



CITY COUNCIL AGENDA December 19, 2022

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. Discussion: Reprecincting

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

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

Board/Commission Appointments

Consent Agenda*

2. Minutes: November 7 Council meeting
3. Ordinance: Amending the 2018 City/County Courts Memorandum of Agreement and approving a 40-year lease (2nd reading)
4. Resolution: Transferring Capital Funds from City/County fund (P-00834) for renovations to Washington Park Pool - \$350,000 (2nd reading)
5. Ordinance/Resolution: Police Civilian Oversight Board Matters
 - a. Ordinance: Amending Chapter 2, Article XVI of the City Code (PCOB) (2nd reading)
 - b. Resolution: Approving Operating Procedures for the PCOB (1 reading; tabled from December 5)
6. Resolution: Appropriating Bond Proceeds for the Woodland Drive subdivision - \$192,453.98 (1 of 2 readings)

City Manager Report

- Report: December 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

7. Public Hearing/Res.: Public Hearing and Resolution of Appropriation to Amend the Fiscal Year 2023 Budget (1 of 2 readings)
8. Ordinance: Considering a Zoning Map Amendment for the Mount View PUD (Planned Unit Development) (2nd reading)
9. Resolution: Considering a Sidewalk Waiver Request for the Mount View PUD (Planned Unit Development) (1 reading; tabled from December 5)
10. Public Hearing/Ord.: Private drainage easements (2) 2100 Avon Court (1 of 2 readings)
11. Public Hearing/Ord.: Temporary Aerial Easement 1223-1225 Harris Street (1 of 2 readings)

General Business

Other Business

Community Matters (2)

Adjournment

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: December 19, 2022
Action Required:
Presenter: Taylor Yowell, Voter Registrar, Anne Hemenway
Staff Contacts: Taylor Yowell, Voter Registrar
Title: **Reprecincting**

Background

Discussion

This will be discussion only. A public hearing and ordinance will be considered at a later date.

Alignment with City Council's Vision and Strategic Plan

Community Engagement

Budgetary Impact

Recommendation

Alternatives

Attachments

None

CHARLOTTESVILLE CITY COUNCIL MEETING

November 7, 2022 at 4:00 PM

In person: Council Chamber, 605 E. Main Street

Virtual/electronic: Zoom

The Charlottesville City Council met on Monday, November 7, 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 and Clerk of Council Kyna Thomas called the roll, noting the following councilors present: Michael Payne, Brian Pinkston, Mayor Lloyd Snook and Vice Mayor Juandiego Wade. Councilor Sena Magill notified City Council and the Clerk that she would need to participate electronically because of a medical situation that prevented her from attending in person.

On motion by Pinkston, seconded by Wade, Council voted 4-0 (Ayes: Payne, Pinkston, Snook, Wade; Noes: none) to approve electronic participation by Councilor Magill. She participated from her home in Charlottesville.

REPORTS

1. PRESENTATION: Botanical Garden of the Piedmont Annual Report

Jill Trischman-Marks, Executive Director, presented the Annual Report for the Botanical Garden of the Piedmont (BGOP). Council members made comments in support of the work being done by the BGOP and their fundraising efforts.

2. PRESENTATION: City Attorney report on vacating Rights-of-Way

City Attorney Lisa Robertson reported on processes for vacating city-owned rights-of-way as follow-up to previous meetings where some members of City Council expressed a desire to follow a more prescribed process. She referenced policies from 2005 and 2019 and reviewed reasons why it may be difficult to treat equally all requests to vacate real estate holdings. Three main types of real estate holdings presented to the City for acceptance or disposition are: Streets (99% city-owned), Alleys (99% privately owned), and public utility easements (100% city-owned). One factor to consider is what the city's interest might be in the property.

Ms. Robertson stated that the Office of Community Solutions is identifying whether the 2019 policy gives enough information about how applications will be handled, the analysis that will take place before items are presented to City Council for a vote, and what factors Council may consider when making decisions.

Following discussion, Councilor Magill suggested placing clear information on the city website for transparency to residents.

CLOSED SESSION

On motion by Payne, seconded by Pinkston, 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)(7) and (A)(8), for consultation with legal counsel pertaining to various litigation matters currently pending in federal court (Western District of Virginia) and the Charlottesville Circuit Court, where briefing in an open meeting would adversely affect the litigating posture of the City, and for consultation with legal counsel regarding the human rights ordinance, the PCOB operating procedures, a pending special use permit application (113 5th Street SW), and for advice on FOIA compliance regarding joint closed meetings with other public bodies.

On motion by Pinkston, seconded by Wade, Council certified by the following vote: 4-0-1 (Ayes: Payne, Pinkston, Snook, Wade; Noes: none; Abstained: Magill), 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. Councilor Magill abstained, stating that she was unable to join the Closed Session electronically because of technical difficulties.

BUSINESS SESSION

Council began the business meeting with a moment of silence.

CONSENT AGENDA*

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

3. MINUTES: September 19 Council meeting, September 27 joint work session with Planning Commission
4. ORDINANCE: To amend, re-ordain, and re-enact Chapter 30, Article 4 of the City Code (Real Estate Tax Relief for the Elderly and Disabled Persons) (2nd reading)

ORDINANCE TO AMEND, RE-ORDAIN, AND RE-ENACT CHAPTER 30, ARTICLE IV OF THE CODE OF THE CITY OF CHARLOTTESVILLE (1990), AS AMENDED (REAL ESTATE TAX RELIEF FOR THE ELDERLY AND DISABLED PERSONS) TO MAINTAIN PARITY WITH THE CHAP PROGRAM AND STREAMLINE ADMINISTRATION OF THE PROGRAM

5. RESOLUTION: Resolution to Appropriate Funds for the Charlottesville/Albemarle Adult Drug Treatment Court Grant Award - \$240,000 (2nd reading)

RESOLUTION

Appropriating the Sum of \$240,000 to the Charlottesville/Albemarle Adult Drug Treatment Court

WHEREAS the Supreme Court of Virginia awarded its Drug Treatment Court Docket a grant in the amount of \$240,000.00, to be allocated to the Charlottesville/Albemarle Drug Treatment Court to fund salaries, benefits, and operating expenses; and

WHEREAS the City of Charlottesville serves as the fiscal agent for the Charlottesville/Albemarle Drug Treatment Court; and

WHEREAS for Fiscal Year 2023 the City of Charlottesville and Albemarle County each appropriated local funding matches as required by this grant, in a combined total amount of \$131,595.00; and

WHEREAS the Supreme Court grant award covers the period July 1, 2022 through June 30, 2023; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that, upon receipt thereof from the Virginia Supreme Court, the sum of \$240,000.00 is hereby appropriated for expenditure by the Charlottesville/ Albemarle Adult Drug Treatment Court, in the following manner:

Revenues

\$240,000 Fund: 209 Internal Order: 1900500 G/L Account: 430120

Expenditures

\$240,000 Fund: 209 Internal Order: 1900500 G/L Account: 530550

All funds hereby appropriated shall be accounted for and expended only in accordance with requirements of the Virginia Supreme Court Drug Treatment Court Docket grant program.

6. RESOLUTION: Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.)- \$452,704 (2nd reading)

RESOLUTION

Appropriating the sum of \$452,704 received from the Commonwealth as a Virginia Juvenile Community Crime Control Act Grant (V.J.C.C.C.A.)

WHEREAS, the City of Charlottesville has been awarded \$292,058 from the Virginia Department of Juvenile Justice; and

WHEREAS, this grant requires local maintenance of effort funds in the amount of \$52,231 from Albemarle County and \$108,415 from the City; and

WHEREAS, the grant award covers the period from July 1, 2021 through June 30, 2022.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that upon receipt of the sum of \$452,704 from the Commonwealth of Virginia, that sum is hereby appropriated in the following manner:

Revenue – \$452,704

\$292,058	Fund: 220	Cost Center:	3523001000	G/L Account: 430080
\$52,231	Fund: 220	Cost Center:	3523001000	G/L Account: 432030
\$108,415	Fund: 220	Cost Center:	3523001000	G/L Account: 498010

Expenditures - \$452,704

\$ 53,075	Fund: 220	Cost Center: 3523001000	G/L Account: 519999
\$399,629	Fund: 220	Cost Center: 3523001000	G/L Account: 530010

All funds hereby appropriated shall be accounted for and expended only in accordance with requirements of the VJCCA grant program.

- 7. RESOLUTION: Appropriating \$700,000 from the CIP Contingency to Avon Fuel Station Replacement Project (2nd reading)

RESOLUTION

Appropriating the Amount of \$700,000 from the CIP Contingency funds to the Avon Fuel Station Replacement Project

WHEREAS the City of Charlottesville designed and bid a project to improve the Avon Fuel Station (the “Project”); and

WHEREAS a funding deficit exists, because the costs of the Project, and of insurance required for the Project are greater than the funding amount previously allocated; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$700,000.00 is hereby transferred from CIP Contingency funds, for expenditure on the Avon Fuel Station Project, in the following manner:

Transfer From

\$700,000 Fund: 426 WBS: CP-080 G/L Account: 599999

Transfer To

\$700,000 Fund: 426 WBS: P-00980 G/L Account: 599999

- 8. RESOLUTION: Appropriating \$107,203.32 for Jefferson School African American Heritage Center Rent Agreement (2nd reading)

RESOLUTION

Approving a gift or donation in the amount of \$107,203.32 to the Jefferson School African American Heritage Center

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that a gift or donation is hereby approved in the amount of **\$107,203.32** to the Jefferson School African American Heritage Center, to be used for payment of rent for the Center’s lease of premises located at 223 4th Street NW, Suite A, in Charlottesville, Virginia.

This gift or donation shall be paid from the Strategic Initiatives account within the FY2023 Budget for City Council expenditures.

9. RESOLUTION: Appropriating American Rescue Plan (ARP) Funds \$565,000 (2nd reading)

RESOLUTION
Appropriating the Amount of \$565,000 of American Rescue Plan Funds
for Eligible Local Activities

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of \$565,000 from American Rescue Plan funding is hereby designated to be available for expenditure for costs associated with following eligible purposes and amounts:

City Hall Ambassadors	\$50,000.
AED Program for City Facilities.	\$300,000.
City Access Control Badges.	\$15,000.
Emergency Shelter Operations at Premier Circle.	\$200,000.
TOTAL.	\$565,000.

Note: account codes will be established following the first reading on this appropriation for inclusion in the second reading and adoption.

10. RESOLUTION: Appropriating Funds for Bag Distribution in Connection with Plastic Bag Tax - \$20,000 (2nd reading)

RESOLUTION
Approving an appropriation in the amount of \$20,000.00 for the purchase and
distribution of bags to SNAP and WIC eligible households impacted by the plastic bag
tax beginning January 1, 2023

WHEREAS, the City of Charlottesville adopted a plastic bag tax on July 18, 2022, that goes into effect on January 1, 2023;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that an appropriation is hereto approved in the amount of \$20,000.00 for the purchase of bags to be distributed to eligible households:

Revenues

Fund: 105 Cost Center: 1601001000 GL Code:410145

Expenditures

Fund: 105 Cost Center: 3301001000 GL Code: 599999

11. RESOLUTION: Appropriating Insurance Reimbursement in the amount of \$4,650.55 - Fire Department Truck Company 9 (carried)

12. RESOLUTION: Appropriating Funds for 2022 Bureau of Justice Assistance FY22 Edward Byrne Memorial Justice Grant Program - Local Solicitation - \$23,459 (carried)

13. RESOLUTION: Appropriating funds from the Victim Witness Assistance Program Grant - \$257,024 (carried)
14. RESOLUTION: Extending the Contract for city management services with The Robert Bobb Group (1 reading)

RESOLUTION

To extend the Contract for City Manager Services with The Robert Bobb Group

WHEREAS by resolution (#R-21-184) dated December 20, 2021, City Council awarded a contract to The Robert Bobb Group, for the provision of city manager services (“Contract”) through June 30, 2022; and

WHEREAS pursuant to a consensus to give priority to recruitment of a chief of police, City Council voted on June 6, 2022 to adopt a resolution (#R-22-071) extending the time for performance of the Contract through December 31, 2022; and

WHEREAS the police chief recruitment process is underway, but will not be completed in time to allow Council a reasonable time to conduct a thorough executive recruitment process for a permanent city manager; and

WHEREAS attempting to change the designated city manager, either by direct appointment or by competitive recruitment of a contract with a firm, would be detrimental to the City organization and those selection processes, in and of themselves, might not be able to be completed by City Council within the next few months; therefore, The Robert Bobb Group is the only source practicably available for these services; and

WHEREAS it is in the best interests of the public, the City Council, and the City government that the contract with The Robert Bobb Group be extended for an additional period of time, as permitted by Virginia Code §2.2-4309, to allow the Robert Bobb Group to complete its work for stabilization of the City government and creating an environment that will enhance the City’s ability to recruit a new permanent city manager; now, therefore,

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the January 6, 2022 contract for City Manager Services entered into between the City Council for the City of Charlottesville and The Robert Bobb Group (“Contract”), is hereby amended and re-enacted with the following amendment:

Section 2 (Time for Performance)

(A) RBG shall commence performance of Services effective as of the date this Contract is executed by City Council, and shall continue its performance through December 31, 2023, or the date as of which a permanent city manager appointed by City Council commences employment, whichever first occurs (“Term”).

All terms and conditions of said Contract shall be and remain in effect throughout the extended term of the Contract.

BE IT FURTHER RESOLVED that, on behalf of City Council, the Mayor is hereby authorized to sign an instrument reflecting this contract amendment, and the City Attorney shall prepare said instrument for signature of the Mayor and The Robert Bobb Group.

Mayor Snook opened the floor for public comment on the Consent Agenda. There were no speakers.

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

CITY MANAGER REPORT

Interim City Manager Rogers referenced the written report in the meeting packet. He made a statement regarding gun violence in the city and reported on his meeting with Friends of the Downtown Mall. He asked Interim Police Chief Durette to report on shots fired calls for service.

Chief Durette reported on shots fired incidents in the city since 2017, noting increases in 2020 and 2021, and a reduction in 2022. He reported additional crime statistics. Mr. Durette stated that he increased the presence of officers on the Downtown Mall.

Mr. Pinkston noted that the recent incidents of gun violence were unrelated to issues regarding the unhoused population.

Mr. Wade summarized topics that were raised at the community meeting on recent gun violence, including support services needed.

Mr. Rogers expressed the need to work with regional partners such as UVA and Albemarle County to address crime.

COMMUNITY MATTERS

1. Emily Morrison, Founder and Executive Director of The Front Porch downtown, spoke about ongoing and increasing security issues at the Downtown Mall - security breaches in buildings, loitering, and defecating on the property, as well as security issues indicative of addiction and mental health issues. She suggested the use of a moderator at public meetings regarding big issues and expressed a need for an emergency alert system for communication in the Downtown district, de-escalation trainings for staff, and creative solutions using the arts community.
2. Kevin Cox, city resident, provided an update on issues involving East High Street. He encouraged looking at the prioritization list for Streets that Work. He recommended curbs along East High Street to divert rainwater and deter drivers from driving through parking lots. He thanked the police department for following up and arresting the motorist who hit a bicyclist during a recent incident.
3. Frank Schmid, city resident, spoke about the proposed Carlton development and Critical Slope Waiver for Belmont, #18 on the Council agenda.
4. John Semmelhack, city resident, spoke about West Main Street protected bike lanes. He stated that a petition started last week has collected over 400 signatures.

5. James Groves, city resident, made suggestions for addressing climate change - specifically a change to City Code ceasing the installation of new gas lines for free.
6. Kat Maier, city resident, asked Council to take a deep look at the engineering information for the Critical Slope Waiver request in Item #18 on the Council agenda. She mentioned flaws and errors in the design.
7. Elizabeth "Alex" Marshall, city resident, spoke about the need for UVA to work with the City to address growth issues that are affecting Charlottesville. Regarding Preston Place, she expressed concerns about fraternity parties, and she thanked Mayor Snook for visiting the site. She asked to make Preston Place permit parking 24/7 because of fraternities and their guests taking over parking.
8. Deborah Jackson, city resident, spoke in opposition to Item #18 on the agenda. Regarding the stormwater management system in the report, she read from the staff report that staff could not recommend approval. She stated that the engineer, with one exception, did not reach out to adjacent neighbors. She stated that it is impossible to review the waiver request without a site plan and made additional comments about groundwater.
9. Katrina Turner, city resident, spoke about a police officer in Missouri who was removed from his job for attending the Unite the Right rally in 2017. She made comments regarding a Charlottesville city employee who attended the January 6, 2021 insurrection on the US Capitol working in a sensitive position, whom she believes should be fired.
10. Eugenio Schettini, city resident, spoke in opposition to the Critical Slope Waiver request in Item #18 of the agenda, stating lack of communication from the engineer to adjacent property owners, quality of life concerns, lack of maintenance of the related culvert, and the size of the proposed retaining wall.
11. Jean Umiker-Sebeok, city resident, urged the city to stop subsidies for natural gas to address climate change.
12. Kirk Bowers, Albemarle County resident, spoke about the need to phase out natural gas in Charlottesville.
13. Christine Palozzolo, city resident, spoke in opposition to Item #18 as presented. She requested that Council pay attention to the reporting from city experts regarding the Critical Slope Waiver request and ask the developers to take another look at the plan.

ACTION ITEMS

15. ORDINANCE: Amending Chapter 12 of the City Code to Require Fire Inspection Reports (carried)

Michael Thomas, Interim Fire Chief, presented the ordinance amendment request, which would establish a local requirement for copies of inspection, testing and maintenance records to be submitted to the City Fire Official, and also to require that the means of sharing those records will be through a web-based application designated by the Fire Official. These requirements are within City Council's authority conferred by Virginia Code Sections 27-97 and 27-98.

Council agreed to carry the item forward to the November 21 Consent agenda for second

reading and vote.

16. ORDINANCE: Amending the Charlottesville Human Rights Ordinance, Code of the City of Charlottesville, Chapter 2, Article XV (1 reading; tabled to November 21)

Todd Niemeier, Director of the Human Rights Commission, shared general information about the Human Rights Ordinance, the Office of Human Rights, and the Human Rights Commission. He gave an overview of proposed ordinance changes.

Mr. Niemeier shared information about the proposal to enter into a workshare agreement with the federal Department of Housing and Urban Development (HUD) Fair Housing Assistance Program, comparing the current process for investigating housing discrimination to the FHAP process. He stated that two staff positions would be needed to support the additional workload - an investigator and intake position.

After discussion on the FHAP, Mayor Snook listed reasons for delaying action on the ordinance changes. Council discussed opinions on the number of commissioners. Several councilors mentioned that nine members seems reasonable. Mr. Wade recommended a strong onboarding process to set expectations for involvement and attendance.

Council agreed to Table the item to the November 21 Consent Agenda in order to have more time for review.

17. RESOLUTION: Amending Community Development Block Grant (CDBG) 2022-2023 Substantial Action Plan - \$178,394.34 (carried)

Alex Ikefuna, Director of Community Solutions, presented the request.

Councilor Payne asked about timeliness of the project. Mr. Ikefuna stated that he hopes timeliness will not be an issue. Mr. Payne also stated that he does not see alignment with the project and priorities for CDBG funds.

Mr. Pinkston asked for clarification on why the Task Force chose the pedestrian bridge project. Mr. Ikefuna stated that after the advertisement period for shovel-ready proposals, two proposals were received and the CDBG Task Force chose the pedestrian bridge.

Council agreed to carry the item forward to the November 21 meeting on the Consent Agenda for second reading and vote.

18. RESOLUTION: Considering a Critical Slope Waiver request at 1003 - 1005 Carlton Avenue, 0 Walnut Street, 730 - 732 Walnut Street, 735 Walnut Street, and 0 Cherry Street (1 reading)

Matt Alfele, City Planner, presented the Critical Slope Waiver request from Belmont & Carlton Holdings, LLC (owner).

Responding to Councilor Payne, City Engineer Jack Dawson stated that he could not recommend approval of the waiver based on City Code regulations and conditions in the

application. He expressed concerns with environmental issues and groundwater recharge, advising that he has no way to weigh density against environmental impact and that being unable to recommend approval does not equate a recommendation of denial.

Mr. Payne expressed concerns about the affordable housing component of the project and adoption of the inclusionary zoning ordinance, specifically whether the public benefit outweighs the real cost.

Ashley Davies, with Riverbend Development answered questions for Council. She referenced State stormwater requirements and stated that the applicant is following processes set by the city. She stated that during the approximately fifteen years of ownership the owner has considered numerous options for development before presenting the current request.

Scott Collins, Riverbend engineer, explained the water flow direction from the property.

On motion by Pinkston, seconded by Wade, Council by the following vote APPROVED the resolution granting the critical slope waiver: 4-1 (Ayes: Magill, Pinkston, Snook, Wade; Noes: Payne).

RESOLUTION

Granting a critical slope waiver for a residential development referred to as “Belmont Condominiums”

WHEREAS Belmont & Carlton Holdings, LLC (“Landowner”) is the owner of certain land identified within the City of Charlottesville Real Estate Assessor’s records as Real Estate Parcel Identification Nos. 570020000, 570002100, 570004000, 570006000, 570007100, 570007300, 570007500, 570007700, 570007900, 570002000, 570003000, 57005000, 570007000, 570007200, 570007400, 570007600, 570007800, 570010000, said parcels having current street addresses of 1003-1005 Carlton Avenue, 0 Walnut Street, 730 – 732 Walnut Street, 735 Walnut Street, and 0 Cherry Street (collectively, the “Subject Property”); and

WHEREAS the Subject Property contains critical slopes, over and within an area of approximately 0.988 acre, which is approximately 16% of the combined area of the various parcels that constitute the Subject Property, and Landowner is requesting a waiver of the critical slopes requirements of City Code Sec. 34-1120(b)(6)(b), in connection with the Owner’s plan to construct a mixed use development on the Subject Property (the “Project”); and

WHEREAS the Project is described in more specific detail within the application materials submitted in connection with waiver application no. P22-0039, as required by City Code §34-1120(b)(6) (collectively, the “Application Materials”); and

WHEREAS the Planning Commission considered and recommended approval of this application at their October 11, 2022 meeting, subject to conditions proposed within the Staff Report and modified as discussed in the meeting; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia, that a waiver is hereby granted of the critical slopes requirements for the Project, to allow for the development of the Project as described within the Application Materials, subject to the following conditions:

- (1) Erosion and sediment control (ESC) plans for the Project shall include, at a minimum, four (4) stages/phases of ESC controls. The first phase shall include “Initial/Preliminary Controls”. Outfalls from any proposed sediment traps shall be established with rigorous independent ESC controls, early in the sequence, prior to the establishment of a sediment trap and associated conveyances.
- (2) Any channels/diversions that convey ‘clear’ water shall be stabilized with sod on the ‘clear water’ side immediately after installation.
- (3) A “Super Silt Fence” (chain linked backing) shall be installed where perimeter silt fence is specified.
- (4) Any disturbance occurring outside of conveyances to a sediment trap, in either sequence or space, planned or unforeseen, shall be immediately stabilized with sod (for pervious areas, utilities should have other “same day stabilization”).
- (5) At no time shall concentrated water be directed toward the areas of critical slopes, without adequate conveyance down and beyond the slopes to an acceptable outfall.
- (6) To document the landowner's representations within the Application Materials regarding intended onsite water quality measures, the Stormwater Management Plan for the Project shall include either (a) a design for onsite water quality provided by a facility, or (b) facilities that are either i) designed in accordance with the BMP Clearinghouse “2013 Draft Design Specifications for Practices 1-15”, or ii) proprietary Manufactured Treatment Device(s) approved by the Virginia Department of Environmental Quality (“DEQ”) as of the date the stormwater management plan for the Project is submitted for the City’s review. The facility or facilities should provide 125 percent of the onsite Phosphorus removal required by the Virginia Water Quality requirements for the development Project. Compliance with the 125 percent will be demonstrated by accurate project data set forth within a completed Virginia Runoff Reduction Method (“VRRM”) spreadsheet for the project.

19. RESOLUTION: Considering a Special Use Permit request at 1113 5th Street SW (1 reading)

Matt Alfele, City Planner, presented the Special Use Permit request.

Valerie Long of Williams Mullen Law Firm, representing the applicant Green Clean Albemarle, LLC, made a presentation and addressed concerns about noise reduction, lighting and walkability.

Mayor Snook mentioned that the entrance corridor should be held to a higher standard, although the standard is not written into the Zoning Ordinance.

Councilor Payne suggested aligning projects for this area with the zoning best practices and less auto-centric uses.

Councilor Pinkston stated that this project would not be the best use of the property.

On motion by Payne to Deny, seconded by Pinkston, Council by the following vote DENIED to Special Use Permit request: (Ayes: Magill, Payne, Pinkston; Noes: Snook, Wade).

Ms. Long requested re-evaluation of the vote based on legal criteria for a Special Use Permit. Neither of the councilors who voted in favor of the motion agreed to reconsider.

OTHER BUSINESS

Vice Mayor Wade requested follow-up on the request regarding permit parking on Preston Place. Mr. Rogers stated that he met with University staff and police to address fraternity issues.

Mayor Snook requested follow-up on subsidizing natural gas hookups. Mr. Rogers stated that a Request for Proposals (RFP) was issued for a consultant. Mr. Sanders stated that negotiations are underway for the consultant to begin work in January, with results expected in June.

COMMUNITY MATTERS (2)

- Craig Key, city resident and applicant for the Special Use Permit in Item #19, expressed disappointment with the process and Council's denial of the Special Use Permit in Item #19, stating that car wash operations provide local jobs and growth opportunities for individuals to become future business owners.
- Tanesha Hudson spoke about the denial of the car wash Special Use Permit in Item #19. She spoke about the Human Rights Commission handling of internal job discrimination. She asked about Zoom registration requirements for City Council meetings and asked when City Council meetings will go back to pre-pandemic operations.

The meeting adjourned at 10:22 p.m.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	December 19, 2022
Action Required:	Approve Ordinance (2 Readings)
Presenter:	Chris Engel, Director of Economic Development, Samuel Sanders, Jr., Deputy City Manager
Staff Contacts:	Chris Engel, Director of Economic Development Samuel Sanders, Jr., Deputy City Manager Lisa Robertson, City Attorney
Title:	Amending the 2018 City/County Courts Memorandum of Agreement and approving a 40-year lease (2nd reading)

Background

On December 17, 2018, the County of Albemarle and the City of Charlottesville executed an inter-governmental memorandum of agreement (MOA) to redevelop the Levy Opera House and site located at 350 Park Street to serve as a co-located General District Court (GDC). The agreement outlines the commitments and responsibilities of each party and specifically requires the City to provide the County with parking spaces for their exclusive use prior to the commencement of court activities in the new facility.

As contemplated in the MOA, the City initially explored developing a new parking structure proximate to the new courts facility on land owned by the City at 701 East Market Street. However, by resolution approved June 21, 2021 the City Council directed the City Manager and staff to halt planning for the new structure.

While the Original Agreement offered options should the City fail to complete the parking structure (Section 2 (G)), the County and the City agree that pursuit of the options are not in the best interest of either party. As such, additional discussions involving City and County staff have occurred resulting in the Amendment presented herein.

Discussion

The Amendment replaces section 2 of the Original Agreement and deletes section 3 entirely. All other terms and conditions of the Original Agreement remain in full force and effect.

In summary, the County receives exclusive control of the East Market Street Parking Lot (located at 701 East Market Street) during regular court hours which are defined as Monday through Friday from 7:00 a.m. to 6:00 p.m and during special court sessions or events which must be noticed in advance. The East Market Street Parking Lot currently includes 63 surface parking spaces. The City and

County will execute a lease to confer access to these spaces and it will be effective February 1, 2023. The term will be 20 years, with one 20-year renewal option. The City will retain full ownership of the ground and will conduct basic repairs and maintenance. The County is responsible for parking enforcement regulations during its hours of exclusive use. Should the County decide to install parking management infrastructure on the lot the cost of installation and maintenance will be the responsibility of the County.

In addition, the City will provide access to 27 spaces in the Market Street Parking Garage by free validation for County Court users for up to 11 hours per day. Parking spaces in the Market Street Garage are not reserved, but Courts users would have the opportunity choose from all available spaces. Should the County install parking control equipment that reduces the number of available spaces in the East Market Street Parking Lot, the City will provide additional free parking validation hours in the Market Street Garage to accommodate the number of parking spaces lost.

The Amendment retains those County options defined in the MOA should the City be unable to meet its obligations to provide parking for County Courts users. The Amendment includes a third option, requiring the City to convey to the County ownership of the Market Street Parking Lot parcel at a price based on the then-current appraised value of the property.

Alignment with City Council's Vision and Strategic Plan

This action aligns with the Council's Vision for a connected community that enables convenient transit supporting mixed-use development. This action aligns with the City Council's Strategic Plan Goal Four: A Strong Diversified Economy.

Community Engagement

The City and County both had significant engagement from the legal and justice system communities regarding the ultimate decision on where and how to expand the court facilities.

Budgetary Impact

No new funding is being requested. The City will lose parking revenue of approximately \$105,000 annually.

Recommendation

Staff recommends that, contingent on approval of the amendment by the County Board of Supervisors as scheduled for December 7, 2022, the Council approves the amendment and authorizes the City Manager to execute the Lease.

Suggested Motion: "I move the ORDINANCE to approve an amended Agreement with Albemarle County for a shared court facility and to approve a 40-year Lease of the 7th Street Parking Lot to Albemarle County, to be used for County Courts parking."

