies, including endorsements and declarations) to Landlord on or before the Commencement Date and at least annually thereafter.

- C. *Indemnification of Landlord.* Tenant shall reimburse Landlord for, and shall indemnify, defend and hold Landlord, its employees and agents harmless from and against, all costs, damages, claims, liabilities, expenses (including attorney's fees), losses and court costs suffered by or claimed against Landlord, directly or indirectly, based on or arising out of, in whole or in part from (a) use and occupancy of the Demised Premises or the use(s), activity(ies) or any business conducted therein by Tenant, (b) any act or omission of Tenant or any invitee, (c) any breach of Tenant's obligations under this Lease, including failure to surrender the Demised Premises upon the expiration or earlier termination of the Lease term, or (d) any entry by Tenant or any invitee upon the Demised Premises prior to the Commencement Date.
- D. *Increase in the rate of insurance caused by Tenant.* Tenant shall not conduct any activity or place any item in or about the Demised Premises which may increase the rate of any insurance on the Demised Premises. If any increase in the rate of such insurance is due to any such activity or item, then (whether or not Landlord has consented to such activity or item) Tenant shall pay the amount of such increase. The statement of any insurance company or insurance rating organization (or other organization exercising similar functions in connection with the prevention of fires or the correction of hazardous conditions) that such an increase is due to any such activity or item shall be conclusive evidence thereof.
- E. *Waiver.* Tenant hereby releases Landlord, its property manager and their respective agents and employees from, and waives all claims for, damage or injury to person or property and loss of business sustained by Tenant and resulting from the Demised Premises or any part thereof, or any equipment therein, becoming in disrepair, or resulting from any accident in or about the Demised Premises. This paragraph shall apply particularly, but not exclusively, to: flooding, damage caused by equipment and apparatus, water, snow, frost, steam, excessive heat or cold, broken glass, sewage, gas, odors, excessive noise or vibration or the bursting or leaking of pipes, plumbing fixtures or sprinkler devices. Without limiting the generality of the foregoing, Tenant waives all claims and rights of recovery against Landlord, its property manager and their respective agents and employees for any loss or damage to any property of Tenant, which loss or damage is insured against, or required to be insured against, by Tenant pursuant to this Article, whether or not such loss or damage is due to the fault or negligence of Landlord, its property manager or their respective agents or employees, and regardless of the amount of insurance proceeds collected or collectible under any insurance policies in effect.
- F. *Financial Condition and Financial Covenants.* Tenant acknowledges that the financial capability of Tenant to perform its obligations hereunder is material to Landlord and that Landlord would not enter into this but for its belief, based on its review of Tenant's financial statements, that Tenant is capable of performing such financial obligations, Tenant hereby represents, warrants and certifies to Landlord that its financial statements and all related documents and information previously furnished to Landlord were at the time given true and correct in all material respects and that there have been no material

subsequent changes thereto as of the date of this Lease. At any time during the Term, within thirty (30) calendar days after Landlord's request therefor, Tenant shall furnish to Landlord Tenant's most recent audited financial statements (including any notes) or, if no such audited statements have been prepared, such other financial statements (and notes) as may have been prepared by an independent certified public accountant or, failing those, Tenant's internally prepared financial statements certified by Tenant's chief financial officer. Tenant shall discuss its financial statements with Landlord and shall give Landlord access to Tenant's books and records in order to enable Landlord to verify the financial statements.

ARTICLE XI. LOSS OR DAMAGE TO PROPERTY OR PERSONS

All personal property belonging to the Tenant, located on or about the Demised Premises shall be there at the sole risk of the Tenant; and neither the Landlord nor Landlord's agent shall be liable for the theft or misappropriation thereof nor for any damage or injury thereto, nor for damage or injury to the Tenant or any of its officers, agents or employees or to other persons or to any property caused by fire, explosion, water, gas, electricity, leaks from the roof or other portion of the , the bursting or leaking of pipes, plumbing, electrical wiring and equipment or fixtures of any kind, or by any act or neglect of other tenants or occupants of the Demised Premises, or due to any other cause whatsoever, unless resulting from the willful acts of the Landlord, its employees, agents or representatives. Tenant shall give immediate notice to Landlord in case of fire or accident in the Demised Premises or of any defects, damage or injury therein or in any fixtures or equipment.

ARTICLE XII. REPAIRS AND MAINTENANCE--TENANT

- A. *Tenant responsibility.* The Demised Premises, and all of the Landlord-owned furniture, fixtures and equipment located therein, (including, without limitation, lighting and electrical fixtures, appliances, plumbing fixtures, build-in cabinetry, heating or air conditioning units or filters located on the interior of the Demised Premises, and all interior plate glass panels, flat glass such as windows and doors, and area skylights, and alterations thereof) (collectively "Demised Premises and Fixtures") shall be kept and maintained by the Tenant in good working order and condition.
- B. *Grounds Maintenance.* Tenant shall reasonably maintain the grounds exterior to the Demised Premises including: onsite walkways, and adjacent public sidewalks; grass mowing; and maintenance of exterior light fixtures.
- C. *Cleaning/Refuse Removal Services.* Tenant shall be responsible for cleaning the Demised Premises, either itself or using a janitorial service, so that the Demised Premises and Fixtures shall be neat and clean at all times. Tenant shall be responsible for removing refuse from the Demised Premises.
- D. *Surrender Obligation.* At the expiration or earlier termination or cancellation of this Lease, Tenant shall surrender all of the Demised Premises and Fixtures to Landlord in as good condition as at the time of delivery, subject to reasonable wear and tear.
- E. *Landlord rights.* If Tenant fails to perform any of its obligations under this Article, then Landlord may perform such obligations and Tenant will pay as additional Rent to Landlord the cost of such performance, including an amount sufficient to reimburse Landlord for overhead and supervision, within thirty (30) calendar days after receipt of Landlord's written demand therefor. For purposes of performing such obligations, or to inspect the

Demised Premises, Landlord may enter the Demised Premises upon reasonable prior notice to Tenant (except in cases of actual or suspected emergency, in which case no prior notice will be required) without liability to Tenant for any loss or damage incurred as a result of such entry (except if directly due to or as a result of the gross negligence or willful misconduct of Landlord, provided, however, Landlord shall have no liability for any special or consequential damages suffered either by Tenant or any party claiming through Tenant); Landlord will take reasonable steps in connection with such entry to minimize any disruption to Tenant's business or its use of the Demised Premises. All injury to the Demised Premises and Fixtures, or any of them, caused by moving any property of the Tenant, its agents, employees, independent contractors, licensees, invitees, or visitors, as well as any other damage due to the neglect of the Demised Premises and Fixtures, or any of them, may be repaired by the Landlord at the expense of Tenant and such costs of repair shall become due and payable upon delivery of a statement of such costs by Landlord to Tenant.

- F. *Other repairs.* All other repairs, including repairs of structural elements, the exterior of the Demised Premises, and the Common Areas, if such repairs have not been necessitated by the act, fault, or negligence of Tenant, or Tenant's agents, shall be the sole responsibility of Landlord.

ARTICLE XIII. REPAIRS AND MAINTENANCE--LANDLORD

- A. *Maintenance of structural elements, etc.* The Landlord shall, at its expense, maintain the Structural Elements and Common Areas, as defined below, in good condition and shall repair the same with reasonable diligence when necessary.

"Structural elements" shall include the roof, exterior walls, structural supports, windows or window systems inherent to architectural profile of the building, and major systems such as fire alarm, plumbing, electrical, heating, air conditioning, and ventilation systems.

"Common areas" include the main lobby, elevator lobbies, elevators, stairways, toilets, hallways, sidewalks and entrances and parking areas, except those elevator lobbies, toilets and hallways that are actually located within the area of the Demised Premises, which shall be the responsibility of the Tenant.

- B. *Maintenance and Repair of Common Areas.* Landlord shall reasonably maintain the foundations, exterior walls, masonry, structural floors, and roof, the portions of the heating, ventilating and air conditioning systems serving the Common Areas of the Property (excluding those which serve only a particular tenant's Demised Premises), and elevators as such elements affect the Demised Premises; but in no event shall Landlord be obligated to repair or maintain glass, windows, skylights, or doors of the Demised Premises (whether interior or exterior), which shall be Tenant's responsibility, nor shall Landlord be obligated to repair or maintain any alterations installed by or on behalf of Tenant or to repair or restore any damage to the Common Areas caused by any act or omission of Tenant or Tenant's employees, agents, contractors or invitees.
- C. *Timing.* Repairs performed by the Landlord shall be at a time and in a manner so as not to unreasonably interfere with Tenant's normal business operations. Landlord's failure to use

all reasonable diligence in making repairs which are Landlord's responsibility under this Lease, shall give Tenant the right to abate his rent by an amount proportionate to the inconvenience thereby caused Tenant.

- D. *Requests for Maintenance and Repair.* Requests for maintenance and repair of the Demised Premises that are the responsibility of Landlord shall be submitted promptly in writing to:

PropertyManagement@Charlottesville.gov

- E. *Property Inspection.* Landlord shall have the right to conduct property inspections at reasonable times such as prior to lease execution, lease renewal or annual lease anniversary date. Landlord will provide Tenant with ample notice and intent of inspection.

ARTICLE XIV. SERVICES AND UTILITIES

- A. *Separately metered utilities.* Notwithstanding anything to the contrary contained herein, Landlord intends to utilize separate meters with respect to Tenant's use of water/sewer, gas, telephone and electric utility services. In such event, Tenant shall be responsible for the cost of its own metered utility usage only. In the event that one or more of such services cannot be separately metered, Tenant shall pay its Proportionate Share of the cost incurred by Landlord for such services, as additional rent, as set forth within Article V.
- B. Tenant shall be solely responsible for all other utility or other services required by Tenant for or in connection with its use of the Demised Premises (such as internet service, trash removal, etc.).
- C. *Heating, ventilation and air conditioning.* As part of the consideration of the basic rent herein provided to be paid by the Tenant, the Landlord agrees to continue to furnish and provide to the Tenant heating, ventilation and air conditioning in the Demised Premises, if applicable.
- D. *Damages for breakdowns.* Landlord shall not be liable for damages to the Tenant for temporary failure to provide heat and/or air conditioning, or other services or amenities, if such failure results from the temporary breakdown of the plants or systems providing such services; provided, however, that in the event of such temporary failure, the Landlord shall promptly and at its own cost and expense repair the machinery or equipment so that said services will be restored.
- E. *No Liability for Interruptions.* Tenant shall not be entitled to any abatement or reduction of Rent by reason of the unavailability of any of the services referred to in this Article when such failure results from casualty, force majeure, or any other cause beyond Landlord's immediate control, or for stoppages or interruptions of any such services when necessary for Landlord to make repairs or improvements required by this Lease. Failure, stoppage or interruption of any such service shall not be construed as an actual or constructive eviction or as a partial eviction against Tenant, or release Tenant from the prompt and punctual performance by Tenant of the covenants contained herein.
- F. *Other services or amenities--Landlord.* Landlord agrees to provide at its own cost and expense: Once a year: top parking lot bed – trim all trees, pull weeds, trim ivy and spray weed control; beds by sidewalk – trim shrubs, pull weeds, mulch, and spray weed control;

beds in front of steps – trim shrubs, pull weeds, mulch, and spray weed control; beds in front of whole building – trim shrubs, pull weeds, mulch, and spray weed control; bed with sign – trim shrubs, pull weeds, mulch, and spray weed control.

Twice a month, as needed: mulch leaves.

- G. *Other services or amenities.* Upon request by Tenant, Landlord agrees to remove snow and ice from parking areas, sidewalks and walkways. Landlord will submit an invoice to Tenant for these services provided.

ARTICLE XV. LANDLORD’S ADDITIONAL RESERVED RIGHTS

- A. Landlord reserves a right of entry for itself or its contractors, to enter into and upon the Demised Premises at reasonable times and upon reasonable notice given to Tenant, for the purpose of inspecting the Demised Premises, or for performing any action Landlord has a right or obligation to perform.
- B. Notwithstanding anything in this Lease to the contrary, all the perimeter walls of the Demised Premises except the interior surfaces thereof, any space in or adjacent to the Demised Premises used for shafts, stacks, ducts, pipes, conduits, wires and appurtenant fixtures, fan rooms, electrical lines, panels or other equipment used to transmit or store electricity, water lines, storm and sanitary sewer lines, all other utility lines, installations and meters, janitorial or other service areas, and all other facilities to which Tenant has not been granted rights hereunder (the “Reserved Areas and Facilities”), and the use thereof, are expressly excluded from the Demised Premises and reserved to Landlord. In addition, Landlord excepts and reserves the right from time to time, (a) to install, use, maintain, repair, replace and relocate within the Demised Premises any Reserved Areas and Facilities; and (b) to make alterations to the Demised Premises and to alter or relocate any entranceways, Common Areas or other Reserved Areas and Facilities (including without limitation all access driveways, walkways and parking areas, if any) serving the Demised Premises. Landlord further reserves the right, at any time, to lease, license, or otherwise permit the use by any person of such Reserved Areas and facilities.
- C. Landlord reserves the following additional rights: (a) to change the name or street address of the Property and/or the suite number of the Demised Premises; (b) to install, affix and maintain any and all signs on the exterior or interior of the Demised Premises; (c) to make repairs, decorations, alterations, improvements, replacements or modifications, whether structural or otherwise, in and about the Property, and for such any of the purposes identified in this Article, to enter upon the Demised Premises, temporarily close doors, corridors and other areas in the Demised Premises and interrupt or temporarily close services or use of Common Areas. Tenant shall be required to pay Landlord for overtime and similar expenses incurred by Landlord if such work is done other than during Landlord’s ordinary business hours at Tenant’s request; (d) to retain at all times, and to use in appropriate instances, keys to all doors within and into the Demised Premises; (e) to grant to any person or to reserve unto itself the exclusive right to conduct any business or render any service in the Demised Premises; (f) to show or inspect the Demised Premises at reasonable times and, if vacated or abandoned, to prepare the Demised Premises for re-occupancy; (g) to close any Common Areas to perform such acts as, in Landlord’s reasonable judgment are necessary or desirable to maintain or improve the Property; (h) to install, use and maintain in and through the Demised Premises any pipes, conduits, wires and ducts serving the Property, provided that such installation, use and maintenance does

not unreasonably interfere with Tenant's use of the Demised Premises; (9) to subdivide or re-subdivide the Property; and (i) to take any other action which Landlord deems reasonable in connection with the operation, maintenance or preservation of the Property.

- D. Landlord may exercise the rights set forth in this Article without notice and without liability to Tenant and the exercise of such rights shall not be deemed to constitute an eviction or disturbance of Tenant's use and possession of the Demised Premises and shall not give rise to any claim for set-off or abatement of rent or any other claim.