Alternatives

Attachments

1. ORD to Approve Lease of 7th Street Parking Lot and Amended MOA_rev

2. 701 Market Street Parking Lot Lease 11.21.22
3. Amendment to Courts Agreement_Draft 11.8.2022
4. Co.City.ExpandCoCC,GDC.CiGDC.MOA.12.17.18

ORDINANCE

To Approve an Amended Agreement and to Approve a 40-year Lease of the Surface Parking Lot at 701 East Market Street to Albemarle County During Designated Hours

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, THAT the following agreement and lease are approved:

1. Amendment to the Memorandum of Agreement between the City of Charlottesville and Albemarle County To Facilitate the Expansion, Renovation, and Efficient and Safe Operation of the Albemarle Circuit Court, the Albemarle General District Court, and the Charlottesville General District Court, and
2. City of Charlottesville Agreement for a Lease of the Surface Parking Lot at 701 East Market Street by the City of Charlottesville to the County of Albemarle, for a term of 40 years (20 years, plus one 20-year renewal) to be used by Albemarle County as parking for County Courts; and

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to execute the above-referenced Amendment to the Memorandum of Agreement and the City of Charlottesville Lease Agreement, as the agent of City Council.

CITY OF CHARLOTTESVILLE LEASE AGREEMENT

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 the “City” or the “Landlord,” and the COUNTY OF ALBEMARLE, VIRGINIA, herein referred to as the “County” or the “Tenant.”

WITNESSETH:

ARTICLE I. PROPERTY

A. Landlord owns certain land and improvements (“The Property”) located at **701 East Market Street, Charlottesville, Virginia**. 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, Landlord does hereby lease, let, and demise unto Tenant the right of exclusive use and possession of said property during specified hours.

Exhibit A, attached and incorporated herein by reference, sets forth the dimensions and characteristics of the Property.

Tenant shall have exclusive right to the use and possession of the Property, during days and hours in which the County’s Circuit Court and/or General District Court (“County Courts”) is/are in session, more specifically:

1. **Weekdays**--Monday through Friday each week, from 7:00 a.m. to 6:00 p.m. each day, excepting holidays observed by the County Courts.
2. **Special Events or Sessions**—any day(s) other than the weekdays specified above, and any weekday hour(s) after 6:00 p.m., when any judicial proceeding or other event within the County Court(s) is scheduled. Immediately upon the scheduling of any special court event or special session, Tenant shall notify the City’s representative in writing.

At all other times, the Landlord shall retain all of its rights as to the use and possession of the property, and Tenant shall not take any action that would hinder or prevent Landlord’s use of the Property, and the parking spaces located therein, at all other times.

ARTICLE II. TERM

The term of this Lease shall be for a period of twenty (20) years (“Term”), commencing on February 1, 2023 (“Commencement Date”), and expiring at midnight on February 1, 2043 (“Expiration Date”)

unless sooner terminated by the parties in accordance with this Lease. Thereafter, unless the County notifies the City in writing of its intent to discontinue this Lease, this Lease will renew for one additional 20-year term, upon the same terms and conditions as set forth herein.

Tenant may cause a Memorandum of this Lease to be recorded among the land records of the City of Charlottesville, Virginia. Landlord shall cooperate with the Tenant and shall promptly sign such Memorandum upon presentment.

ARTICLE III. USE OF PROPERTY

A. **Management of Property.** The Tenant shall use the Property for parking throughout the entire term of this Lease. Failure to maintain continuous use, except for shutdowns for repair and maintenance for a not more than 90 days, in the aggregate, per year, shall be deemed a breach of this Lease.

To facilitate its use of the Property, Tenant shall have the right to install parking management infrastructure within the Property. All costs and expenses to install, maintain or replace such infrastructure shall be borne by the Tenant throughout the term of the Lease. Examples of parking management infrastructure include, but are not necessarily limited to, signage, access control gates or equipment, and payment kiosks. All signage shall be compliant with requirements of the City's zoning ordinance, and Tenant shall be responsible for obtaining from City officials any building permits, electrical permits, zoning approvals, or other governmental approvals required for any parking management infrastructure. (The Property, together with any parking management infrastructure or other installations or alterations undertaken by the County for its purposes, shall, collectively, be the "Parking Facility").

The Tenant, at its sole discretion, may enforce parking regulations within the Property during times when it has exclusive use and possession under this Lease. No City of Charlottesville official or employee shall be asked to assist with enforcement of parking regulations, nor shall any City of Charlottesville official or employee provide assistance with parking enforcement. The Tenant's operation of the Parking Facility during all times when the Tenant has the right of exclusive use and possession under this lease shall be the sole undertaking of the Tenant; the Landlord shall not be deemed a partner of the Tenant's, nor shall the Landlord otherwise be deemed to be in any joint undertaking with the Tenant.

B. **Specific use authorized.** The Property shall be used by the Tenant only as a commercial surface parking lot. Parking spaces within the Property shall be for use by the general public who have business with the Albemarle County Courts, or for judges, clerks, or staff employees of those Courts. No other use shall be made by Tenant of the Property 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 Property. Such rules shall include, but are not limited to, the following:

- 1) The sidewalks, entries, passages, vehicular travel ways and any 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.

- 3) Tenant shall have a parking operations plan that specifies when, and under what circumstances vehicles will be towed from parking spaces within the Property. Signs posted within the Premises shall comply with applicable legal requirements and shall provide telephone number(s) at which an employee of Tenant may be reached for customer complaints and for resolution of complaints. Tenant shall be solely responsible, financially and otherwise, for contracting with a provider of towing services.

ARTICLE IV. RENT

Rent. The Tenant hereby covenants and agrees to occupy the Property 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 Ten Dollars (\$10.00) in U.S. currency per year (“Rent”).

The parties acknowledge that the annual Fair Market Rent for the Property is \$92,412.00. The difference between the annual Rent specified for this Lease and the annual Fair Market Rent shall be deemed an in-kind financial contribution by Landlord to Tenant in support of the parties’ operation of a joint general district court complex on a different site.

ARTICLE V. DAMAGE OR DESTRUCTION BY CASUALTY

- A. *Casualty renders entirely untenable.* If during the term of this Lease, the Property 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 unsuitable for Tenant’s uses, and if said Property 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.
- B. *Casualty renders partially untenable.* If said Property shall be partially damaged by any of the above casualties as to be partially unsuitable for Tenant’s uses, Landlord shall repair the Property promptly.
- C. *Limitation.* At any time that any parking spaces within the Property are unavailable for use due to circumstances referenced in (A) or (B) for more than seven consecutive calendar days, the Landlord shall provide an equivalent number of parking spaces in a location mutually acceptable to the parties within a one-third mile radius of the Albemarle Circuit Court building, which is the center of the area known as “Court Square”, for as long as the Property are at least partially untenable.
- D. *Exclusions from Landlord’s repairs.* If Landlord undertakes repair of the Property under this Section, Landlord shall not be obligated to repair, restore or replace any of Tenant’s fixtures or any other personal property owned by or in the possession of Tenant and located on the Property; further, Landlord shall not be under any obligation to repair, restore or replace any alterations to the Property made by or on behalf of Tenant.

ARTICLE VI. 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, or may be rendered unable to conduct its ongoing operations within the Property 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 or pandemics, 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.

ARTICLE VII. INSURANCE

- A. *Required insurance coverage.* Tenant shall maintain throughout the term of this Lease, with a company licensed to do business in the Commonwealth of Virginia, having a rating satisfactory to Landlord: broad form comprehensive general liability insurance (written on an occurrence basis, including contractual liability coverage).
- 1) The broad form comprehensive general liability insurance shall be in the minimum amount typically carried by prudent tenants engaged in commercial parking operations, but in no event shall be in an amount less than one million dollars (\$1,000,000.00) combined single limit per occurrence.
 - 2) Tenant’s property insurance shall be in an amount not less than that required to replace all fixtures, personal property and other Tenant-installed improvements located on the Property, or twenty-five thousand dollars (\$25,000.00), whichever is greater.
- 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.

ARTICLE VIII. LOSS OR DAMAGE TO PROPERTY OR PERSONS

All personal property and fixtures belonging to the Tenant, located on or about the Property 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, 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 Property or of any defects, damage or injury therein or in any fixtures or equipment.

ARTICLE IX. REPAIRS AND MAINTENANCE--TENANT

- A. *Surrender Obligation.* At the expiration or earlier termination or cancellation of this Lease, Tenant shall surrender the Property to Landlord in as good condition as at the time of delivery, subject to reasonable wear and tear.

- B. *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. Tenant's obligation under this paragraph shall survive the expiration or termination of this Lease.

ARTICLE X. REPAIRS AND MAINTENANCE--LANDLORD

- A. *Maintenance, generally.* Maintenance of the Property, other than as set forth in the foregoing Article, shall be provided by Landlord. Landlord's maintenance responsibility shall include removal of snow and ice from parking areas, onsite walkways, and adjacent public sidewalks and grass mowing. In order to ensure the safety of users of the lot when County courts are in operation, Tenant reserves the right, but not the obligation, to remove snow and ice from the Property, at Tenant's own expense, if not timely removed by the Landlord.
- B. *Capital maintenance.* The Landlord shall, at its expense, maintain the pavement and painted parking space lines in good condition and shall repair the same with reasonable diligence when necessary.
- C. *Timing.* Landlord shall use reasonable diligence in scheduling maintenance to take place at a time and in a manner so as not to unreasonably interfere with Tenant's normal parking use; provided, however, that Landlord shall not be required to perform maintenance at night, or on weekends, if, in Landlord's sole discretion, that would not be efficient from either a budgetary or a practical perspective. Landlord shall give reasonable advance notice to Tenant of scheduled maintenance activities, so that Tenant can adjust its operations accordingly. If planned maintenance or repair activities will render any parking spaces within the Property unavailable for Tenant's exclusive use for more than seven consecutive calendar days, Landlord shall provide an equivalent number of parking spaces in a location mutually acceptable to the parties within a one-third mile radius of the Albemarle Circuit Court building, which is the center of the area known as "Court Square", for the remaining duration of the repair or maintenance activities.

ARTICLE XI. SERVICES AND UTILITIES

- A. *Separately metered utilities.* If, and to whatever extent, any electric, telephone or other utility service(s) are required by Tenant for its parking infrastructure, and such services cannot be separately metered, Tenant shall place all utilities serving the Property in the Tenant's name and be solely responsible for associated costs.
- 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 Property (such as internet service, trash removal, etc.).

ARTICLE XII. ALTERATIONS BY TENANT

- A. *Alterations Prohibited Without Landlord Consent.* Tenant shall not make any alteration or improvement to the Property, and shall not install any parking infrastructure, without first submitting plans for such to the Landlord for review and approval.
- B. *Procedure; Review of Drawings and Specifications.* In the event Tenant proposes to make any alteration or physical improvement to the Property, Tenant shall first submit to Landlord for prior written approval: (a) detailed drawings and specifications, and (b) all other documents and information as Landlord may reasonably request in connection with such alteration (including,

without limitation, materials proposed to be submitted in connection with required building permit applications, zoning approvals, or other governmental requirements). Approval of drawings and specifications under the provisions of this Lease shall not constitute any 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 (such compliance to be determined only by the governmental authorities responsible for enforcement of such 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 Property. 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 Property (excepting only Tenant's furniture, removable equipment and removable trade fixtures) shall become Landlord's property and shall remain upon the Property 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.

Upon completion of alterations or improvements, Tenant shall provide to the City copies of as-built drawings, in the form of a CAD disc.

- C. *ADA Compliance.* Tenant acknowledges that the Property may constitute a place of public accommodation or a facility under Title III of the Americans with Disabilities Act (the "ADA"). Any alteration or improvement to the Property, and parking infrastructure, 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.* Parking infrastructure installed by Tenant shall comply with applicable ADA and accessibility standards.
- D. *Liens.* Upon completion of any alteration or improvement, 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 Property 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, to the extent permitted by Virginia law. Nothing herein constitutes a waiver of either party's sovereign immunity. 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.

ARTICLE XIII. REPRESENTATIONS OF TENANT

Tenant acknowledges and represents that it has had an opportunity to inspect the Property, and that the Property are in good order and repair. Tenant accepts the Property “as-is” and acknowledges that, based on its own inspection of the Property, the Property are suitable for its intended purposes.

ARTICLE XIV. 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 Property or of the operation of the Tenant’s parking therein.

ARTICLE XV. DEFAULT BY TENANT

A. *Events of Default.* Tenant shall be deemed to be in default under this Lease, if:

- 1) 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;

In the event the Tenant abandons the Property, either (i) by removing all of Tenant’s personal property and fixtures from the Property, or (ii) by Tenant’s failure to occupy the Property for a period in excess of ninety (90) days for reasons other than a *force majeure* event, 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 Property, 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 Property and the Landlord may make such alterations, improvements, repairs, etc. as it deems necessary to prepare the Property 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 material default of any covenant, condition or agreement contained in this Lease shall exist, Tenant’s right to possession shall thereupon cease and Landlord shall be entitled to the possession of said Property and to re-enter the same without demand for rent or for possession. Landlord may proceed forthwith to recover possession of said Property by process of law, any notice to quit or of intention to exercise such option or to re-enter said Property 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 Property 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 Property 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. *Remedies for Default.*

Upon the occurrence of a material Default, Landlord may elect to terminate this Lease, or, without terminating this Lease, Landlord may terminate Tenant's right to possession of the Property—in either case, after giving written notice thereof to Tenant. Upon any such termination, Tenant shall immediately surrender and vacate the Property and deliver possession thereof to Landlord. Tenant grants to Landlord the right, without notice to Tenant, to enter and repossess the Property, to eject Tenant and any others who may be occupying the Property, and to remove any and all personal property and fixtures 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, access gates, or other security devices at the Property.

In addition, 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 shall be reimbursed by Tenant to Landlord on demand.

D. *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.

E. *No Waiver.* 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.

ARTICLE XVI. DEFAULT BY LANDLORD

Landlord shall be deemed to be in default under this Lease, if it shall fail to provide the Property 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. In case of Landlord's material default, Tenant shall have the option of terminating this Lease after first giving sixty (60) days' advance written notice to Landlord and an opportunity to cure. In the event the material default is not cured within the 60-day period, the Lease shall terminate.

ARTICLE XVII. SURRENDER OF PROPERTY

Upon the expiration or other termination of this Lease, Tenant shall quit and surrender the Property 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 Property caused by such removal and make reasonable restoration of the Property to the condition in which they existed prior to the installation of the property so removed.

ARTICLE XVIII. SIGNAGE

Tenant shall have no right to erect or install canopies, marquees, or advertising devices within the area of the Property. Tenant shall have no right to erect or install any sign within the Property, 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 XIX. ASSIGNMENT AND SUBLETS

- A. Except as otherwise expressly authorized herein, Tenant shall not assign or sublet the Property or any part thereof to any third party.
- B. Tenant shall not mortgage or encumber the Property without Landlord's written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion.
- C. *Tenant to Remain Liable.* In no event shall any Transfer (whether or not 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.
- D. *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 XX. 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 Property, 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 Property and/or the Property.

D. To the extent permitted by law, 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. Nothing herein constitutes a waiver of either party's sovereign immunity.

ARTICLE XXI. 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:	Albemarle County Executive 401 McIntire Road Charlottesville, Virginia 22902
	Delivery Address:	same as above
Landlord	Mailing Address:	City Manager 605 East Main Street Charlottesville, VA 22902
	Delivery Address:	same as above

ARTICLE XXII. QUIET ENJOYMENT

Upon 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 Property during the days and times specified herein, 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.

ARTICLE XXIII. 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 XXIV. 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 XXV. ENTIRE AGREEMENT; MODIFICATION

- A. This Lease, together with exhibits attached hereto and the parties' Memorandum of Agreement regarding the County's Courts Project (as amended), represents the entire understanding between the parties, and there are no other collateral or oral agreements or understandings between the parties as to any subject(s) herein contained.
- B. This Lease is entered pursuant and subordinate to the parties' Memorandum of Agreement regarding the County's Courts Project (as amended). Any rights and responsibilities of the parties thereunder, including (but not limited to) any and all obligations to provide alternate parking, survive termination of this Lease.
- C. This Lease shall not be modified unless in writing of equal dignity signed by both parties.

ARTICLE XXVI. 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 XXVII. 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 XXVIII. 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]

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the date first written above.

COUNTY:
THE COUNTY OF ALBEMARLE, VIRGINIA

By:

Jeffrey Richardson
County Executive

Approved as to form:

County Attorney

CITY:
THE CITY OF CHARLOTTESVILLE, VIRGINIA

By:

Michael C. Rogers
City Manager

Approved as to form:

City Attorney

**AMENDMENT TO THE MEMORANDUM OF AGREEMENT TO FACILITATE THE
EXPANSION, RENOVATION, AND EFFICIENT AND SAFE OPERATION OF THE
ALBEMARLE CIRCUIT COURT, THE ALBEMARLE GENERAL DISTRICT COURT,
AND THE CHARLOTTESVILLE GENERAL DISTRICT COURT**

THIS AMENDMENT TO THE MEMORANDUM OF AGREEMENT (the “Amendment”) is made as of _____ 20____, by and between the **COUNTY OF ALBEMARLE, VIRGINIA** (the “County”) and the **CITY OF CHARLOTTESVILLE, VIRGINIA** (the “City”), both of which are political subdivisions of the Commonwealth of Virginia. The County and the City may be referred to collectively as the “Parties.”

R-1. The Parties previously entered into that certain Memorandum of Agreement dated December 17, 2018, concerning the expansion, renovation, and efficient and safe operation of the County’s Circuit and General District Courts and the City’s General District Court (the “Original Agreement”); and

R-2. The County and the City fulfilled their respective obligations under Section 1 of the Original Agreement to sell and purchase the County’s one-half interest in the previously jointly-owned East Market Street Parcel (the “Market Street Parking Lot”); and

R-3. The City elected not to construct the Parking Structure pursuant to Section 2 of the Original Agreement; and

R-4. The County and the City agree that pursuit of the options available to the County as provided in Section 2(G) (Failure of the City to Complete Construction of the Parking Structure) of the Original Agreement are not in the best interest of the City or the County;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. Section 2 of the Original Agreement (Parking Structure on the East Market Street Parcel) is deleted and replaced in full by the following terms:

2. Parking Provided by City.

A. Total Number of Parking Spaces for County Courts Users and Employees. As detailed in Sections 2(B) and 2(C) below, the City must provide the equivalent of ninety (90) total parking spaces in the Market Street Parking Lot and the parking garage owned and operated by the City and located at 550 East Market Street, Charlottesville, Virginia (the “Market Street Garage”). At any time that parking spaces made available for the County’s use in either of these parking facilities are unavailable to the County for more than seven (7) calendar days, the City must provide equivalent parking in a location mutually acceptable to the Parties within a one-third mile radius of Court

Square.

B. East Market Street Parking Lot. The City and County are to execute a lease in a form acceptable to the County and effective not later than February 1, 2023 (the “Lease”), to allow the County the exclusive use of all sixty-three (63) parking spaces in the Market Street Parking Lot at no cost, subject to the following terms and conditions:

- i. The County must have exclusive control over access to and the right to determine the use of the Market Street Parking Lot during the following days and times:
 1. During Regular Court Hours. Each Monday through Friday, both inclusive, from 7:00 a.m. until 6:00 p.m., unless the day is a Court holiday.
 2. During Special Court Sessions or Events. Any weekend day or Court holiday, or any evening after 6:00 p.m., when any County judicial proceeding or other County Court event is scheduled. The County must provide advance notice to the City of any such judicial proceeding or other County Court event.
- ii. The County may enforce parking regulations during its hours of exclusive use of the Market Street Parking Lot. In order to ensure that parking spaces are available to the County, the County may elect to install parking management infrastructure on the Market Street Parking Lot. The cost to install and maintain any such parking management infrastructure must be borne by the County during the term of the Lease. Examples of parking management infrastructure include (but are not limited to) signage, access control gates, and payment kiosks.
- iii. Throughout the term of Lease, the City must bear all costs of maintenance and repair of the Market Street Parking Lot, with the exception of any maintenance and repair required for County-installed parking management infrastructure. The County may (but is not obligated to) remove snow from the lot to ensure vehicular and pedestrian safety.
- iv. The Lease is to be effective for an initial term of twenty (20) years and may be renewed upon the same terms and conditions at the option of the County for an additional 20-year term.

C. Market Street Garage. The City must provide the equivalent of twenty-seven (27) parking spaces to the County in the Market Street Garage by free parking validations for up to eleven (11) validated hours for each such space during the hours set forth in Section 2(B)(i)(1).

This equivalent parking must be made available to the County not later than the date of issuance of the Certificate of Occupancy for the General District Court Building described in Section 5 of this Agreement.

- i. Except by future mutual agreement, parking spaces in the Market Street Garage will not be designated for exclusive use by the County.
- ii. If, in accordance with Section 2(B)(ii), the County elects to install parking management infrastructure in the Market Street Parking Lot, and such installation reduces the number of spaces usable in such lot, the number of spaces provided to the County in the Market Street Garage must be increased by a number equivalent to the reduction. Upon request of the County, the Parties must enter into an amendment to this Agreement in a form acceptable to the County to reflect any such increase.

D. Failure by the City to Abide by Terms and Conditions. If the City fails to perform its obligations under this Section 2 or the Lease, the County may elect one of the following alternative remedies:

- i. **Provide Parking in the Market Street Garage.** The City must provide one hundred (100) parking spaces in the Market Street Garage on or below Level 2, as these levels were identified as of the date of this Agreement designated for the County's exclusive use during the hours set forth in Section 2(B)(i)(1);
- ii. **Reconvey One-Half Interest in East Market Street Parcel, Allow the County to Use the Parcel for Parking, and Pay the County.** The City must convey a one-half interest in the East Market Street Parcel to the County, allow the County to use the East Market Street Parcel for parking, and pay the County, subject to the following terms and conditions:
 - a. **Reconveyance.** The City must convey to the County a one-half interest in the East Market Street Parcel for the amount the City paid to the County pursuant to Section 1 of this Agreement or the then-current appraised value of such one-half interest, whichever is less, less one-half of the fair market rental value for the City's sole use and occupancy of the East Market Street Parcel for the period that the City was the sole owner of the East Market Street Parcel; and
 - b. **Use.** In addition, the County and the City must enter into a memorandum of understanding in a form acceptable to the County, providing to the County exclusive control over access

to and the right to determine the use of the East Market Street Parcel; or

- iii. **Purchase of East Market Street Parcel by the County.** The City must convey to the County fee simple title to all ownership interests in the East Market Street Parcel at the then-current appraised value. The Parties may enter into a separate purchase contract in a form acceptable to the County for the County's acquisition of the East Market Street Parcel.

If the County elects the remedy set forth in either Section 2(D)(ii) or 2(D)(iii), the terms and conditions of Sections 1(B)-(E) of this Agreement will apply to the resulting valuation and/or (re-)conveyance, *mutatis mutandis*.

- II. Section 3 (Managing the Parking Structure and Maintaining the County Parking Spaces) of the Original Agreement and Section 4(F) (Reversion) of the Original Agreement are hereby deleted in their entirety.
- III. All other terms and conditions of the Original Agreement not replaced, superseded, or modified by this Amendment are affirmed and remain in full force and effect. Capitalized terms used in this Amendment and not defined herein are to have the meanings attributed to them in the Original Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COUNTY:

THE COUNTY OF ALBEMARLE, VIRGINIA

By:

Jeffrey Richardson
County Executive

Approved as to form:

County Attorney

CITY:

THE CITY OF CHARLOTTESVILLE, VIRGINIA

By:

Michael C. Rogers
City Manager

Approved as to form:

City Attorney

**MEMORANDUM OF AGREEMENT TO FACILITATE THE EXPANSION,
RENOVATION, AND EFFICIENT AND SAFE OPERATION OF THE ALBEMARLE
CIRCUIT COURT, THE ALBEMARLE GENERAL DISTRICT COURT, AND THE
CHARLOTTESVILLE GENERAL DISTRICT COURT**

THIS AGREEMENT is entered into this 17th day of December, 2018, by and between the **COUNTY OF ALBEMARLE, VIRGINIA** (the “County”) and the **CITY OF CHARLOTTESVILLE, VIRGINIA** (the “City”), both of whom are political subdivisions of the Commonwealth of Virginia. This agreement may be referred to as the “Agreement.” The County and the City may be referred to collectively as the “Parties.”

RECITALS

- R-1** Court Square is an approximately three-quarter acre parcel located in a part of the County that is now surrounded by the incorporated territory of the City near the City’s downtown that has served as the Albemarle County courthouse since the Eighteenth Century, and the building in Court Square in which the Albemarle County Circuit Court is located has continuously served as a County court since the early Nineteenth Century; and
- R-2** The County’s General District Court, as well as related County offices, are also located within Court Square; and
- R-3** The City’s Circuit and General Districts Courts are located near the County’s Courts and the City’s downtown, respectively; and
- R-4** As a result of the proximity of these County and City Courts to one another, as well as the location of the United States District Court in the City’s downtown, many law offices and other court-related businesses, organizations, and court-system related service providers are located in the City’s downtown area; and
- R-5** The County and the City agree that an economically strong City benefits the residents of the City, the County, and the region; and
- R-6** The County has studied the expansion, renovation, and efficient and safe operation of the Albemarle County Circuit Court and General District Courts (the “County Courts”) and related facilities since at least 1999, and more recently has studied and considered the relocation of the County Courts to the County Office Building at 401 McIntire Road, which is within the City, and to locations within the County other than Court Square; and
- R-7** This Agreement is premised on the City’s stated intention to construct a parking structure in downtown Charlottesville and the availability of those parking spaces for those persons working in and using the County Courts and their related offices, and the City’s stated intention to contribute funds for the full cost of a City General District Court court set and clerk’s office within the proposed General District Court Building, as those terms are described in this Agreement; and
- R-8** The availability of adequate and convenient parking for persons working in and using the County Courts and their related offices is essential for the current and future safe, convenient, and practical operation of the County Courts in Court Square and its immediate vicinity; and
- R-9** The County’s Board of Supervisors has determined, as stewards of the revenues received from the County’s taxpayers, that it is fiscally prudent to enter into this Agreement and affirm the County’s commitment for the County Courts to remain in Court Square and its immediate vicinity.

STATEMENT OF AGREEMENT

The County and the City agree to the following:

1. **Sale of the County's One-Half Interest in the Jointly-Owned East Market Street Parcel.**

The City and the County each own a one-half interest in the parcel located at 701 East Market Street, which is identified as City Parcel Identification Number 530159000 (the "East Market Street Parcel"). Subject to the requirement of Virginia Code § 15.2-1800(B) for the County's Board of Supervisors to first conduct a public hearing and the decision of the County's Board of Supervisors following the public hearing, the County agrees to sell its one-half interest in the East Market Street Parcel to the City pursuant to the following terms:

- A. **Purpose.** The purpose for the County selling its one-half interest in the East Market Street Parcel is to facilitate the City's construction of a multi-level public parking structure on the parcel (the "Parking Structure"). The Parties understand that any necessary City financing and ongoing operation and maintenance of the Parking Structure is simplified if the County is not a co-owner of the East Market Street Parcel. In addition, as set forth in Section 2, the Parking Structure alleviates the County's need for ongoing ownership of the parcel.
- B. **Value of the East Market Street Parcel; Independent Appraisal.** The fair market value of the East Market Street Parcel shall be determined by an independent appraisal. The Parties shall jointly select an appraiser to appraise the Parcel to determine its fair market value at the time of the appraisal. The Parties shall each contribute one-half of the cost of the independent appraisal. The City shall manage the appraisal process by ensuring that all applicable requirements are satisfied in procuring the services of an independent appraiser. Notwithstanding Section 5(I)(2), the Parties may agree to share the cost of the independent appraisal before all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is signed by the Governor.
- C. **Sales Price.** The County agrees to sell its one-half interest in the East Market Street Parcel for one-half the appraised value determined by the independent appraisal prepared pursuant to Section 1(B).
- D. **Costs.** Each Party shall bear its own costs and expenses associated with the sale of the East Market Street Parcel, except for the cost of the independent appraisal.
- E. **When the Sale Will Close.** The County's sale of its one-half interest in the East Market Street Parcel shall close within six months after completion of the independent appraisal conducted pursuant to Section 1(B), or within two months after all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is signed by the Governor, whichever is latest.
- F. **Sales Contract.** The Parties may enter into a separate purchase contract for the City's acquisition of the County's one-half interest in the East Market Street Parcel. The contract shall be consistent with the terms in Sections 1(A) through 1(E).
- G. **Section 6 of the July 20, 2004 City-County Agreement is Inapplicable.** The procedures and requirements of Section 6 of the "City of Charlottesville/County of Albemarle Intergovernmental Agreement Regarding the Joint Purchase/Ownership of Real Estate," which pertain to the East Market Street Parcel and other properties when "either party wishes to dispose of its interest in the Property" do not apply to this conveyance.
- H. **Consequences if the County's Board of Supervisors Fails to Approve Sale Following Public Hearing.** If, following the public hearing required by Virginia Code § 15.2-1800, the County's Board of Supervisors does not approve the sale of the East Street Market Parcel to the City as provided in this section, this Agreement is void.

2. Parking Structure on the East Market Street Parcel.

The City shall construct the Parking Structure on the East Market Street Parcel pursuant to the following terms:

- A. **Purpose.** The City intends to construct the Parking Structure to meet the parking needs of the City. The Parking Structure is also significantly important to the County because one of the bases for the County investing in the expansion and renovation of the County Courts as described in this Agreement is the availability of convenient vehicular parking for those persons working in and using the County Courts and their related offices.
- B. **Design of the Parking Structure.** The City shall have sole discretion in the design of the Parking Structure, subject to the following:
 1. **Providing Parking Structure Design Plans to the County.** During the City's design process for the Parking Structure and until the City's final approval of its design, the City shall provide the original and each revision of the Parking Structure design plans to the County for the County's review and comment. The purpose for the County's review and comment of the Parking Structure design plans is to ensure that the requirements of Section 2(C) are satisfied.
 2. **Changes to the Parking Structure Design After Its Approval.** The City shall not change the design of the Parking Structure after the final approval of its plans by change order or otherwise without the County's express written consent if the design change would change or affect in any way the requirements of Section 2(C) being satisfied. County approval shall not be unreasonably withheld.
- C. **Parking Spaces Allocated to the County.** The City shall provide parking spaces to the County within the Parking Structure as follows:
 1. **Number of County Parking Spaces.** The City shall provide 90 dedicated parking spaces for exclusive use and control by the County and persons working in and using the County Courts, or any other purpose (the "County Parking Spaces") as provided in this subsection.
 2. **Location of the Parking Spaces.** The 90 County Parking Spaces shall be located on the ground level within the Parking Structure to the fullest extent feasible, and exclusive of any parking spaces required to be located on the ground level to comply with the Americans with Disabilities Act. If the design of the Parking Structure does not allow all 90 County Parking Spaces to be located on the ground level, as many of the County Parking Spaces as possible shall be on the ground level and any remaining County Parking Spaces shall be located on the next level above or below the ground level subject to design considerations and applicable State or federal regulatory requirements. For the purposes of this Agreement, "ground level" means the level of the Parking Structure that is at or nearest to the level of the ground around the Parking Structure. Because of the different elevations of East Market Street and 7th Street, it is possible for more than one level of the Parking Structure to be ground level.
 3. **Access to Sidewalks Outside of the Parking Structure.** All 90 County Parking Spaces shall be located to provide convenient pedestrian access to sidewalks outside of the Parking Structure to allow persons working in and using the County Courts to safely walk to and from the County Courts.
 4. **Controlled Access.** The Parking Structure shall be designed to provide controlled access to the fullest extent feasible to the County Parking Spaces when the County has the exclusive right to use the County Parking Spaces for its purposes as provided in Section 2(C)(6). The techniques and systems to control access shall be agreed to between the City and the County while the Parking Structure is being designed. County approval shall not be unreasonably withheld.

5. **County Parking Space Circulation, and Dimensions.** The design of the Parking Structure shall provide safe and convenient ingress and egress from the City streets to the County Parking Spaces, access, and internal circulation shall meet the minimum requirements of City Code § 34-975, and the dimensions of each County Parking Space shall meet the minimum dimensions for a parking space for a standard vehicle (8.5 feet by 18 feet) or a compact vehicle (8 feet by 16 feet) as provided in City Code § 34-977. The ratio of County Parking Spaces for standard vehicles and compact vehicles shall be the same as it is for other parking areas within the Parking Structure.
 6. **When the County has Exclusive Right to Occupy the County Parking Spaces.** The County shall have exclusive control over access to and the right to determine the use of the County Parking Spaces as follows:
 - a. **During Regular Court Hours.** Each Monday through Friday, from 7:00 a.m. until 6:00 p.m., unless the day is a court holiday.
 - b. **During Special Court Sessions or Events.** The County shall also have exclusive control over access to and the use of the County Parking Spaces on any weekend day or evening after 6:00 p.m. when the County or any County Court knows that a judicial proceeding or other County Court event will be held on those days or during those times. The County shall provide the City advance notice of the judicial proceeding or other County Court event that will be held on a weekend day or in the evening after 6:00 p.m.
 7. **When the County does not have Exclusive Right to Occupy the County Parking Spaces.** At any time when the County does not have exclusive control of them as provided in Section 2(C)(6), the County Parking Spaces shall be under the control of the City and may be open to the public or otherwise used as the City determines to be appropriate.
 8. **Separate Lease.** Before the County begins using the County Parking Spaces, the County and the City will enter into a lease for the County Parking Spaces. The lease will be for a minimum term of 20 years, for a rent of not more than \$1.00 per year, and will permit the County to renew the lease for one time for a period not to exceed 20 years for a rent of not more than \$1.00 per year and will otherwise be consistent with the terms and conditions of this Agreement. The lease shall contain a section which provides the County with alternative off-street parking spaces if, at any time during the term of the lease, the County Parking Spaces become unavailable. The lease will make proximity as close as possible to the County Courts the City's first priority in providing alternative parking spaces.
- D. **When Construction Shall Begin.** The City shall begin construction of the Parking Structure no later than May 1, 2022.
- E. **When a Certificate of Occupancy Must be Issued and County Entitled Use.** The City shall issue a certificate of occupancy for the Parking Structure, or at least for the County Parking Spaces, by November 30, 2023, subject to the following:
1. **Coordination.** One of the primary objectives of this Agreement is to ensure that parking spaces are available to persons working in and using the County Courts and their related offices when the General District Court Project is completed. The Parties intend for the City's construction of the Parking Structure and for the General District Court Project to be completed as simultaneously as practicable. In furtherance of that intention:
 - a. **Meetings.** Representatives from the County and the City who will be managing the General District Court Project and the construction of the Parking Structure for their respective localities shall meet to discuss coordinating the timely completion of the two projects. The

parking, based on an average parking space size of 8.5 feet by 18 feet, less the minimum area required for safe travelways.

3. **Reduction.** The amount of the County's pro rata share is thereafter reduced by 15 percent in recognition that the County will not exclusively control the access and use of the County Parking Spaces at all times every day.
 4. **Example.** For example, if the County's pro rata share is 25 percent, and the City's total annual management cost of the Parking Structure is \$200,000, the County's pro rata share is \$50,000. That amount is then reduced by 15 percent (\$7,500) for an annual County payment of \$42,500.
- C. **When Payment by the County is Due.** The County shall pay the City its portion of the costs to manage and maintain the Parking Structure once each year, within 30 days after the County receives a written invoice from the City.
 - D. **Ongoing Assessment of Best Practices.** Upon the request of either party, City and County representatives will meet to identify and discuss City and County Courts parking needs that will inform decisions as to the best practices to address those needs.
4. **On-Street Parking.**

The City agrees to provide 15 on-street parking spaces for the County's designated use during the County Courts' operational hours, as follows:

- A. **Location.** The 15 on-street parking spaces are located on the sides of the streets abutting the block containing Court Square and the City park that is bounded by East High Street, Park Street, East Jefferson Street, and 4th Street NE (the "On-Street Parking Spaces" and the "Court Square Block").
- B. **Parking Spaces in Addition to Existing Dedicated Parking Spaces.** The On-Street Parking Spaces provided by the City pursuant to this section are in addition to the 16 on-street parking spaces on the same block that are already dedicated for County and Court personnel and for persons with disabilities. These 16 on-street parking spaces shall remain dedicated for County and Court personnel and for persons with disabilities during the term of this Agreement and the ratio of those parking spaces for their currently-dedicated uses shall not change without the prior written consent of the County.
- C. **When the County has Exclusive Right to Occupy the On-Street Parking Spaces.** The County shall have exclusive control over access to and the right to determine the use of the On-Street Parking Spaces on the days and during the times as provided in Section 2(C)(6).
- D. **When County May Begin Use.** The City will make the On-Street Parking Spaces available for County occupation pursuant to this Agreement when the Virginia General Assembly enacts, with the signature of the Governor, all of the amendments to the Code of Virginia listed in Section 5(I) of this Agreement and the County demonstrates, to the City's satisfaction, that all funds necessary for completion of the General District Courts Project are budgeted by the County.
- E. **Enforcement.** The County will develop an enforcement policy, strategy, or plan, or a combination thereof (collectively, the "Plan"), intended to ensure that all of the on-street parking spaces (both the previously dedicated 16 on-street parking spaces (not including the parking spaces already designated for persons with disabilities) and the 15 On-Street Parking Spaces are available for use by County Court personnel and persons using the County Courts on the days and during the times as provided in Section 2(C)(6). The County will provide the Plan to the City for its review and approval before the Plan is implemented.

- F. **Reversion.** Alternatively, at the County's sole option, the County may occupy up to 120 parking spaces in the Parking Structure pursuant to Sections 2 and 3 of this Agreement, and up to 15 of the On-Street Parking Spaces described in Section 4 of this Agreement shall revert back to the sole ownership, use, and control of the City, all of which shall be as agreed to between the City and the County before the County executes its option and the on-street parking spaces revert to the City.

5. **The General District Court Project.**

To facilitate the General District Court Project, the County and the City agree as follows:

- A. **General District Court Project described.** The "General District Court Project" is the County's relocation and expansion of its General District Court and other offices from Court Square to the property located at 350 Park Street, which is identified as City Parcel Identification Numbers 530109000 and 530108000, and which is jointly owned by the City and the County (the "Project Property"). The General District Court Project will include two County General District Court court sets, a shell for a third County General District Court set, and one City General District Court court set. The General District Court Project will also include spaces for Court Clerks and for storage, and will renovate the Levy Opera House building so that the County Commonwealth's Attorney's Office may be relocated there. For the purposes of this Agreement, a "court set" includes a courtroom, judge's chambers, and places for people conducting court business to meet. The General District Court Project is part of a larger project that will include renovating and modernizing the existing County Circuit Court buildings located in Court Square.
- B. **City Consent to Use the Property.** The City consents to the County using the Project Property and constructing and operating the General District Courts on the Project Property for as long as they are located there.
- C. **City Contribution for a City General District Court Court Set.** Within 60 days after receiving a written request from the County, the City shall contribute \$6,838,028 to design and construct the General District Court Project, by which the City will obtain a City General District Court court set and a clerk's office.
 - 1. **Consequences if the City Fails to Appropriate and Transfer.** The County acknowledges that the City's financial contribution to the General District Court Project is subject to appropriation by the City Council. If the City Council does not appropriate the City's contribution and its contribution is not transferred to the County as provided in this Agreement, the City shall pay any costs incurred by the County to redesign the General District Court Project to accommodate only the three County General District Court court sets, any costs related to the delay in the start of construction of the Project, and the City's pro rata share, had it made its full contribution, of the costs for the General District Court Building's foundation, common areas, and circulation elements (access points, entries, lobbies, and hallways that allow people to move around the building).
 - 2. **Liquidated Damages.** The Parties agree that it would be difficult if not impossible to ascertain the amount of damages sustained by the County arising from the costs related to the delay in the start of construction of the Project caused by the City Council's failure to make the financial contribution to the County pursuant to this Agreement. It is therefore expressly agreed by the Parties that if the City fails to make the financial contribution to the County pursuant to this Agreement which results in Project delay, the City shall pay to the County as liquidated damages, and not as a penalty, the sum of \$200,000.

- D. Ownership and Maintenance of the Project Property and the General District Court Building.** The County and the City jointly own the Project Property and joint ownership shall continue. The County and the City shall also jointly own the General District Court Building. The County's ownership interest shall be based on the percentage of its financial contribution to the total General District Court Project cost and the City's ownership interest shall be based on the percentage of its financial contribution to the total General District Court Project cost.
1. **Management and Maintenance of the Project Property and the General District Court Building.** The Project Property and the General District Court Building (collectively, the "Project Property") shall be managed and maintained (collectively "managed") by the County or a vendor selected by the County, provided that the City and the City General District Court may, at its option, manage and maintain the City General District Court court set.
 2. **Costs.** The City's portion of management costs is 15.68 percent of the total amount of the County's annual management costs of the Project Property.
 3. **When Payment by the City is Due.** The City shall pay the County its share of the costs to manage the Project Property in December of each calendar year, within 30 days after the City receives a written invoice from the County.
- E. Future Capital Costs.** Any capital costs to be incurred after the City issues the certificate of occupancy for the General District Court Building are subject to the following:
1. **Capital Maintenance.** The County shall be responsible for capital maintenance of the Project Property and shall be the fiscal agent for all funding issues pertaining to capital maintenance of the Project Property.
 - a. **Costs.** The City's portion of capital maintenance costs is 15.68 percent of the total amount of any capital maintenance project.
 - b. **When Payment by the City is Due.** The City shall pay the County its share of the costs for capital maintenance within 30 days after the City receives a written invoice from the County.
 2. **Capital Improvements to the Interiors of the General District Court Court Sets.** Any capital upgrades, modifications, or other capital improvements of any General District Court court set shall be solely funded by the County for any County General District Court court set and by the City for the City General District Court court set, provided that any capital upgrades, modifications, or other capital improvements for all four General District Court sets being performed as part of a single project shall be subject to the responsibilities, fiscal agency, cost formula, and payment schedule as provided in Section 5(E)(1).
- F. Furnishing and Equipping.** Each Party shall be responsible for, and pay the full cost of, its respective General District Court court sets. The Parties shall equally share the cost of furnishing and equipping any common areas of the General District Court Building.
- G. Permitting Fees.** When completed, the General District Court Project will be composed of up to four General District Court court sets (one of which will be a shell for future completion by the County). One of the court sets will be a City General District Court court set. The County is responsible for paying any City-imposed permitting fees, provided that the County's obligation to pay permitting fees shall be reduced by the amount of any building inspection fees pursuant to Virginia Code § 15.2-1804, and further provided that the City shall pay 25 percent of all City permitting fees, including any fees imposed by a City utility. Payment by the City of its 25 percent share may be accomplished by reducing the total local fees to be paid for the General District Court Project to 75 percent of that total, less any reduction in building inspection fees pursuant to Virginia Code § 15.2-1804.

H. Charlottesville Circuit Court's Interim Occupation of the Levy House. The Parties entered into a memorandum of understanding on May 9, 2018 to allow the Charlottesville Circuit Court to occupy a portion of a floor of the building known as the Levy House until August 31, 2019 while the Charlottesville Circuit Court's permanent building is being renovated. If the Charlottesville Circuit Court's occupation of the Levy House extends beyond August 31, 2019, upon the written request by the County, the City shall immediately relocate the Charlottesville Circuit Court to another building. If the City does not relocate the Charlottesville Circuit Court by the deadline provided in the County's written request, the City shall pay to the County any costs incurred by the County resulting from the delay, including any increase in the cost for the General District Court Project if the Project must be re-bid.

I. Cooperation in Pursuing Amendments to State Law. The Parties acknowledge that the County's county seat is Court Square and that the County's General District Court Project would relocate the County's General District Courts from Court Square, which is located in the County, to the Project Property, which is located in the City. In addition, the General District Court Building that will be constructed on the Project Property will be jointly used by the County and the City if the City makes its financial contribution for the City General District Court court set pursuant to Section 5(C). Therefore:

1. **Cooperation.** The Parties agree to jointly cooperate from the date of this Agreement until June 30, 2020 in pursuing before the General Assembly any required amendments to State law, including the following:

a. **Amendment to Virginia Code § 15.2-1638.** Virginia Code § 15.2-1638 provides that the fee simple of the lands and of the buildings and improvements thereon used for courthouses "shall be in the county or city." Because Project Property is jointly owned by the County and the City, and because the new General District Court Building may be jointly owned, an amendment to Virginia Code § 15.2-1638 is required in order to accomplish the General District Court Project as proposed.

b. **Amendment to Virginia Code § 16.1-69.35.** Virginia Code § 16.1-69.35(5) currently leaves it to the discretion of the chief judge of the general district court to determine whether court shall be held in any place or places in addition to the county seat. Because the General District Court Project would relocate the County's General District Court from Court Square, the County's county seat, an amendment to Virginia Code § 16.1-69.35 is required in order to allow the General District Court Project to proceed.

2. **Consequences if Amendments Not Obtained.** If all State legislation required to enable the County to lawfully pursue the General District Court Project described in Section 5 is not effective by July 1, 2020, neither party shall have any obligation under this Agreement except as provided in Section 1(B).

6. Legislative Powers and Rights of Voters Not Affected by this Agreement.

The following legislative powers and voters' rights are not affected by this Agreement, subject to the consequences provided below:

A. **Resolution by the County's Board of Supervisors.** The City acknowledges that the County's Board of Supervisors may not contract away the Board's legislative powers. Therefore, this Agreement shall not be construed to affect in any way the authority of the Board to adopt a resolution pursuant to Virginia Code § 15.2-1644(A) requesting the County's Circuit Court to order an election on the question of removing the County's county seat (referred to in Virginia Code § 15.2-1644(A) as the "courthouse") to one or more places specified in the resolution.

- B. **Petition by County Voters.** The City acknowledges that the County’s Board of Supervisors may not infringe upon the right of the County’s registered voters to petition the County’s Circuit Court pursuant to Virginia Code § 15.2-1644(A) requesting the Court to order an election on the question of removing the County’s county seat (referred to in Virginia Code § 15.2-1644(A) as the “courthouse”) to one or more places specified in the petition.
- C. **Consequences of a Successful Referendum.** If the referendum on the question requested by the County’s Board of Supervisors or petitioned for by the County’s registered voters pursuant to Virginia Code § 15.2-1644(A) is approved by the voters as provided by law, this Agreement continues in force and effect only until construction of the County court facilities are relocated pursuant to the referendum and the County court facilities are completed and occupied.

7. **Notices and any Other Communications.**

Any notice or other communication required by this Agreement shall be in writing and be mailed by first class mail or delivered by electronic means, including by email, to the chief administrative officer of the other Party.

- A. **Mailing Addresses.** The mailing addresses of the chief administrative officers are as follows:

County Executive	City Manager
County of Albemarle	City of Charlottesville
401 McIntire Road	605 East Main Street
Charlottesville, Virginia 22902	Charlottesville, Virginia 22902

- B. **Email Addresses.** Email communications shall be addressed using the chief administrative officer’s official email address issued by the Party.

8. **Miscellaneous.**

- A. **Amendments.** This Agreement may be amended in writing as mutually agreed by the County and the City.
- B. **Assignment.** Neither Party may assign or transfer any interest in this Agreement, whether by assignment or novation, without the prior written consent of the other Party.
- C. **Non-Severability.** The terms and conditions of this Agreement are integrated with one another. However, if any part of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement is terminated only if it defeats the purposes of this Agreement for each Party as stated in the Recitals.
- D. **Entire Agreement.** This Agreement contains the entire agreement of the County and the City and supersedes any and all other prior or contemporaneous agreements or understandings, whether verbal or written, with respect to the matters that are the subject of this Agreement.
- E. **Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia.
- F. **Approval Required.** This Agreement shall not become effective or binding upon the County and the City until it is approved by actions of the County’s Board of Supervisors and the City Council, and executed by an authorized official of each Party.

IN WITNESS WHEREOF, and as authorized by actions of the Albemarle County Board of Supervisors and the Charlottesville City Council, the County and the City each hereby execute this Agreement as of the date first above written, by and through their respective authorized officials:

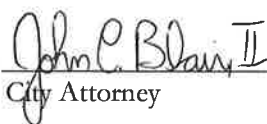
COUNTY OF ALBEMARLE, VIRGINIA

By: 
Chair, Board of County Supervisors

Approved as to Form: 
County Attorney

CITY OF CHARLOTTESVILLE, VIRGINIA

By: 
Mayor, City Council

Approved as to Form: 
City Attorney

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: December 19, 2022

Action Required: Appropriation action required.

Presenter: Riaan Anthony, Deputy Director - Parks Division

Staff Contacts: Riaan Anthony, Deputy Director - Parks Division
Dana Kasler, Director of Parks and Recreation

Title: Transferring Capital Funds from City/County fund (P-00834) for renovations to Washington Park Pool - \$350,000 (2nd reading)

Background

The City of Charlottesville, through Parks and Recreation, has funding budgeted to install synthetic turf and lights on four (4) rectangular athletic fields at Darden Towe Park in FY'20 (P-00834) in the amount of \$923,963. This Capital Improvement Plan (CIP) is a joint project fund between the City and the County, and the County has not approved this project and recent deliberation confirms they are not moving forward as originally planned. Staff would like to reallocate funds to resurface the Washington Park Pool shell and all the pool amenities, including shade structures and mirror renovation. If approved, \$350,000.00 will be appropriated into the lump sum account P-00834.

Discussion

The Parks and Recreation CIP project has the remaining project balance, and no additional expenditure:

P-00834	City/County CIP Fund	\$350,000.00
---------	----------------------	--------------

Alignment with City Council's Vision and Strategic Plan

This project aligns with City Council's "Green City" vision and contributes to Goal 2 of the Strategic Plan: Be a safe, equitable, thriving and beautiful community, and objective 2.5, to provide natural and historical resources stewardship.; 5.2. Build collaborative partnerships; 5.3. Promote community engagement.

Community Engagement

Washington Park pool is well used by the community during the summer season and the community will be very happy to see this pool resurface.

Budgetary Impact

No new funding is being appropriated. All funds will be transferred from funding previously appropriated in the Capital Improvement Program Fund.

Recommendation

Staff recommends the appropriation of these funds.

Alternatives

N/A

Attachments

1. Washington Park Pool Resolution

RESOLUTION

**Appropriating the amount of \$350,000
For Renovations to Washington Park Pool**

WHEREAS renovations are needed to resurface the Washington Park Pool shell and pool amenities, including shade structures and mirror renovation;

WHEREAS Council previously appropriated funding to install synthetic turf and lights on four (4) rectangular athletic fields at Darden Towe Park in FY 20;

AND WHEREAS Albemarle County has not approved this project and recent deliberation confirms they are not moving forward as originally planned;

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$350,000 is hereby appropriated as follows:

Transfer From:

\$350,000 Fund: 426 WBS: P-00834 G/L Account: 599999

Transfer To

\$350,000 Fund: 426 WBS: P-00XXX G/L Account: 599999

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	December 19, 2022
Action Required:	Approval of Ordinance Amendment and Approval of Proposed Operating Procedures
Presenter:	William Mendez - PCOB Chair
Staff Contacts:	Lisa Robertson, City Attorney
Title:	Police Civilian Oversight Board Matters

Background

At their December 20, 2021 meeting, the City Council amended and reapproved the enabling ordinance for the Charlottesville Police Civilian Oversight Board (PCOB), amending Article XVI Chapter 2 (Administration) of the Charlottesville Code. The ordinance granted powers and authorities to the Board consistent with Virginia Code Section 9.1-601. Section 2-452(i) of the City ordinance, and Section 9.1-601(D) specify that the City Council is required to establish the policies and procedures for the Board's performance of its duties. The Council is asked to consider the attached Operating Procedures and technical corrections to the enabling ordinance that will allow the Board to fulfill its mission.

Discussion

Substantively, the contents of the Operating Procedures are similar to the version sent to the Council in April, although the structure has been modified and a number of matters expected to have practical implications have been set out in greater detail. The purpose of the Operating Procedures is to implement the powers and authorities granted to the Board in Section 2-452(c) of the enabling ordinance. In the course of legal review by the City Attorney and the Board's independent counsel, 35 articles within the previous drafts (April 2022) have been compressed into 18 sections, by combining related materials, removal of duplicative language, and simplification of some procedures. The current procedures now deal, in order, with:

- The structure and authority of the Board
- Membership requirements and terms, meeting schedules and procedures, a code of ethical conduct and conditions under which Board members may be removed.
- Appointment and duties of the Board's Executive Director
- Receipt, screening, and processing of citizen complaints and review requests
- Requirement for initiating, and procedures for conducting, independent investigations
- Hearing procedures and the role of hearing examiners
- Procedures for making disciplinary recommendations
- Procedures for referring cases to mediation and mediation processes

- The issuance of subpoenas (under limited circumstances) and the execution of audits
- Board members' rights and duties in the monitoring of peaceable assemblies, and
- Community outreach and engagement

A few substantive modifications have been made. Recognizing that investigations of citizen complaints and investigations of incidents have the same structure and objectives, these two functions are now combined into one procedure. Most importantly, this approach abolishes the distinction between a "Preliminary Investigative Report" and an "Investigative Report" and does away with the former. Under the new structure, all Board-initiated investigations of complaints or incidents culminate in an Investigative Report authored by the Executive Director, which then supports further Board decision making (e.g., whether the Board will hold a hearing, whether the Board will find that misconduct has occurred, etc.)

Also, all procedures related to Board hearings have been combined into one module which covers both hearings after Board-initiated investigations and in support of citizen Review Requests. General procedures that apply to all hearings (rules and standards of evidence, the role of the Hearing Examiner, rules for orderly conduct during hearings, presumptions of legal conduct, etc.) are all now in one place in the Procedures. Differences across types of hearing (identity of parties, allowable findings, order of proceedings) are preserved, of course. Language has also been added to clarify the qualifications of, and procedures for, engaging Hearing Examiners.

In addition, the Board's duties in conducting audits are much more clearly defined, and a requirement for a detailed planning process before the Board engages in mediation has been added. Proposed Amendment to The Ordinance: The requested amendments of Sections 2-457 through 2-459 of the ordinance are necessary to implement the new procedures relating to investigations discussed above. The proposed language affirms the Board's authority to hold hearings after investigating an incident, an authority that is not currently specifically included. This change would allow the procedure after a Board-initiated investigation of an incident to follow the same path as for investigation of a civilian complaint. This change obviates the requirement for a "Preliminary Investigative Report," as noted above.

Alignment with City Council's Vision and Strategic Plan

The proposal contributes to Strategic Plan Goal 2, Promoting Health and Safety in the city. The proposal also contributes to Goal 5, (Responsive Organization) in that it provides citizens with expanded avenues to address concerns related to policing.

Community Engagement

The development of the Operating Procedures has been a nearly 2-year process during which the Board has asked for public input on several occasions. A draft of the operating procedures was provided to the City Council in April of this year and has been available for public comment since then. Input from concerned citizens received over this period has been incorporated.

Budgetary Impact

The PCOB is currently funded at a level that was intended to support estimated needs for fulfilling the functions specified in the enabling ordinance (responding to complaints, holding hearings, conducting investigations, public outreach, outside legal counsel, salary/benefits for an executive director,

etc.) There may be budgetary impacts if the future demand for services is less than or greater than anticipated. The magnitude of such impacts cannot be estimated at this time.

Recommendation

ORDINANCE (two readings): City Attorney's Office recommends adoption. (The City Manager should also be asked to confirm recommendation of adoption.)

RESOLUTION: City Attorney's Office recommends approval. It is also advisable for the City Manager to confirm approval.

Suggested Motion: "I move the RESOLUTION to approve Operating Procedures for the City's Police Civilian Oversight Board."

Alternatives

City Council may, at its discretion, decline to approve some or all of the proposed actions.

Attachments

None

ORDINANCE
AMENDING AND REENACTING CHAPTER 2 (ADMINISTRATION),
ARTICLE XVI (POLICE CIVILIAN REVIEW BOARD)

WHEREAS on December 21, 2021 the Charlottesville City Council previously enacted an ordinance establishing a Charlottesville Police Civilian Oversight Board in conformity with Virginia code §9.1-601; and

WHEREAS while preparing a set of policies and procedures for the performance of duties by said oversight board, as required by Virginia Code Sec. 9.1-601(D), it has become apparent that several amendments to the previously-enacted ordinance would clarify the board’s authority and allow implementation of best practices; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA, that Article XVI (Police Civilian Oversight Board) of Chapter 2 (Administration) of the Code of the City of Charlottesville (1990), as amended (“City Code”) is hereby amended, reordained and reenacted to include the following:

1. Section 2-458 of the City Code shall be amended to read as follows:

Sec. 2-458 - Investigations of Complaints and Incidents.

(a) Compliance. Any investigation shall comply with all federal, state, and local laws, as well as with requirements for the initiation and conduct of investigations described in the procedures promulgated by the City Council under § 2-460 of this ordinance.

(b) Compelled Statements. The Board may not compel a statement from any Department employee, other than by means of its subpoena powers.

(c) Exclusions. The Board shall not consider complaints, incidents, claims or issues involving the following:

(1) Any incident that occurred more than one year before the filing of the Complaint, or one year before the Board received notice of the incident, except as otherwise authorized by subsection (d) of this section;

(2) Except as otherwise authorized by subsection (d) of this section, a matter that was the subject of an investigation where more than seventy-five (75) days has elapsed since the Department sent notice to the Complainant informing the Complainant that the Department's Internal Affairs investigation is complete (unless the Board determines that there is good cause to extend the filing deadline);

(3) Matters that are the subject of a pending criminal proceeding in any trial court, a pending or anticipated civil proceeding in any trial court (as evidenced by a Notice of Claim or a filed complaint), or any pending City of Charlottesville grievance proceeding;

(4) Any financial management related issue;

(5) Any complaint, incident, claim or issue where the Complainant requests that the Board not have access to their files;

(6) Any complaint, incident, claim or issue that has previously been the subject of an investigation by the Board, unless substantial new information has come to the attention of the Board;

(7) An allegation of misconduct only by employees of law enforcement agencies other than the Department. Such complaints should be referred to the appropriate law enforcement agency;

(8) An allegation of conduct that does not violate the Charlottesville Police Policies and Guidelines, Disciplinary Orders, or Code of Conduct;

(9) Any other claim outside the scope of the Board's authority expressly set forth within this Ordinance.

(d) Exceptions to Time Limits. With the concurrence of the City Manager, the Board may review investigations beyond the time limits specified in subsections (c)(1) and (c)(2) if:

(1) The board determines that there is good cause for doing so, or

(2) As part of an audit taking place under Section 2-462(b).

(e) Suspension of Investigations. If a Complaint asserts criminal conduct by an employee of the Department, or if at any point in an investigation of a Complaint or

Incident the Board becomes aware that an employee may have committed a criminal offense, the Board shall:

(1) Suspend the investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged conduct, ensuring that no statements obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting authority except in accordance with applicable law; and

(2) Evaluate, in consultation with Board legal counsel, the City Attorney, and the Commonwealth's Attorney, whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board.