ARTICLE XVI. ALTERATIONS BY TENANT

- A. *Alterations Prohibited Without Landlord Consent.* Tenant shall not make any replacement, alteration, improvement or addition to or removal from (collectively an "alteration") the Demised Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, provided any such proposed alternation will not (a) exceed the capacity of the systems or structure, (b) adversely affect the capacity, maintenance, operating costs or integrity of the structure or systems, (c) violate any agreement which affects the Demised Premises or binds Landlord, (d) alter the exterior of the Property in any way, or (e) violate or cause a breach of any mortgage or financing agreement affecting the Demised Premises or Property. Tenant shall not make any alteration to any other parts of the Demised Premises without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion.
- B. *Procedure; Review of Drawings and Specifications.* In the event Tenant proposes to make any alteration, Tenant shall, prior to commencing such alteration, submit to Landlord for prior written approval: (a) detailed drawings and specifications (copies of which drawings and any other project drawings shall be provided to Landlord and Landlord's agents in the form of a CAD disc upon completion of such alterations); (b) sworn statements, including the names, addresses and copies of contracts for all contractors; (c) all necessary permits evidencing compliance with all applicable Legal Requirements; (d) certificates of insurance inform and amounts required by Landlord, naming Landlord and any other parties designated by Landlord as additional insureds; and (e) all other documents and information as Landlord may reasonably request in connection with such alteration. Neither approval of the drawings and specifications nor supervision of the alteration by Landlord shall constitute a representation or warranty by Landlord as to the accuracy, adequacy, sufficiency or propriety of such drawings and specifications or the quality of workmanship or the compliance of such alteration with applicable Legal Requirements.
- C. *General Requirements.* Tenant shall pay the entire cost of the alteration and, if requested by Landlord, shall deposit with Landlord, prior to the commencement of the alteration, security for the payment and completion of the alteration in form and amount required by Landlord. Each alteration shall be performed in a good and workmanlike manner, in accordance with the drawings and specifications approved by Landlord and shall meet or exceed the standards for construction and quality of materials established by Landlord for the Demised Premises. In addition, each alteration shall be performed in compliance with all applicable legal requirements and all regulations and requirements of Landlord's and Tenant's insurers. Each alteration, whether temporary or permanent in character, unless otherwise specified, made by Tenant in or upon the Demised Premises (excepting only Tenant's furniture, removable equipment and removable trade fixtures) shall become Landlord's property and shall remain upon the Demised Premises at the expiration or

termination of this Lease without compensation to Tenant. Notwithstanding the foregoing, Landlord shall have the right to require Tenant to remove any alteration at Tenant's sole cost and expense.

- D. *ADA Applicability.* Tenant acknowledges that the Demised Premises may constitute a place of public accommodation or a facility under Title III of the Americans with Disabilities Act (the "ADA") and that the ADA is applicable to both an owner and a lessee of a place of public accommodation or facility. Tenant further acknowledges that under the ADA any structural alteration to the Demised Premises must comply with accessibility standards set forth in the rules promulgated by the Department of Justice at 28 C.F.R. 36.101 *et seq.* Notwithstanding anything in this Lease to the contrary, in the event Tenant makes any structural alteration to the Demised Premises which would require compliance with Title III of the ADA and the accessibility standards promulgated by the Department of Justice, Tenant agrees to design and such structural alterations so as to comply with the ADA and the accessibility standards.
- E. *Liens.* Upon completion of any alteration, Tenant shall promptly furnish Landlord with sworn contractor's acknowledgements of payment in full and final waivers of lien in form and substance satisfactory to Landlord covering all labor and materials included in such alteration. Tenant shall not permit any mechanic's lien to exist against the Property, or any part thereof, arising out of any alteration performed, or alleged to have been performed, or any service or work or material provided or furnished to Tenant or the Demised Premises by or on behalf of Tenant. If any such lien exists, Tenant shall, within ninety (90) days thereafter, have such lien discharged of record or deliver to Landlord a recordable bond in form, amount, and issued by a surety satisfactory to Landlord indemnifying Landlord against all costs and liabilities resulting from such lien and the foreclosure or attempted foreclosure thereof. If Tenant fails to have such liens so released or to deliver such bond to Landlord, Landlord, without investigating the validity of such lien, may pay or discharge the same and Tenant shall reimburse Landlord upon demand for the amount so paid by Landlord, including expenses and attorneys' fees.
- F. *Heating, Ventilation and Cooling.* If Tenant installs any machines, equipment or devices in or about the Demised Premises that do not constitute customary office equipment, and if such machines, equipment or devices cause the temperature in any part of the Demised Premises to exceed (other than to a de minimis extent) the temperature the building's mechanical system would be able to maintain in the Demised Premises were it not for such machines, equipment or devices, then Landlord reserves the right to install, upon prior notice to Tenant, supplementary air conditioning units in the Demised Premises or elsewhere in the building, and Tenant will pay to Landlord all reasonable costs of installing, operating and maintaining such supplementary units.

ARTICLE XVII. REPRESENTATIONS OF LANDLORD

Landlord hereby represents and warrants to Tenant that, as of the date of its execution of this Lease:

- A. *Defective Drywall.* Landlord is not aware of the existence of any defective drywall as defined by Va. Code Ann. § 36-156.1 on the Demised Premises.
- B. *Mold.* Landlord is not aware of the existence of any visible evidence of mold on the Demised Premises in areas readily accessible within the interior of the Demised Premises.

- C. **Authority.** Landlord has full legal authority and right to grant to Tenant the estate hereby demised and the easements and appurtenances thereunto pertaining.
- D. **Zoning.** The City's zoning administrator, in consultation with the City Attorney, has verified that the uses authorized within Article IV of this Lease are allowed by right at the Property under the City's zoning ordinance.

ARTICLE XVIII. REPRESENTATIONS OF TENANT

Tenant hereby represents and warrants to Landlord that, as of the date of its execution of this Lease:

- A. **Bankruptcy Actions.** There is no bankruptcy action, pending or threatened, against or affecting the Tenant;
- B. **Authorization to do business within Virginia.** Tenant represents and warrants to the Landlord that it is an entity lawfully organized and in good standing under the laws of the Commonwealth of Virginia, and, if Tenant is a corporation, limited liability company, or other entity required to register with the Virginia State Corporation Commission, Tenant represents and warrants that it is active and currently authorized to do business within Virginia.
- C. **Nonprofit status.** If Tenant is required by this Lease to pay only nominal rent for the Demised Premises, Tenant represents and warrants that it is a charitable organization, institution or corporation authorized to receive appropriations, gifts or donations of money or property, real or personal, from the Landlord, under the provisions of Virginia Code Sec. 15.2-953. Records which document Tenant's nonprofit status are attached as **Exhibit C** (if applicable).

ARTICLE XIX. COMPLIANCE WITH LAWS AND REGULATIONS

The Tenant shall, at its own expense, properly and promptly comply with and execute all laws, ordinances, rules, regulations and requirements, as the same now exist or as the same may hereafter be enacted, amended or promulgated by any federal, state or municipal authority, and/or any department or agency thereof, relating to the Tenant's use of the Demised Premises or of the operation of the Tenant's business therein.

ARTICLE XX. DEFAULT BY TENANT

- A. **Events of Default.** Tenant shall be deemed to be in default under this Lease, if:
 - 1) The Tenant shall fail to pay any rent due hereunder, or any other costs and expenses for which the Tenant shall be responsible hereunder, within seven (7) days after notice from the Landlord specifying the item or items alleged to be due and unpaid, unless the Tenant shall in good faith dispute its liability therefor or the propriety of the amount claimed (other than rent);
 - 2) Tenant shall fail or neglect to keep and perform each and every one of the other covenants, conditions and agreements herein contained and on the part of the Tenant to be kept and performed, within thirty (30) days after written notice from the Landlord specifying the items alleged to be in default, unless (1) the curing of such default will take more than thirty (30) days, in which event Tenant shall be deemed to be in default only if it does not commence the curing of such default within the said thirty (30) day

- period and carry it, in good faith, to prompt completion; or (2) the Tenant shall, in good faith, dispute the existence of any default or the extent of its liability therefor, in which event the Tenant shall be deemed to be in default only if it fails, within thirty (30) days after the agreement or final adjudication, to commence the curing of such default as is adjudged to exist or which the Landlord and the Tenant shall agree exists, and to carry it, in good faith, to prompt completion;
- 3) If the Tenant shall make an assignment of its assets for the benefit of creditors, or if the Tenant shall file a voluntary petition in bankruptcy, or if an involuntary petition in bankruptcy or for receivership be instituted against the Tenant and the same be not dismissed within thirty (30) days of the filing therefor, or if the Tenant be adjudged bankrupt, then and in any of said events, unless otherwise prohibited by the United States Bankruptcy Code, this Lease shall immediately cease and terminate at the option of the Landlord with the same force and effect as though the date of said event was the day herein fixed for expiration of the term of this Lease;
 - 4) In the event the Tenant abandons the Demised Premises, either (i) by removing all of Tenant's personal property from the Demised Premises, or (ii) by Tenant's failure to occupy the Demised Premises for a period in excess of sixty (60) days, the Landlord may, at its option, accelerate the entire unpaid balance of the basic annual rent for unexpired portion of the Lease, and take action to collect same as the Landlord deems appropriate. The Landlord may re-enter the Demised Premises, and such re-entry shall not be deemed a surrender and termination of the Lease. It shall be deemed to be a retaking for the purpose of re-letting the Demised Premises and the Landlord may make such alterations, improvements, repairs, etc. as it deems necessary to prepare the Demised Premises for re-letting. Neither the Landlord's re-entry nor failure to re-enter shall be deemed a waiver of any claim it may have against the Tenant for the remaining portion of the Lease. The Tenant remains liable to the Landlord for the entire unpaid balance plus all damages that the Landlord may have suffered by reason of Tenant's abandonment, less credit given for any rental received by the Landlord from a successor tenant. If the successor tenant pays a rent that exceeds the rent obligation of the Tenant hereunder, the Landlord shall be under no obligation to the Tenant to account for or pay over such excess.
- B. If a default of any covenant, condition or agreement contained in this Lease shall exist, material or otherwise, Tenant's right to possession shall thereupon cease and Landlord shall be entitled to the possession of said Demised Premises and to re-enter the same without demand for rent or for possession. Landlord may proceed forthwith to recover possession of said Demised Premises by process of law, any notice to quit or of intention to exercise such option or to re-enter said Demised Premises being hereby **EXPRESSLY WAIVED BY TENANT**. Further, Landlord at its sole option may accelerate the unpaid rent for the unexpired portion of the Lease, giving credit for any proceeds from the re-letting in whole or in part of the Demised Premises and improvements by Landlord to others. Tenant will be liable to Landlord for all court costs and reasonable attorney's fees in the event Tenant shall become in default and Landlord incurs court costs and/or attorney's fees in obtaining possession of the Demised Premises or in the enforcement of any covenant, condition or agreement herein contained, whether through legal proceedings or otherwise, and whether or not any such legal proceedings be prosecuted to a final judgment.

C. To establish reasonable attorney's fees, the Landlord may present a signed affidavit from legal counsel as to the fees claimed and the services rendered and anticipated to be rendered to collect the unpaid claim of Landlord. All objections to this method of proof are hereby expressly waived by Tenant. The parties agree that future attorney's fees may be claimed hereunder.

D. *Remedies for Default.*

- 1) *Entry/Termination.* Upon the occurrence of a Default, Landlord may elect to terminate this Lease, or, without terminating this Lease, Landlord may terminate Tenant's right to possession of the Demised Premises—in either case, after giving written notice thereof to Tenant. Upon any such termination, Tenant shall immediately surrender and vacate the Demised Premises and deliver possession thereof to Landlord. Tenant grants to Landlord the right, without notice to Tenant, to enter and repossess the Demised Premises, to expel Tenant and any others who may be occupying the Demised Premises, and to remove any and all property therefrom, without being deemed in any manner guilty of trespass and without relinquishing Landlord's rights to any rent or any other right given to Landlord hereunder or by operation of law. In addition, Landlord may alter any locks and other security devices at the Demised Premises.
- 2) *Re-letting the premises.* If Landlord terminates Tenant's right to possession of the Demised Premises without terminating this Lease, Landlord may re-let the Demised Premises or any part thereof. In such case, Landlord shall use reasonable efforts to re-let the Demised Premises on such terms as Landlord shall reasonably deem appropriate; provided, however, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such re-letting. Tenant shall reimburse Landlord for the costs and expenses of re-letting the Demised Premises, including, but not limited to, all brokerage, advertising, legal, alteration and other expenses incurred to secure a new tenant for the Demised Premises.
- 3) *Damages.* If Landlord terminates this Lease pursuant to the terms and provisions of this Article Landlord may recover from Tenant, and Tenant shall pay to Landlord, on demand, all rent and other charges payable by Tenant to Landlord through the date of termination, and, in addition, shall pay to Landlord as damages, at the election of Landlord, amounts equal to the rent which would have been payable by Tenant had this not been so terminated, payable upon the due dates therefor specified herein following such termination and until the Expiration Date. A suit for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the Term of this Lease would have expired if it had not been terminated hereunder.
- 4) *Landlord's Lien.* In addition to any statutory lien for rent in Landlord's favor, Landlord (the secured party for purposes hereof) shall have, and Tenant (the debtor for purposes hereof) hereby grants to Landlord an express contract and lien and a continuing security interest to secure the payment of all Rent and the performance of all other obligations due hereunder from Tenant, upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant (and any transferees, subtenants or other occupants of the Demised Premises) presently or hereafter situated on the Demised Premises, and upon all proceeds of any insurance

- which may accrue to Tenant by reason of damage or destruction of any such property and all proceeds of any of the foregoing. In the Event of Default under this Lease, Landlord shall have, in addition to any other remedies provided herein or by law, all rights and remedies of a secured party under the Virginia Uniform Code, including without limitation, the right to sell the property described in this paragraph at public or private or sale or auction upon thirty (30) days' notice to Tenant, which notice Tenant hereby agrees is adequate and desirable in Landlord's discretion to perfect the security interest hereby conveyed. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto. Landlord and Tenant agree that this Lease and the security interest granted herein serve as a financing statement, and a copy or photographic or other reproduction of this paragraph of this Lease may be filed of record by Landlord and have the same force and effect as the original.
- 5) *Landlord's Right to Cure.* Landlord may, but shall not be obligated, to perform any obligation of Tenant under this Lease, and if Landlord so elects, all costs and expenses paid by Landlord in performing such obligation, together with interest at the rate specified in Article VI, shall be reimbursed by Tenant to Landlord on demand.
- E. *Cumulative Remedies.* Any and all remedies set forth in this Lease: (a) shall be in addition to any and all other remedies Landlord may have at law and/or in equity, (b) shall be cumulative, and (c) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future.
- F. *No Waiver.* No receipt of money by Landlord from Tenant after termination of this Lease or after the service of any notice or after the commencing of any suit or after final judgment for possession of the Demised Premises shall renew, reinstate, continue or extend the Term or affect any such notice or suit. No waiver of any default of Tenant shall be implied from any omission by Landlord to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.
- G. *No Accord and Satisfaction.* No payment by Tenant or receipt and acceptance by Landlord of a lesser amount than the Annual/ Monthly Base Rent and any Additional Rent shall be deemed to be other than part payment of the full amount then due and payable; nor shall any endorsement or statement on any check or any letter accompanying any check, payment of Rent or other payment, be deemed an accord and satisfaction; and Landlord may accept, but is not obligated to accept, such part payment without prejudice to Landlord's right to recover the balance due and payable or to pursue any other remedy provided in this Lease Agreement or by law.
- H. *Agreements Applicable to Tenant's Bankruptcy.* Notwithstanding anything to the contrary contained herein, and without prejudice to Landlord's right to require a written assumption from each assignee, any person or entity to whom this Lease is assigned including, without limitation, assignees pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Paragraph 101 *et seq.*, (the "Bankruptcy Code") shall automatically be deemed, by acceptance of such assignment or sublease or by taking actual or constructive possession of the Demised Premises, to have assumed all obligations of Tenant arising under this Lease Agreement, effective as of the earlier of the date of such assignment or sublease or the date on which the assignee or sublessee obtains possession of the Demised Premises.