(f) Subpoenas.

(1) If the Board determines that there is evidence (including witnesses) not within the control of the Department that the Board is unable to obtain voluntarily, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the Court, on finding that the witness or evidence is material to the discharge of the Board's duties, may issue the requested subpoena.

(2) If the Executive Director is denied access to material witnesses, records, books, papers, or other evidence within the control of the Department that the Executive Director deems necessary to perform their duties and the duties of the Board, the Executive Director may request the City Manager to require the Department to produce the requested witnesses and documents. The City Manager, or their designee, shall not unreasonably deny such a request, but may place conditions on the production of the requested witnesses and documents as necessary to preserve confidentiality for the reasons set forth in this ordinance. The City Manager, or their designee, shall issue a decision on the Executive Director's request within 5 business days from the date of that request.

(3) If the City Manager, or their designee, denies the Executive Director's request made pursuant to subparagraph (2) above, the Board by two-thirds vote may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witnesses or the production of such books, papers, and other evidence. The Court, on finding that the witness or evidence is material to the discharge of the Board's duties, shall cause the subpoena to be issued with such conditions as the Court may deem necessary to protect the Department's concerns about the need for confidentiality. The Board shall give the City Manager and the Department reasonable notice of its intent to subpoena such witness or records and shall give the City Attorney a copy of the request for subpoena. The Board shall not unreasonably withhold its agreement to limitations on the scope of the subpoena requested by the City Manager that may be necessary to protect confidential information. The parties may request that any hearing to be held in the Circuit Court on the request for a subpoena be conducted in a closed courtroom, to the extent permitted by state law. Upon request, the court file for any such subpoena request shall be kept under seal to the extent permitted by state law.

(4) If a subpoena is granted, the Board shall digitally record any interviews or depositions conducted pursuant to the subpoena and shall make copies of any documents obtained by subpoena. The Board shall provide the Department with copies of any such interview/deposition recordings and documents. The Board shall delegate its authority to subpoena and question witnesses to the Executive Director, who shall conduct any interviews, depositions, or questioning of witnesses in a non-public forum that adequately protects the privacy of the individual being subpoenaed, the confidentiality or sensitivity of information shared or sought, and the integrity of any pending or concurrent investigation.

(5) In deciding whether, and under what conditions, the Circuit Court will issue any subpoena, the Court shall refer to procedures and caselaw decided under Rule 3A:12 of the Rules of the Supreme Court of Virginia.

(g) Conduct of Investigations Pursuant to §2-457(a)

(1) If the Complainant asks that their Complaint be investigated by the Department, the Complaint will be investigated by the Department with monitoring by the Executive Director. When the Department's investigation is concluded, the Department will provide the Complainant with an Investigative Report of its findings and the resolution of the Complaint and will provide the Board a summary of the Department's resolution of the Complaint.

(2) The Executive Director may actively monitor all investigations of Complaints of employee misconduct conducted by the Department and shall have access to records and witnesses to the same extent as the Department, subject to the limitations or requirements set out in this Ordinance. Such monitoring may include reviewing the investigative plan of the Department, reviewing with the Department any records within the Department's digital evidence management system, reviewing with the Department any pertinent law enforcement records within the Department's Records Management System, observing any and all real-time interviews of witnesses with the Department, reviewing all recorded interviews which the Executive Director chooses not to attend in real time, providing feedback during the interview to be relayed to Department staff conducting the interview, providing feedback to Department staff in determining next steps in the investigative process, and reviewing facts gained from investigation with Department staff. For active investigations, the Executive Director shall be limited in their participation to the same extent the Department is limited in its participation in such investigations. The Executive Director may monitor the Department's administrative investigation of employee misconduct after the close of the active investigation in the same manner as all other investigations of employee conduct handled by the Department as described in this section. When monitoring Department investigations, during the pendency of the investigations the Executive Director shall not disclose information to the Board, any Board member, or any person other than as authorized in writing by the Chief of Police or the City Manager.

(3) If the Complainant asks that the Complaint be investigated only by the Board, the Executive Director shall initiate an investigation on behalf of the Board. The Executive

Director will provide the Chief of Police with enough identifying information to allow the Department to give the Executive Director access to information, records and witnesses as required by §2-452(e) and (f) of this Ordinance as may be relevant to the Complaint. When the Board's investigation is concluded, the Executive Director will provide the Board, the Complainant and the Department with an Investigative Report that includes a summary of the circumstances of the incident(s) of alleged misconduct, the evidence related to whether there was any misconduct, and any suggested findings related to each allegation.

(h) **Conduct of Investigations Pursuant to §2-457(b).** If the Board is investigating an Incident under the authority of §2-457(b), the Board may request information from the Department, may seek subpoenas as authorized above, and may conduct an investigation of the incident. When the Board's investigation is concluded, the Executive Director will provide the Board, the Department, and (if a complaint has been filed) the Complainant, with an Investigative Report that includes, at a minimum, a summary of the circumstances of the incident, the evidence related to whether the incident involved any police or employee misconduct, and any suggested findings related to the incident. The Executive Director may make recommendations as to whether an allegation, if substantiated, could constitute serious misconduct as defined in Sec. 2-452(d). The Investigative Report shall also be provided to any employees identified within the Investigative Report as having committed employee misconduct.

(i) **Duration of Investigations.** Investigations of complaints and incidents will be completed, and any Investigative Report will be submitted, within seventy-five (75) days from the date the Complaint is received, or the Board received notice of the an incident. The Board may extend the 75-day period upon request of the Police Chief or the Executive Director to protect an ongoing investigation or prosecution, or for other good cause, with notice to the Complainant and the City Manager.

2. Section 2-459 of the City Code shall be amended to read as follows:

Sec. 2- 459 – Matters on which the Board may Conduct Hearings

(a) Hearings.

(1) At the conclusion of an investigation of an incident or a complaint the Board may conduct a Review Hearing whose scope and procedures are described in the Board's operating procedures, approved by City Council. Review hearings shall be defined as any hearing conducted by the Board to review the facts, issues and findings of an Investigative Report of the Department related to an Internal Affairs investigation, or of an Investigative Report of the Executive Director related to a Complaint or Incident Investigation. .

(2) The Board may conclude that no hearing, or a hearing only on a limited issue, is necessary to support the Board's decision related to a particular complaint or incident. If so, the Board may issue a report without a hearing.

(b) Within 30 days of a Review Hearing of an Internal Affairs investigation, the Board shall report their findings publicly and to the City Manager, the Police Chief, and the Complainant with respect to each allegation or issue under review as follows:

(i) That the Board finds that the investigation of the Complaint was satisfactory, and the Board concurs with the findings of the investigation;

(ii) That the Board finds that the investigation of the Complaint was satisfactory, but the Board does not concur with the findings of the investigation, in which case the Board may make recommendations to the City Manager concerning disposition of the Review Request; or

(iii) That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

(c) If the Board makes a finding under (b)(iii) above, the Board may conduct an independent investigation of the matter that is the subject of the complaint. The Board shall report publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

(i). That the Board now finds that, despite the defects in the original Internal Affairs investigation, the Boards own Investigation has produced no material evidence to dispute the original findings of the Internal Affairs Department.

- (ii). The Board's independent investigation has produced substantive new information that causes them to disagree with the findings of the Internal Affairs investigation. In this case, the Board shall make recommendations to the City Manager concerning disposition of the Complaint; or,
- (iii). That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the Internal Affairs Investigative Report are correct.

(d) Within 30 days of a Review Hearing of a Complaint or Incident investigation, the Board shall report their findings publicly and to the City Manager, the Police Chief, and the Complainant with respect to each allegation or issue under review as follows:

- (i). That the Board finds that the Department employee committed misconduct;
- (ii). That the Board finds that no Department employee committed misconduct; or
- (iii). That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether any Department employee committed misconduct.

RESOLUTION

**To Approve Operating Procedures for the City's
Police Civilian Oversight Board**

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, pursuant to Section 2-360 of the City Code, and as required by Section 9-601(D) of the Virginia Code, THAT that Operating Procedures are hereby approved for the Charlottesville Police Civilian Oversight Board.

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



TABLE OF CONTENTS

- 1. GENERAL OPERATING PROCEDURES**
- 2. EXECUTIVE DIRECTOR**
- 3. SCREENING OF COMPLAINTS**
- 4. SCREENING OF REVIEW REQUESTS**
- 5. GENERAL PRINCIPLES FOR PCOB INVESTIGATIONS**
- 6. COMPLAINT AND INCIDENT INVESTIGATIONS**
- 7. INVESTIGATION OF POLICIES, PRACTICES AND PROCEDURES**
- 8. REFERRALS TO THE COMMONWEALTH ATTORNEY AND EXTERNAL JURISDICTIONS OR AGENCIES**
- 9. HEARING EXAMINERS**
- 10. REVIEW HEARINGS**
- 11. DISCIPLINARY RECOMMENDATIONS**
- 12. MEDIATION**
- 13. ISSUANCE OF SUBPOENAS**
- 14. EXECUTION OF AUDITS**
- 15. PEACEFUL ASSEMBLY MONITORING**
- 16. COMMUNITY ENGAGEMENT**
- 17. CODE OF ETHICS**
- 18. DEFINITIONS**

CITY OF CHARLOTTESVILLE



POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

GENERAL OPERATING PROCEDURES

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-1
Subject: POWERS AND DUTIES	
Approval: City-County Resolution By Vote of City Council, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Virginia Code § 9.1-601(D) states "The governing body of the locality shall establish the policies and procedures for the performance of duties by the law-enforcement civilian oversight body." The purpose of these Police Civilian Oversight Board ("PCOB" or "Board") Operating Procedures is to set forth the policies and procedures that govern the Charlottesville PCOB in the performance of its duties.

The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, the City Council, the City Manager, and the public. In furtherance of that goal, the Board shall provide objective and independent civilian-led oversight of the Charlottesville Police Department ("CPD" or "Department") in an effort to enhance transparency and trust, to promote fair and effective policing, and to protect the civil and constitutional rights of the people of the City of Charlottesville.

II. ENABLING LEGISLATION

The powers and duties of the PCOB are set forth within Virginia Code § 9.1-60, and within Charlottesville City Code § 2-452, hereinafter known as the "enabling ordinance."

III. PROCEDURES – GENERAL ADMINISTRATIVE

A. Scope and Authority

1. The Board's jurisdiction extends to all civilian complaints alleging misconduct by sworn officers and civilian employees of the Charlottesville Police Department, irrespective of duty status. For purposes of this Article, "misconduct" is defined as any conduct actionable under CPD General Orders 517.00 (Disciplinary Procedures) Parts 1 and 2, 400.05 (Bias-Based Policing), and 400.00 (Code of Conduct), as amended, as

well as any other violation of procedures and policies applying to police conduct. The Board may also independently investigate incidents, including the use of force, by a law enforcement officer, death or serious injury to any individual held in custody, or serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of law enforcement officers and civilian employees of the Department.

2. The PCOB is not authorized to take any action (adoption of bylaws, enactment of resolutions, implementation of programs, expenditure of City funds, etc.) that exceeds its authority expressly set forth within the enabling legislation identified in Section 2, above.

B. Board Membership and Terms of Office

1. Board members will be appointed by the City Council, after an open application process, for staggered three-year terms, as described in § 2-453(a) and (c) of the enabling ordinance.
2. Board composition shall reflect the demographic diversity of the City of Charlottesville and shall otherwise be composed as described in § 2-453(b) of the enabling ordinance.
3. The Board's Executive Director shall monitor the terms of office being served by City-council appointed members of the PCOB. At least 60 days prior to the expiration of the term of appointment of a member, the Executive Director will notify the Office of the Clerk of Council, so that an application process can be conducted in accordance with § 2-453 of the Charlottesville City Code.
4. Members appointed by City Council to the PCOB shall serve their terms in office and thereafter may continue until replaced.
5. In the event that a member's term has expired, the member may continue to serve in a hold-over capacity until they are either re-appointed by Council, or until Council has appointed a different person to fill the succeeding term.
6. If a member serves in a hold-over capacity, the individual appointed by City Council to fill the seat vacated by that member will serve the portion of the term remaining as of the date of appointment. If the date of appointment is made within the first three (3) months of the commencement of the established term for the vacated seat, then the new appointee shall be deemed to be serving a full term.
7. The term limits set forth in Charlottesville City Code § 2-8 shall apply to the PCOB membership.
8. Resignation – A member of the PCOB may resign, by submitting a written resignation to the Clerk of City Council, by electronic mail. The resignation will take effective immediately upon the date of submission.

C. Meetings of the Board

1. Regular Meetings. Regular Meetings shall be held once per month on a schedule that is convenient to Board members. The time and location of the meetings will be determined by consultation between the Board and the City Manager. The Board may by majority vote change the time and place of regular meetings.
2. Special Meetings. Special Meetings may be called by the Board Chair or by request of any two Board members to the Chair or Executive Director.
3. Notice. Public notice of regular meetings must be provided per City policy and the Virginia Code § 2.2-3707. Whenever possible, the Board shall provide written summaries of proposed agenda items as part of the agenda package. Public notice of special meetings must be provided at the same time as notice is provided to the Board Members.
4. Meeting Procedures. Roberts' Rules of Order 12th Edition, Sec. 49:21 Rules for Small Boards shall be used as guidance for the conduct of meetings. During meetings:
 - a) Board members must be recognized by the Chair before speaking or introducing motions.
 - b) The Chair will recognize members in order which they ask to be heard.
 - c) The Chair may participate in discussions and vote on motions but must relinquish the gavel if he/she wishes to introduce a motion.
 - d) The Chair will work to assure that the opinions of all members are heard.
 - e) Board members are expected conduct themselves civilly and respectfully.
5. Public Comment Period. At least one public comment period will be held at each regular and special meeting of the Board. More than one comment period may be held at the discretion of the chair. If two or more comment periods are scheduled, the Chair may limit the subjects of comments to items on the agenda in one comment session. During public comment periods, participants will be called on in the order that they request to be recognized. Each commenter will be limited to three minutes. Individuals may ask to be recognized more than once during a meeting or during a comment period; such individuals may be recognized by the chair, time permitting, after all others have had one chance to speak. The Board will develop and publish guidelines for public participation during its meetings.
6. Minutes. Minutes of regular and special meetings shall be taken by the Vice Chair or, if delegated by the Board, the Executive Director, as described in § 2-454(d) of the enabling ordinance.

D. Grounds for Removal from Office

Members of the PCOB serve at the pleasure of the City Council. The following conduct shall be specific grounds for removal of a member from office (but are not intended as an exclusive list of the potential grounds for removal):

1. Violation of any confidentiality obligations required by law, or set forth within Charlottesville City Code Chapter 2, Article XVI;
2. *Ex parte* communications with persons who have matters pending before the PCOB;
3. Neglect of duties including, but not limited to, absence from three (3) consecutive PCOB meetings, absence from four (4) PCOB meetings within any 12-month period or repeated failure to promptly attend to official PCOB business;
4. Failure to adhere to the Code of Ethics set forth within these or any other Operating Procedures; Failure to comply with any law(s) applicable to the transaction of the PCOB's business or to the member's service as a public official (including, but not limited to, violation of the Virginia State and Local Government Conflicts of Interest Act, or violation of the Virginia Freedom of Information Act); or
5. Any other action that constitutes either misfeasance or malfeasance of or in performance of a PCOB member's duties.

Each PCOB member and the Executive Director shall have responsibility to notify the City Manager and City Council upon becoming aware of any conduct of any member that is detailed in 1-6 above

E. Removal from Office

1. ~~Before a~~ PCOB member may be removed ~~after being~~ they shall be given a copy of written grounds for removal, prepared by the Executive Director at the request and direction of either City Council or the City Manager.
2. At its option, City Council may solicit comment from the PCOB regarding any matter(s) that form the basis of the written grounds.
3. The written grounds shall be accompanied by a notice of a hearing to be conducted by City Council, which hearing shall be conducted at least ten (10) business days after the ~~date~~ delivery of the notice.
4. At the hearing, the PCOB member will have the opportunity to be heard on the grounds, either pro se or by counsel.
5. Following the hearing, City Council shall vote regarding removal. In the event of removal of a PCOB member, City Council shall cause a written report to be made

detailing its finding on the grounds. The written report shall be made available for public inspection.

F. Conduct and Ethics

1. Conduct

- a) Each member of the PCOB shall conduct themselves in accordance with applicable state statutes.
 - b) Each member of the PCOB shall conduct themselves in accordance with the provisions of Charlottesville City Code Chapter 2, Article XVI.
 - c) Each member of the PCOB shall execute and comply with the terms of a Confidentiality Agreement, to carry out the requirements of Charlottesville City Code § 2-453(e).
2. Ethics. Each Board member, as well as the Executive Director and any auditor, investigator, volunteer or staff of the PCOB, shall conduct themselves in a manner that reflects the ethical principles detailed in Board's Code of Ethics in these Procedures.

In the event that the PCOB determines that one of its members has failed to adhere to the PCOB's Code of Ethics or engaged in any act of misconduct inconsistent with their PCOB roles and responsibilities set forth within this Operating Procedure, then upon a majority vote of the remaining members the PCOB may take any of the following actions: (i) verbal or written censure of the member, or (ii) exclusion of the member from specific PCOB proceedings.

G. Resolution of Complaints About PCOB Members

1. In the event that a complaint is made regarding the conduct of a member of the PCOB to the Executive Director, the City Manager or the City Council, notice of the complaint shall be given as follows:
 - a) If the complaint is made to the Executive Director or to the City Manager, or if the Executive Director is notified by a PCOB member of a complaint, the Executive Director shall promptly notify the City Manager. The City Manager shall notify the City Council and the PCOB of receipt of the complaint.
 - b) If the complaint is made to the PCOB, or any member of the PCOB, the complaint shall promptly be brought to the attention of the Executive Director and the Chair of the PCOB. Upon receipt of the complaint, the Chair and the Executive Director shall coordinate to make prompt notification to the City Manager, who shall make notification to City Council.

2. In addition to carrying out the notifications required in section F.1(a) and (b) above, the Chair of the PCOB may also appoint a committee of PCOB members, to review and comment upon the complaint. No PCOB member who is the subject of a complaint may be part of any PCOB committee reviewing a complaint, nor may the PCOB member vote on any recommendation of the PCOB regarding any matter that is the subject of the complaint.
3. If City Council notifies the PCOB that it is considering removal of the PCOB member that is the subject of the complaint and of the charges against the PCOB member, then any committee of the PCOB designated to review a complaint shall be required to complete its review within the 10-day notice period prior to City Council's hearing.

H. Committees and Subcommittees

1. The PCOB, by majority vote, may establish ~~a one or more~~ committees of its membership. Any committee of the Board may, by majority vote, establish a subcommittee. No committee or subcommittee may include members who are not City-Council members appointed to the PCOB.
2. The purpose of a committee or subcommittee shall be to perform tasks delegated by the PCOB or committee, respectively, or to formulate recommendations or otherwise to advise the PCOB or committee, respectively.
3. The PCOB is to be a working board, and is not authorized to delegate responsibilities, duties, or decision-making roles to persons who are not members of the PCOB. The PCOB may not establish committees, subcommittees or advisory boards that include individuals other than City-Council-appointed PCOB members, or City-Manager-authorized staff. Notwithstanding the foregoing, the PCOB may assign duties to consult with, and request the presence of the Executive Director for any and all committee, subcommittee or advisory board so long as the ED is not a voting member of such assemblages, consistent with the Enabling Legislation and operating procedures which govern the roles and responsibilities of the Executive Director.
4. Nothing in this section shall preclude any committee or subcommittee from seeking or accepting information from persons who are not members of the PCOB or committee of the PCOB.

5. A committee, subcommittee, or working group, consisting of any 2 or more members of the Board, and that is created to perform delegated tasks for the Board, or to provide advice or recommendations to the Board, is a "public body" for purposes of FOIA. Any time they meet, FOIA's open meeting requirements shall apply."

~~5. When any committee or subcommittee consisting of at least (2) members meet together in person, or by electronic communications means, and the purpose of the meeting is the discussion or transaction of the business of the PCOB, committee, or subcommittee,~~

~~then that meeting shall be an open meeting conducted in compliance with FOIA's open meeting requirements.~~

I. Recordkeeping

1. The PCOB shall be responsible for establishing and maintaining public records, in a manner that complies with the Virginia Public Records Act and the Virginia Government Data Dissemination Practices Act and any additional requirements set forth within the Virginia Code.
2. The Executive Director is hereby designated as the records officer who will serve as a liaison to the Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including authorized destruction, of obsolete records. The Executive Director shall contact the Library of Virginia and provide their name and contact information. The City Manager shall ensure that
3. The Executive Director shall also be responsible for ensuring that the PCOB's record keeping system(s) comply with the requirements of Virginia's Government Data Dissemination Practices Act (Code of Virginia (1950), as amended, Title 2.2., Chapter 38).
 - a) All of the PCOB's record keeping systems shall be set up and maintained in a manner that adheres to the principles of information [management] practice set forth within Va. Code § 2.2-3800(C)(1)-(10).

The PCOB membership and the Executive Director are responsible for taking steps to prevent an individual's personal information collected for purposes authorized by City Council from being used or disseminated for another purpose. Neither the PCOB or any of its individual members, nor the Executive Director, shall use or disseminate personal information regarding any individual(s), for any purpose(s), or in any manner, other than expressly authorized by a City Council approved Operating Procedure

- b) The Executive Director shall be responsible for ensuring compliance with Va. Code § 2.2-3806 (rights of data subjects).
4. The Executive Director shall be responsible for ensuring that public records of the PCOB are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. If the Executive Director converts or migrates an electronic record, they shall ensure that the converted or migrated electronic record is an accurate copy of the original record.

J. FOIA Compliance

1. The City's FOIA Officer shall serve as the FOIA officer for the PCOB.

2. The PCOB members, and the members of every committee or subcommittee established by the PCOB to perform any delegated function(s) or to advise the PCOB, shall comply with the City's established FOIA Records Policy, a copy of which is available on the City's website.
3. The PCOB and its membership, and all of the PCOB's various committees and subcommittees, shall comply with the Citywide FOIA Meetings Policy, establishing uniform requirements for electronic and in-person meetings.
4. Neither the PCOB nor the Executive Director shall submit a "FOIA request" to any other City department, agency or official regarding PCOB matters. When the PCOB or the Executive Director desire to obtain information or records necessary to carry out the duties assigned to the PCOB pursuant to Chapter 2, Article XVI of the Charlottesville City Code, they will work cooperatively with department heads, employees and city officials. Neither the PCOB nor its Executive Director are authorized, either expressly or by implication, to bring any lawsuit against the City or any department, agency, official, or employee of the City related to or regarding PCOB matters.
5. A subpoena request submitted to a court as contemplated by state law and Charlottesville City Code Chapter 2.2, Article XVI shall not be deemed a "lawsuit"; however, neither the PCOB nor the Executive Director shall seek to subpoena any City official or employee, or any City records, unless all administrative avenues have been exhausted through the City Manager's office.

K. Review of Department Expenditures

1. Virginia Code § 9.1-601(C)(6) allows a locality to confer upon the PCOB the following responsibility: "To request reports of the annual expenditures of the law enforcement agencies serving under the authority of the locality, and to make budgetary recommendations to the [City Council] concerning future appropriations." This enabling legislation has been implemented by City Council within Charlottesville City Code § 2-463.
2. The term "expenditure report" shall mean and refer to a report generated from the data within the City's SAP software, which shows actual expenditures compared to the budgeted expenditure categories for a given fiscal year ("Budget-to-Actual Report"). The PCOB or Executive Director may, once per calendar year, within the month of October, request that a Budget-to-Actual Report be presented for the fiscal year that ended June 30 of that same year.
3. Upon request by the Executive Director on behalf of the Board, the Budget Office shall comply with the requirements of Charlottesville City Code § 2-463 by providing reports of the Department's annual expenditures, not more than once during each annual budget process. If the Board wishes to make budgetary recommendations to the

City Manager during that same annual budget process, the Board shall submit its recommendations to the City Manager on or before March 1 each calendar year.

4. The PCOB's work in reviewing and making recommendations regarding the Police Department's annual budgeted expenditures shall be with the Budget Office, City Manager and City Council. The Police Department is not required to consult with the PCOB prior to submitting its annual expenditure estimates (operational or capital) to the Budget Office. However, nothing in these Procedures shall preclude a representative of the PCOB, or the Executive Director, from meeting with the Chief of Police, a Deputy City Manager, or a member of the Budget Office during the annual budget process or at any other time to discuss the Department's budget expenditures.

DRAFT

CITY OF CHARLOTTESVILLE



POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

EXECUTIVE DIRECTOR

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-2
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to establish the process by which an Executive Director to the Board is selected, and to detail the roles and responsibilities of the Executive Director to the Board.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-455.

III. PROCEDURES

A. Appointment.

The Executive Director is appointed by the City Manager, pursuant to the process set forth within Charlottesville City Code § 2-455. The Executive Director provides support, expertise and leadership to the Board, under the supervision of the City Manager.

B. Selection Process

The City Manager shall conduct a selection process as set forth in Charlottesville City Code § 2-455 to identify and evaluate candidates for Executive Director. The PCOB will participate in the selection process by having two PCOB members serve on the interview panel. PCOB members shall be selected to serve on the interview panel in accordance with the following process:

1. The Chair will ask for volunteers.

2. If more than two PCOB members seek to volunteer, the Chair will invite each member to express their reasons for wanting to serve.
3. After allowing all prospective volunteers to speak, the Chair will ask each PCOB member, to vote for one of the candidates who is seeking to serve on the interview panel.
4. The two members who receive the most votes will serve on the interview panel.

C. Role Of The Executive Director

1. The role of the Executive Director is to provide support to the PCOB in the implementation and exercise of all of the Board's functions authorized by the enabling ordinance. The Board may assign specific tasks to the Executive Director, including the monitoring of investigations conducted by the Department, or the investigation of complaints or incidents. If contractors are to be engaged to assist in performance of the Board's functions, the Executive Director will be responsible for compliance with procurement and other contracting requirements, and for overseeing the performance of contracted services. The Executive Director will comply with City Standard Operating Procedures pertaining to procurement, as well as those pertaining to approval and signature of contracts.
2. The PCOB may not delegate to the Executive Director decision-making authority for any of the functions listed in Va. Code § 9.1-601(C)(1)-(8).
3. The Executive Director shall have specific roles and responsibilities, in addition to those as otherwise assigned by the PCOB:
 - a. *Investigations*—the Executive Director's role in supporting investigations to be conducted by the PCOB pursuant to the authority of Va. Code § 9.1-601(C)(1) and (2) shall be set forth in more specific detail within the Operating Procedure specific to the various types of investigation.
 - b. *Other functions*—the Executive Director's role in supporting other functions of the PCOB (as authorized by state enabling legislation and the Charlottesville City Code) shall be set out within the Operating Procedures specific to the function(s).
 - c. *Liaison*—the Executive Director shall facilitate communications among and between the PCOB, the Police Department and the City Manager's Office.
 - d. *Monitor of Investigations and Complaints* --The Executive Director may actively monitor the Police Department's administrative investigations of

complaints received from civilians regarding the conduct of law-enforcement officers or civilian employees of the Police Department. The City Manager may establish a Standard Operating Procedure that will govern the Executive Director's access to information, records and witnesses while monitoring an administrative investigation.

- e. During the pendency of an administrative investigation which is not the subject of a citizen complaint, to which the Executive Director is allowed access, the Executive Director shall not disclose information to the PCOB, any PCOB member, or any person other than as authorized in writing by the Chief of Police or the City Manager. However, notwithstanding the other provisions of this paragraph, the Executive Director may acknowledge the existence of a matter otherwise under investigation to the PCOB or any PCOB member, or in the normal course of PCOB business.
- f. Budget—the Executive Director will administer budgeted funding in support of the PCOB, in accordance with the annual budget approved by City Council and in accordance with direction received from the City Manager.

Each year the Executive Director shall, in consultation with the Board Chair, prepare and submit to the City Manager's Office (Budget) a plan and estimate of all contemplated expenditures and the amount(s) of public funds needed for the ensuing fiscal year to support the operations of the PCOB. The plan and estimate shall include all of the staff desired to be employed for support of the PCOB functions, all independent contractor services, all technology and support services, etc. If the Executive Director does not submit an estimate in accordance with this paragraph, then the City's Budget Office will prepare and submit the estimate.

- g. *Contracts and procurement*--All contract services and expenditures associated with the operations of the PCOB shall be paid from the budget approved by City Council for a given fiscal year, inclusive of funding for contract legal counsel, other independent contractors, and personnel employed by the City to support the PCOB functions. The Executive Director shall review a budget-to-actual expenditures report on at least a monthly basis.

All contracts, whether for goods or services, are subject to the City's procurement procedures, and are subject to the City Manager's SOP governing Internal Contracts Management. Failure to comply with these requirements may subject the Executive Director to disciplinary action and may have other actions consistent with Charlottesville City Code Sec. 22-33.

D. Supervision Of The Executive Director

The City Manager shall supervise the work of the Executive Director and may delegate that responsibility to a Deputy City Manager. The City Manager's annual evaluation of the Executive Director's performance shall consider a written performance review submitted by the Board to the City Manager. The Board may request that the City Manager meet with the Board's Chair to discuss the Executive Director's performance.

1. A written performance review by the Board shall include the input and review of all Board members.
2. Prior to meeting with the City Manager, the Board Chair shall solicit comments from each Board member to ensure all positions are represented.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES

SCREENING OF COMPLAINTS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-3
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB will conduct intake and screening of Complaints to carry out its function of initiating investigations in cases where the Complainant requests the Board, and not the Department, conduct an investigation of an allegation of misconduct.