In the event this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord or shall remain the exclusive property of Landlord and not constitute the property of Tenant or Tenant's estate within the meaning of the Bankruptcy Code. In the event of any Default described above, in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, in connection with any assignment and assumption of this Lease, Tenant must fulfill the following obligations, in addition to any other reasonable obligations that Landlord may require, before any assumption of the Lease is effective: (a) all events of default must be cured within thirty (30) days after the date of assumption; (b) all actual monetary losses incurred by Landlord (including, but not limited to, reasonable attorneys' fees) must be paid to Landlord within thirty (30) days after the date of assumption; and (c) Landlord must receive within thirty (30) days after the date of assumption a security deposit in the form of a letter of credit in an amount equal to three (3) months of Base Monthly Rent (using the Base Rent in effect for the first full month immediately following the assumption) and an advance prepayment of Base Monthly Rent in the amount of three (3) months Base Monthly Rent (using the Base Rent in effect for the first full month immediately following the assumption), both sums to be held by Landlord in accordance with this and deemed to be rent under this Lease for the purposes of the Bankruptcy Code, as amended and from time to time in effect. In the event this is assumed in accordance with the requirements of the Bankruptcy Code and this Lease, and is subsequently assigned, then, in addition to any other reasonable obligations that Landlord may require and in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Landlord shall be provided with (a) a financial statement of the proposed assignee prepared in accordance with generally accepted accounting principles consistently applied, on a cash basis, which reveals a net worth in an amount sufficient, in Landlord's reasonable judgment, to assure the future performance by the proposed assignee of Tenant's obligations under this Lease; or (b) a written guaranty by one or more guarantors with financial ability sufficient to be in form and content satisfactory to Landlord and to cover the performance of all of Tenant's obligations under this Lease.

ARTICLE XXI. DEFAULT BY LANDLORD

- A. Landlord shall be deemed to be in default under this Lease, if it shall fail to provide the Demised Premises in the condition agreed to herein, free from any interference with Tenant's use and enjoyment thereof, or to provide all services within the standards agreed upon.
- B. In case of Landlord's default, Tenant shall have the following remedies:
 - 1) Tenant shall have the option of terminating this Lease for any material default by Landlord. Such default shall include, but not be limited to, denying Tenant access to the Demised Premises for any reason other than Tenant's prior default, or failure to perform with all reasonable speed and efficiency any repair which is the obligation of the Landlord under this Lease; and
 - 2) If any default by Landlord is due to its failure to make necessary repairs with reasonable dispatch after notice from Tenant that such repairs are needed, Tenant may cause the repairs to be made at its own expense. The reasonable expense of such repairs may then be deducted by Tenant from its next due installment of Base Monthly Rent; and

- 3) Tenant shall have the right to abate its rent proportionately when Landlord, for any cause reasonably within its control, is unable or unwilling to provide the Demised Premises in the condition agreed, free from interference or obstruction, or the services within the standards or the hours agreed.

ARTICLE XXII. SURRENDER OF DEMISED PREMISES

Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Demised Premises to Landlord in good order, repair and condition, ordinary wear and tear, acts of God, fire, and other casualty (not resulting from Tenant's or Tenant's agents', employees' or invitees' acts or omissions) excepted. Tenant shall on the day of expiration or termination of this Lease, or prior to such date, remove all property of Tenant, and Tenant shall within two weeks after expiration or termination repair all damage to the Demised Premises caused by such removal and make reasonable restoration of the Demised Premises to the condition in which they existed prior to the installation of the property so removed.

ARTICLE XXIII. SIGNAGE

Tenant shall have no right to erect or install canopies, marquees, or advertising devices, including signs, on the exterior of the Demised Premises, and Tenant shall have no right to erect or install any sign within the interior of the Demised Premises that are visible from the exterior of the Demised premises, except with Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. All signs authorized by the Landlord must comply with applicable requirements of the City's zoning ordinance and the Uniform Statewide Building Code.

ARTICLE XXIV. ASSIGNMENT AND SUBLETS

- A. **Sublets.** Except as expressly stated in Article IV, Paragraph B, Tenant shall not assign or sublet the Demised Premises or any part thereof, without the prior written consent of Landlord.
- B. **Notice of request for assignment.** If Tenant wants to assign, sublet or otherwise transfer all or part of the Demised Premises, the Tenant shall give Landlord written notice ("Tenant's Request Notice") of the identity of the proposed assignee or subtenant and its business, all terms of the proposed assignment or subletting, the commencement date of the proposed assignment or subletting (the "Proposed Sublease Commencement Date") and the area proposed to be assigned or sublet (the "Proposed Sublease Space"). Tenant shall also transmit therewith the most recent financial statement or other evidence of financial responsibility of such assignee or subtenant and a certification executed by Tenant and the proposed assignee or subtenant stating whether any premium or other consideration is being paid for the proposed assignment or sublease. Tenant shall pay the expenses (including all attorney's fees) reasonably incurred by Landlord in connection with Tenant's request for Landlord to give its consent to any assignment, subletting, occupancy or mortgage.
 - 1) **Landlord's right to terminate.** Landlord shall have the right in its sole and absolute discretion to terminate this Lease with respect to the Proposed Sublease Space, by sending Tenant written notice within forty-five (45) days after Landlord's receipt of Tenant's Request Notice.

- 2) If the Proposed Sublease Space does not constitute the entire Demised Premises and Landlord elects to terminate this Lease with respect to the Proposed Sublease Space, then: (a) Tenant shall tender the Proposed Sublease Space to Landlord on the Proposed Sublease Commencement Date as if the Proposed Sublease Commencement Date had been originally set forth in this Lease Agreement as the expiration date of the Lease term with respect to the Proposed Sublease Space, and (b) as to all portions of the Demised Premises other than the Proposed Sublease Space, this Lease shall remain in full force and effect except that the rent and other payments due hereunder shall be reduced proportionately. Tenant shall pay all expenses of construction required to permit the operation of the Proposed Sublease Space separate from the balance of the Demised Premises.
 - 3) If the Proposed Sublease Space constitutes the entire Demised Premises and the Landlord elects to terminate this Lease, then (1) Tenant shall tender the Demised Premises to Landlord on the Proposed Sublease Commencement Date, and (2) the term shall terminate on the Proposed Sublease Commencement Date.
 - 4) **Excess rent or other charges paid by subtenant.** If any sublease, assignment or transfer (whether by operation of law or otherwise) provides that the subtenant, assignee or other transferee is to pay any amount in excess of the rent and other charges due under this Lease, then whether such excess be in the form of an increased rental, lump-sum payment, payment for the sale or lease of fixtures or other Leasehold improvements, or any other form (and if the applicable space does not constitute the entire Demised Premises, the existence of such excess shall be determined on a pro-rata basis), Tenant shall pay to Landlord any such excess upon such terms as shall be specified by Landlord and in no event later than ten (10) days after Tenant's receipt thereof. Landlord shall have the right to inspect Tenant's books and records relating to any sublease, assignment or other transfer. Any sublease, assignment or other transfer shall be effected on forms supplied or approved by Landlord.
- C. In the event that Landlord consents to an assignment, or to a sublease, and the Landlord collects or accepts rent from any assignee, subtenant or occupant, such conduct by Landlord shall not be construed as relieving the Tenant or any assignee, subtenant or occupant from the obligation of obtaining Landlord's written consent to any subsequent assignment, subletting or occupancy, and Tenant hereby assigns to Landlord any sum due from any assignee, subtenant or occupant of Tenant as security for Tenant's performance of its obligations pursuant to this Lease. Tenant authorizes each such assignee, subtenant or occupant to pay such sum directly to Landlord if such assignee, subtenant or occupant receives written notice from Landlord specifying that such rent shall be paid directly to Landlord. Landlord's collection of such rent shall not be construed as acceptance of such assignee, subtenant or occupant as tenant. All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any subtenant, assignee or occupant of Tenant, and Tenant shall cause such persons to comply with all such restrictions and obligations.
- D. **Assignment pursuant to provisions of Bankruptcy Code.** If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the Landlord, shall be and remain the exclusive property of the Landlord, and shall not

constitute the property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of the Landlord and shall be promptly paid and/or delivered to the Landlord.

- E. **Mortgage of Demised Premises prohibited.** Tenant shall not mortgage or encumber the Demised Premises without Landlord's written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion.
- F. **Dissolution, etc. of partnership, limited liability company or corporation deemed assignment.** If Tenant is a partnership, then any dissolution of Tenant or a withdrawal or change, whether voluntary, involuntary or by operation of law, or partners owning a controlling interest in Tenant shall be deemed a voluntary assignment of this Lease. If Tenant is a corporation or limited liability company, then any dissolution, merger, consolidation or other reorganization of Tenant, or any sale or transfer of a controlling interest in its capital stock, shall be deemed a voluntary assignment of this Lease.
- G. *Tenant to Remain Liable.* In no event shall any Transfer (whether or not approved by Landlord or permitted hereunder) release or relieve Tenant from its obligations to fully observe or perform all of the terms, covenants and conditions of this Lease on its part to be observed or performed (including liability arising during any renewal term of this Lease or with respect to any expansion space included in the Demised Premises). It is agreed that the liabilities and obligations of Tenant hereunder are enforceable either before, simultaneously with or after proceeding against any assignee, sublessee, licensee, sublicensee or other transferee of Tenant.
- H. *Attorneys' Fees.* Tenant shall pay Landlord, on demand as additional rent, any attorney's fees and expenses incurred by Landlord in connection with any proposed Transfer, whether or not Landlord consents to such Transfer.

ARTICLE XXV. HAZARDOUS MATERIAL

- A. For purposes of this Lease "Hazardous Material" means any flammable items, explosives, radioactive material, oil, toxic substance, material or waste or related materials, including any material or substance included in the definition of "hazardous wastes," "hazardous materials" or "toxic substances", now or hereafter regulated under any Legal Requirements, including, without limitation, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, medical waste, polychlorinated biphenyls, and similar compounds. "Hazardous Material" shall also include, without limitation, any materials or substances which could trigger any employee "right to know" requirements or for which any regulatory or other governmental body has adopted any requirements for the preparation or distribution of a material safety data sheet.
- B. Tenant shall not cause or permit any Hazardous Material to be brought upon, produced, stored, generated, used, discharged or disposed of, in, on, under or about the Demised Premises, without the prior written consent of Landlord and then only in compliance with all applicable environmental legal requirements.
- C. Tenant shall execute such affidavits, representations and certifications from time to time as may be requested by Landlord, concerning Tenant's best knowledge and belief regarding

the presence or absence of Hazardous Material in, on, under or about the Demised Premises and/or the Property.

- D. Tenant shall defend, indemnify and hold harmless Landlord from and against any and all claims (including, without limitation, costs and attorneys' fees) arising from any breach of this Article. The indemnity, defense and hold harmless obligations in this Article shall be in addition to all other indemnity, defense and hold harmless obligations contained in this Lease.

ARTICLE XXVI. NOTICES

- A. Any notice required or permitted by this Lease to be given by either party to the other may be hand-delivered or sent by U.S. Mail, return receipt requested, with the sender retaining sufficient proof of having given such notice. No notice required or permitted by this Lease shall be effective if given only by electronic mail.
- B. All notices required by this Lease, unless otherwise designated in writing, shall be given to:

Tenant Mailing Address:
 McGuffey Arts Association, Inc.
 201 2nd Street NW
 Charlottesville, VA 22902

 Delivery Address:
 McGuffey Arts Association, Inc.
 201 2nd Street NW
 Charlottesville, VA 22902

Landlord Mailing Address:
 Office of the City Manager
 City of Charlottesville
 P.O. Box 911
 Charlottesville, VA 22902
 Attn: City Lease

 Delivery Address:
 Office of the City Manager
 City of Charlottesville
 605 E. Main Street, 2nd Floor
 Charlottesville, VA 22902
 Attn: City Lease

ARTICLE XXVII. QUIET ENJOYMENT

Upon payment by Tenant of all rent and other sums provided to be paid in this Lease, and the observance and performance of all the covenants, terms and conditions on Tenant's part to be

observed and performed, Tenant shall have the peaceful and quiet use of the Demised Premises , and all rights, servitudes, and privileges belonging to, or in any way appertaining thereto, or granted hereby for the terms stated, without hindrance, or interruption by Landlord or any other person or persons lawfully claiming by, through or under Landlord; subject, nevertheless, to the terms and conditions of this Lease.

ARTICLE XXVIII. NO IMPLIED WAIVERS

A waiver of any covenant or condition of this Lease shall extend to the particular instance only and in the manner specified and shall not be construed as applying to or in any manner waiving any further or other covenants, conditions or rights hereunder.

ARTICLE XXIX. ESTOPPEL CERTIFICATES

Tenant agrees, at any time and from time to time, upon not less than five (5) days' prior written notice by Landlord, to execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (b) stating the dates to which the rent and other charges hereunder have been paid by Tenant, (c) stating whether or not to the best knowledge of Tenant, Landlord is in default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which the Tenant may have knowledge, and (d) stating the address to which notices to Tenant should be sent. Any such statement delivered pursuant hereto may be relied upon by any owner, prospective purchaser, or financier of the Tenant's business.

ARTICLE XXX. NO PARTNERSHIP CREATED

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of, or between, Landlord and Tenant, or to create any other relationship between the parties hereto other than that of Landlord and Tenant.

ARTICLE XXXI. TENANT'S ORGANIZATION, AUTHORITY AND NET WORTH

In the event Tenant is a corporation (including any form of professional association), partnership (general or limited), or other form of organization other than an individual (each entity is individually referred to herein as "Organizational Entity"), then Tenant hereby covenants, warrants and represents: (1) that the individual executing this Lease is duly authorized to execute and/or attest and deliver this Lease on behalf of Tenant in accordance with the organizational documents of Tenant, (2) that this Lease is binding upon Tenant, (3) that Tenant is duly organized and legally existing in the state of its organization, and is qualified to do business in the Commonwealth of Virginia, and (4) that the execution and delivery of this Lease by Tenant will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, credit agreement, partnership agreement or other contract or instrument to which Tenant is a party or by which Tenant may be bound. If Tenant is an Organizational Entity, upon request, Tenant will, prior to the Commencement Date, deliver to Landlord true and correct copies of such organizational

documents of Tenant as may be requested by Landlord in order to verify Tenant's organizational structure and authority to execute this Lease, including, without limitation, copies of an appropriate resolution or consent of Tenant's board of directors or other appropriate governing body of Tenant authorizing or ratifying the execution and delivery of this Lease, which resolution or consent will be duly certified to Landlord's satisfaction by an appropriate individual with authority to certify such documents, such as the secretary or assistant secretary or the managing general partner of Tenant.

ARTICLE XXXII. BROKERS

Tenant represents and warrants that Tenant has not dealt with any broker(s) in connection with this Lease and that, to the best of the Tenant's knowledge, no broker negotiated this Lease or is entitled to any commission in connection herewith. Tenant agrees to indemnify, defend and hold harmless from and against any claims for a fee or commission made by any broker claiming to have acted by or on behalf of Tenant in connection with this Lease.

ARTICLE XXXIII. TENDER OF LEASE NOT AN OFFER TO LEASE; EXECUTION AND DELIVERY

Submission of this instrument for examination or signature by Tenant does not constitute a reservation of space or an option for space, and it is not effective until execution and delivery by both Landlord and Tenant. Execution and delivery of this Lease by Tenant to Landlord, with Tenant's signature, shall constitute an irrevocable offer by Tenant to lease the Demised Premises on the terms and conditions set forth herein, which offer may not be revoked for thirty (30) days after such delivery.

ARTICLE XXXIV. NO IMPLIED SURRENDER

Neither the delivery of keys to any employee of Landlord or to Landlord's agent or any employee thereof, nor the termination or expiration of any sublease or assignment for all or any portion of the Demised Premises, nor the abandonment of the Demised Premises by Tenant, shall operate as any termination of this Lease or an acceptance of surrender of the Demised Premises by Landlord, absent the explicit written agreement of the Landlord to same.

ARTICLE XXXV. LIMITATION OF LANDLORD'S LIABILITY

Landlord shall have the right in its sole and unrestrained discretion, to transfer and assign, in whole or in part, all of its rights and obligations in and to this Lease and/or the Lease or Property. The word "Landlord" is used in this Lease to include the Landlord named above as well as its successors and assigns, each of whom shall have the same rights, remedies, powers, authorities and privileges as it would have had if originally signed this as Landlord. Any such person, whether or not named herein, shall have no liability hereunder after it ceases to hold title to the Demised Premises, except for obligations which may have theretofore accrued. Neither Landlord nor any principal, member, officer, employee or partner of Landlord nor any owner of the Property, whether disclosed or nondisclosed, shall have any personal liability with respect to any of the provisions of this Lease, and neither Landlord, nor any parent or affiliate company, nor any

principal, employee, officer, member or partner of Landlord shall have any personal liability to Tenant for any liability of or claim against Landlord under this Lease beyond the equity of the Landlord in the Demised Premises and the Land.

ARTICLE XXXVI. ENTIRE AGREEMENT; MODIFICATION

- A. This Lease, together with exhibits attached hereto, represents the entire understanding between the parties, and there are no collateral or oral agreements or understandings between the parties as to any subject(s) herein contained.
- B. This Lease shall not be modified unless in writing of equal dignity signed by both parties.

ARTICLE XXXVII. PARTIAL INVALIDITY

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be held void, unenforceable or invalid, then the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held void, unenforceable or invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

ARTICLE XXXVIII. BINDING EFFECT

It is agreed that all of the terms and conditions of this Lease are binding upon the parties hereto, their administrators, heirs, successors and assigns, unless otherwise specified herein. All terms and conditions herein are also covenants.

ARTICLE XXXIX. APPLICABLE LAW

This Lease shall be governed in all aspects by the laws of the Commonwealth of Virginia, notwithstanding its conflict of laws provisions.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives, following below:

[insert signature pages following]

CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Date: _____

Title: _____

TENANT: MCGUFFEY ARTS ASSOCIATION, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

Exhibit A

Demised Premises



Exhibit B

Facilities Definitions and Terms of Use

Facilities Definitions:

Building Grounds and Parking Lot: Building Grounds and Parking Lot is defined as facility use or related systems found outside the 20-foot building perimeter boundary. Systems to include parking lots and lighting, playgrounds and lighting, swimming pools and lighting, Trail or walkways and lighting, athletic fields and lighting, and grounds requiring irrigation and lawn services. All directional signage, trash or recycling containers, benches and comfort stations are included in this section.

Component Renewal: Preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 10 years.

Corrective Maintenance: Unscheduled maintenance repairs to correct deficiencies during the year in which they occur.

Custodial Services: Defined as services required to maintain interior and exterior building components in a sanitary and presentable condition. Services to include restroom cleaning and sanitizing, office waste removal and cleaning, common area cleaning and sanitizing, window cleaning, floor cleaning and trash pick-up and discarding. LOS would be contingent on building profile, occupancy levels, and cleaning standards as set forth by industry standards and guidelines.

Deferred Maintenance (DM): Maintenance that was not performed when it should have been or when it was scheduled and which, therefore, was put off or delayed for a future period. This DOES NOT include constructed asset deficiencies where there is non-compliance to codes (e.g. life safety, ADA, OSHA, environmental, etc.) and other regulatory or Executive Order compliance requirements. It does include engineering and/or contracted A&E services that support planning, design, and execution of deferred maintenance activities.

Demolition: Dismantling and removal, or surplus of a deteriorated or otherwise unneeded asset or item of IBE, includes necessary clean-up work, during the year in which the need occurred.

Emergency Maintenance: Maintenance activities that are unscheduled repair, to include call outs, to correct an emergency need to prevent injury, loss of property, or return asset to service. These repairs are initiated within a very short time period from which the need is identified, usually within hours.

Exterior Building Envelope: The Exterior envelope is defined as the structural components of the building, including roof and supporting architecture, roof drainage systems, load bearing walls, foundation, plumbing and sewer systems, electrical distribution network, HVAC systems including duct network and system controls, all affixed exterior lighting and controls. Exterior envelope can include up to a 20-foot perimeter from exterior walls that may contain walkways or building approaches, trash or recycling containers, walkway pole lighting, and perimeter foliage and irrigation.

Facility Event Make Ready and Breakdown Services: Defined as services required to set up or breakdown material to host events. Can include tables, chairs, lighting, custodial items and HVAC modulations. After event cleaning services are stand alone services that are not part of normally scheduled custodial services or provisions.

FF&E or FFE: Furniture, Fixtures and Equipment. Defined as movable furniture, fixtures, or other equipment that have no permanent connection to the structure of the building and can be owner or tenant furnished.

HVAC: Heating Ventilation and Air-Conditioning. Defined as any number of integrated or dedicated systems designed, and employed, to manage various air environmental conditions in a defined space or area.

Interior Building Envelope, Conditioned Spaces: The interior envelope for conditioned spaces includes all building fixtures, furnishings, or equipment (FF&E) integrated, but without dependency on the structural makeup or components of the building model. Interior envelope can include floors, ceiling panels and gridwork, wallboard and finishes, non-architectural equipment such as appliances, sound systems, door hardware, alarm systems, IT Systems and lighting. The Interior envelope for conditioned spaces will always have HVAC systems servicing the space but may also include passive solar or natural lighting systems.

Interior Building Envelope, Unconditioned Spaces: The Interior envelope for unconditioned spaces can include all elements as found in the Interior envelope for conditioned spaces but without artificial HVAC systems. Spaces can include warehouses, storerooms, pool pump and mechanical rooms and stand-alone sheds. Space can include passive solar systems or re-directional natural lighting design.

Level of Service (LOS): Level of Service as recommended by manufacturer, Best Practices as demonstrated through industry standards, or recommendations presented by prevailing Building or Equipment management. Level of Service can vary between facility due to equipment or building profile, environmental conditions, or previous maintenance activity.

Maintenance: Maintenance to repair unscheduled and scheduled deficiencies during the time period in which they occur. This includes preventive maintenance for buildings, structures, and installed building equipment (IBE) as recommended by the manufacturer. It also includes engineering and/or contracted Architectural and Engineering (A&E) services that support planning, design, and execution of maintenance activities.

Mobile Equipment Maintenance: All corrective, preventive, emergency, replacement, etc., maintenance done on mobile equipment assets, those assets directly contributing to the Real Property / Facility Maintenance mission.

OSHA: Occupational Safety and Health Administration. Responsible for setting and enforcing workplace safety and health standards in the United States. The agency was created in 1970 by the Occupational Safety and Health Act (OSH Act) and is a division of the U.S. Department of Labor.

NFPA: National Fire Protection Agency. A global self-funded nonprofit organization, established in 1896, devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards.

Preventive Maintenance: Scheduled servicing, repairs, inspections, adjustments, and replacement of parts that result in fewer breakdowns and fewer premature replacements and achieve the expected life of constructed assets and IBE. These activities are conducted with a frequency of 1 year or less.

Recurring Maintenance: Preventive maintenance activities that recur on a periodic and scheduled cycle of greater than 1 year, but less than 10 years.

Shared Spaces: Mechanical, closets, or other shared space utilized concurrently by 2 or more contract participants on an ongoing or consistent manner.

Weather Related Services:

- Snow removal services
 - Building perimeter: pedestrian
 - Building vehicular traffic including loading docks
- High Wind
- Rain Events

Definitions Pertaining to Facility Use Conditions:

Assignable Area:

- Definition: The sum of all areas on all floors of a building assigned to, or available for assignment to, an occupant or specific use.
- Description: Included should be space subdivisions, as applicable, of the ten major room use categories for assignable space – classrooms, labs, offices, study facilities, special use, general use, support, health care, residential and unclassified – that are used to accomplish the organization’s mission.

Building Service Area:

- Definition: The sum of all areas on all floors of a building used for custodial supplies, sink room, housekeeping closets, and for occupant rest rooms.
- Description: Included should be housekeeping closets or similarly small cleanup spaces, maintenance material storage areas, trash collection points exclusively devoted to the storage of nonhazardous waste created by the building occupants. Loading docks for the explicit use for material pick up or delivery.

Circulation Area:

- Definition: The sum of all areas on all floors of a building required for physical access to some subdivision of space, whether physically bounded by partitions or not.
- Description: Included should be, but is not limited to, public corridors, fire towers, elevator lobbies, tunnels, bridges, and each floor’s footprint of elevator shafts, escalators and stairways. Areas deemed ingress / egress as defined by the Fire Marshall’s Office.

Electrical Panel / Fire Alarm Control Panel:

- Definition: The sum of all areas on all floors of a building designed to house electrical sub-panels, fire protection controls, and security controls integrated into the building operations.
- Description: Including electrical distribution sub-panels, Fire Alarm Panels and Security or Access Control Panels.

Mechanical Area:

- Definition: The sum of all areas on all floors of a building designed to house mechanical equipment, utility services, and shaft areas.
- Description: Included should be mechanical areas such as HVAC equipment, electrical switch gear and transformers, domestic hot water heaters or boilers.

Non-Assignable Area:

- Definition: The sum of all areas on all floors of a building not available for assignment to an occupant or for specific use, but necessary for the general operation of a building.
- Description: Included should be space subdivisions – building service, circulation and mechanical.

Facilities Terms of Use:

All Conditions set forth in this ‘Terms of Use’ are understood by the Tenant to be part of the Lease Agreement as executed between the City of Charlottesville and Tenant and are instituted to supplement agreed to limitations on facility use as set forth in the executed lease agreement.

Terms of Use:

- General Conditions:
 - No food products are to remain in an open and unsealed condition at end of business, where promotion of insect or other pest infestations could occur.
 - Gates or other facility modifications for the purpose of securing areas, are not authorized without explicit authorization from the City of Charlottesville Facilities Maintenance and only after review and approvals from the Fire Marshalls Office.
 - Building Fire and Evacuation Drills to be administered in accordance to City Fire Marshall requirements; including but not limited to, conformance of all Fire Marshall Regulations for ingress / egress routes.
 - Tenant shall have 48 hours to correct any space deficiencies unless otherwise approved by City Facilities Maintenance.
- Custodial Services:
 - Tenant to submit in writing upon request, a cleaning service schedule sufficiently detailed to address facility occupancy in all Assignable Areas.
 - Janitorial and sanitizing cleaning agents must only be used and in the manner specified by the product manufacturer.
 - Cleaning agents used for the purpose of cleaning and sanitizing Assignable Areas, must be pre-approved by City Facilities Maintenance Custodial Services.
 - All cleaning chemicals must be stored in accordance to standards through OSHA, NFPA and Industry Best Practices and limited to storing in Building Service Areas.
- Chemical Management:
 - An inventory of all stored chemicals used by tenant must be made available to City Facilities.
 - City Facilities Maintenance reserves the right to deny storage of any chemical or otherwise volatile material that presents a clear hazard to building and / or occupants.
 - A Safety Date Sheet (SDS) for each stored chemical must be displayed in a visible and easily assessable station near stored chemicals.
 - Chemical agents must not be stored on any wood, or otherwise absorbent material and must be stored on City Facilities Maintenance approved shelving systems in a manner consistent with OSHA, NFPA and Industry standards and best practices.
 - Dry goods or other cardboard boxed items to be stored in a manner consistent with industry best practices and in accordance with City Fire Marshall requirements.