II. ENABLING LEGISLATION.

Charlottesville City Code § 2-457
Charlottesville City Code § 2-458
Charlottesville City Code § 2-459

III. PROCEDURES

A. Standing to File a Complaint

The following shall have standing to have their complaints alleging misconduct by sworn officers or civilian employees considered by the Board:

1. Any individuals directly affected by incidents of police misconduct. “Directly affected” shall include any persons who were physically present and in physical or verbal contact with police during the alleged misconduct.
2. Designated representatives of individuals directly affected by police misconduct.

3. Parents, guardians, legal custodians of minors or persons under a disability who have alleged to have been victims of police misconduct.
4. Any witnesses to incidents of police misconduct who were physically present during the alleged misconduct.
5. Any individual with material information concerning police misconduct.

B. Filing of the Complaint

1. Complainants may file complaints online, in writing, or orally.
2. Complaints may be filed with the Charlottesville Police Department or through the PCOB online portal.
3. In the complaint filing the Complainant may choose whether they request the complaint be investigated by the Board only, or by the Department with monitoring of the investigation of the complaint to be conducted by the Executive Director.
4. Regardless how a Complaint is received, it shall be promptly provided to the Department and to the Executive Director.
5. The Board is authorized to decline to investigate a complaint.

C. Initial Screening of Complaints

1. **Opening of Case File.** Upon receipt of a complaint, the Executive Director shall create a case file for the complaint, designate a tracking number for the complaint, and enter the case in a database. In the event that the complaint was initially filed with the Department, the Executive Director shall use the complaint number assigned by the Internal Affairs Division of the Department.
2. **Preservation of Evidence.** Upon opening a case file, the Executive Director shall immediately initiate a process to ensure that any relevant body-worn camera footage, dash-cam footage, and all other electronic evidence and any documentation related to the case is preserved by the Department or other City of Charlottesville agencies or departments.
3. **Initial Evidence Collection.** The Executive Director may request additional information from the complainant, and collect any evidence necessary for the initial review.

4. Options after Screening is Complete. The Executive Director shall screen every complaint that is received and shall take any of following actions:
 1. Recommend to the Board that an investigation of the complaint be declined;
 2. Consult with and refer the complaint to the Commonwealth's Attorney to address an illegal activity alleged in the complaint;
 3. With the agreement of all parties, refer the complaint to mediation per the appropriate Operating Procedure
 4. Refer the complaint for an investigation to be conducted by the Board pursuant to the Complaint and Incident Investigation Operating Procedure
 5. Refer the complaint to the Department for investigation because the complaint falls outside of the authority of the Board to review.

D. Executive Director's Recommendation to Decline Investigation

1. After a complaint has been screened and the Executive Director recommends that an investigation be declined, the Executive Director shall so advise the Board in writing, stating the basis of his declination recommendation. In making the recommendation, the Executive Director shall consider the following factors:
 - a. The veracity of the allegations as presented in any available video evidence or other electronic evidence;
 - b. Credible oral or written testimony of an independent, third-party witness who refutes the allegations as presented by the complainant;
 - c. Other relevant information related to the allegations as presented in the complaint.
2. In cases where the Executive Director makes a recommendation to decline investigation of a complaint, the Board Chair may accept the recommendation and notify the Board of such decision. If two (2) or more Board members object to the recommendation, the Board Chair shall refer the matter to the full Board for consideration and a vote at its next regularly scheduled meeting.
3. If the Chair or the full Board accepts the recommendation not to investigate, the complainant shall be notified in writing of that decision within 2 days following the acceptance of the Executive Director's recommendation. The Board shall also advise the complainant with the reasons for the declination, and provide the opportunity to have the complaint sent to CPD for investigation.

4. If a majority of the Board votes to not accept the Executive Director's recommendation, the Chair shall direct the Executive Director to proceed with investigation of the complaint.

E. Withdrawal Of Complaints And Review Requests

A complaint may be withdrawn from further consideration at any time, verbally or in writing, by the complainant. A verbal withdrawal shall be memorialized as soon as practicable with the date and reason for the withdrawal (if provided). In whatever form delivered, such withdrawal should be provided to the Executive Director or any member of the Board. By majority vote the Board may decide to continue the investigation of a withdrawn complaint if they determine that doing so is in the public interest, keeping in mind the complainant's legitimate privacy concerns.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES



SCREENING OF REVIEW REQUESTS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-4
Subject: POWERS AND DUTIES	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB (a/k/a “Board”) will conduct intake and screening of Review Requests to carry out its function of reviewing dispositions of complaints, in cases where the original complaint was submitted to the Department for investigation and an investigation was conducted by the Department’s Office of Internal Affairs.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-457 through 2-459

III. PROCEDURES

A. Standing to File a Review Request

Any Complainant whose complaint has been investigated by the Charlottesville Police Department and who has received a Closure Letter may file a Review Request.

B. Filing of the Review Request

1. A Review Request is deemed filed with the Board when either a Complainant, or any member of the Board, submits a written request to the Executive Director for a hearing to be held on allegations of a complaint previously investigated by the Department’s Office of Internal Affairs.

2. The Executive Director shall ascertain whether the filing is timely as defined by Charlottesville City Code XVI § 2-459(a). If the filing is beyond the time limit defined in that section, the Executive Director shall ascertain the reason for the late filing.
3. Once a Review Request is filed the Executive Director shall contact the person who was the subject of the police-civilian interaction that is the subject of the Request, and must acquire the subject's written permission for the Board to access the Internal Affairs files and evidence, pursuant to Charlottesville City Code § 2-459(a).
4. If the subject of the police-civilian interaction has not previously authorized Board involvement in the investigation, and upon request of the Executive Director, does not grant written permission, the Board may not access the Internal Affairs files, and no Review Request may proceed.

C. Initial Screening of the Review Request

1. Upon receiving permission to access the Internal Affairs files pursuant to III.B.4 above, the Executive Director shall review the Internal Affairs complaint, summaries of evidence utilized by Internal Affairs, the final Internal Affairs disposition reports, and Closure Letter. The Executive Director may also consider any other information to which the Board has lawful access.
2. Preservation of Evidence. Upon opening Review Request for screening, the Executive Director shall immediately initiate a process to ensure that any relevant body-worn camera footage, dash-cam footage, and all other electronic evidence and any documentation related to the case is preserved by the Department or other City of Charlottesville agencies or departments.
3. Within 10 days of receiving a Review Request, the Executive Director shall provide a report to the Board:
 - a. Indicating whether in the Director's professional judgement any of the allegations in the review requests are unsupported by the available evidence;
 - b. If the report has not been filed in a timely manner, whether there are grounds to go forward with the Review Request under the exceptions granted by Charlottesville City Code XVI 2-458(d).

D. Decision Whether to Proceed with Review Hearing

1. The Board shall meet to consider:
 - a. Whether the Executive Director's recommendations as to whether any of the allegations in the Review Request are unsupported by the available evidence.

- b. Whether to accept the Executive Director's recommendation to proceed with a review that was not filed in a timely manner, if such was the case The Executive
2. By majority vote, the Board may:
 - a. Accept or refuse to proceed with a Review Request that was not filed in a timely manner;
 - b. Decline to investigate allegations that in their judgement are unsupported by the available evidence;
 - c. Proceed with the Review Request related to some or all of the allegations in the Review Request, at Board's discretion.
 - d. Decide whether to hold a Hearing related to the Review Request, or make findings solely based on the evidence in the record and other information to which the Board has lawful access.
3. The Board shall issue a report documenting their decisions in Sections 2. (a-d) above, and the basis for those decisions. The report shall be in writing and be prepared by the Executive Director, at the direction of the Board. The report shall be provided to the complainant, Chief of Police, and City Manager, within ten (10) days of the Board's finding.

E. Decision to Proceed with a Review Hearing

1. If the Board decides to proceed with a Review Hearing on a Review Request, the hearing will be held promptly, and in accordance with relevant Operating Procedures.
2. At any time prior to the commencement of presentation of evidence at the Review Hearing, the issues presented may be referred for mediation by either the Board or the Executive Director, in accordance with relevant Operating Procedures.

CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**



**GENERAL PRINCIPLES FOR BOARD
INVESTIGATIONS**

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-5
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The standards and principles in this section, have been guided and adapted in part from the Quality Standards for Investigations (QSI) which provide a framework for conducting high-quality investigations for Offices of Inspector General (OIGs) affiliated with the Council of the Inspectors General on Integrity and Efficiency (CIGIE). Additionally, guidance has been incorporated from the National Association for Civilian Oversight of Law Enforcement (NACOLE) and affiliated practitioners and agencies.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(1) and (2)

III. PROCEDURES

A. Independent Investigations Or Delegation Of Investigations

The Board is responsible for investigating complaints and incidents. The Board may conduct the investigation itself or by committee of itself (in either case, with the assistance of the Executive Director), the Board may request the Executive Director to conduct the investigation (subject to the Board’s direction), or the Board may request the Executive Director to engage a contract investigator (subject to the availability and appropriation of funds within the Board’s budget to support that expense) in accordance with Charlottesville City Code § 2-455(c) and § 2-458(g). In utilizing the discretion to directly investigate or delegate, or to have the Executive Director or a contractor perform the investigation, the Executive Director shall consider the following factors:

1. Complexity of the investigation (i.e. number of allegations, number of officers involved, seriousness of the allegations at hand, etc.).
2. Public interest in the case at hand.
3. Timeliness assessment (i.e. whether the investigation can be completed in a timeframe that does not cause undue burden for the execution of the other duties of the Executive Director).
4. Fiscal impact- availability of funds in the operating budget at the time the complaint is received.
5. The available resources and experience of the Executive Director.

B. General Standards

Prior to executing and investigations, the Executive Director shall compile an Investigation Manual that establishes guidelines for implementing this Operating Procedure (“Manual”), which shall be approved by the Board. The Manual shall implement this Operating Procedure and shall contain no processes or guidelines in conflict with the Ordinance or any other Council-Approved Operating Procedures. The Manual cannot create any rights, access, obligations or requirements not otherwise authorized by the ordinance or the operating procedures. The Board and the City Manager may jointly establish protocols to be incorporated within the Manual, and the City Manager’s endorsement of such protocols shall be reflected by his signature to the document. Until the manual is approved, the Board may, with the approval of the complainant, refer complaints to the Internal Affairs Department

The Executive Director shall present the Manual for review and approval by the Board. The Manual shall also be certified by both the Board’s independent legal counsel and the Office of the City Attorney as being consistent with the City Ordinance and these Operating Procedures. The Manual shall be reviewed by the Executive Director and recertified by the attorneys every three years to ensure it represents the latest standards in the field and changing circumstances within the City of Charlottesville. The review and revision of the manual should seek to incorporate any feedback provided from members of the public, members of the PCOB, the City Manager’s Office, City Attorney’s Office, the Chief of Police, the Commonwealth Attorney for the City of Charlottesville, and any other relevant stakeholder. The Manual will include, among other things: required qualifications for investigators, procedures for initiating independent investigations, required elements of investigations, and reporting and recordkeeping procedures.

The general standards for Board investigations are:

1. Qualifications:

Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the tasks required.

This standard places upon the Board the responsibility for ensuring that investigations are conducted by persons who collectively have the knowledge and skills required to perform the investigative activities.

2. Independence:

In all matters relating to investigative work, the Board must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude.

This standard places upon the Board, via the Executive Director, the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

3. Due Professional Care:

Due professional care must be used in conducting investigations and in preparing related reports.

This standard requires the Board, via the Executive Director, a constant effort to achieve quality and professional performance. It does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.

In addition to the general standards in the field, the Board will also adhere to the requirements as outlined in § 2-458(a)-(e).

C. Compliance

Any investigation shall comply with all federal and state laws, and the City Ordinance, any Standard Operating Procedures referenced in the Ordinance, and all applicable provisions of the Board's various Operating Procedures.

D. Procedures for Obtaining Statements from Department Officers or Employees

1. Prior to the interview of any police officer, the officer shall be given reasonable advance notice of the interview, the name of any individual(s) to be present during the interview, and a written notice of the charges (i.e., information regarding the date/time/location of the encounter being investigated and the allegations of the complaint and the basis therefor).

2. Interviews/ questioning of a police officer shall take place at a reasonable time and place as designated by the Executive Director, preferably when the officer(s) under investigation are on duty and within the office of the Executive Director or a suitable office within the Department. The Board's investigator shall plan, prepare for, and coordinate the investigative process, so that multiple, repetitive interviews/ question sessions will be avoided to the extent practicable (although on occasion, a follow-up interview may be necessary).
3. Prior to commencement of any interview/questioning, the chief of police or other authorized command staff member shall advise the officer of their Garrity rights, and obtain a written acknowledgment from the officer that they have been so advised. A copy of the form shall be maintained in the investigative file.
4. An officer who is being interviewed may have an attorney or other representative present during the interview, and shall be allowed reasonable breaks during which the officer may confer with the attorney/ representative. Otherwise, the attorney or other representative shall not be allowed to participate in the interview/ questioning. Upon request, the officer and the attorney/representative shall be provided with a copy of any audio/ video recording of the interview/ questioning.
5. Following the interview/ questioning an officer who is the subject of an allegation, the officer shall be notified that they have the right, within a reasonable time following the date of the interview, to respond in writing to the charges. The time limit shall be determined by the Executive Director, but in no event shall the time be less than five (5) calendar days unless agreed to by the officer.
6. All information and evidence (“records”) collected by the Board and its investigator shall be assembled and maintained within an investigative file, to be kept in a secure location within the offices of the Executive Director. All such records shall be preserved in accordance with applicable records retention schedules of the Library of Virginia. All such records shall be exempt from public inspection pursuant to Virginia Code § 2.2-3705.1(1) and § 2.2-3706(B)(9)(ii).

If a subpoena is obtained, the Circuit Court for the City of Charlottesville can compel attendance of witnesses (which may include persons outside the Department, and individuals who are not public officials or employees of the City of Charlottesville) and the production of books, papers, and other evidence necessary to perform the investigative duties pursuant to § 2-452(c) & § 2-458(f).

E. Exceptions to time limits for investigation

The Board may initiate and/or complete any investigations of complaints or incidents beyond the time limits specified in § 2-458 subsections (c)(1) and (c)(2) if the Board determines that there is good reason for doing so.

1. For cases that are beyond the time limits, the Executive Director will assist the Board by interviewing the complainant to determine the reasons for the late filing.

2. The Executive Director shall deliver the reasoning as communicated by the complainant via a written Memorandum of Good Reason (MGR).
3. The Board shall consider whether the complainant had a “good reason” at the next regular business meeting of the Board. If the Board makes a determination by majority vote that “good reason” exists, it shall submit a request to waive the time limit to the City Manager. If the City Manager does not respond to the waiver request within 72 hours, the request shall be deemed to have been granted.

F. Suspension of Investigations

If a Complaint asserts criminal conduct by an employee of the Department, or if at any point in an investigation of a Complaint or Incident the Executive Director becomes aware that an employee may have committed a criminal offense, the Executive Director shall notify the Board Chair to that effect. With the concurrence of the Chair, the Executive Director shall:

Suspend the investigation and notify the Chief of Police and Commonwealth's Attorney of the alleged conduct, ensuring that no statements obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting authority except in accordance with applicable law; and Evaluate, in consultation with Board legal counsel, the City Attorney, and the Commonwealth's Attorney, whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



COMPLAINT AND INCIDENT INVESTIGATIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-6
Subject: POWERS AND DUTIES	
Approval: <u>City-County Resolution By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Pursuant to Charlottesville City Code § 2-457(a) the Board may conduct investigations of complaints from members of the public regarding the misconduct of law enforcement employees of the Department and may refer complaints to the Department for investigation.

Pursuant to Charlottesville City Code § 2-457(b) the Board may, *sua sponte* (on its own motion), initiate an investigation of conduct of a Department employee, if it becomes aware of allegations of certain incidents of misconduct of a law enforcement employee of the Department.

II. ENABLING LEGISLATION

Virginia Code § 9.1-601
Charlottesville City Code § 2-457(a)
Charlottesville City Code § 2-457(b)

III. POWERS AND DUTIES

A. Complaint Investigations .

The Board shall have the power to conduct Complaint Investigations when a member of the public makes a complaint of misconduct against a Department employee and requests to have the complaint investigated by the Board rather than the Department

The complainant's request for an investigation by the Board does not affect the authority that the Executive Director has under the Ordinance to monitor all IA investigations.

B. Incident Investigations

The Board shall have the power to initiate and conduct Incident Investigations of certain conduct of a police officer or department employee as authorized in City Code § 2-452(c)(2).

IV. PROCEDURES

A. Initiation of Complaint Investigations

1. Upon receipt of a complaint from a member of the public about alleged misconduct by a department employee the Board may initiate a Complaint Investigation, or the Board may refer the Complaint to the Department for investigation.
2. The Board may conduct the investigation itself, or by committee of itself (in either case, with the assistance of the Executive Director). The Board may request the Executive Director to conduct the investigation (subject to the Board's direction), or the Board may request the Executive Director to engage a contract investigator (subject to the availability and appropriation of funds within the Board's budget to support that expense).
3. If the Complainant asks that the Complaint be investigated only by the Board, the Executive Director shall first screen the complaint pursuant to the criteria provided in The Operating Procedure governing the Screening of Complaints.
4. After screening, if the Board elects to conduct an investigation, the Board shall notify the Chief of Police of its intent to conduct an investigation.
5. The Executive Director shall provide to the Chief of Police enough identifying information about the complainant, and enough information about the date, time, and location of the alleged encounter, to allow the Department to give the Executive Director information for the investigation.

B. Initiation of an Incident Investigation.

1. Upon request of the Chair, or upon the request of any two Board members, the Executive Director shall initiate an investigation of the following incidents:
 - A. Use of force by a law enforcement officer.
 - B. Death or serious injury to any individual held in custody
 - C. Serious abuse of authority or misconduct as defined in Charlottesville City Code § 2-452(d).

- D. Alleged discriminatory stops (vehicular or otherwise), of civilians by law enforcement officers.
 - E. Other incidents regarding the conduct of law enforcement officers and civilian employees of the Department.
2. Notice. Prior to initiation of an Incident Investigation, the Board Chair shall provide notice to the City Manager and the Chief of Police who shall ensure the Department's cooperation with the investigation.

V. GENERAL PRINCIPLES OF COMPLAINT AND INCIDENT INVESTIGATIONS

A. Access to Information.

1. The Department shall give the Board, or its designated investigator, access to information, records and witnesses as required by, and subject to, the provisions of § 2-452(e) and (f) of the Ordinance, as may be relevant to the matter under investigation.
2. Prior to the interview of any police officer, the officer shall be given reasonable advance notice of the interview, the name of any individual(s) to be present during the interview, and a written notice of the allegations (i.e., information regarding the date/time/location of the encounter being investigated and the allegations of the complaint and the basis therefor).
3. Interviews/ questioning of a police officer shall take place at a reasonable time and place as designated by the Executive Director, preferably when the officer(s) under investigation are on duty and within the office of the Executive Director or a suitable office within the Department. The Board's investigator shall plan, prepare for, and coordinate the investigative process, so that multiple, repetitive interviews/ question sessions will be avoided to the extent practicable (although on occasion, a follow-up interview may be necessary).
4. Prior to commencement of any interview/questioning, the Chief of Police or other authorized command staff member shall advise the officer of their Garrity rights, and obtain a written acknowledgment from the officer that they have been so advised. A copy of the form shall be maintained in the investigative file.
5. An officer who is being interviewed may have an attorney or other representative present during the interview, and shall be allowed reasonable breaks during which the officer may confer with the attorney/ representative. Otherwise, the attorney or other representative shall not be allowed to participate in the interview/ questioning. Upon request, the officer and the attorney/representative shall be provided with a copy of any audio/ video recording of the interview/ questioning.
6. Following the interview/ questioning an officer who is the subject of a complaint or allegation, the officer shall be notified that they have the right, within a reasonable time following the date of the interview, to respond in writing to the charges. The time limit

shall be determined by the Executive Director, but in no event shall the time be less than five (5) calendar days unless agreed to by the officer.

7. All information and evidence (“records”) collected by the Board and its investigator shall be assembled and maintained within an investigative file, to be kept in a secure location within the offices of the Executive Director. All such records shall be preserved in accordance with applicable records retention schedules of the Library of Virginia. All such records shall be exempt from public inspection pursuant to Virginia Code § 2.2-3705.1(1) and § 2.2-3706(B)(9)(ii).

B. Failure of the Complainant to Cooperate.

If the Complainant fails or refuses to cooperate in the Complaint Investigation after requesting the Board conduct the investigation, the Executive Director may recommend that the Board refer the investigation to the Department. The Board shall adopt or disapprove the Executive Director’s recommendation by a majority vote.

In the alternative, with the consent of the Board, the Complaint Investigation may be continued without the cooperation of the Complainant if, in the judgment of the Board and Executive Director, a fair and complete investigation is still possible.

C. Failure of the Subject Officer/Employee to Cooperate.

If the subject officer or employee refuses or fails to cooperate in the investigation, the Executive Director shall notify the Chief of Police of the lack of cooperation in writing. If the chief of police does not promptly resolve the issue, the Executive Director shall seek the intervention of the City Manager.

Officers or employees, including the chief of police, who refuse or fail to cooperate may be subject to disciplinary action.

D. Timeline for Completing the Investigation.

Any investigation conducted pursuant to this operating procedure shall be completed in accordance with the timelines prescribed in Section E. of the General Principles for Board Investigations Operating Procedure.

E. Preparation of the Investigative Report.

1. When the investigation is complete the Executive Director or other investigator shall prepare an Investigative Report for the Board’s review. The Report shall include the following:
 - a. A summary of the circumstances of the incident(s) of alleged misconduct.
 - b. The evidence related to whether there was any misconduct.
 - c. Any suggested findings related to each allegation.

- d. Indications of serious abuse of authority or misconduct as defined in § 2-452(d) of the enabling ordinance.
2. The Investigative Report shall also be given to the City Manager and to the Chief of Police, who shall be required to keep the contents of the report confidential (except as between themselves) unless otherwise agreed by the Board. The City Manager and Chief of Police shall have the right to submit comments, analysis, or proposed corrections to the Executive Director, who shall share them with the Board.
3. The Board may hold a hearing to review the information and allegations that are the subject of the Investigative Report in accordance with the Operating Procedure governing Review Hearings.

F. No Presumption of Misconduct.

The findings in an Investigative Report are not conclusive and create no presumption of misconduct unless and until the Board either:

1. By vote of majority affirms some or all of the findings in the report, without a Review Hearing; or
2. By vote of a majority, affirms some or all of the findings after conducting a Review Hearing.

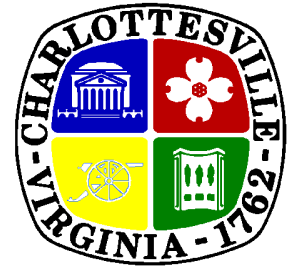
G. Board Not Required to Affirm the Findings in a Preliminary Investigative Report.

After reviewing the Investigative Report, the Board by majority vote, shall have the power to accept or reject the report's findings in whole or in part, issue a closure letter, and take no further action. If the Board rejects the Report's findings, in whole or in part, the Board shall direct the Executive Director to make changes and to prepare a final report that reflects the findings of the Board.

H. Disposition of the Investigation

The Board, assisted by the Executive Director, shall prepare a final disposition of the investigation and the disposition shall be prepared for public release within thirty (30) days of the conclusion of a hearing conducted by the Board with respect to the allegations of the Complaint, or (ii) within 30 days of receipt of the final Investigative Report, whichever occurs later.

Matters of confidentiality, and any public disclosure of "personal information", as defined in Virginia Code § 2.2-3801, shall be resolved among the Board, the Executive Director and the City Manager, consistent with the requirements of Charlottesville City Code § 2-452(c), the Standard Operating Procedure referenced in that Code section, and with Charlottesville City Code § 2-452(g).



CITY OF CHARLOTTESVILLE

**POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES**

INVESTIGATION OF POLICIES, PRACTICES AND PROCEDURES

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-7
Subject: POWERS AND DUTIES	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This procedure details the Board’s power and authorities when investigating the policies, practices and procedures of the Department.

II. POWERS AND DUTIES

The Board shall have the power and duty to investigate the policies, practices and procedures of the Department, and to make recommendations regarding changes to such polices, practices and procedures. Such investigations may involve review of public documents, such as the Department’s General Orders, and other such documents, as well as studies of the implementation or effect of Departmental policies.

III. ENABLING LEGISLATION

- Virginia Code § 9.1-601(C) (5)
- Charlottesville City Code § 2-462
- Charlottesville City Code § 2-452(c)(4)
- Charlottesville City Code § 2-457(f)

IV. PROCEDURES

A. Authorization of an Investigation of Policies, Practices and Procedures

By a majority vote, the Board may authorize an investigation of Department policies, practices and procedures. The Board may assign its own members to conduct reviews of public documents and policies or direct the Executive Director to conduct such investigations.

B. No Limitation on Powers

The Board's powers and duties to complete retrospective examinations and audits of Internal Affairs investigations, arrest and detention, and other public-police interactions shall not preclude the Board from exercising the powers and duties under this operating procedure.

C. Access to Information and Subpoena Power.

The Board shall make a good faith effort to obtain access to information as detailed in Sec. A. of the Subpoena Operating Procedure. If after such effort the Board is unable to secure voluntary cooperation or production, the Board may apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witnesses, or the production of such books, papers and other evidence according to the procedures provided in the Operating Procedure governing Subpoenas.

D. Timeliness of Investigations.

When authorizing an investigation, the Board shall, in consultation with the Executive Director, establish a schedule for completion. Investigations under this section shall be completed in an expeditious and efficient manner consistent with the approved schedule.

E. Report of Investigations.

The delegated Board members or Executive Director shall provide a report of all investigations of policies, practices and procedures, and recommended changes to the Board for review and approval.

F. Policy Recommendations after Investigations.

After the Board receives and reviews the report of the investigation, the Board may make recommendations regarding policies, practices and procedures of the Department. Such recommendations shall be made utilizing the following procedure:

1. The Board shall present in writing its findings and recommendations with supporting rationale to the City Manager and Chief of Police.
2. If the Department declines to implement any changes recommended by the Board, the Chief of Police shall explain their decision in writing. Such written explanation by the Chief shall be made available for public inspection.

3. The Board may withdraw its recommendations to the Department based on the rationale provided by the Chief of Police. Such decision to withdraw its recommendation to the Department must be made in writing and shall be made available for public inspection.

V. RESOURCES TO DISCHARGE DUTIES

With the consent of the Board, the Executive Director may seek to contract with independent contractors and firms, consistent with the competitive and non-competitive guidelines and requirements of the City Charlottesville's procurement rules, to undertake investigations under this Operating Procedure. The Executive Director shall develop an investigative plan and budget for approval by the Board before an investigation can be undertaken.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES



REFERRALS TO THE COMMONWEALTH ATTORNEY AND
EXTERNAL JURISDICTIONS OR AGENCIES

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-8
Subject: POWERS AND DUTIES	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to detail under what circumstances the Board may refer matters for consideration by the Commonwealth Attorney for the City of Charlottesville, and/or to external jurisdictions and agencies.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-458(e)(1)

III. PROCEDURES

- A. If the Executive Director becomes aware that the misconduct, by a Department employee, alleged in the complaint or disclosed in the course of an investigation may be criminal in nature, with the concurrence of the Board chair they shall refer the case to the City of Charlottesville Commonwealth Attorney for possible criminal prosecution.
- B. In such a case the Board shall suspend their investigation and notify the Chief of Police and Commonwealth’s Attorney of the alleged misconduct, by a Department employee, ensuring that no statement obtained from the Police Department employee(s) whose actions are the subject of the matter are shared with criminal investigators or any prosecuting attorney, except in accordance with applicable law.
- C. The Executive Director shall give written notification of such referral to the Board, the Chief of Police, the City Manager, the City Attorney, the complainant, and subject officer(s). If requested by the Commonwealth Attorney, the Executive Director shall

delay notification of the referral to one or more of these parties until the Commonwealth Attorney determines that notification is appropriate.

D. The Executive Director shall transmit copies of all relevant files to the Commonwealth Attorney, maintain a record of each referral, and record the disposition of each referred matter.

E. Consideration of Parallel Investigations:

The Board shall confer with the Commonwealth Attorney, the City Attorney, and the Board's own legal counsel as to whether competing public interests and civil rights involved permit the resumption of continued, parallel investigation by the Board, pursuant to Charlottesville City Code § 2-458(e)(2). If the Board is advised that a parallel investigation is advisable, they shall such certify in writing and initiate or resume an investigation as appropriate.

F. Referral to the External Jurisdictions/Agencies

If the Board receives complaints regarding the conduct of non-CPD officers and employees, the Executive Director, with the concurrence of the Board chair, shall notify the complainant of the Board's lack of jurisdiction to investigate, and shall forward the complaint to the appropriate agency or jurisdiction, with the permission of the complainant.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



HEARING EXAMINERS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-9
Subject: POWERS AND DUTIES	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which a Hearing Examiner will be selected for hearings of the PCOB, to clarify the required qualifications for a Hearing Examiner, and to provide guidelines for the Hearing Examiner's role in PCOB hearings.