- Floor surface to remain clean and clear of any material that presents hazards or rite of passage concerns in all Assignable, Circulation and Building Service Areas.
- Lighting:
 - All lighting fixtures must contain a full contingent of light products as specified by the light fixture. No failed or diminished light bulbs in lighting fixtures.
 - Light fixture diffusers must be periodically cleaned to promote a safe and healthy environment.
- Boiler and Mechanical Rooms:
 - Tenant shall not use and under any circumstance, any space in areas containing Boiler, Mechanical, or main electrical switch gear. Mechanical Areas to be accessible by City Facilities Maintenance staff only unless otherwise authorized by City Facilities Maintenance.
- Electrical Panel / Fire Alarm Control Panel (FACP)
 - Electrical Panel and FACP closets are not authorized to be used for storage by the tenant as found in Mechanical Areas.
 - Electrical Sub-Panel closets may be conditionally used and only under authorization from City Facilities Maintenance.
- Circulation Areas:
 - Under no conditions will stairways and stairway landings be used for storage or as an interim space for inventory replenishment.
 - No non-emergency or non-directional signage or communication notices are authorized to be placed on walls or on any free standing easels on stairway landings.
 - All circulation areas are to be free of obstructions and kept clean in accordance to Industry Best Practices.
 - Conformance to all Fire Marshall Regulations regarding Ingress / Egress routes.
- Heating, Ventilation and Air Conditioning (HVAC)
 - Systems common, or shared with other Tenants are considered “Common Infrastructure” and are the responsibility of the City to maintain.
 - Systems servicing Tenant spaces only, are considered “Dedicated Systems” and are typically smaller units such as residential or window units.
 - The Tenant is responsible for changing the Air Filter on a quarterly basis as determined by City Facilities Maintenance procedures. A written filter changing log is to be maintained and provided to the City upon request.
 - Repair and Maintenance of the system will be the responsibility of the City.
 - The Tenant is responsible for submitting a work request to the City in order to address any equipment concerns.
 - HVAC system operation will integrate energy and water management principles to optimize building performance and meet operational needs while supporting comfort and health. In support of this, the following provisions shall be implemented:
 - Mandatory Provisions:
 - During occupied hours, all thermostatically controlled heating/air conditioning units in City-owned/maintained facilities will be cooled or heated to a pre-determined temperature range:

Heating Season:	68 – 72 degrees F
Cooling Season:	72 – 76 degrees F

- During unoccupied hours, all thermostatically controlled heating/air conditioning units in City-owned/maintained facilities shall be set back to the following temperatures:
 - Heating Season: 55 degrees F
 - Cooling Season: 80 degrees F
 - “Tampering” with thermostats and temperature sensors to provide a false temperature reading is prohibited.
 - Building occupants and staff shall keep exterior doors closed while the air conditioning and heating systems are operating. A consultation with the Department of Public Works Energy and Water Management Team is required if routine prolonged openings (15 minutes or longer) are necessary to meet operational needs. Doors between conditioned and unconditioned spaces should remain closed.
 - All work areas which are open to the elements (e.g. equipment repair shops, vehicle wash facilities) or are otherwise not intended for daily occupancy by employees or visitors, shall be heated/cooled to the extent required to accommodate temporary occupants and protect any equipment or material within the structure.
 - Recommended best Practices:
 - Building occupants should keep windows closed while the air conditioning and heating systems are on.
 - Building occupants and staff should refrain from placing obstructing furniture or furnishings near thermostats, temperature sensors, and air vents or grills.
- Repair and Maintenance
 - Space modifications or request for new service, including HVAC, Electrical, Plumbing or any other building trades not mentioned here, are not the responsibility of the City and should follow the requirements as stated in the lease agreement with the tenant.
 - All request for space modifications or installations for new service in any of the Facilities Trades, must be submitted in writing for review by the City in accordance with the lease agreement. All facility work must be approved by the City Facilities Maintenance Division.
 - All request for facility repairs / maintenance, must be submitted thru the City Property Management email.
 - Propertymanagement@charlottesville.gov
 - Tenant will receive a notification of request receipt within 24 hours
 - Request review and follow up may include a direct call from Facilities Maintenance to inform the tenant of next steps
 - An email sent to the tenant’s designated email address will inform the tenant of the Work Order next steps.
 - Once a work order is placed, Facilities Maintenance will address the issue on a prioritized system governed by resource allotment and industry best practices.
 - Emergency requests are understood to mean requests that if not acted upon will result in bodily injury, loss or disruption of business, or a detrimental effect on city property.
 - Tenants are advised to call Facilities Maintenance direct at:
 - 434-970-3651 during normal business hours from 8:00 am to 5:00 pm
 - 434-972-1999 emergency dispatch after hours number

Exhibit C

Tenant's Non-Profit Status

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: January 3, 2023
Action Required: Establish meeting dates for 2023
Presenter: Lloyd Snook
Staff Contacts: Kyna Thomas, Clerk of Council
Title: Establishing days, times and places of Regular Meetings of the Charlottesville City Council during Calendar Year 2023 (1 reading)

Background

Local municipalities may approve a regular Council meeting schedule for the calendar year in order to establish meeting dates for the year. The proposed schedule includes variances according to holidays and Council may choose to make adjustments.

Discussion

Regularly scheduled City Council meetings take place on the first and third Mondays of each month in Council Chamber at City Hall, 605 E. Main Street. If a regularly scheduled Council meeting falls on a holiday, then the meeting will take place on Tuesday. Meetings generally begin at 4:00 p.m. with a work session for hearing reports and presentations, followed by a closed session (if needed), and a 6:30 p.m. business meeting. Council has previously chosen to take a summer break and has discussed holding only one meeting in months with major holidays such as November and December. At least one councilor has expressed a desire to modify the April 2023 schedule. The regular Council meeting schedule for 2023 is below and may be modified after Council discussion:

<i>Tuesday, January 3</i>	Monday, July 3
<i>Tuesday, January 17</i>	July 17
February 6	August 7
<i>Tuesday, February 21</i>	August 21
March 6	<i>Tuesday, September 5</i>
March 20	September 18
April 3	October 2
April 17	October 16
May 1	November 6
May 15	November 20
June 5	December 4
<i>Tuesday, June 20</i>	December 18

Italics indicates an adjusted date due to a holiday.

The approved schedule will be posted on the city website as the official public notice for City Council meetings, as well as at the Office of the Clerk of Council.

Alignment with City Council's Vision and Strategic Plan

Community Engagement

n/a

Budgetary Impact

n/a

Recommendation

"I move the RESOLUTION establishing days, times and places of Regular Meetings of the Charlottesville City Council during Calendar Year 2023 with amendments as discussed."

Alternatives

none

Attachments

1. 2023 Regular Meeting Dates Resolution

RESOLUTION
Establishing Days, Times and Places of Regular Meetings of the
Charlottesville City Council During Calendar Year 2023

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, THAT pursuant to Virginia Code Sec. 15.2-1416, the regular meetings of the Charlottesville City Council shall be conducted on the following days, times, and places during calendar year 2023:

DATES		
January 3, 2023 <i>Tuesday</i>	May 1, 2023 <i>Monday</i>	September 5, 2023 <i>Tuesday</i>
January 17, 2023 <i>Tuesday</i>	May 15, 2023 <i>Monday</i>	September 18, 2023 <i>Monday</i>
February 6, 2023 <i>Monday</i>	June 5, 2023 <i>Monday</i>	October 2, 2023 <i>Monday</i>
February 21, 2023 <i>Tuesday</i>	June 20, 2023 <i>Tuesday</i>	October 16, 2023 <i>Monday</i>
March 6, 2023 <i>Monday</i>	July 3, 2022 <i>Monday</i>	November 6, 2023 <i>Monday</i>
March 20, 2023 <i>Monday</i>	July 17, 2023 <i>Monday</i>	November 20, 2023 <i>Monday</i>
April 3, 2023 <i>Monday</i>	August 7, 2023 <i>Monday</i>	December 4, 2023 <i>Monday</i>
April 17, 2023 <i>Monday</i>	August 21, 2023 <i>Monday</i>	December 18, 2023 <i>Monday</i>

TIME: 4:00 p.m. work session;
5:30 p.m. closed meeting (if any);
6:30 p.m. business meeting upon conclusion of the closed meeting agenda

LOCATION: City Hall Council Chamber
605 E. Main Street
2nd Floor
Charlottesville, VA
Electronic participation via Zoom, with registration available at:
www.charlottesville.gov/zoom

BE IT FURTHER RESOLVED THAT any regular meeting may be adjourned from day to day, or from time to time, or from place to place, not beyond the day and time fixed by this resolution for the next regular meeting, until the business before this City Council is

completed. Notice of any regular meeting continued in this manner shall be reasonable under the circumstances and shall be given as provided in subsection D of Virginia Code Section 2.2-3707.

BE IT FURTHER RESOLVED THAT, in the event that the Mayor, or the Vice Mayor if the Mayor is unavailable or otherwise unable to act, finds and declares that weather or other conditions are such that it is hazardous for members to attend a regular meeting, that regular meeting shall be continued to the next business day on which the said hazardous conditions no longer exist. Such finding and declaration shall be communicated to all city councilors and to the press as promptly as possible, along with the date and time on which the continued meeting will commence. All public hearings and other agenda matters previously advertised shall be conducted at the continued meeting with no further advertisement.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Resolution Approval
Presenter:	James Freas, Director of NDS
Staff Contacts:	James Freas, Director of NDS Missy Creasy, Deputy Director of NDS Kristel Riddervold, Environmental Sustainability Manager
Title:	Adopting the Amendment and Re-enactment of the November 15, 2021 Comprehensive Plan for the City of Charlottesville, as amended (1 of 2 readings)

Background

At the December 13, 2022 Planning Commission meeting a joint public hearing was held for consideration of a proposed action to amend and re-enact the Comprehensive Plan of the City of Charlottesville (2021) which included:

- a proposed amendment that would reference **manufactured housing as one source of affordable housing** (which, if adopted, should address the legal deficiency pointed out in the lawsuit, relative to the requirement of Va. Code §15.2-2223.5), and
- a proposed amendment that will incorporate a **climate action plan** as a component of the Comprehensive Plan, and
- a proposed action: i.e., the amendment and **re-enactment** of the November 15, 2021 Plan, as amended.

Discussion

On November 15, 2021, the City Council adopted an amended Comprehensive Plan ("Plan"). The Plan, as adopted, reorganized, reformatted and updated the 2013 Comprehensive Plan, which had been overdue for its required 5-year review. The proposed Plan had been advertised for a joint public hearing conducted by City Council and the Planning Commission on October 12, 2021, as required/allowed by law. Following the public hearing, the Planning Commission voted within the time period required by state law, and then the Plan was presented to City Council for consideration. Although not required by law, City Council then advertised a second public hearing on the proposed Plan, which was conducted on November 15, 2021. On that same day, following the extra public hearing, City Council voted to approve the Plan, within the window of time allowed by state law. (Per Va. Code §15.2-2226 City Council may vote on a proposed Plan at any time, within 90 days of the planning commission's recommending resolution).

On December 15, 2021, after City Council's approval of the November 15, 2021 updated Comprehensive Plan, eleven city residents brought a legal action within the Charlottesville Circuit Court, asking the Court to declare the Plan as adopted on November 15, 2021 to be "void". The plaintiffs are individuals who oppose the density increases within the City's low-density residential neighborhoods. The plaintiffs challenged the Plan on various grounds, both procedural and substantive. Substantively, the plaintiffs presented arguments as to why they believe the Planning Commission and City Council were making poor decisions. Procedurally, the plaintiffs alleged that: (1) the November 15, 2021 Plan failed to include provisions to promote *manufactured housing* as a source of affordable housing, as required by Virginia Code §15.2-2223.5 (which took effect July 1, 2021); and (2) that the contents of the public hearing notice published in the *Daily Progress* to give notice of the November 15, 2021 public hearing didn't have enough detail in it to give landowners sufficient notice of whether the updated Plan would affect them. Thus far, the City has successfully weeded out many of the legal arguments; the only legal issue that remains pending is the sufficiency of the newspaper notice for the November 15, 2021 City Council hearing. No date for a court hearing on that remaining legal issue has been set at this time.

On February 7, 2022, the City Council approved its first amendment to the previously-enacted November 15, 2021 Plan (i.e., the inclusion of the Urban Rivanna River Corridor Plan). Within this memo, we are citing to the Plan that is before you tonight, as the "November 15, 2021 Plan, as amended"

Alignment with City Council's Vision and Strategic Plan

The Comprehensive Plan touches all aspects of the Vision statement. Areas specific to the amendments proposed include Quality Housing Opportunities for All and A Green City.

Community Engagement

Community member participation is an important element in the Comprehensive Planning Process. The Planning Commission, RHI team, and City staff carried out an extensive program of community review and participation prior to the November 15, 2021 plan adoption. Outreach has continued as part of the Zoning Ordinance project that remains underway. The Climate Action Plan amendment request had additional extensive engagement.

There were 24 speakers at the joint public hearing held on December 13, 2022.

Budgetary Impact

No direct impacts. The Comprehensive Plan is supposed to be used as one tool to guide development and priorities within the Capital Improvement Program and should be referenced in that process, which is underway, and used as a reference point in establishing priorities for funding within the CIP.

Recommendation

Approval of the attached resolution to approve the November 15, 2021 Comprehensive Plan, as amended (including the new amendments recommended by the Planning Commission on December 13, 2022) should be adopted and re-enacted as the current adopted comprehensive plan for the City of Charlottesville.

Suggested Motion: "I move the RESOLUTION amending and re-enacting the Comprehensive Plan for the City of Charlottesville"

Alternatives

City Council could chose to approve the resolution with changes or deny the resolution.