These Operating Procedures set forth City Council's intention and guidance as to how the provisions within the Ordinance shall be interpreted and applied by the PCOB, the Executive Director and the Hearing Examiner. In the event of any apparent disparity between the provisions of this Operating Procedure and provisions of the Ordinance, the provisions of this Operating Procedure shall govern the interpretation of the Ordinance.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-460(a)

III. PROCEDURES

A. Selection of Hearing Examiner

1. The Executive Director, assisted by independent legal counsel and the Office of the City Attorney, shall prepare a list of hearing examiners whose qualifications under Paragraph A.2., below, have been verified ("List").
2. The Executive Director should endeavor to establish a List that contains at least 3 qualified examiners who would be available to preside at a hearing at a given time. Hearing Examiners performing legal services for the City's PCOB are exempt from procurement; however, the Executive Director may elect to conduct a competitive

selection process. Every Hearing Examiner shall be an attorney licensed to practice law in the Commonwealth of Virginia, and must meet the following standards:

- a) One of the following criteria: at least five (5) years' active practice of law; five years' service as a federal or state judge; an active hearing examiner on the Virginia Supreme Court's list of approved "hearing officers"; Professional experience in police oversight or mediation is preferred; however experience in other area(s) of relevant jurisprudence experience may be appropriate; and
 - b) Membership in good standing of the Virginia State Bar, in one of the following categories: active, judicial, or retired membership; and
 - c) Completion of a half-day training session conducted jointly by the PCOB independent legal counsel and Office of the City Attorney, at which the Deskbook contents will be reviewed. Such training may be completed after the Hearing Examiner is engaged, but completion will be required before they can assume any duties under this Procedure.
3. The PCOB's independent legal counsel and the Office of the City Attorney shall, cooperatively, prepare a "deskbook" setting forth a set of procedural guidelines intended to assist hearing examiners presiding within a PCOB hearing with the handling of those hearings and procedural issues that may arise within the hearings. The Deskbook for hearing examiners shall be based on the "*Hearing Officer Handbook*" published by the Office of the Executive Secretary of the Supreme Court of Virginia (Rev. November 2021), modified to fit the hearings conducted by the PCOB.
4. When a hearing is to be scheduled, the Executive Director will contact two or more individuals on the list and will determine their availability for the date(s) and time(s) of the hearing, and will ask the available hearing examiners(s) to verify that they could accept the assignment without having any conflict of interest, or without there being any appearance of a conflict of interest. Possible conflicts of interest include, without limitation:
- a) Financial interest in the outcome of the hearing,
 - b) Examiner's law firm representing one of the parties involved,
 - c) Member of the examiner's family being employed by one of the parties involved,
 - d) Bias toward or against one of the parties,
 - e) Prejudgment of one or more of the issues involved in the complaint,
 - f) Impermissible ex-parte communications (including, without limitation: pre-hearing communications with a police officer, a complainant/ complainant's representative, or a member of the PCOB other than the Chair)
5. The Executive Director shall not utilize the same Hearing Examiner for each and every case, but shall select a Hearing Examiner from the List on a rotating basis;

however, it may be necessary, due to individuals' availability on given date(s) and times, and the potential for conflicts relative to a particular case, to occasionally utilize the same Hearing Examiner for two hearings in a row. The goal of having the List is to build a reasonably sized pool of Hearing Examiners who develop familiarity with the work of the PCOB.

6. Prior to commencement of responsibilities as Hearing Examiner, every Hearing Examiner shall execute a written engagement letter in a format established and approved by the Office of the City Attorney.

- a) The form engagement letter shall include, at a minimum: acknowledgment/verification of the Hearing Examiner's qualifications, the date/time/location of the hearing, the compensation to be received by the Hearing Examiner and any invoicing/payment procedures required for the Hearing Examiner to receive payment upon completion of services, and a certification that the Hearing Examiner, to their knowledge and belief, has no conflicts of interest; and
- b) The Complaint number for the Complaint that will be the subject of the Review Hearing for which the Hearing Examiner is engaged.

B. Role of Hearing Examiner

1. The Hearing Examiner will be engaged to preside over the Pre-Hearing Conference and the Review Hearing (and any rescheduling(s) or continuation(s)) for a specific complaint.

2. The Hearing Examiner will preside over all PCOB hearings.

- a) The hearing examiner will ensure that the hearing is conducted in such a manner that the parties to the hearing have a full and reasonable opportunity to present their evidence and arguments as may be relevant to the issues set forth in the complaint.
- b) The hearing examiner's responsibility is to exercise such control as is necessary for an orderly, effective, thorough, and reasonably expeditious progress of the hearing. The hearing examiner shall prevent disruptive or prejudicial conduct during hearings. The Examiner may refuse to recognize individuals engaging in disruptive behavior and may adjourn or continue a hearing where, in the judgement of the Examiner, the disruptive behavior interferes with the legal and due process rights of any participant or impedes the work of the Board.
- c) The hearing examiner shall preside over the hearing itself; however, the chair of the PCOB shall remain the presiding officer with respect to the deliberations among the board members and any actions [votes] taken at the hearing.

- d) The hearing examiner shall control the progress of the hearing and the conduct of the parties in a respectful, professional manner.
 - e) Shall preside over the presentation of evidence and shall make determinations as to the relevance of evidence that the parties wish to present and may advise the Board as to which items of evidence may be heard or considered by the Board relative to the authorized scope of the Board's investigation of complaints and incidents and review of the Internal Affairs Investigation.
3. The Hearing Examiner may make minor modifications of the applicable Hearing Procedures as necessary to facilitate the efficient and effective progress of a hearing, taking into account the nature and circumstances of the complaint, whether or not parties are represented by legal counsel, and other circumstances. No modifications are authorized which would deprive any party of substantial justice or due process, or that would substantially alter the nature of the hearing contemplated by the applicable Operating Procedures for the hearing.

Types of minor modifications or adjustments that are permissible by a Hearing Examiner include, without limitation:

- a) Change in the order of presentation of evidence or arguments
 - b) Establishment or changes in time limits for presentation of evidence or arguments
4. The Hearing Examiner is not a "party" to the hearing, but rather a neutral actor whose purpose is to ensure compliance with procedures for how a hearing is to be conducted.
- a) The Hearing Examiner may not suggest possible dispositions or informal resolutions of any complaint or issue.
 - b) The Hearing Examiner may not seek or accept any role(s) or responsibilities other than those provided in this Operating Procedure. (such as mediator, factfinder, final decisionmaker, etc.)
5. For purposes of a PCOB hearing, and because the hearing examiner is not a factfinder or decision-maker, the hearing examiner may have the following pre-hearing contacts and communications (no such contacts shall be deemed impermissible *ex parte* contacts):
- a) Conferences with PCOB independent counsel and a member of the City Attorney's Office, for purpose of reviewing provisions of the Deskbook, and asking general questions about procedures, the role of the Hearing Examiner, etc.,
 - b) Conferences with the Executive Director, to discuss dates/times for scheduling of hearings or prehearing conferences and to complete administrative paperwork (execution of an engagement letter, confidentiality agreements,

etc.), or conferences with the Executive Director and Board Chair to discuss administrative arrangements such as room setup, audio-visual setup, or any other administrative details anticipated relative to a particular hearing.

IV. RESOURCES

“*Hearing Officer Handbook*” published by the Office of the Executive Secretary of the Supreme Court of Virginia (Rev. November 2021).

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURE



REVIEW HEARINGS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-10
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process by which the PCOB (a/k/a “Board”) will conduct all hearings which the Board is empowered to conduct pursuant to its enabling legislation.

II. ENABLING LEGISLATION

Virginia Code § 9.1-601(C) (5)
Charlottesville City Code § 2-452
Charlottesville City Code § 2-459

III. DEFINITION OF REVIEW HEARING

For purposes of the exercise of the powers and duties of the Board, a Review Hearing shall be defined as any hearing conducted by the Board to review the facts, issues and findings of an Investigative Report of the Department related to an Internal Affairs investigation, or of an Investigative Report of the Executive Director related to a Complaint or Incident Investigation.

IV. PROCEDURES

A. Review Hearings Following an Internal Affairs Investigation

The purpose of a Review Hearing following an Internal Affairs Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Department’s Internal Affairs (IA) Investigation related to a specific complaint, and the appropriateness of the Department’s disposition of the complaint based on the information and evidence compiled during the course of the IA Investigation.

Upon review of the Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

1. **Factors Considered by Board in Review of an Internal Affairs Investigation**

In conducting a Review Hearing of an Internal Affairs Investigation, the Board shall consider and make findings as to whether the IA Investigation was incomplete or otherwise unsatisfactory related to the thoroughness, completeness, objectivity, impartiality or accuracy of the investigation.

2. **Report of Findings Following Review of an IA Investigation.**

At the conclusion of the Review Hearing, the Executive Director, at the direction of the Board, shall prepare a detailed written report of the basis for the Board's findings.

Such report shall be reported publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

- a. The Board finds that the original IA Investigation was satisfactory, and the Board concurs with the original findings of the IA Investigation; or
- b. The original IA Investigation was satisfactory, but the Board does not concur with the findings. In the event the Board makes this finding, the Board shall set forth its own findings, and make recommendations to the City Manager concerning disposition of the complaint; or
- c. That the Board finds that the investigation is incomplete or otherwise unsatisfactory and provides a detailed written explanation of the basis for such finding.

3. **Board's Authority to Initiate an Independent Investigation if an IA Investigation is Found to be Incomplete or Unsatisfactory.**

If the Board finds that an IA Investigation was incomplete or otherwise unsatisfactory, pursuant to section IV(A)(2)(c) above, the Board may request the Executive Director, on behalf of the Board, conduct an independent investigation of the incident that is the subject of the Complaint. This investigation shall be conducted in accordance with the procedures set out within Operating Procedure governing General Principles of PCOB Investigations.

After completion of an independent investigation pursuant to this section, the Executive Director shall prepare a detailed written report of the investigation for the Board. After reviewing the Executive Director's report, the Board shall report publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

- a. That the Board now finds that, despite the defects in the original IA investigation, the Board's own Investigation has produced no material evidence to dispute the original findings of the Internal Affairs Department.
- b. The Board's independent investigation has produced substantive new information that causes them to disagree with the findings of the Internal Affairs investigation. In this case, the Board shall make recommendations to the City Manager concerning disposition of the Complaint; or,
- c. That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether the findings of the IA Investigative Report are correct.

B. Review Hearings Following a Complaint Investigation

The purpose of a Review Hearing following a Complaint Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Executive Director's Investigation related to a specific complaint that has not previously been the subject of an IA Investigation and Investigative Report, pursuant to Charlottesville City Code § 2-457(a). In such cases the Executive Director shall conduct a Complaint Investigation in accordance with the appropriate Operating Procedure and prepare a Complaint Investigative Report at the conclusion of the investigation.

Upon review of the Executive Director's Complaint Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

C. Review Hearings Following an Incident Investigation

The purpose of a Review Hearing following an Incident Investigation is for the Board, working with the Executive Director, to verify the adequacy and thoroughness of the Executive Director's Investigation which was undertaken upon the Board's own initiative pursuant to Charlottesville City Code § 2-457(b).

In such cases the Executive Director shall conduct an Incident Investigation in accordance with the appropriate Operating Procedure, and prepare an Incident Investigative Report at the conclusion of the investigation.

Upon review of the Executive Director's Incident Investigative Report, the Board may conclude that no hearing, or a hearing only on a limited issue is necessary. The Board may also issue a report without the need for a full hearing.

D. Report of Findings Following Review of the Executive Director's Incident Investigation or Complaint Investigation.

At the conclusion of the Review Hearing, the Executive Director, at the direction of the Board, shall prepare a detailed written report of the basis for the Board's findings. Such report shall be reported publicly and to the City Manager, the Chief of Police and the Complainant that the Board has made one of the following findings:

1. That the Board finds that the Department employee committed misconduct;
2. That the Board finds that no Department employee committed misconduct; or
3. That despite the Board's best efforts, the evidence is insufficient to allow the Board to determine whether any Department employee committed misconduct.

V. HOW THE HEARING PROCEEDS

A. Order of Presentations

The order of presentation of evidence and arguments to the Board during a Review Hearing shall be as follows:

1. Opening Statements:
 - a. In the case of a complaint or incident investigation, the Executive Director shall first present a summary of the Investigative Report prior to the parties' opening statements. Each Party will have the opportunity to make brief opening statements, not to exceed 5 minutes each. Upon prior request, the Hearing Examiner may grant each party additional time, for good cause shown, or change the order of statements. Under no circumstances shall either party be granted more time than the other. As noted in The
 - b. The Complainant, where relevant, shall have the opportunity to make the first opening statement, detailing their experience during the incident and its effect on them. Thereafter, the Department shall make its opening statement.
 - c. The Complainant may make their opening statement, or if represented by an attorney, may allow their attorney to present opening statements on their behalf. If a party has a designated representative or legal guardian, that person may make an opening statement on the party's behalf. The Department's opening statement shall be made by the Internal Affairs representative, the Chief of Police, or the Chief's designee.

d. Either party shall have the right to waive its opening statement.

2. Presentation of Evidence:

- a. Each party will have the opportunity to present its evidence. Evidence may be presented in the form of witness statements, personal statements, or by introduction of other forms of evidence deemed admissible according to the Rules of Evidence in Section (VI) below.
- b. The Complainant, where relevant, shall have the opportunity to present its evidence first, followed by the Department.
- c. In Review Hearings of IA Investigations, prior to presentation of any other evidence on its behalf, the Department shall be required to have its IA representative present a summary of the Complaint, the IA investigation of the complaint, and detail the basis for the IA finding.
- d. In hearings related to complaint investigations, the complainant may make a statement and present evidence, if they desire, at a time during the hearing approved by the Hearing Examiner.
- e. Either party shall have the right to call witnesses to testify in its case.
- f. No person providing evidence in a case can be compelled to answer questions.
- g. Cross-examination of witnesses: Only members of the Board shall be permitted to cross-examine any person who provides evidence in a case, subject to the evidentiary rulings of the Hearing Examiner.
- h. If the subject officer attends the hearing and voluntarily chooses to make a statement, only members of the Board shall have the right to ask questions of the subject officer, consistent with the limitations on cross-examination established in III.G.1.b.vi above.
- i. Generally, each presentation of evidence should be 30 minutes or less. The Hearing Examiner will request a presenting party to pause at the 30-minute mark. At that point, the Board may, by majority vote, extend the party's presentation time. Under no circumstances shall any party be granted more time than the other, but any party may waive any amount of its assigned presentation time.
- j. At the time provided for members of the Board to question parties or witnesses, the member shall ask the Hearing Examiner: "May I be

recognized for a question?” and shall wait for the Hearing Examiner to recognize the member, prior to asking the question.

- k. Notwithstanding the provisions of this paragraph, the Hearing Examiner may modify the order of presentations, as to the entire Review Hearing for good cause shown, and after articulating the reasons therefor on the record. Also, in cases involving multiple, complex issues, the Hearing Examiner may require each party to present their evidence on one issue at a time (with modified time limits), followed by the response from the other parties (going back and forth in that manner until all of the issues have been presented).

3. **Conclusion of Evidence Presentation**

After the time set aside for presentation of evidence has expired, the Hearing Examiner shall announce that “The evidentiary portion of this hearing is concluded, unless the Board has any additional questions for either party”. At the request of the Board chair, the Hearing Examiner may extend the hearing to allow questioning of the parties by Board members, but the hearing will not be reopened for presentation of additional evidence.

When there are no further questions from Board members to either party, the Hearing Examiner shall state that “The evidentiary portion of is complete”, and then the Hearing Examiner will ask “Does the Board wish to begin its deliberations”?

B. Deliberations of the Board

The Board’s deliberations must be conducted within an open public meeting unless a closed meeting is authorized by Va. Code §§ 2.2-3711 or 2.2-3712.

C. Findings Of The Board

1. The Board shall deliberate on the evidence and arguments presented by the parties at the Review Hearing, and on the basis of the information received and all of the information and materials within the Internal Affairs file(s), or Investigative Report, The Board shall make the findings appropriate to the Review Hearing being conducted and in accordance with this Operating Procedure section IV(A)(2) for IA Investigations, IV(D)for Complaint or Incident Investigations.
2. The Findings of the Board must be made by majority vote of the Board, such vote to be taken in an open meeting.

D. Policy Recommendations.

Once the Board has made its finding(s) the Executive Director shall ask the Board members whether the information presented at the Review Hearing suggests that the

Board should make policy recommendations to the Chief of Police and the City Manager. Should the Board have policy recommendations, the Board shall direct the Executive Director in preparation of the recommendations to be submitted to the City Manager within 30 days of completion of the Review Hearing.

E. Disciplinary Recommendations:

If the disposition of the IA Investigation was “sustained” for any allegation, the Executive Director shall initiate discussion by the Board of whether the officer’s conduct constituted a serious breach of departmental and/or professional standards, as defined in X. If so, the Board may initiate a process for making disciplinary recommendations, in accordance with the appropriate Operating Procedures.

VI. GENERAL HEARING PROCEDURES APPLICABLE TO ALL REVIEW HEARINGS

A. Presumption of Lawful Conduct

Hearings and related investigations are required to be neutral fact-gathering processes. Until findings are made to the contrary, all parties are presumed to have acted lawfully and in accordance with applicable policies and procedures.

B. Standard of Evidence and Findings

The Board’s findings related to review of all investigations shall be governed by a preponderance of the evidence standard.

C. Participation of Parties and Others in Review Hearings

1. Parties:

a. Parties to Review Hearing following an IA Investigation or a Complaint Investigation.

For the purpose of a Review Hearing following either an IA Investigation or a Complaint Investigation, the parties to the hearing are the Complainant and the Department (represented by the Chief of Police, an investigator from the Office of Internal Affairs, or both).

b. Parties to Review Hearing following an Incident Investigation.

For the purpose of a Review Hearing following an Incident Investigation, Parties to the hearing shall be the Department as the respondent. The Executive Director or his designee shall present evidence of its investigation, but shall not be a party in any matter.

2. Complainant(s). Any person whose complaint has been subject to an IA Investigation, Department or Complaint Investigation by the Executive Director shall be deemed the Complainant for the purpose of a Review Hearing. Because Incident Investigations are

conducted at the initiation of the Board, there shall be no “complainant” in Review Hearings of Incident Investigations.

3. Subject Officer(s). For the purpose of a Review Hearing, the officer(s) who are the subject of the complaint is/are neither parties to the Review Hearing, nor witness(es), except to the extent that the Subject Officer’s written or recorded statement(s) within the IA Investigation are part of the record of that investigation. In the event that the Board initiates an independent investigation of the matter pursuant to V(A)(3) above, the Board’s investigator will have the same access to the Subject Officer(s) as the original IA investigator(s).
4. The subject officer may voluntarily make a statement if he/she chooses.

D. Adverse Inferences from Non-Appearance

No party or witness is required to participate in a Review Hearing. However, the Board may infer from a party’s or a witness’s voluntary absence from a Hearing, despite notice and a request to appear, that their truthful participation would have been adverse to the interests of such voluntarily absent party or witness. The application and/or weight of any such inference shall be determined by a standard of objective reasonableness under the circumstances.

E. Rules of Evidence

1. Virginia's Rules of Evidence.

The Virginia Rules of Evidence, set forth within Part II of the Rules of the Supreme Court of Virginia. in the Code of Virginia. and in applicable Virginia Supreme Court opinions, shall be followed to the extent practicable within every Review Hearing. However, those rules are not binding, and the parties or their representatives may present arguments in support of the admission or exclusion of specific evidence.

- a. Admissibility of Evidence:

- i. Motions and Objections. Upon a proper motion or objection being made, the Hearing Examiner may make an evidentiary ruling as to the admissibility of evidence. Absent a sustained objection or motion as detailed herein, all evidence presented shall be deemed admissible.
- ii. A motion or objection is proper only when made be made only by the following:
 - A party,
 - The Board chair,
 - A Board member, seconded by another Board member

- iii. Rulings on Motions and Objections. The Hearing Examiner’s decision on motions or objections, as detailed herein, shall be noted for purposes of the record of the Review Hearing.
- iv. Overruling Objections. The Board, by majority vote, may overrule a Hearing Examiner’s ruling as to the admissibility of any evidence.

2. Prior or Subsequent Conduct of Complainant or Officer.

Prior or subsequent conduct of a complainant or police officer or employee may be considered by the Board in reviewing the findings and conclusions set forth within an Investigative Report. The determination of relevance of such conduct shall be based on an assessment of whether such conduct was substantially similar to the conduct that is the subject of the complaint, and whether such conduct indicates a pattern that should have been considered during the investigation. The following evidence related to prior conduct shall be excluded:

- a. Information or documents about the complainants’ past encounters with the police, if they do not show *modus operandi*, or a pattern or practice of behavior that are relevant to the conduct that was the subject of the investigation.
- b. The criminal record of an individual, unless the criminal record includes offenses that would tend to impeach the credibility of that individual (e.g., prior conviction for forgery or perjury).
- c. Witness testimony that is not helpful to the Board in reaching a factual conclusion.
- d. An officer’s or employee’s past disciplinary record may not be excluded from consideration.

F. Timeline for Issuing Reports:

Within 30 days of the completion of the Review Hearing, or within 30 working days following receipt of a report from the Executive Director regarding the findings of an independent investigation conducted pursuant to Charlottesville City Code § 2-459(d) and Section IV(A)(3) of this operating procedure, the Board will report publicly its disposition of the case and also make notice of findings directly to the parties and the City Manager, and will post their findings on the Board’s website.

G. Confidentiality of Information:

“Personal information”, as defined in Virginia Code § 2.2-3801, shall be maintained confidential (i.e., not publicly disclosed) throughout the Board’s proceedings under this Operating Procedure, until the proceedings have been concluded. At the end of the proceedings, questions regarding specific items of “personal information” to be included within the Board’s public report shall be resolved with the City Manager, in

accordance with Charlottesville City Code § 2-453(f) and the Standard Operating Procedure referenced in that Charlottesville City Code section.

H. Right to advisor/representative of choice.

Throughout the hearing process, all parties may consult with and be represented by legal counsel, their legal guardians, authorized representative, or another individual advisor/representative of their choosing at any meeting or proceeding related to the Hearing process. A representative is not required, and the complainant and the Department are each responsible for ensuring their representatives' presence at the hearing.

I. Interpreters.

Any party requesting an interpreter shall provide at least 14 working days written notice of this request to the Executive Director.

J. Continuances.

The Board or the Executive Director may continue a Review Hearing due to the unanticipated unavailability of a witness or the individual who filed the Review Request (or their representative) for good cause shown, or due to the unavailability of an interpreter, or for other reasons deemed by the Board to constitute "good cause".

K. Non-Appearance of the Complainant or the Department.

In the event that any party, fails to appear more than 30 minutes after the scheduled time for a Review Hearing, the hearing will proceed, and the allegations may be sustained, or not, based on the evidence in the record and that presented by the other parties and witnesses.

Provided that a party or a witness has been given all of the notice(s) required by this O.P., the Board may infer from the party's or a witness's voluntary absence from a Hearing, despite notice and a request to appear, that their truthful participation would have been adverse to the interests of such voluntarily absent party or witness. The application and/or weight of any such inference shall be determined by a standard of objective reasonableness under the circumstances.

L. Limitation of Use of Subpoenas.

In cases where a Review Hearing is held, the Board may not subpoena any police officer(s) to testify at the Review Hearing. The individual police officer(s) who were involved in the civilian-police interaction that was the subject of the complaint are not parties to a Review Hearing. Statements of the police officer(s) collected during the IA Investigation shall be utilized by the Board, in lieu of subpoenaing police officers

as witnesses. Conditions under which the Board may request subpoenas during investigations are detailed in the Issuance of Subpoenas Procedure.

M. Officer Participation in the Event of the Board's Initiation of an Independent Investigation.

If, after a finding the Board chooses to assign the Executive Director to conduct an independent investigation, the City Manager shall require police officers within the Department to cooperate with the investigation, and to give interviews to the Executive Director, in the same manner as if the Department itself were conducting the investigation. This shall be the case regardless of whether the police officer(s) were previously interviewed during the IA Investigation. A representative of the Office of Internal Affairs shall be present at all such interviews, as an observer/ monitor.

N. Selection of a Hearing Examiner. The Executive Director shall select a Hearing Examiner, in accordance with the Hearing Examiner Procedure

O. Pre-Hearing Conference.

At the direction of the Board Chair, the Executive Director may schedule a pre-hearing conference to discuss preliminary issues related to the hearing. The Executive Director will provide at least ten days' notice of the pre-hearing conference to all parties. The Hearing Examiner shall preside over the Pre-Hearing Conference attended by the Parties, the Board Chair and the Executive Director. At the Pre-Hearing Conference the following issues to be discussed and resolved include, but shall not be limited to:

- i. Setting the date for the Review Hearing.
- ii. Any conflicts of interest or requests for recusal.
- iii. Standards of conduct and decorum for the hearing.
- iv. Objectives of the Complainant.
- v. Evidentiary issues.
- vi. Identification of witnesses needed for the Review Hearing
- vii. Order of statements and presentation of evidence
- viii. Preliminary requests or motions for the Board.
- ix. Any other such issues that may resolved in advance to facilitate the orderly progress of the Review Hearing.

P. Notice of Review Hearing.

Notice of the scheduled hearing shall be given to the parties, and to any witnesses whose testimony is to be accepted during the hearing no fewer than 14 days prior to the scheduled hearing. If the complainant or individual who filed a Review Request seeks to present testimony from witnesses, those individuals shall be identified not later than

at the pre-hearing conference. Witnesses not identified at the pre-hearing conference shall not be permitted to testify at the Review Hearing, without a showing of good cause, and with the approval of a majority of the Board. Failure of any person to receive proper notice pursuant to this section shall not create cause for the matter under consideration to be closed to the Board's review. Failure to provide proper notice may create good cause for the Board to grant a continuance of the matter, at the discretion of the Board.

Q. Engagement of Expert Witnesses by the Board.

The Board or the Executive Director, with the authorization of the Board, may engage disinterested medical, forensic, technological, or other experts, as defined by applicable law, when expertise on a topic is needed in order to achieve a fuller understanding police practices, policies or procedures, technical or scientific evidence, and/or of the methodology of the IA Investigations, or the conclusions reached by the Department within the IA Investigation. (Any such engagement shall be in accordance with applicable competitive procurement requirements).

R. Open Public Meeting – Virginia Freedom of Information Act (FOIA)

The PCOB is subject to the requirements of the Virginia Freedom of Information Act ("FOIA"), Virginia Code § 2.2-3700 et. seq., both as to access to public records of its deliberations and decisions, and as to FOIA's requirements for the business of the PCOB to be transacted within open, public meetings unless exempted by FOIA. The PCOB shall exercise any discretionary exemption available to it under applicable FOIA provisions, balancing the interests of transparency and privacy interests, as those interests may relate specifically to the circumstances at issue in a particular complaint.

S. Confidentiality:

1. Department records will be shared with the Board, pursuant to the provisions of Charlottesville City Code § 2-452(e), § 2-453(f) and the Standard Operating Procedures referenced in those Charlottesville City Code sections. No Board member shall use or share any Department records with other individual(s), or for any purposes other than preparation for the Review Hearing.
2. The Board may not, by majority vote or otherwise, compel the Department to share its records with the public, with any individual(s) who filed the Review Request, or who any individual representing the filing party at the Review Hearing. Neither may the Board, by majority vote or otherwise, share Department records except as authorized by Charlottesville City Code § 2-452(e), 2-453(f) and the Standard Operating Procedures referenced in those code provision. Upon request by a Complainant, the Board may itself review specific records within the IA file. The Board may verify the presence or absence of specific records as part of its public report.

3. Board members will not have access to records listed in Charlottesville City Code § 2-452(f).
4. Notwithstanding the foregoing, and subject to any exemptions authorized by FOIA or other state law(s), a person who is the subject of IA Records shall have the rights set forth within Virginia Code § 2.2-3806.
5. “Personal information”, as defined in Virginia Code § 2.2-3801, shall be maintained confidential (i.e., not publicly disclosed) throughout the Board’s proceedings under this Operating Procedure, until the proceedings have been concluded.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



DISCIPLINARY RECOMMENDATIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-11
Subject: POWERS AND DUTIES	
Approval: City-County Resolution By Vote of City Council, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Following any investigation or hearing authorized by Charlottesville City Code Article XVI § 2-461(a)(1), should the Board make a finding that any police action constituted a serious breach of departmental or professional standards, the Board shall meet to determine disciplinary recommendations to make to the Charlottesville Police Department (CPD). In making such recommendations, the Board shall review written policies, procedures, and the Department's general orders.

II. ENABLING LEGISLATION

Code of Virginia § 9.1-601.C.3
Charlottesville City Code § 2-461(a)(1)

III. PROCEDURES

A. Types of Disciplinary Recommendations.

Disciplinary recommendations for specific acts of misconduct shall be consistent with the range of sanctions allowable under the CPD Disciplinary Matrix for the type of violation at issue in the investigation.

Recommendations may also include changes to supervisory practices or procedures to disincentivize similar breaches of departmental or professional standards in the future and to ensure that such breaches, if they do occur, are timely identified by CPD command staff and that corrective discipline is timely imposed. If the Board is concerned about the advisability or lawfulness of a particular policy that was at issue in the situation under

review, then the Board may initiate an audit, or the Board may recommend that the chief of police review the policy and update it in accordance with current federal and state laws, or 21st Century community policing principles or other generally recognized best practices.

B. Timeline.

The meeting shall be held no later than 14 calendar days from the date of the Board's fact-finding referenced in paragraph B above.

C. Notice to Officer/Employee.

The Executive Director shall notify the chief of police and the subject officer or employee at least 10 working days before the meeting. The notification shall include a summary of the sustained allegations and the range of disciplinary actions that may be considered by the Board.