Attachments

1. RES Amend Comp Plan
2. Council memo Comprehensive Plan -January 3 2023 - CAP and Manufactured updated

RESOLUTION

Amending and Re-enacting the Comprehensive Plan for the City of Charlottesville

WHEREAS on Tuesday, December 13, 2022 the Charlottesville City Council and the Charlottesville Planning Commission held a joint public hearing on proposed amendments and a proposed re-enactment of the Comprehensive Plan for the City of Charlottesville, dated November 15, 2021, as amended to date (the “Comprehensive Plan”), after notice of intention to do so was published in accordance with the requirements of Virginia Code §15.2-2204(A); and

WHEREAS, after the public hearing on December 13, 2022, the Planning Commission unanimously recommended approval of the proposed amendments and re-enactment of the Comprehensive Plan and directed that said plan be transmitted to City Council for consideration (the “Certified Plan”); and

WHEREAS as required by Sec. 15.2-2225 of the Code of Virginia, a link to the Certified Plan was posted on the City’s website on which the Planning Commission generally posts, information and the Certified Plan has been available to the public; and

WHEREAS City Council desires that the proposed amendments be made, to-wit: (i) amendments to Chapter 4 (Land Use, Urban Form, and Historic & Cultural Preservation) and to Chapter 5 (Housing), to add provisions promoting manufactured housing as a source of affordable housing, and (ii) amendment to Chapter 7 (Environment, Climate and Food Equity), to add the City’s Climate Action Plan as a component of the Comprehensive Plan, thereby expanding the City’s action strategies related to climate change mitigation through greenhouse gas emissions reductions, and providing guides for action that address equity, focus on co-benefits, and plan for community engagement and capacity building; and

WHEREAS City Council finds and determines that, with the amendments desired by Council as described above, the Certified Plan has been made with the purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the territory within the City which will, in accordance with present and future probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the City’s inhabitants; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of Charlottesville THAT the aforesaid Certified Plan is hereby adopted, re-enacted and re-ordained as the official Comprehensive Plan for the City of Charlottesville pursuant to Virginia Code Sec. 15.2-2226 and shall hereafter continue to be known and referred to as the City’s “Comprehensive Plan (2021)”.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Resolution Adoption (1 st of 2 Readings)
Presenter:	James Freas, Director, Neighborhood Development Services
Staff Contacts:	James Freas, Director, Neighborhood Development Services Missy Creasy, Deputy Director, Neighborhood Development Services Kristel Riddervold, Public Works - Environmental Sustainability Division
Title:	Charlottesville Comprehensive Plan Amendment and Re-enactment

Background:

At the December 13, 2022 Planning Commission meeting a joint public hearing was held for consideration of a proposed action to amend and re-enact the Comprehensive Plan of the City of Charlottesville (2021) which included:

- a proposed amendment that would reference **manufactured housing as one source of affordable housing** (which, if adopted, should address the legal deficiency pointed out in the lawsuit, relative to the requirement of Va. Code §15.2-2223.5), and
- a proposed amendment that will incorporate a **climate action plan** as a component of the Comprehensive Plan, and
- a proposed action: i.e., the amendment and **re-enactment** of the November 15, 2021 Plan, as amended.

Discussion:

On November 15, 2021, the City Council adopted an amended Comprehensive Plan ("Plan"). The Plan, as adopted, reorganized, reformatted and updated the 2013 Comprehensive Plan, which had been overdue for its required 5-year review. The proposed Plan had been advertised for a joint public hearing conducted by City Council and the Planning Commission on October 12, 2021, as required/ allowed by law. Following the public hearing, the Planning Commission voted within the time period required by state law, and then the Plan was presented to City Council for consideration. Although not required by law, City Council then advertised a second public hearing on the proposed Plan, which was conducted on November 15, 2021. On that same day, following the extra public hearing, City Council voted to approve the Plan, within the window of time allowed by state law. (Per Va. Code §15.2-2226 City Council may vote on a proposed Plan at any time, within 90 days of the planning commission's recommending resolution).

On December 15, 2021, after City Council’s approval of the November 15, 2021 updated Comprehensive Plan, eleven city residents brought a legal action within the Charlottesville Circuit Court, asking the Court to declare the Plan as adopted on November 15, 2021 to be “void”. The plaintiffs are individuals who oppose the density increases within the City’s low-density residential neighborhoods. The plaintiffs challenged the Plan on various grounds, both procedural and substantive. Substantively, the plaintiffs presented arguments as to why they believe the Planning Commission and City Council were making poor decisions. Procedurally, the plaintiffs alleged that: (1) the November 15, 2021 Plan failed to include provisions to promote *manufactured housing* as a source of affordable housing, as required by Virginia Code §15.2-2223.5 (which took effect July 1, 2021); and (2) that the contents of the public hearing notice published in the *Daily Progress* to give notice of the November 15, 2021 public hearing didn’t have enough detail in it to give landowners sufficient notice of whether the updated Plan would affect them. Thus far, the City has successfully weeded out many of the legal arguments; the only legal issue that remains pending is the sufficiency of the newspaper notice for the November 15, 2021 City Council hearing. No date for a court hearing on that remaining legal issue has been set at this time.

On February 7, 2022, the City Council approved its first amendment to the previously-enacted November 15, 2021 Plan (i.e., the inclusion of the Urban Rivanna River Corridor Plan). Within this memo, we are citing to the Plan that is before you tonight, as the “November 15, 2021 Plan, as amended”

Alignment with City Council Vision and Strategic Plan

The Comprehensive Plan touches all aspects of the Vision statement. Areas specific to the amendments proposed include Quality Housing Opportunities for All and A Green City.

Community Engagement:

Community member participation is an important element in the Comprehensive Planning Process. The Planning Commission, RHI team, and City staff carried out an extensive program of community review and participation prior to the November 15, 2021 plan adoption. Outreach has continued as part of the Zoning Ordinance project that remains underway. The Climate Action Plan amendment request had additional extensive engagement.

There were 24 speakers at the joint public hearing held on December 13, 2022.

Budgetary Impact:

No direct impacts. The Comprehensive Plan is supposed to be used as one tool to guide development and priorities within the Capital Improvement Program and should be referenced in that process, which is underway, and used as a reference point in establishing priorities for funding within the CIP.

Recommendation: Following a public hearing on December 13, 2022, the Planning Commission adopted a Resolution, recommended approval of the proposed Comprehensive Plan. Six commissioners voted in favor of the motion. Subsequent to the Planning Commission’s vote, the Secretary of the Commission has prepared a certified copy of the proposed Comp Plan, reflecting the changes voted upon by the Commission, which can be accessed by you electronically at the link set out at the end of this Memo.

It is recommended that City Council adopt the attached resolution.

The Comprehensive Plan may be accessed here: <https://www.charlottesville.gov/DocumentCenter/View/7073/Comprehensive-Plan-Document---2021-1115-Final?bidId=> . Information on manufactured housing may be accessed here: https://www.charlottesville.gov/DocumentCenter/View/8764/202212_PC-Report-Manufactured-Housing-Comp-Plan-Update?bidId= . The Climate Action Plan may be accessed here: <https://www.charlottesville.gov/DocumentCenter/View/8776/Charlottesville-Climate-Action-Plan-PDF> .

Attachments:

- Proposed City Council Resolution
- Link to December 13, 2022 Planning Commission meeting materials (starting on page 29): <https://www.charlottesville.gov/1077/Agendas-Minutes> or <https://charlottesvilleva.civicclerk.com/Web/Player.aspx?id=1610&key=-1&mod=-1&mk=-1&nov=0>
- Link to Certified copy: <https://www.charlottesville.gov/DocumentCenter/View/8946/Resolution-of-the-Planning-Commission?bidId=>

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approve Resolution
Presenter:	James Freas, Director of NDS
Staff Contacts:	James Freas, Director of NDS
Title:	Initiating a Zoning Text Amendment - Planned Unit Development (1 reading)

Background

RMD Properties, owner of 2117 Ivy Road, are requesting consideration of a zoning text amendment that would allow development of this property beyond what is currently allowed by zoning (request attached). As per the ordinance cited below, only Council or the Planning Commission may initiate a zoning text amendment.

Whenever the public necessity, convenience, general welfare or good zoning practice require, the City Council may, by ordinance, amend, supplement, or change the city's zoning district regulations, district boundaries, or zoning district classifications of property. A zoning text amendment may be initiated by: (1) Resolution of the City Council; or (2) Motion of the Planning Commission. (See City Code §34-41(a), which is based on Virginia Code §15.2-2286(a) (7)).

Discussion

As outlined in the request, there is not currently a option within the zoning ordinance that would allow the proposed project to proceed. The property owner is therefore proposing to utilize the Planned Unit Development (PUD) provisions of the ordinance, with a zoning text amendment that would reduce the minimum lot size required for a PUD in the Urban Corridor Mixed Use District. At this point in time, Council is not being asked to discuss the merits of making this zoning amendment or not, but simply whether to approve a resolution directing the Planning Commission to consider the proposed zoning text amendment and to provide a recommendation to Council.

The following information may be useful to Council in this decision:

- This section of the zoning ordinance was last amended in 2006 when Council raised the minimum lot size necessary for a PUD citywide to the current 2 acre requirement.
- The proposed project is potentially consistent with the 2021 Comprehensive Plan with regard to the land use map and affordable housing objectives.
- Staff is at this time still targeting June 2023 for adoption of the new zoning ordinance. Staff is currently not considering keeping the PUD section of the zoning ordinance.

Alignment with City Council's Vision and Strategic Plan

This project could support City Council's visions of Economic Sustainability. It contributes to the following Strategic Plan Goal 4: A Strong Creative and Diversified economy.

Community Engagement

After a proposed amendment is initiated, the opportunity for public comment is available through the public hearing process required as part of a zoning text amendment.

Budgetary Impact

No additional funds are required.

Recommendation

Staff recommends approval of the resolution allowing consideration of a proposed zoning text amendment by the Planning Commission and City Council.

Suggested Motion: "I move the RESOLUTION initiating an amendment to the zoning text within Section 34-492 of the City Code"

Alternatives

The City Council may decide not to approve this resolution.

Attachments

1. RES Initiate ZTA
2. RMD Properties_ LLC Request for Initiation of Zoning Text Amendment w_ exhibits

RESOLUTION

Initiating an amendment to the Zoning Text within Section 34-492 of the City Code

WHEREAS upon consideration of matters set forth within a report received from the Director of Neighborhood Development Services, initiation of a zoning text amendment is desirable, in order to commence debate and consideration within the context of a public hearing process of an amendment of City Code Sec. 34-492, to eliminate minimum acreage (2 acres) required for a planned unit development within the Urban Mixed Use Corridor zoning district; and

WHEREAS this Council finds that consideration of the proposed zoning text amendment set forth within the Discussion Draft is required by the public necessity, convenience, general welfare or good zoning practice; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville that a zoning text amendment process is hereby initiated pursuant to City Code 34-41(a)(1), for consideration of an amendment to Section 34-492 of the Code of the City of Charlottesville (1990) that would eliminate the minimum acreage (2 acres) required for a planned unit development within the Urban Mixed Use Corridor zoning district; and

BE IT FURTHER RESOLVED THAT the proposed zoning text amendment is hereby referred to the Charlottesville Planning Commission for its recommendations, and to be scheduled for a joint public hearing with City Council. Based on the Planning Commission's deliberations, and based on input received during the public hearing process, the Planning Commission shall report its findings and recommendations back to City Council within 100 days after their first regular meeting following the adoption of this resolution.

Direct Dial: 434.951.5709
vlong@williamsmullen.com

December 5, 2022

Via Email: freasj@charlottesville.gov

James Freas
Director of Neighborhood Development Services
City of Charlottesville
605 E. Main Street
Charlottesville, Virginia 22902

**Re: Request for Initiation of Zoning Text Amendment ("ZTA")
Section 34-492 – Planned Unit Development Districts, Configuration**

Dear Mr. Freas:

As we have discussed, our firm represents the developer working with RMD Properties, LLC, the owner of property located at 2117 Ivy Road, identified as Parcel 070001200 on the attached map, for the proposed redevelopment of the property. This parcel is one of the last remaining properties along Ivy Road within the City limits that has not been acquired by The University of Virginia. Redevelopment of the site to allow for residential housing, along with ground-floor retail/commercial component will further the City's Comprehensive Plan and Economic Development goals.

The Applicant proposes to develop the property as a mixed-use development in a building nine stories tall that would include approximately 225-250 residential units (for approximately 610 residents), up to 4,000 square feet of retail/neighborhood commercial uses on the ground floor, structured parking, and high-quality amenity spaces. In keeping with Council's affordable housing objectives, the Applicant is also proposing a mix of on-site affordable units and/or a cash donation to the City's Affordable Housing fund for this proposal. The Applicant has built numerous mixed-use projects in communities like Charlottesville that provide housing for a variety of groups near-campus, including undergraduate and graduate students, young professionals, University faculty and staff, and the community at-large.

The parcel is currently zoned Urban Corridor (URB) with an Entrance Corridor Zoning Overlay, and is just over one acre (46,656± SF). The newly adopted Comprehensive Plan designates this property as Urban Mixed-Use Corridor, described as "*Higher intensity mixed use development arranged along corridors between employment, commercial, and civic hubs of the city.*" We understand that because the current zoning ordinance does not allow for additional height or density that would meet either the general goals and recommendations of the new Comprehensive Plan, or the needs of this proposal in the URB zoning district or any other zoning district, that a zoning text amendment (ZTA) is required. We believe the Planned Unit Development (PUD) district would be an appropriate option for the project, but for the requirement in Section 34-492 that any parcel proposed for a PUD be a minimum of two acres. In our opinion, this 2-acre minimum requirement is a relic of

the current suburban-oriented code and warrants reconsideration in light of the new Comprehensive Plan's objectives. As such, we hereby respectfully request that City Council initiate a ZTA to amend Section 34-492 to allow property currently zoned URB that is less than two acres in size to be considered for rezoning to the Planned Unit Development District. Included in our application is the proposed change to this section of the ordinance.

We acknowledge and understand that the City is currently updating the entire zoning ordinance to implement the Comprehensive Plan, which is tentatively scheduled for final action in June or July of 2023; however, the agreement between the property owner and the developer requires action on a shorter timeframe. As such, we have tailored this proposed ZTA as narrowly as possible. In light of how this proposal would further the City's Comprehensive Plan and Economic Development goals in an area with very few parcels left for private development, we respectfully request Council's consideration of this limited request.

We understand that even if City Council approves the ZTA, that a rezoning application for the project will also need to be submitted and approved by the City. We anticipate submitting the rezoning application either while the ZTA is under review, or if approved, immediately after its approval.

We appreciate Council's consideration of this request and look forward to working with the City on the proposal. Please do not hesitate to contact me with any questions or if you require any further information.