D. Structure.

The Board Chair shall preside at all Disciplinary Meetings. At the beginning of the meeting, the Board's Executive Director shall provide a written report to the board and make a presentation of the report, which shall include the following:

1. A summary of the allegations constituting serious misconduct
2. The opinion of the chief of police;
3. Input from the complainant;
4. Input from witnesses, if appropriate;
5. Written statement from of the officer, if they wish to provide one;
6. Prior sustained community member complaints against the officer, if they exist; and
7. The applicable provisions of the CPD disciplinary matrix or General Order.

The Board may then hear statements from the chief of police, and the subject officer or their representative, if the officer elects to participate.

E. Participation of the Subject Officer/Employee.

The subject officer/employee may be represented by an attorney when interacting with the Executive Director in advance of the Disciplinary Meeting, and during the Disciplinary Meeting, if the officer/employee elects to participate. At any stage of the proceeding, the officer/employee may submit a written statement to the Executive Director or Board to be considered during the Disciplinary meeting, in lieu of in-person participation. In this

meeting the officer/ employee's Attorney's role shall be limited to presentation of information and or statements on behalf of the officer or employee. If the subject officer/employee elects to appear in person at the Disciplinary Meeting, the officer will be allowed to provide an oral statement to the Board at the Meeting and will not be subject to cross-examination by anyone. No adverse inference may be made by the Board solely based upon the officer's or employee's decision not to participate in any aspect of the Disciplinary Meeting.

No portion of the Disciplinary Meeting at which the subject officer/ employee's personal information (as defined in Va. Code § 2.2-3801, shall be open to the public. The Board may either discuss and deliberate in a closed meeting, or the Board may elect to publicly discuss and deliberate using references only to "The Officer" or "The Employee", and other precautions.

F. Recommendations.

All recommendations of the Board shall be established by majority vote of a quorum of Board members. The recommendations shall be publicly announced and shall not reference any personal identifying information about the involved officer/ employee without the concurrence of the City Manager. The Board will submit disciplinary recommendations reflective of the Board's majority vote to the chief of police and the City Manager in writing within 10 calendar days from the date of the disciplinary meeting.

If the Department declines to implement the disciplinary recommendation of the Board, within 30 days of the Board's recommendation, the Chief of Police shall provide a written explanation of their reason for declining to implement the Board's recommendation. This explanation shall be made available to the Board, the City Council, the City Manager, and to the public.

G. FOIA.

To the extent permitted pursuant to FOIA, some or all of the disciplinary meeting may be held in closed session. To enter into a closed meeting, the Board shall follow the procedure required by Code of Virginia § 2.2-3712.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES



MEDIATION

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-12
Subject: POWERS AND DUTIES	
Approval: City County Resolution By Vote of City Council , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the circumstances in which disposition of a matter over which the PCOB has authority may be determined by a person or persons other than the PCOB.

Notwithstanding various terminology utilized within Chapter 2, Article XVI (the “Ordinance”) (i.e., “mediation” and “mediation or other alternative dispute resolution methods”, or “informal resolution”): these Operating Procedures set forth City Council’s express guidance on how the provisions within the Ordinance shall be interpreted and applied. In the event of any apparent disparity between the provisions of this Operating Procedure and provisions of the Ordinance, the provisions of this Operating Procedure shall govern the interpretation of the Ordinance. Where the Ordinance references “informal resolution”, that term is used to mean and refer to the authority of the PCOB to deviate from the strict requirements of the Operating Procedures for a hearing, in cases where all parties are agreeable.

II. ENABLING LEGISLATION

Va. Code § 9.1-601(C)(3)
Charlottesville City Code § 2-460(b); 2-466(c); 2-468

III. PROCEDURES

A. Mediation

1. Mediation shall be the only form of alternative dispute resolution utilized by the PCOB or Executive Director to address complaints.

B. Planning for a Successful Mediation Program

1. Prior to referring any citizen complaints to mediation, the PCOB and the Board will engage in a planning process such as that highlighted in Chapter 5 (“Planning for a Successful Mediation Program) of the U.S. DOJ Publication “Mediating Citizen Complaints Against Police Officers: A Guide for Police and Community Leaders”).
2. PCOB’s independent legal counsel shall certify to the City Manager and City Attorney that, in independent counsel’s opinion, a careful planning process has been undertaken and an appropriate mediation program is ready for implementation by the PCOB and Executive Director. Following this certification, the PCOB and Executive Director may refer complaints to mediation.

C. Case Eligibility

1. The following CANNOT be referred to mediation by the PCOB or Executive Director:
 - a. Any complaint involving use of force by a law-enforcement officer, death or serious injury to any person, serious abuse of authority, allegedly discriminatory stops, and other allegations of serious misconduct in violation of a person’s Civil Rights; or
 - b. Any complaint involving an officer who has been named in two or more civilian complaints within the 12 months preceding the date of the complaint (excluding complaints resolved by mediation); or
 - c. Any complaint, of any nature whatsoever, made by an individual *other than* the individual who was the subject of the citizen-police interaction that is the subject of the complaint, or their designated representative. An individual who has elected to have a representative aid them in the pursuit of a complaint may participate in mediation, but the representative may not be present during mediation sessions. The mediator may allow the participation of a legal guardian when the subject of the alleged misconduct is a minor or otherwise disabled.
2. Complaints selected for referral to mediation will be cases in which the goal of mediation will be building understanding, and not fact-finding or determination of “guilt” or “innocence”.
3. Citizen complaint mediation is an alternative to the PCOB’s review of an internal affairs investigation previously conducted by the Department and is an alternative to an investigation by the PCOB of a police-citizen interaction.

- a. If mediation achieves an outcome that is satisfactory to both the citizen and the police officer or Department representative who participated in the mediation, the PCOB shall have no further jurisdiction over the complaint. If this will be unacceptable to the PCOB in a given situation, the complaint shall not be referred for mediation.

D. Timing of Referral

1. The Executive Director shall notify the PCOB membership by email, of an assessment that a particular complaint is suitable for mediation (“Notification”). If the Executive Director receives no response from a member within 48 hours of giving the notification, the member shall be deemed to have no objection to mediation.
2. If two or more members of the PCOB give notice by email to the Executive Director within 48 hours of the Notification that they object to a complaint being mediated, then the question of mediation will be presented to the Board to be decided by majority vote.

Initial referral for mediation shall occur prior to any investigation by the PCOB or Executive Director beyond that necessary to determine if the complaint is eligible for mediation. Parties to the complaint may, however, request mediation at any time prior to the commencement of an investigative hearing.

E. Selection of Mediator; Mediator Qualifications

1. The PCOB will use a mediator on contract with the City, when available. If PCOB would like to establish contracts with one or more mediation organizations to call upon on an as-needed basis, the contracts may be awarded after compliance with procurement procedures. Regardless of how a mediator is selected in a given situation, a written engagement letter/ contract shall be executed by the mediator.
2. The Executive Director shall endeavor to locate/identify, or to develop, a cadre of certified mediators who are willing to study and develop proficiency specific to handling mediations of disputes arising from citizen-police interactions.
3. Every mediator shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia (reference: the Virginia Supreme Court’s Guidelines for the Training and Certification of Court-Referred Mediators), and the certification must be in the category “Circuit Court-Civil”. The City Manager may also accept mediators with equivalent qualifications.
4. To ensure mediator neutrality, prior to engaging a mediator in a particular situation, the prospective mediator shall be advised of the individuals who will be participants in the mediation, and the prospective mediator shall be given summaries of the factual allegation of the complaint. The prospective mediator shall be advised that they must

disclose all actual and potential conflicts of interest reasonably known to the mediator, and any written engagement agreement shall include a certification by the mediator that no conflicts exist. (Financial conflicts are not likely to arise in civilian complaint cases, but conflicts arising from political attitudes or personal associations may exist or may arise). The mediator shall decline to participate in a mediation, and shall decline to participate further in a mediation once engaged, should any conflict arise.

5. The mediator's written engagement shall contain an acknowledgment that the mediation is governed by the provisions and requirements of Virginia. Code § 8.01-581.21 et seq., including the standards and duties of mediators set forth within Virginia. Code § 8.01-581.24. Mediators should explain to the parties the confidentiality requirements in these provisions.
6. The written engagement of the mediator shall ensure that the mediator will conduct the mediation in accordance with this Operating Procedure, and a copy of this Operating Procedure shall be provided to the mediator at the time of engagement.
7. No individual may serve both as mediator and hearing examiner relative to a complaint.

F. Voluntary Participation and Settlement

1. The Board shall prepare informational brochures (one, suitable for citizens and a second, suitable for police officers) advising of the potential benefits of mediation, the confidentiality of the process, and the potential consequences for each participant of reaching a settlement of a particular dispute.
2. The Executive Director shall advise a citizen and police officer(s) involved in the incident that is the subject of a complaint that the complaint may be eligible for mediation as soon as practicable after making such a determination.

G. Proceedings

1. Mediations shall be governed by the provisions of Virginia. Code Title 2.2, Chapter 41.1, and by the provisions of Virginia. Code Title 8.01, Chapter 21.2.
2. Mediations of citizen complaints shall not include or involve attorneys. Neither the complainant nor the officer(s) participating in the mediation shall be entitled to a representative or an attorney within the mediation.
3. Confidentiality is an essential element of mediation. For mediation to succeed, both sides must feel free to speak candidly. The mediator shall be required to utilize a written form advising the parties to the mediation of their obligation and agreement as to confidentiality, and a plain-language explanation of the provisions of Virginia. Code §

8.01-581.22. Participants shall be required to sign the form, acknowledging their understanding of the process.

4. It is expected by the PCOB that each mediation process will be approached as a structured process, generally outlined as follows ¹:

- a. Introduction—mediator introduces the parties, explains the mediation process, and sets ground rules for the session
- b. Problem determination—mediator identifies the problem that has brought the parties together and asks each to explain their side of the story
- c. Summary—mediator summarizes the problem in a neutral and evenhanded manner
- d. Issue identification—mediator helps the parties identify specific issues that need to be mediated, without introducing mediator’s own interpretation of the dispute(s). Dialog between the two parties is to be the primary focus of the process.
- e. Development of alternatives—mediator assists the parties to discuss alternative ways to resolve the dispute(s). It is not within the purview of the mediator to impose a solution, but they may recommend options based on past experience. Further, the mediator will emphasize dialog between the parties and not a quick settlement (e.g., “It’s getting late; we need to wrap this up”).
- f. Selection of appropriate alternatives— once options have been discussed, the mediator will assist the parties in coming to agreement as to an appropriate solution.

Creative, non-traditional solutions/ outcomes are encouraged (such as agreements for the parties to take some type of action outside the mediation session that will build understanding between the parties as human beings).

No solution/ outcome may require any monetary payment from a police officer individually, or from the City of Charlottesville or any of its public officials, nor shall any solution/ outcome create any other binding legal obligation on the City of Charlottesville or its public officials. The mediator shall understand that a police officer participating in mediation does not have authority to speak for or bind the City organization or any of its other public officials or employees.

¹ The outlined process is credited to “*The Mediator Handbook*” published by the Center for Dispute Resolution at Capital University in Columbus, Ohio (Mitchell and Dewhirst 1990) and cited within “*Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders*” authors Samuel Walker, Carol Archbold, Leigh Herbst (Department of Criminal Justice University of Nebraska at Omaha, 2002) published by the U.S. Department of Justice, Office of Community Policing Services.

Conclusion of mediation—The mediation session concludes with a clear statement of, and agreement on the terms of the resolution. The statement will be documented as in (IV.) below.

IV. Mediation Outcome Reporting

- A. If both parties agree that the mediation has been successful, the Department will remove the complaint from the officer's personnel file(s). Within PCOB and Department files, the case will be logged and tracked as having been "Mediated".

A successful mediation must be documented with a simple statement to that effect, signed by both parties. The document must not contain details regarding the nature of the complaint or the final agreement, simply a certification that the parties agree that mediation was successful. (However, if the resolution requires the parties to take some action outside the mediation process, a written understanding of what action is supposed to take place may be prepared and placed in a sealed file in the possession of the mediator and the file will remain sealed and confidential so long as the activity occurs. In such cases, the parties to the mediation shall notify the mediator once the activity is completed, and the written acknowledgement of successful mediation will be forwarded to the PCOB at that time).

- B. A mediation will be deemed "unsuccessful" if (1) either party expresses dissatisfaction with the outcome or (2) the mediator indicates that one or both parties failed to participate in good faith or (3) either party fails to attend a mediation session without adequate justification. If mediation is unsuccessful the mediator will document this outcome and notify the Executive Director of that fact, without disclosing any other details. The complaint will be returned to the PCOB for handling, in the same posture as the case existed prior to referral to mediation.

V. RESOURCES

- A. "*Mediating Citizen Complaints against Police Officers: A Guide for Police and Community Leaders*" authors Samuel Walker, Carol Archbold, Leigh Herbst (Department of Criminal Justice University of Nebraska at Omaha, 2002) published by the U.S. Department of Justice, Office of Community Policing Services.

Virginia Supreme Court's Guidelines for the Training and Certification of Court-Referred Mediators)

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD
OPERATING PROCEDURES



ISSUANCE OF SUBPOENAS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-13
Subject: POWERS AND DUTIES	
Approval: City-County Resolution By Vote of City Council, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This Operating Procedure implements the power of the Board to request subpoenas for the production of evidence or the appearance of witnesses.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(c)(8)
Charlottesville City Code § 2-458(f)

III. PROCEDURES

The Board shall make a good faith effort to obtain access to information as detailed in Sec. II.A. of this Operating Procedure. If after such effort the Board is unable to secure voluntary cooperation or production, the Board may apply to the Circuit Court for the City of Charlottesville for a subpoena compelling the attendance of such witnesses, or the production of such books, papers and other evidence according to the following procedure:

- A. The Board may exercise its subpoena power only by a two-thirds vote of the majority after first making a good faith effort to obtain the evidence voluntarily.
- B. Upon a proper two-thirds vote of the majority the Board may direct the Executive Director, on behalf of the Board, to apply to the Charlottesville Circuit Court for a subpoena compelling the attendance of such witness or the production of such books, papers or other evidence.
- C. Prior to making the Board’s authorized application to Court for a subpoena directed to a City official or City employee, the Board shall give the City Manager and the Department reasonable notice of its intent to subpoena such witnesses or records. If

the City Manager concurs that the Board's request is reasonable and necessary for the Board's work, then the City Manager will direct and authorize the Executive Director to obtain the information (records) from the department(s), or if the Board seeks testimony, the City Manager will direct the City official or employee to participate; provided, however, that in no circumstances shall any subpoena be directed to the City Attorney's Office, or to any employees therein. (See also Operating Procedures X and Y). In the event of a conflict between the provisions of this Operating Procedure and the provisions of another Operating Procedure, the more specific provisions shall apply.

- D. The Board shall give the City Attorney a copy of the request for subpoena on the same day that it is filed with the Court.
- E. The Board shall not unreasonably withhold its agreement to limitations on the Board's request for records or testimony which are requested by the City Manager that may be necessary to protect confidential information.
- F. The Board or the City Manager may request that any hearing to be held in Circuit Court on the subpoena request be conducted in a closed courtroom, if permitted by law, and either the Board or the City Manager may request a protective order.
- G. Upon request of either the Board or the City Manager, the court file for such subpoena may be kept under seal, to the extent permitted by law and where authorized by the judge.
- H. The Court, on finding such witness or evidence is necessary for and material to the discharge of the Board's duties, may issue the requested subpoena.
- I. The Court may cause the subpoena to be issued with such conditions as the Court may deem necessary to protect confidentiality.
- J. Rule 3A:12 of the Rules of the Supreme Court of Virginia shall govern the issuance of Board requested subpoenas, pursuant to this operating procedure.

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



EXECUTION OF AUDITS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-14
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The purpose of this Operating Procedure is to set forth the process and procedures by which the Board may exercise its authority granted under Charlottesville City Code, Chapter 2, Article XVI, § 2-462 (the “Ordinance”), as enabled by Code of Virginia § 9.1-601(C)(4) (referred to as “Audits” or “the Audit Function”).

These Operating Procedures set forth City Council’s guidance on how the provisions within Charlottesville City Code, Chapter 2, Article XVI, § 2-462 shall be interpreted and applied

II. ENABLING LEGISLATION

Code of Virginia § 9.01-601(C)(4)
Charlottesville City Code § 2-462(a) and(b)

III. PROCEDURES

As authorized in Charlottesville City Code § 2-462(b), the Board may direct the Executive Director on its behalf to review and make recommendations regarding policies, practices, and procedures of the Department, and to conduct retrospective examinations and audits of patterns in Internal Affairs investigations, arrest and detention, and other public-police interactions. The Board may initiate an audit in support of the development of policy recommendations as authorized in Charlottesville City Code § 2-462(a).

The Board’s authority to have the Executive Director perform an Audit is distinct from the Director’s authority to monitor Internal Affairs investigations as provided in Charlottesville City Code § 2-455(c).

A. Manual of Audit Procedures

The Executive Director shall compile a manual that establishes guidelines for implementing this Operating Procedure (“Manual”), which shall be approved by the Board. The Manual shall implement these Operating Procedures and shall contain no processes or guidelines in conflict with the Ordinance or these Operating Procedures. Neither the Board nor the Executive Director shall have authority, within the Manual, to impose requirements on any police officers or other employees or management personnel within the City; however, the Board and the City Manager may jointly establish protocols to be incorporated within the Manual, and the City Manager’s endorsement of such protocols shall be reflected by his signature to the document.

The Manual shall be based on guidance that reflects best police oversight and auditing practices including, but not limited to those set forth within the following documents:

- NACOLE- Guidebook for the Implementation of New or Revitalized Police Oversight
- Los Angeles Police Department- Audit Division Policy and Procedures Manual
- The Yellow Book- Generally Accepted Government Auditing Standards (GAGAS)- 2018 Revision

The Manual will identify audit techniques and practices that are relevant to types of retrospective analyses that the PCOB will be conducting. The Manual will reflect best audit practices, cognizant of organizational and resource constraints facing the Board.

The Executive Director shall present the Manual for review and approval by the Board. The Manual shall also be certified by both the Board’s independent legal counsel and the Office of the City Attorney as being consistent with the City Ordinance and these Operating Procedures. The Manual shall be reviewed by the Executive Director and recertified by the attorneys every three years to ensure it represents the latest standards in the field and changing circumstances within the City of Charlottesville. The review and revision of the manual should seek to incorporate any feedback provided from members of the public, members of the PCOB, the City Manager’s Office, City Attorney’s Office, the Chief of Police, the Commonwealth Attorney for the City of Charlottesville, and any other relevant stakeholder.

The Audit Manual will address the following topics, at a minimum:

- Audit planning process and the development of an Audit Plan
- Definition of audit objectives and questions to be addressed
- Auditor qualifications, audit staffing and participation
- Assurance of audit independence
- Identification of data sources and databases to be accessed, data analyses to be conducted and individuals to be interviewed
- Other tasks required to complete the audit
- Projected schedule and costs of the audit
- Documentation of compliance with audit procedures and guidance
- Documentation of audit results and answers to audit questions

- Format and organization of the Audit Report
- Precautions for handling confidential and personal information

No audits shall be undertaken until the Audit Manual required by this Operating Procedure has been approved by the City Manager's Office (when required by this Procedure) and has been certified by the City Attorney and the Board's legal counsel as set forth above.

B. Execution of the Audit

The Board shall specify the subject and scope of the audits in consultation with the Executive Director and shall request audits be undertaken by majority vote. The Executive Director shall prepare a proposed Audit Plan before commencing the work on any audit; the plan will address all the audit elements identified in Section A., above. The proposed Audit Plan shall be provided to the City Manager and Chief of Police, and they shall be given an opportunity to be heard on any matters that may adversely impair or disrupt ongoing operations of the City administration or CPD. Failure of either the City Manager or the Chief of Police to provide a response to the proposed audit plan within 10 days of receipt shall constitute their tacit approval of the proposed audit plan. Final approval of an Audit Plan by the Board is required before work commences. If the City Manager and Chief of Police do object to the Audit Plan as submitted, the Plan shall be deemed approved without a further Board vote.

All audits shall be conducted in accordance with the approved Audit Plan and on the schedule and budget specified therein, and in accordance with the Ordinance, this Operating Procedure and with the Audit Manual. When the execution of an audit spans more than 30 days, the Executive Director shall report on the progress on the audit at each regular Board meeting until the audit is complete. If, during the process of an audit, the Executive Director determines that changes are needed to the audit procedures, the changes and justification for them will be documented in a proposed Amended Audit Plan which shall be reviewed by the City Manager and Chief of Police and then provided to the Board for approval, following the same process as for establishment of the original Plan.

C. Audit Documentation

Progress on the audit, compliance with audit procedures, and audit outcomes will be documented using available software selected by the Executive Director. Auditors should design the form and content of audit documentation to conform the requirements of the Audit Plan and meet the circumstances of the particular audit. The audit documentation constitutes the principal record of the work that the auditors have performed in accordance with standards, and the conclusions that the auditors have reached. The quantity, type, and content of audit documentation are a matter of the auditors' professional judgment, within the specifications of the Audit Plan.

Auditors will prepare a draft Audit Report for review by the Board and the Board's independent legal counsel. Audit Reports transmitted to the Board will avoid or minimize the use of "personal information", as defined in Virginia Code § 2.2-3801. Audit reports that cite or otherwise disseminate personal information about a city employee shall be publicly released only after compliance with the requirements of the Information Sharing SOP adopted by the City Manager pursuant to Charlottesville City Code § 2-453(f).

The Draft and Final Audit Reports shall include a copy of the original or amended Audit Plan as an Appendix. Following preliminary review by the Board of a draft Audit Report for compliance with this Operating Procedure, a Final Audit Report will be presented at a regular meeting of the Board and a copy of the final Audit Report will be posted on the PCOB website.

D. Delegation of Audit Performance

With approval of the Board, the Executive Director, or any qualified city employee under the Executive Director's supervision, may undertake roles required for the completion of an audit. The Executive Director's/ employee's role(s) shall be specifically identified within the Audit Plan.

Employees of the Charlottesville Police Department may not participate in the audit process beyond providing information in support of the audit.

The Executive Director may also seek to engage independent contractors and firms to perform some or all of an Audit. Contracted services shall be allowed if contracts for the services are awarded after compliance with the City's Small Purchase Procedures or other competitive procurement processes, when required. In all cases, however, the Executive Director will be responsible for assuring that audits comply with all provisions within this Operating Procedure and are conducted on schedule and within budget. If independent contractors are engaged, the Audit Plan will identify the independent contractor's role and responsibilities and shall include adequate quality assurance mechanisms to document compliance with the Plan.

E. Cooperation from City Departments

In developing Audit Plans, the Executive Director shall coordinate with the Charlottesville Police Department, the City Manager's Office, and any other city departments from whom data will be requested or from whom cooperation would be required.

The Charlottesville Police Department and other city departments shall cooperate with reasonable requests for access to information and personal interviews. Provision of information and scheduling of interviews may be negotiated on a mutually agreed basis, but in no case can access to information or personnel be unreasonably delayed. If the desired information or cooperation is not forthcoming within 30 days of a written request,

the Executive Director may request that the City Manager direct the appropriate department heads to cooperate with the PCOB audit. If the City Manager issues the instruction and the department head fails to comply, the department head shall be subject to disciplinary action and the City Manager shall send the Executive Director into the applicable department with all necessary support and assistance (including from the Department of Information Technology) to collect the information and records. If necessary to complete an audit, after all other administrative means have been exhausted, the Board may request subpoenas as authorized in Charlottesville City Code § 2-46(b), applying the procedures described in Charlottesville City Code XVI § 2-458(f).

Notwithstanding the foregoing: the City Attorney's Office shall be excluded from the list of departments from whom data may be requested during an Audit and shall not be required to participate in any interviews pertaining to an Audit. However, nothing shall preclude the City Attorney and the Board's independent counsel from mutually agreeing to an exchange of non-privileged records relating to non-pending claims or non-pending litigation matters directly relevant to a matter being audited, only if such records cannot be obtained from any other department(s). All such records shall be provided by the City Attorney's Office to the outside counsel.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



PEACEFUL ASSEMBLY MONITORING

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-15
Subject: POWERS AND DUTIES	
Approval: City-County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

Members of the Board may observe or monitor “demonstrations” as defined by Charlottesville City Code §18-36. This procedure outlines the authority and responsibility of Board members when monitoring demonstrations.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452(c)(9)

III. PROCEDURES

A. Training And Identification

Members of the Board monitoring such demonstrations or gatherings will be appropriately trained in applicable law and monitoring procedures. They will clearly identify themselves to police and participants as monitors and shall not participate in assemblies they are monitoring.

B. Reports

Members of the Board shall report their experiences and observations to the Board at the next regular Board meeting after serving as a monitor at any gathering or demonstration.

C. Information on Complaint Process

Board members or the Executive Director may inform attendees of demonstrations of procedures for reporting police misconduct to the Police Department or to the Board.

D. Report of Misconduct

Members observing misconduct by Police officers during a demonstration shall promptly provide a written statement to the Executive Director describing the misconduct. Any such member shall recuse themselves from discussing or participating in any deliberative or decision-making capacity on any Board decisions related to the misconduct they observed. Members may not file complaints with the Board.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



COMMUNITY ENGAGEMENT

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-16
Subject: POWERS AND DUTIES	
Approval: City-County Resolution By Vote of City Council, as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

This procedure specifies activities for community outreach and engagement that may be undertaken by the Board.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452
Charlottesville City Code § 2-465

III. PROCEDURES

A. Community Listening Sessions

At least twice a year, the Board shall host public community listening sessions or town hall meetings to discuss policing matters of pressing public concern, including the impacts of local policing on historically disadvantaged communities that currently experience or traditionally have experienced disparate policing.

B. Community Training

At least yearly, the Board shall host public community trainings on topics like legal observation of peaceful assemblies and “know your rights” in interactions with the police. The board will poll the community to determine what training the community needs.

C. Community Events

At least once a year, the Board shall participate in community-sponsored events where they can educate the community about the Board and its purpose.



CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURE

CODE OF ETHICS¹

DRAFT

¹ The Code of Ethics ~~was is, in large part, based upon~~ developed by the National Association of Civilian Oversight of Law Enforcement (NACOLE.)

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-17
Subject: POWERS AND DUTIES	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

I. PURPOSE

The Board shall be governed in all its powers and duties by a code of ethics.

II. ENABLING LEGISLATION

Charlottesville City Code § 2-452
Charlottesville City Code § 2-453

III. PROCEDURES

A. Preamble

Board members, by virtue of their office, have been placed in a position of public trust. While Board members should engage in public matters and serve their communities, they must govern their public and private behavior to ensure the greatest public confidence in the member's independence, impartiality, integrity, and competence. To this end, a Board member must abstain from public comment about, or involvement in, a pending or impending matter that is before the Board, or that could come before the Board.

~~Civilian oversight practitioners have a unique role as public servants overseeing law enforcement agencies. The community, government, and law enforcement have entrusted them to conduct their work in a professional, fair and impartial manner. They earn this trust through a firm commitment to the public good, the mission of their agency, and to the ethical and professional standards described herein.~~

The standards in ~~the~~ this Code are intended to be of general application. It is recognized, however, that the practice of civilian oversight varies among jurisdictions and agencies, and additional standards may be necessary. The spirit of these ethical and professional standards should guide ~~Board members the civilian oversight practitioner~~ in adapting to individual circumstances, and in promoting public trust, integrity and transparency. Members of the Board shall adhere to the standards set out in this Preamble in addition to the following principles of conduct:

B. Personal Integrity

Demonstrate the highest standards of personal integrity, commitment, truthfulness, and fortitude in order to inspire trust among ~~your~~its stakeholders, and to set an example for others. Avoid conflicts of interest. Conduct ~~yourself~~themselves in a fair and impartial manner and recuse ~~yourself~~themselves or personnel within ~~your agency~~the PCOB when significant conflict of interest arises. Do not accept gifts, gratuities or favors that could compromise ~~your~~their impartiality and independence.

C. Independent and Thorough Oversight

Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner. Rigorously test the accuracy and reliability of information from all sources. Present the facts and findings without regard to personal beliefs or concern for personal, professional or political consequences.

D. Transparency and Confidentiality

Conduct oversight activities openly and transparently providing regular reports and analysis of ~~your~~their activities, and explanations of ~~their~~your procedures and practices to as wide an audience as possible. Maintain the confidentiality of information that cannot be disclosed and protect the security of confidential records.

E. Respectful and Unbiased Treatment

Treat all individuals with dignity and respect, and without preference or discrimination including, but not limited to age, ethnicity, citizenship, color, culture, race, disability, gender, gender identity, gender expression, housing status, marriage, mental health, nationality, religion, sexual orientation, socioeconomic status, or political beliefs, and all other protected classes.

F. Outreach and Relationships with Stakeholders

Disseminate information and conduct outreach activity in the communities that ~~you~~they serve. Pursue open, candid, and non-defensive dialog with ~~your~~their stakeholders. Educate and learn from the community.

G. ~~Agency~~PCOB Self-examination and Commitment to Policy Review

Seek continuous improvement in the effectiveness of ~~your oversight agency~~the PCOB, the ~~law enforcement agency it works with~~Department, and ~~their~~the PCOB's and the Department's relations with the communities they serve. Gauge ~~your~~their effectiveness through evaluation and analysis of ~~your~~their work product. Emphasize policy review aimed at substantive organizational reforms that advance law enforcement accountability and performance.

H. Professional Excellence

Seek professional development to ensure competence. Acquire the necessary knowledge and understanding of the policies, procedures, and practices of the ~~law enforcement agency you oversee~~Department. Keep informed of current legal, professional and social issues that affect the community, the ~~law enforcement agency~~Department, and ~~your oversight agency~~the PCOB.