Sincerely,

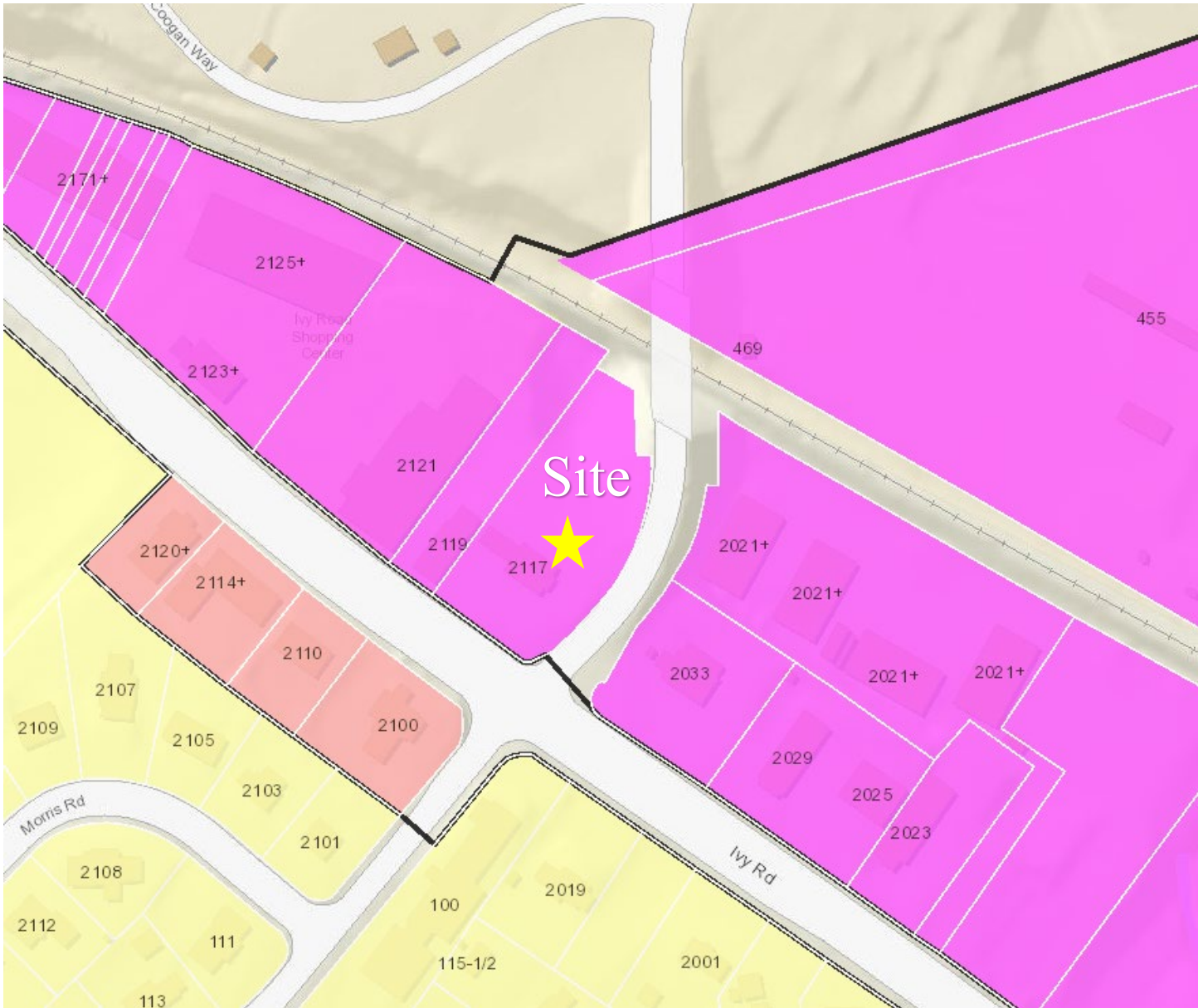
Valerie W. Long

Valerie W. Long

Attachment 1- Zoning Map

Attachment 2- Proposed Revisions to Zoning Ordinance

Zoning Map:



ARTICLE V. PLANNED UNIT DEVELOPMENT DISTRICTS

DIVISION 1. GENERALLY

Sec. 34-490. Objectives.

In reviewing an application for approval of a planned unit development (PUD) or an application seeking amendment of an approved PUD, in addition to the general considerations applicable to any rezoning the city council and planning commission shall consider whether the application satisfies the following objectives of a PUD district:

- (1) To encourage developments of equal or higher quality than otherwise required by the strict application of zoning district regulations that would otherwise govern;
- (2) To encourage innovative arrangements of buildings and open spaces to provide efficient, attractive, flexible and environmentally sensitive design.
- (3) To promote a variety of housing types, or, within a development containing only a single housing type, to promote the inclusion of houses of various sizes;
- (4) To encourage the clustering of single-family dwellings for more efficient use of land and preservation of open space;
- (5) To provide for developments designed to function as cohesive, unified projects;
- (6) To ensure that a development will be harmonious with the existing uses and character of adjacent property, and/or consistent with patterns of development noted with respect to such adjacent property;
- (7) To ensure preservation of cultural features, scenic assets and natural features such as trees, streams and topography;
- (8) To provide for coordination of architectural styles internally within the development as well as in relation to adjacent properties along the perimeter of the development; and
- (9) To provide for coordinated linkages among internal buildings and uses, and external connections, at a scale appropriate to the development and adjacent neighborhoods;
- (10) To facilitate access to the development by public transit services or other single-vehicle-alternative services, including, without limitation, public pedestrian systems.

(9-15-03(3))

Sec. 34-491. Permitted uses.

Only those uses shown on an approved PUD development plan shall be permitted uses.

(9-15-03(3); 9-16-13)

Sec. 34-492. Configuration.

A PUD shall contain two (2) or more acres of land, except for parcels zoned Urban Corridor (URB) which shall have no minimum acreage requirement. A PUD may be comprised of one (1) or more lots or parcels of land. The lots or parcels proposed for a PUD, and all acreage(s) contained therein, shall either be contiguous, or shall be within close proximity to one another and integrated by means of pedestrian walkways or trails, bicycle paths, and/or streets internal to the development. City council may vary or modify the proximity requirement.

(9-15-03(3); 11-20-06(5); 9-16-13)

Sec. 34-493. Required open space.

- (a) As used within this article, the term "open space" shall mean land designated on an approved development plan for a PUD as being reserved for the use, benefit and enjoyment of all residents of the PUD. Such open space may consist of common areas owned and maintained by a developer, or non-profit corporation or property owners' association, and/or any parkland, hiking trails, drainage area, or similar areas dedicated to the public and accepted by the city.
- (b) The following amount of open space shall be required within a PUD: At least fifteen (15) percent of the gross area of all land included within the PUD development site; however, the city council may reduce this requirement in situations where through creative design, or in light of the nature and extent of active recreational facilities provided, it deems the overall objectives of the PUD are best served by such reduction.
- (c) Open space must be useable for recreational purposes, or provide visual, aesthetic or environmental amenities. The following areas shall be excluded from areas counted as open space: buildable lots, buildings and structures, streets, parking areas, and other improvements, other than those of a recreational nature. The following improvements may be counted as part of required open space: playgrounds, ball courts, swimming pools, picnic areas and shelters, parks, walking paths and hiking trails, landscaped terraces, open-air plazas, and similar amenities. Land within a floodway or floodway fringe may be used to satisfy the open space requirement for a PUD; however, not more than thirty-three (33) percent of such land may be counted towards open space requirements.
- (d) Open space shall be provided within each phase of a PUD, in sufficient amounts to serve the expected uses and/or residential population of that phase.
- (e) All property owners within a PUD shall have access to the open space by means of a public street, or a private street or walkway located within an easement reserving property for such access.

(9-15-03(3))

Sec. 34-494. Ownership of land; common areas.

- (a) All property within a PUD shall remain under single entity ownership of a developer, or group of developers, unless and until provision is made which insures the establishment and ongoing maintenance and operation of all open space, recreational facilities, and other common areas within the development. The developer or developers of the PUD shall not lease or sell any property within the PUD unless or until the director of neighborhood development services determines, in writing, that such satisfactory provisions have been made.
- (b) Where a property owners' association is established to own and maintain common areas within a PUD (including all required open space remaining in private ownership) the following requirements shall apply:

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- (1) The property owners' association shall be established and constituted in accordance with the Virginia Property Owners' Association Act, prior to the final approval, recordation and lease or sale of any lot within the PUD;
 - (2) The membership of the property owners' association, and the obligations of such association with respect to the common areas, shall be set forth within a declaration, suitable for recording in the land records of the Circuit Court for the City of Charlottesville, meeting the requirements of the Virginia Property Owners' Association Act. The declaration shall detail how the association shall be organized, governed and administered; specific provisions for the establishment, maintenance and operational responsibilities of common areas and the improvements established therein; and the method of assessing individual property owners for their share of costs associated with the common areas.
- (c) All common areas and required open space within a PUD shall be preserved for their intended purpose as expressed in the approved development plan. All deeds conveying any interest(s) in property located within the PUD shall contain covenants and restrictions sufficient to ensure that such areas are so preserved. Deed covenants and restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

(9-15-03(3))

Secs. 34-495—34-499. Reserved.

DIVISION 2. DEVELOPMENT STANDARDS

Sec. 34-500. Dimensional standards, generally.

The dimensional standards (i.e., restrictions of the height, area, location and arrangement of buildings and structures, lot area requirements, and required yards) and landscaping requirements applicable within a PUD district shall consist of: (i) any specific requirements or limitations set forth within this article, (ii) those shown on the approved development plan for the PUD, and (iii) those described within any approved proffers.

(9-15-03(3))

Sec. 34-501. Context.

- (a) Within a PUD district:
- (1) With respect to any building located within seventy-five (75) feet of a low-density residential zoning district, which includes R-1, R-1S, and R-2, the height regulations of the residential district shall apply to that building.
 - (2) No non-residential use shall be located within seventy-five (75) feet of the perimeter of a PUD unless such use is permitted within the adjacent zoning district at the time of PUD approval.
- (b) Except as specifically provided within paragraph (a), above, building height, scale and setbacks of buildings within a PUD shall complement existing development on adjacent property, taking into consideration:
- (1) The nature of existing uses, and of uses anticipated by the city's comprehensive plan, adjacent to and in the neighborhood of the PUD development site. Where a PUD is established on property that shares a block face with improved property, development within the PUD facing such existing improvements shall be harmonious as to height, mass, lot coverage, and setbacks;

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- (2) The number, type, and size of the various buildings proposed within the PUD;
 - (3) The location of natural, topographical, cultural or other unique features of the site;
 - (4) The location of public utilities, public streets, roads, pedestrian systems and bicycle paths, and of associated easements;
 - (5) The objectives of the PUD district.

(9-15-03(3); 9-16-13)

Sec. 34-502. Landscaping.

- (a) A portion of the required open space shall consist of landscaped open areas, in an amount equal to twenty (20) percent of the aggregate gross floor area of commercial uses within the development.
- (b) In all PUD districts landscaping shall be provided using materials consistent with those required by Article VIII, sections 34-861, et seq.) and the city's list of approved plantings.
- (c) In addition to the requirements of paragraphs (a) and (b), above, landscaping shall be utilized within a PUD:
 - (1) To provide visual separations or buffers, as may be appropriate, between uses and areas different in intensity or character from one another, and between the PUD and adjacent low-density residential districts;
 - (2) To protect and enhance the scenic, recreational, or natural features of a site; priority shall be given to preservation of existing trees having a caliper of eight (8) or more inches and in-place natural buffers;
 - (3) As a means of harmonizing the street frontage along the perimeter of a PUD with the street frontage of adjacent properties;
 - (4) To minimize the impact of noise, heat, light and glare emanating from a building, use or structure upon adjacent buildings, uses or structures.

(9-15-03(3))

Sec. 34-503. Sensitive areas.

The following areas shall be left natural and undisturbed, except for street crossings, hiking trails, utilities and erosion control devices:

- (1) Land within a floodway; and
- (2) Wetlands.

(9-15-03(3); 11-21-11(3); 9-16-13)

Sec. 34-504. Parking.

Off-street parking for each use within a PUD shall be provided in accordance with the standards set forth within Article IX, sections 34-970, et seq., unless otherwise approved by city council.

(9-15-03(3); 9-16-13)

Sec. 34-505. Phased development.

PUDs may be developed in phases, provided the following requirements are met:

- (1) All phases must be shown, and numbered in the expected order of development, on the approved development plan.
- (2) The open space within each recorded phase may constitute fifteen (15) percent of the gross land area within that phase, or all required open space may be provided in the first phase.
- (3) All project data required in section 34-517 for the project as a whole shall be given for each individual phase of development.
- (4) Phasing shall be consistent with the traffic circulation, drainage and utilities plans for the overall PUD.

(9-15-03(3))

Secs. 34-506—34-514. Reserved.

DIVISION 3. PROCEDURES

Sec. 34-515. Application review process.

- (a) Prior to the formal submission of an application seeking approval of a proposed PUD, the developer or their representative shall hold a conference with the director of neighborhood development services concerning the proposal, and shall provide the director with unofficial preliminary studies of their development concept and a sketch plan that specifies:
 - (1) The general location and amount of land proposed for residential, office, commercial, industrial, open space/recreation and vehicular and pedestrian access and circulation. This information shall be presented in a format that illustrates how the proposal meets the objectives of section 34-490;
 - (2) The numerical range of dwelling units in terms of quantity, and the gross floor area and acreage of each use or land area shown on the sketch plan;
 - (3) A narrative explaining the development plan and if applicable, any proposed deviations or modifications from generally required provisions;
 - (4) Any preliminary proffers.
- (b) Upon confirmation by the director that all materials and information submitted by the applicant satisfy the requirements referenced within paragraph (c), below, the application will be reviewed and acted upon in the manner prescribed within section 34-41.
- (c) Each application shall satisfy the requirements of section 34-41 as well as all of the requirements of this article.

(9-15-03(3); 4-13-04(2), § 1; 9-16-13; 10-19-15(3); 9-7-21(1) , § 2)

Sec. 34-516. Application.

- (a) Following the required pre-application review, the developer may submit an application seeking a rezoning approval for a PUD.

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- (b) The rezoning application shall consist of the following materials:
- (1) A city rezoning application form;
 - (2) A development plan prepared in accordance with section 34-517, below.
 - (3) A written statement of any proffers proposed in connection with the PUD.
 - (4) In the event the development plan indicates that any critical slopes will be disturbed, the applicant shall submit a request to modify or waive the critical slopes provisions as provided for in section 34-1120.
 - (5) A proposed land disturbance plan to include approximate timing and area of disturbance.
- (c) The completed application shall be processed in accordance with the procedures applicable to rezonings. In the event that subsection (b)(4) applies, the critical slope waiver application shall be considered simultaneously therewith by the planning commission, and if granted, conditioned upon compliance with the approved plan of development.
- (9-15-03(3); 11-21-11(3); 9-16-13)

Sec. 34-517. PUD development plan— Requirements—Contents.

- (a) Each of the following is a required component of a complete plan of development submitted in connection with an application for approval of a planned unit development:
- (1) A survey plat describing and depicting the entire land area to be included within the PUD development site, including identification of present ownership, existing zoning district classification(s) of the parcel(s) to be included within the PUD.
 - (2) A narrative statement of how the objectives described within section 34-490 are met by the proposed PUD.
 - (3) A conceptual development plan, supporting maps, and written or photographic data and analysis which show:
 - a. Location and size of existing water and sanitary and storm sewer facilities and easements;
 - b. Layout for proposed water and sanitary sewer facilities and storm drainage facilities;
 - c. Location of other proposed utilities;
 - d. Location of existing and proposed ingress and egress from the development;
 - e. Location and size of existing and proposed streets;
 - f. Location of existing and proposed pedestrian and bicycle improvements, including connections to nearby schools;
 - g. An inventory, by tax map parcel number and street address, of all adjacent parcels within a five hundred-foot radius of the perimeter of the PUD, indicating the existing zoning district classification of each.
 - h. A site inventory of the significant natural, environmental and cultural features of a site, including at a minimum: historic landmarks contained on any state or federal register; vegetation; existing trees of eight-inch caliper or greater; wetlands, topography, shown at intervals of five (5) feet or less, critical slopes, and other, similar characteristics or features, and a plan for preserving, protecting, utilizing and/or incorporating such features into the design and function of the proposed PUD.

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- (4) A proposed land use plan. Such plan will identify:
 - a. Proposed land uses and their general locations, including without limitation, building and setbacks;
 - b. Proposed densities of proposed residential development;
 - c. Location and acreage of required open space;
 - d. Square footage for non-residential uses;
 - e. Maximum height of buildings and structures in area of PUD.
 - (5) A general landscape plan which focuses on the general location and type of landscaping to be used within the project as well as the special buffering treatment proposed between project land uses and adjacent zoning districts;
 - (6) Phasing plan if needed. Each phase shall individually meet the requirements of this section.
 - (7) A statement from the city public utilities department verifying whether water and sewer infrastructure capacity does or does not exist for the proposed land use(s).
 - (8) A statement from the fire marshal verifying whether adequate fire flow service does or does not exist for the proposed land use(s).
 - (9) Additional information as deemed necessary by the director of neighborhood development services in order to facilitate a thorough review of the potential impacts of the proposed PUD that is the subject of the application. If any application fails to demonstrate within their application materials that a proposed PUD meets the minimum requirements specified in section 34-517, above, the application shall be rejected as incomplete.

(9-15-03(3); 11-21-11(3); 9-16-13)

Sec. 34-518. Approval.

- (a) Approval of the rezoning application establishes the maximum density/intensity, height and other dimensional requirements, the general location of each use and locations for streets and utilities shown on the development plan. Together with any approved proffers, the approved development plan shall establish the zoning requirements applicable to the PUD. Approval of a PUD does not relieve the applicant from its obligation to comply with all local, state, and federal laws and regulations. Any change in use, increase in density/intensity, any substantial decrease in the amount of open space, substantial change in the location of permitted uses or streets, and any other substantial change from what is shown on the approved development plan shall be deemed a substantial deviation requiring an amendment of the PUD approval. Factors to be considered in determining whether a change is substantial include, but are not limited to: the extent of the locational change and the expected impact on properties adjacent to the PUD.
- (b) Following approval of a PUD development plan, preliminary and final subdivision and site plan approvals shall be required. All such plans shall conform to the approved PUD development plan. No building or structure shall be erected, no building permit(s) issued, and no final subdivision plat(s) recorded, unless:
 - (1) A final site plan has been approved;
 - (2) Any required dedications, reservations or required improvements have been made in accordance with the final site plan and PUD phasing schedule; and,
 - (3) Sufficient financial guarantees for completion of required improvements have been received by the city.

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(Supp. No. 56, Update 1)

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- (c) Where phased development has been approved, applications for subdivision and site plan approvals may, at the developer's option, be submitted for each individual phase.

(9-15-03(3); 9-16-13)

Sec. 34-519. Amendment.

Following approval of a plan of development for a planned unit development, the owner of the development may amend the plan of development only as follows:

- (1) The owner of a PUD may submit a written request for a proposed minor change to the approved plan of development to the director of neighborhood development services. The request shall be supported by graphic, statistical and other information necessary in order for the director to evaluate the request. The director may approve the request upon a determination that it involves only a minor deviation from the layout or design contemplated within the approved plan of development. For the purpose of this section the terms "minor change" and "minor deviation" mean and refer to changes of location and design of buildings, structures, streets, parking, recreational facilities, open space, landscaping, utilities, or similar details which do not materially alter the character or concept of the approved plan of development. Should the director determine that the requested change constitutes something more than a minor change or deviation from the approved plan of development, then the owner may seek an amendment pursuant to paragraph (2), below.
- (2) The owner of a planned unit development may apply to city council for permission to amend the approved plan of development, following the same procedure as for the original approval.

(9-15-03(3))

Secs. 34-520—34-539. Reserved.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Approval of Resolution
Presenter:	Ben Chambers
Staff Contacts:	Ben Chambers, Transportation Planning Manager
Title:	Extending the Dockless Mobility Sharing System Permit for Veo Ride, Inc. (1 reading)

Background

Under the City's dockless mobility program, Veo Ride, Inc. has been operating its dockless scooter service in Charlottesville since 2020. The operation has approximately 350 scooters and 50 e-bikes operating in Charlottesville and served over a quarter million rides in 2022. Veo Ride, Inc. is interested in renewing its permit for 2023, but has requested an opportunity to revisit the current terms of the permit regulations to better serve the City. This review of the permit would include developing a more responsive plan for addressing scooter parking concerns. In order to complete this review of permit regulations and Veo Ride, Inc.'s re-application to the dockless sharing system permit program, Veo Ride, Inc. is requesting a 90-day extension of its 2022 permit, through March 31, 2023.

Discussion

Following a 2018 pilot program for shared e-bikes and scooters, the City established the Dockless Mobility Permit Program in December 2019 to ensure that for-hire dockless vehicles were operated in a manner that was consistent with the health, safety, and welfare of the public. The program was designed to reduce single-occupancy vehicle use, improve mobility, safety, and equity of the transportation network, and to create a healthy and safe city.

Veo Rides, Inc. has held a dockless mobility permit and has operated scooter and e-bike services in Charlottesville since 2020. Scooter and e-bike permits have been held by additional companies in the past, but currently Veo Rides, Inc. is the sole operator in the City. Veo Rides, Inc. has up to 350 scooters and 50 e-bikes operating in Charlottesville, which have served over a quarter million rides in 2022. The number of vehicles that Veo Rides, Inc. is allowed to have operating is capped by the permit regulations, though vehicle bonuses are available based on performance standards set in the regulations.

Veo Rides, Inc. approached the City about the renewal of their permit for 2023 and has requested to revisit the Dockless Mobility Permit Program regulations. Specifically, Veo Rides, Inc. is seeking a restructuring of fees, fleet size restrictions, and performance-based vehicle bonuses to be better aligned with permitting programs in peer cities they operate in across the country. An extension of

their 2022 permit would allow for this re-assessment of the current permit regulations.

The City itself could benefit from this re-assessment, due to ongoing issues with dockless scooter and e-bike parking. Despite Veo Rides, Inc. actively managing their fleet through redistribution and mitigation tools like required photos of final parking locations provided by users, dockless scooters and e-bikes are often found parked in areas where they are blocking sidewalks, bike lanes, and curb ramps, creating potential mobility issues for pedestrians and bicyclists. The additional 90 days would allow City staff and Veo Rides, Inc. to identify and implement strategies to address these issues. This would include identifying locations for parking corrals in heavily-used corridors like West Main Street. Parking corrals for dockless scooters and e-bikes are used by the University of Virginia to control parking on Grounds and an extension of that system would be simple for Veo Rides, Inc. to implement in 2023.

The Dockless Mobility Permit Program has been managed historically by the City's Bicycle and Pedestrian Coordinator, in collaboration with the University of Virginia's Parking and Transportation department. The City's Bicycle and Pedestrian Coordinator position has been vacant in 2022. The 90-day extension would allow the City to fill this position and return to more active management of the permitting program ahead of Veo Rides, Inc.'s 2023 permit application.

Alignment with City Council's Vision and Strategic Plan

This program supports the City Council's vision statements on Economic Sustainability, Green City, America's Healthiest City, and Connected Community. It can contribute to Goal 3 of the Strategic Plan to be a beautiful and sustainable natural and built environment, and Objective 3.3, to provide a variety of transportation and mobility options. The program also aligns with the Bicycle and Pedestrian Master Plan recommendation to monitor existing bikeshare programs.

Community Engagement

Since the 2018 pilot program, staff has met with representatives from a variety of City departments, City schools, as well as with representatives from UVA Parking and Transportation and Office of the Architect to coordinate an approach that would effectively manage this new technology. In addition, staff has sought input from the Bicycle and Pedestrian Advisory Committee throughout the pilot program.

City staff created a website with program and safety information, an email address to collect feedback on the program, and worked to integrate scooters in the myCville reporting tool. Staff has also worked with the companies to coordinate opportunities to table at a variety of popular events.

Budgetary Impact

There is no impact to the General Fund.

Recommendation

Staff recommends approval of a 90-day extension of Veo Ride, Inc.'s 2022 Dockless Mobility Sharing System Permit, through March 31, 2023.

Alternatives

If an extension is not approved, Veo Ride, Inc. will need to apply for a 2023 Dockless Mobility Sharing System Permit. Veo Ride, Inc. has not indicated its willingness to reapply without changes to the permit regulations. Veo Ride, Inc. would need to remove its vehicles from Charlottesville immediately.

Attachments

1. Resolution for extension of Veo contract 12.19.22

RESOLUTION

**Extending an Agreement with VEO Ride, Inc. for Dockless
Scooter Service to the City of Charlottesville**

WHEREAS the City of Charlottesville (hereafter “City”) is a municipal corporation duly organized and existing under the laws of the Commonwealth of Virginia; and

WHEREAS the City Council is the legislative body of the City; and

WHEREAS the City has entered into an agreement with Veo Ride, Inc. (“Veo”) permitting Veo to operate its dockless scooter service in Charlottesville since 2020 (the “Agreement”), with the goals of reducing single-occupancy vehicle use, and improving the mobility, safety, and equity of the City’s transportation network; and

WHEREAS the Agreement is set to expire as of December 31, 2022, and Veo has requested a 90-day extension of its 2022 permit, through March 31, 2023; and

WHEREAS approval of an extension to the Agreement would allow the City to identify and implement strategies to address ongoing issues with dockless scooter and e-bike parking, including identifying locations for parking corrals in high-usage areas; and

WHEREAS Veo has also requested a reassessment of the City’s current permit regulations, with the purpose of potentially restructuring fees, fleet size restrictions, and performance-based bonuses to better align with permitting policies in peer cities that Veo conducts business with;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that:

Section 1. The City hereby extends the Agreement with Veo for ninety (90) days, to expire on March 31, 2023.

Section 2. This resolution shall take effect immediately upon its passage.

Passed and Adopted by the Council on this _____ day of _____, _____.

CITY OF CHARLOTTESVILLE

By: Lloyd Snook
Mayor

ATTEST: _____
By: Kyna Thomas, Clerk of Council

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	January 3, 2023
Action Required:	Resolution
Presenter:	Alexander Ikefuna, Director of Community Solutions
Staff Contacts:	Alexander Ikefuna, Director of Community Solutions Ian S. Baxter
Title:	Expressing support for the TJPDC Allocation Plan for HOME – American Rescue Plan (ARP) funding (1 reading)

Background

The City of Charlottesville is an Entitlement Community and receives an annual HOME allocation as part of the Thomas Jefferson District Planning Commission HOME Consortium. In April 2021, the City was informed of HUD's HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP) funding award for \$2,452,270, for the City of Charlottesville, Albemarle, Fluvanna, Greene, Louisa and Nelson Counties. The City's share of the HOME-ARP award is \$347,404.92.

Discussion

As a Consortium, the Thomas Jefferson Planning District Commission (TJPDC) is responsible for coordination and administration of this fund. A regional Needs Assessment was conducted by the TJPDC in spring of 2022, as mandated by HUD Regulations. The TJPDC is also required to develop and submit a Regional Allocation Plan that includes the City of Charlottesville, to HUD for approval. The City will conduct a Request for Proposal (RFP) process to solicit potential applicants to submit application for funding. The City plans to spend the funds to develop affordable housing for the qualifying populations.

The TJPDC expects to submit the Allocation Plan to HUD by February 1, 2023.

Alignment with City Council's Vision and Strategic Plan

Approval of this agenda item aligns directly with Council's vision for **Economic Sustainability, A Center for Lifelong Learning, Quality Housing Opportunities for All, and A Connected Community**. It contributes to a variety of Strategic Plan Goals and Objectives including: Goal 1: Inclusive, Self-sufficient Community; Goal 3: Beautiful Environment; Goal 4: Strong, Diversified Economy; and Goal 5: Responsive Organization.

Community Engagement

The consultant hired to conduct the Needs Assessment had extensive consultations with small and focused groups, one-on-one interviews that covered current programs and services, the number and

types of persons served, intake and referrals process, gaps and local homeless services, priority gaps to be addressed, and the different needs among urban and rural jurisdictions.

After the Allocation Plan is approved by HUD, staff will conduct an RFP process to solicit proposals for funding. The recommendations will go through the public review process, Action Plan Amendment, and subsequently Public Hearing, prior to the City Council consideration and approval.

Budgetary Impact

All proposed HOME-ARP projects will be carried out using only the allocated funds to be received by the City of Charlottesville from the U.S. Department of Housing and Urban Development (HUD) for the TJPDC Consortium.

Recommendation

Staff recommends approval of the resolution requesting the Thomas Jefferson Planning District Commission (TJPDC) to transmit the proposed Regional Allocation Plan to HUD for review and approval.

Suggested Motion: "I move the RESOLUTION expressing Council Support for the TJPDC Allocation Plan for HOME - AMERICAN RESCUE PLAN Funding"

Alternatives

No alternatives are proposed.

Attachments

1. RESOLUTION HOME ARP Plan TJPDC 010323

RESOLUTION

**Expressing Council Support for the TJPDC Allocation Plan for
HOME – AMERICAN RESCUE PLAN (ARP) FUNDING**

WHEREAS, the City of Charlottesville is a U.S. Department of Housing and Urban Development (HUD) Entitlement Community for the Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) programs and as such expects to receive its share of the \$2,452,270 in HOME ARP funding of (\$347,404.92) through the Thomas Jefferson Planning District Commission following HUD approval of the Regional Allocation Plan; and

WHEREAS, in accordance with the City’s Citizen Participation Plan and HUD regulations, the City will issue a Request for Proposal to solicit potential applicants to develop affordable housing for the qualifying populations; and

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the City Council supports the transmission of the Thomas Jefferson PDC Allocation Plan to HUD for approval.

Approved by Council
January 3, 2023

Kyna Thomas, CMC
Clerk of Council