I. Primary Obligation to the Community

Members of the PCOB must aAt all times, place ~~your~~their obligation to the community, duty to uphold the law and to the goals and objectives of ~~your agency~~the PCOB above ~~your~~ personal self-interest.

DRAFT

CITY OF CHARLOTTESVILLE

POLICE CIVILIAN OVERSIGHT BOARD OPERATING PROCEDURES



DEFINITIONS

Type of Policy: PCOB Operating Procedures	Policy No. PCOB-18
Subject: DEFINITIONS	
Approval: City County Resolution <u>By Vote of City Council</u> , as required per Va. Code § 9.1-601(D)	Approval Date: DRAFT
	Effective Date:

Whenever used in these regulations, unless plainly evident from the context that a different meaning is intended, the following terms are defined as follows:

- Allegation: An allegation is a claim or assertion that someone has done something illegal or wrong, or in violation of CPD General Orders and other guidance. Allegations against police officers or employees of the CPD may be made by persons filing a complaint or internally by the IAD. There may be multiple allegations made in a single complaint; the PCOB addresses each complaint individually.
- Audit: A PCOB review of patterns in Internal Affairs investigations, arrest, detention, or other public-police interactions. Audits are executed by Executive Director at the direction of the PCOB.
- Board: The Charlottesville Police Civilian Oversight Board (PCOB)
- Chief of Police: The Chief of the City of Charlottesville Police Department.
- Compelled Statement: A statement made under compulsion, for example a statement required of a police officer after a “Garrity warning.” The Board may not compel a statement from any witness or party to a complaint except by applying for a subpoena.
- Complainant: The person filing an investigation complaint or a review request with the PCOB who is alleging misconduct by sworn officers or civilian employees considered by the PCOB:

- Any individuals directly affected by incidents of police misconduct (who were physically present and in physical or verbal contact with police during the alleged misconduct)
 - Representatives, designated in writing, of individuals affected by police misconduct
 - Parent or guardian of minor alleging police misconduct or custodians of an individual with diminished mental capacity
 - Any witness to incidents of police misconduct who was present during the alleged misconduct
 - Any individual with material information related to police misconduct
- Complaint: A report of misconduct made by a person against a sworn police officer or Charlottesville Police Department employee irrespective of duty status.
 - Confidential Information: Information which cannot be released under Virginia Law, the Charlottesville City Code, and the Standard Operating Procedures CPD/PCRB-01 defining protocols for information release to the PCOB.
 - Conflict of Interest: Conflicts of interest are defined in the Virginia State and Local Government Conflicts of Interest Act (Virginia Code § 2.2-3100 – 3131.) The Act prohibits PCOB members from taking actions on behalf of the Board or as part of their duties on the Board that further the own financial or personal interests.
 - Continuance: Postponement of a hearing or other proceeding. The Executive Director may Continue a hearing “due to the unanticipated unavailability of a witness or representative if good cause is shown, or due to the unavailability of an interpreter.”
 - Day: Calendar days, unless specified otherwise.
 - Disciplinary Matrix: A list of types of misconduct and recommended disciplinary options, contained in Charlottesville Police Department General Order 517.00, Parts 1 and 2, as amended.
 - Discriminatory Action: Conduct by a member of the CPD that results in the disparate treatment of persons because of their race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, place of residence or business or any other ground of discrimination prohibited under the statutory and the common law of the Commonwealth of Virginia and the City of Charlottesville.
 - Ex parte communication: Communication that is made by a party outside the presence of the other party(ies) to a controversy. Board members may not engage in ex parte communications with individuals having matters before the Board.

- Exonerated: A subject officer will be exonerated when it is determined that the alleged conduct occurred but was within the law and did not violate CPD General Orders, policies, or procedures.
- FOIA: The Virginia Freedom of Information Act (VA code § 2.2-3700 et seq.)
- Hearing Examiner: A qualified person designated by the Executive Director to preside over a review hearing.
- Incident: Refers to an event or occurrence of apparent police misconduct where a member or employee of the CPD is involved, regardless of whether a member of the public was present, and regardless of whether a citizen complaint is filed.
- Independent Investigator: Qualified individuals engaged by the Executive Director to investigate a complaint or incident.
- Investigative Report: A report summarizing the results of a PCOB investigation of a civilian complaint, an incident of alleged police misconduct, or the Board's review of an Internal Affairs Investigation. The Investigative Report is used to support the Board's decision making on the matter.
- Malfeasance/Misfeasance: Malfeasance by a Board member is a wrongful or dishonest act that causes harm to one or more parties in a matter before the Board. Misfeasance is conduct that is lawful and consistent with the enabling ordinance but harms another person financially or physically due to carelessness or accident.
- Mediation: An alternative dispute resolution process, facilitated by a neutral third party, whereby the complainant and the subject officer meet in good faith to discuss the alleged misconduct with the goal of addressing their differences.
- Mediator: A suitably qualified neutral third party who has contracted with the Board to attempt to mediate disputes between complainants and subject officers.
- Misconduct: Abuse or misuse of police power by a sworn officer directed toward any person who is not a sworn officer or employee of the Department, even if the person(s) are not present.
- Pre-Hearing Conference: A proceeding overseen by a Hearing Examiner at which preliminary matters related to the Hearing are discussed and/or resolved. Preliminary matters may include (but are not limited to) procedural rules for, and order of, the hearing, and admission of testimony and other evidence into the record.

- Preponderance of Evidence: Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.
- Personal Information: Information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.
- Recusal: The withdrawal of a Board member from deliberating and voting in a case on the grounds that they are unqualified to perform legal duties under the Ordinance because of a possible conflict of interest or lack of impartiality. It is the duty of the Board members (upon consultation with the Executive Director and/or Board's independent counsel if necessary) to decide whether it is appropriate for them to recuse themselves in any particular case.
- Relevant Evidence: Evidence is relevant to the Board if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the Board's decision
- Removal: Board members may be removed by the City Council for violation of confidentiality obligations, engaging in ex parte communications with individuals having issues before the Board, neglect of duties, failure to adhere to the Code of Ethics, failure to comply with any applicable laws, misfeasance or malfeasance, or other good cause.
- Review Hearing: A hearing convened by the Board to evaluate evidence and make findings related to a review request or the investigation of a civilian complaint or incident of alleged police misconduct
- Review Request: A request by a complainant that the PCOB review the results of an Internal Affairs investigation.
- Sua Sponte: Latin phrase for "of one's own accord; voluntarily." The Board may undertake an investigation of an incident of police misconduct sua sponte (that is, without a citizen complaint.)
- Subject Officer: A sworn member of the CPD against whom an allegation of misconduct has been made in a complaint.
- Subpoena: An order issued by a judge requiring a witness to attend a proceeding or to produce specific documents to support an investigation.

- Sustained: An allegation is sustained when it is determined that the alleged conduct occurred and that the conduct was illegal or violated the CPD General Orders, policies, or procedures.
- Technical Rules of Evidence: Refers to such rules of evidence as those found in Virginia's Rules of Evidence, contained in Part II of the Rules of the Supreme Court of Virginia and in the Code of Virginia or any other official codebook, manual, or protocol. Such rules are intended to guide the acceptance of evidence by the Board, but are not strictly binding.
- Timely: Complaints are considered timely if filed within one year of the date upon which the alleged misconduct occurred. Review requests are timely if they are filed within 75 days of the issuance of a closure letter by the CPD. The PCOB may not investigate complaints or review requests that are not timely unless they determine that there is good reason to do so (for example, the receipt of new information.)
- Unfounded: An allegation is unfounded when it is concluded that the alleged action did not take place.
- Witness: a person who testifies with first-hand knowledge of a matter in question.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: December 19, 2022
Action Required: First Reading for Appropriation Resolution
Presenter: Krisy Hammill, Director of Budget
Staff Contacts: Jack Dawson, City Engineer
Title: Appropriating Bond Proceeds for the Woodland Drive subdivision - \$192,453.98 (1 of 2 readings)

Background

Whenever a developer proposes a new subdivision, the City requires the developer to post certain bonds, to guarantee that the developer will build public streets and other public facilities in accordance with the requirements of City ordinances and the Standards and Design Manual, and to guarantee that the developer will construct stormwater management facilities for the development, and provide erosion and sediment control measures during construction, as required by law. If a developer fails to satisfy its obligations, the City may "call" the bond, and then utilize the bond proceeds for corrective measures.

City Code Section 2-98 (b) requires that no resolution appropriating money exceeding the sum of one thousand dollars (\$1,000.000) shall be passed by city council on the same day of its introduction (i.e., two readings are required for adoption of an appropriations resolution, and the readings need to be at least three days apart). Council cannot waive the second reading for an appropriation.

Discussion

A letter of credit was provided to the City of Charlottesville, Virginia by the developer for the Woodland Drive subdivision, to guarantee completion of certain public street improvements, stormwater management and erosion and sediment control measures for a development referred to as the Woodland Drive subdivision, as set forth within a site plan approved by the City in 2016. On June 9th 2021, City Engineering provided Atlantic Union Bank advising that the developer had failed or refused to complete the work in accordance with the bonded development plans, within the time period specified by the City's development code. The City collected proceeds from Letters of Credit, in the total amount of \$192,453.98. Public Improvements made to the site at that time were both incomplete and portions were not in conformance with the approved plans. During the remainder of 2021 Public Works (PW) staff examined previously provided mid- process construction as-builts and conducted extensive field visits and inspections to prepare a list of deficiencies. Plans were prepared to provide public improvement corrections and minimal remedial storm water design to provide a pathway to restore the project to regulatory compliance in as close accordance with the approved plans as possible.

Alignment with City Council's Vision and Strategic Plan

Yes

Community Engagement

N/A

Budgetary Impact

\$192,453.98 additional funds for expenditure in accordance with development regulations

Recommendation

Staff recommends approval

Alternatives

None; the City is required to utilize the bond proceeds received for the purposes for which the bonds were originally posted.

Attachments

1. Resolution_Bond Proceeds Appropriation

RESOLUTION

Appropriating the Sum of \$192,453.98 received from Development Bond Proceeds

BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the sum of **\$192,453.98** is and shall be appropriated for expenditure by the Department of Public Works, in the following manner:

Revenues – \$192,453.98

\$192,453.98 Fund: _____ Internal Order: _____ G/L Account: _____

Expenditures – \$192,453.98

\$192,453.98 Fund: _____ Internal Order: _____ G/L Account: _____



City Manager's Report

December 2022

UPDATES FROM CITY MANAGER MICHAEL ROGERS

- **Gas Utility Comments**

This is to provide information related to comments to council November 21, 2022. Currently, the city offers natural gas service to residential and commercial customers based on the proposed connected loads of their gas appliances. City staff look at the prospective revenues to ensure the installation, operation and ongoing maintenance of the natural gas service lines makes sense financially for the gas utility. If a residential development does not plan on installing qualifying appliances within the development, for example, domestic hot water heaters or furnaces, then the customer or developer will be billed for the cost of the labor and materials associated with the installation of the natural gas line. City code states “the gas division may install new service connections up to one hundred fifty (150) feet from the main at no cost to the customer for residential service, provided that the gas superintendent determines that the prospective revenue from such installation will justify the city's investment therein”. The key to this section of city code is the word may and city staff make that decision based on the revenue that will be generated. The payback time period for the revenue generated is approximately 4 ½ years.

It was stated that prior to 1979 that if gas was installed customers paid for it and in 1979 that section of code was deleted and language was added to subsidize gas lines for customers. The code referenced in 1979 is associated with ornamental gas lights and not gas lines. In 1979, language was added for the cost of new service connections that is similar to today’s code where “...new service connections up to one hundred-fifty feet from the main at no cost to the customer. The additional cost to the city in extending any such service connection beyond one hundred-fifty feet from the main shall be charged to the customer.” In 1979, almost 100% of city homes utilized natural. A review of city code prior to 1979 shows no evidence that customers were charged for gas line installations. Retired employees have also indicated they could not recall customers being charged for gas line installations. Existing policies regarding fees of other natural gas providers in Virginia are in line or less stringent than Charlottesville’s natural gas policies.

In addition, the city is finalizing the contract to conduct a study regarding the decarbonization of the natural gas utility and how the city of Charlottesville natural gas distribution system can play a role in the city achieving their overall greenhouse gas emissions reduction goals. Another key component of the study is evaluating the legality of discontinuing natural gas operations or new connections by looking at state and local laws. City staff is also interested in the consultant evaluating cost and resiliency implications to existing and new customers. This will include reviewing city code and making recommendations associated with the natural gas utility fee structure.

- **Chief of Police Search**

The City Manager and newly designated Police Chief, Michael Kochis held a virtual Press conference following his appointment on December 5th.

- **Internal Organizational Work**

The City Manager and Human Resource Director held a Town Hall Meeting with City employees to discuss the new Personnel Rules issued on October 17. There was robust dialogue and several clarifications. The City Manager had a discussion with lead team members rolling out the results of the employee survey

and identifying the work that needs to be done to address many of the findings of the survey. Much more follow-up will be required.

The compensation and classification study continues to progress, and we are on track to have some preliminary information in January. The process will not stop at classification but will also require the creation and approval of a compensation policy as part of this process. There will be some positions that are at the market average, some above, and some below. To level set expectations, not every employee will necessarily be eligible for an upward adjustment in pay, it all depends on where the position is on the market scale.

UPDATES FROM DEPUTY CITY MANAGER ASHLEY MARSHALL

- **Departmental Awards**

The Office of the City Manager would like to congratulate the Office of Budget and Management for receiving the Government Finance Officer Association’s Distinguished Budget Presentation Award for the 2022 Budget. This represents the 18th consecutive year that the office has received the award.

The Office of the City Manager would also like to celebrate the Department of Social Services’ recent honor as the Champions Employer of the Year by the Charlottesville Regional Office of the Department of Aging and Rehabilitation Services.

- **2022 National Community Survey**

The City of Charlottesville is excited to announce the launch of The National Community Survey, also called The NCS. Specifically, the City wants to know what they can do to work towards a better, safer community. To get involved, local participants should go to <https://polco.us/charlottesville22op> . Once they have answered the survey questions, residents provide their email addresses and ZIP code. This ensures that the city only hears from each person once. It also collects information on the general area where respondents live. Residents who provide this information will also be able to receive notifications of any future survey or polling efforts Charlottesville decides to conduct. Responses are anonymous, and personal information is securely stored on Polco. If you received a survey from participating, please use the link that you were provided in the mail or complete the paper copy that was provided for you. Polco is committed to a strict privacy policy—they only share anonymous, combined results. Participants’ individual data and votes are never shared.

UPDATES FROM DEPUTY CITY MANAGER SAMUEL SANDERS

- **Staffing Update**

We welcome Anthony Warn who joined the city to serve as the Grants Analyst, with the responsibility for managing the entitlement funds received annually from HUD. Anthony is a new member of the Office of Community Solutions team.

- **Winter Weather Preparation**

The internal city team held its annual Winter Coordination Meeting at the end of November to fully review the plan for snow operations. The team is ready to execute the plan during any upcoming weather

event with a reminder to the public that we are ready to respond to any weather event.

- **Senior Transportation Initiatives**

Midway Manor Bus Stop Project continues as an active project. We have expanded the scope of the project to a more appropriate full scale bus shelter. The next step is to secure an easement from the property owner to permit the construction of the shelter.

CAT has completed planning work to make it possible for an extension of Route 11 to begin serving The Center at Belvedere. This project will be submitted to the FTA for review and we are anticipating the route change to go live by May 2023.

CITY MANAGER'S OFFICE UPDATES

- **Office of the City Manager** – Executive Assistant Terry Bentley (she/her)

The City Manager's Office would like to wish everyone a safe and happy holiday season. Please be careful as you travel and enjoy the time with friends and family. And do find an opportunity to reach out to someone less fortunate and be the blessing they need during this holiday season. We look forward to a Happy New Year as we continue to provide consistency, clarity, and commitment for meeting the needs of the citizens of Charlottesville.

- **Office of Budget and Management** – Director Krisy Hammill (she/her)

The Office of Budget and Management has processed departmental requests for CIP and Operational budgets. This month and next, departments will meet with the City Manager and the budget review team to discuss their requests. The Office will hold two (2) public meetings with the Planning Commission. The first meeting was held on November 22, 2022 and the second was held on December 13, 2022. In addition, the Budget Office has also been notified that they – once again – have received GFOA's Distinguished Budget Presentation Award for the 2022 Budget. This represents the 18th consecutive year that the office has received the award.

- **Office of Communications & Public Engagement** – Deputy Director David Dillehunt (he/him)

The Office of Communications & Public Engagement oversaw a very successful 25th Annual Grand Illumination event on December 2, 2022. Job well done to staff member Caroline Rice and David Dillehunt for ensuring the night was beautiful! Public Safety Information Officer Kyle Ervin continues to support CFD and CPD with timely news releases and announcements. Communications Specialist Remy Trail continues to assist City boards and commissions with Zoom meeting setup and scheduling and coordinates the Sunday programming for CPA-TV. Further, Deputy Director David Dillehunt continues to provide management support the full team while leading the execution of the City's PEG-TV (public access television) operation.

- **Office of Community Solutions** – Director Alex Ikefuna (he/him)

OCS is continuing its effort to fill staff vacancies. The Grant Analyst has been hired. The Housing Program Manager interview is completed, and offer being made. The Grants Manager position application process is closed, and candidate submissions are under screening. The Housing Operations and Program Support (HOPS) grant application for funding is open and will close on Wednesday, December 30, 2022. A total of

\$575,000 will be available for funding. Procurement of reusable, recycled grocery bag has been finalized. Delivery is expected on December 28. This is in readiness for the Plastic Tax Ordinance enacted by the City Council which will take effect on January 1, 2023.

- **Office of Economic Development** – Director Chris Engel (he/him)

The Office of Economic Development’s (OED) Minority Business Program recently completed another GO Start-Up program. GO Start-Up is designed to provide introductory-level business concepts and help entrepreneurs process potential start-up feasibility. A total of nine participants successfully completed the entrepreneurship workshop. We wish Wilma Dove, Robert Johnson, Jonathan Vowles, Samuel Bush-Wright, Hyeon Moon, Signay Shelton, Jahmila Riley, Amber Smith, and Brandon Lee success in their future entrepreneurial endeavors. The Office is also pleased to announce that Resonance has been selected as the consultant to develop a comprehensive economic development strategic plan to help guide the City’s development activities for the next five years. The Resonance team has advised organizations worldwide and has deep experience with university communities, including several in Virginia. The plan is expected to leverage existing assets and envision a future that builds a more inclusive, resilient business and entrepreneurial community. The project is expected to commence this winter and conclude in mid-2023.

- **Office of Human Rights** – Director Todd Niemeier (he/him)

The Office of Human Rights continues to receive a high volume of requests for individual support. We are still entering service data for November 2022, but the current total of incoming contacts for 2022 is 2,775. The total number of incoming contacts for 2021 was 1,962, the highest of any year since the office’s opening in 2014. The office has finalized a position description and interview questions for hiring a Human Rights Intake Counselor and intends to begin the hiring process within the next month. Victoria McCullough, Community Outreach and Administrative Specialist for the Office of Human Rights, has been working this month to continue to connect with and develop relationships with community partners, including participating with The Haven through their weekly Coordinated Entry system calls and working with the Blue Ridge Area Food Bank through their quarterly Hunger Coalition calls. Ms. McCullough also presented at the Venable Neighborhood Association meeting and is working with an illustrator to create educational videos about Protected Actions under the Charlottesville Human Rights Ordinance. Currently, for 2022 the Office of Human Rights has attended a total of 6 service provision outreach events. Victoria also contributes significant time to assisting with incoming inquiries and individual service follow-up. Human Rights Interns Lily Gates and Ginny Helmandollar continue to hold the primary responsibility for individual service data entry and completion of minutes for publicly noticed meetings of the Commission. On November 13th, OHR staff went to the College of William and Mary to support Ginny’s hosting of the “Walk 10,000 Miles in My Shoes” refugee resettlement simulation. Ginny worked with classmates and a professor to recreate the simulation based on the OHR’s materials.

- **Office of Equity and Inclusion**

- **Home to Hope Program** - Employment & Financial Opportunity Manager Roy Fitch Jr. (he/him)

The Home to Hope Program is currently wrapping up its interview process for a new Home to Hope Peer Navigator. The program hopes to make an offer before the New Year. In addition, Navigator Stacey Washington shared an impact statement at the Charlottesville Fire Department’s Annual Ceremony held at CitySpace on Thursday, October 27th. The Peer Navigators also attended the November 2022 One-Stop

Shop at Carver Recreation to support community members reentering post-incarceration. Finally, the Home to Hope program is proud to announce a partnership with the University of Virginia School of Law to provide additional assistance to program participants. Enormous thank you to current Navigator Whitmore Merrick and past Navigator Shadee Gilliam (now with the Department of Human Services) for working to establish this partnership.

Downtown Job Center – Employment & Financial Opportunity Manager Roy Fitch Jr. (he/him)

The Downtown Job Center has had an additional increase in jobseekers during October and November 2022, thanks to our collaboration with Dawn Lawson at the City of Promise. Seven (7) parents and one (1) teen had appointments with the Center so far, and more appointments are scheduled for later dates. The program is also working internally with the Department of Human Resources to build additional support for community members seeking employment while bringing additional great candidates to the City as an organization.

Americans with Disability Act (ADA)– ADA Coordinator Paul Rudacille (He/Him)

During this fiscal year, the ADA Coordinator became an official part of the Office of Equity and Inclusion. The current priority work focuses on completing the procurement process for the ADA Transition Plan update and responding to any community concerns. You can find out more information about the ADA Coordinator on our website at: <https://www.charlottesville.gov/274/Americans-with-Disabilities-Act-ADA-Coor>

CITY DEPARTMENTAL UPDATES

- **Charlottesville Area Transit** – Director Garland Williams (he/him)

Working on the conversion of our radio network in partnership with the region through the Emergency Communications Center. CAT will be upgrading its radios to join the upgraded 800mhz radio tower serving the region. We gain significant upgrade by completing this implementation as the final partner to do so.

Microtransit with the County is another active project that has increased in activity. The consultant team visited the stakeholder group to begin planning details for this “Uber-like/Lyft-like” transit service. The pilot will bring additional service to the North 29 area and Pantops, two areas needing expanded service as growth continues. A \$300,000 grant is supporting some of the effort along with the county.

- **Charlottesville Fire Department** – Interim Chief Michael Thomas (he/him)

Staff are reviewing the DRAFT Emergency Services Master Plan produced by consultant, Emergency Services Consulting International. Once our edits of the document have occurred, we anticipate a final version to be released in January. The CFD leadership team will begin prioritizing matters highlighted and recommended for best practice implementation. The priorities will be tiered as short-mid-long term so the additional capacity and budget planning can support any pursuit of changes.

Chief Thomas has met repeatedly with Chief Eggleston (Albemarle County) to ensure collaboration remains in high order during the current leadership transition. Members of the city and county executive offices joined most recently to share expectations and ask operational questions all aimed at supporting the collegial relationship that supports our commitment to mutual aid.

- **Charlottesville Police Department** – Assistant Chief Major LaTroy Durette (he/him)

The Charlottesville Police Department is proud to announce the hire of five (5) new officers attending the academy in January 2023. The Department has also hired one (1) certified officer who started in December 2022. Current staffing numbers are 81 sworn officers and 29 civilians. Further, as of November, the department has responded to approx. 36,634 calls for service.

The Department also is working to conduct a “State of the Department” audit for the new Chief of Police, requested by current Acting Chief Major LaTroy Durette as he transitions from his Acting role. The audit’s goal is to provide stability within the organization ensuring an orderly and efficient transition of command. Some of the tasks that will be accomplished include conducting inventories of the property and evidence room; all firearms (including ammunition) and less-lethal weapons in our possession; the quartermaster’s space; our motorized and bicycle fleet; our communications and electronic systems, including all phones, radios, computers, and audio/video surveillance equipment; all badges and sworn credentials; and of all other fixed assets that are within the main facility and any of our offsite offices. Further work will be done to review financials, including all credit cards inventoried, the driver’s license status and criminal histories of all departmental employees, and to provide written confirmation reflecting that every departmental member has been in receipt of and has been instructed or otherwise trained concerning the policies and procedures of the department. Finally, audits on all open warrants and protective orders and an inspection of all personnel, training, and internal affairs files will be completed.

- **Emergency Management** – Jeremy Evans (he/him)

Currently editing the final draft of the Emergency Operations Plan. Estimated Completion date 12/22. Emergency Support Functions are being edited along with several support annexes.

Editing the inclement weather SOP. Meeting with Mary Ann and Sam to finalize details

EOC Team identified, with notifications and meetings to follow in early 2023.

Critical Incident Management Team to resume meeting regularly to discuss critical incidents occurring in the city. Meetings will resume in early January 2023 or as needed before 1/2023.

Temporary office moves to City Space completed.

VDEM Director Talmadge is to visit Charlottesville and Albemarle County on December 15th to discuss hazards in our region. Flooding and other hazards identified in the 2023 Hazard Mitigation Plan and the Hazard Identification and Risk Analysis are to be discussed. Members of the City’s Flood Resiliency Taskforce will be in attendance.

- **Human Resources** – Director Mary Ann Hardie (she/her)

The Office of Human Rights continues to receive a high volume of requests for individual support. We are still entering service data for November 2022, but the current total of incoming contacts for 2022 is 2,775. The total number of incoming contacts for 2021 was 1,962, the highest of any year since the office’s opening in 2014. The office has finalized a position description and interview questions for hiring

a Human Rights Intake Counselor and intends to begin the hiring process within the next month. Victoria McCullough, Community Outreach and Administrative Specialist for the Office of Human Rights, has been working this month to continue to connect with and develop relationships with community partners, including participating with The Haven through their weekly Coordinated Entry system calls and working with the Blue Ridge Area Food Bank through their quarterly Hunger Coalition calls. Ms. McCullough also presented at the Venable Neighborhood Association meeting and is working with an illustrator to create educational videos about Protected Actions under the Charlottesville Human Rights Ordinance. Currently, for 2022 the Office of Human Rights has attended a total of 6 service provision outreach events. Victoria also contributes significant time to assisting with incoming inquiries and individual service follow-up. Human Rights Interns Lily Gates and Ginny Helmandollar continue to hold the primary responsibility for individual service data entry and completion of minutes for publicly noticed meetings of the Commission. On November 13th, OHR staff went to the College of William and Mary to support Ginny's hosting of the "Walk 10,000 Miles in My Shoes" refugee resettlement simulation. Ginny worked with classmates and a professor to recreate the simulation based on the OHR's materials.

Human Rights Commission and Human Rights Ordinance: Detailed data regarding ongoing complaints of discrimination and individual services provided by the office can be found in the agenda packets for regular meetings of the Human Rights Commission. At its last regular meeting on October 20th, The Human Rights Commission voted to adopt the proposed revisions to the Human Rights Ordinance (City Code Chapter 2, Article XV) for presentation to City Council on November 7th. City Council approved a slightly edited version of the ordinance at its November 21, 2022, meeting through a two-reading process. Additionally, on October 27th, the Commission submitted its recommendations to Council regarding the legislative agenda for 2023.

- **Department of Human Services** – Director Misty Graves (she/her)
The Department of Human Services is currently interviewing for the Hotline Coordinator position, which provides oversight and support to the Community Resource Line (Pathways) and the Homeless Information Line. For programs, the balance on the Pathways fund is currently \$354,381.66 as of 12/7/2022. The average weekly disbursement over the last four weeks is \$13,080.14. Additionally, the Department partnered with Blue Ridge Area Coalition for the Homeless (BRACH, formerly TJACH) to facilitate a follow-up to the Homelessness Summit held by the City last year. Held on December 1st at City Space and virtually, it was well attended, with 22 members in-person and approximately 10 online. This meeting worked to engage partners in the system of care to focus on three initiatives: Year-Round Emergency Shelter, Street Outreach, and Permanent Housing. The Department also continues to support the One-Stop Shop, which is held monthly at Carver Recreation Center. The One-Stop allows service partners to engage with residents; specifically, those formerly incarcerated. Internally, staff at DHS have been focusing on supporting staff well-being and safety. One of our staff will partner with a staff member of CDSS to provide a Stress First Aid overview at the January LEAD TEAM meeting.
- **Department of Information Technology** – Director Steve Hawkes (he/him)
Internally, the Department has nearly completed the organizational migration to Microsoft OneDrive. There is one remaining department in this transition. Migration from the J: Drive is scheduled to occur in late December/early January, and communication has been sent to all users requesting that they take time to review files they may have on that drive. For Cyber Security, the phishing email training campaign

ended in October, and we saw a 20% failure rate among staff. We sent out an email to all users discussing the training and provided tips to help them spot a phishing attempt in the future. Another phishing email training campaign is underway, and we hope to see improvement in a lower failure rate, and we plan on continuing the campaigns throughout the year. The Incident Response Plan (IRP) was finalized last month, and in January, we will put it to the test with a cybersecurity incident exercise. For Applications, the team recently opened the IT Department's Helpdesk system to the organization so users can submit tickets and check on the status of their tickets. The department is also working to help staff better use several tools that can help us work more effectively and collaboratively, such as Microsoft Teams. To that end, and in collaboration with the City's iTeam there will be upcoming WIIFM workshops (What's In It For Me) on Microsoft Teams, Outlook, and OneDrive in January, February, March, and April. Meetings are also being held with Departments to learn more about their technology needs and to let them know about some IT initiatives that may be of interest. Staffing updates include Brady Winter being promoted to Systems Engineer, Tyler Ringling being promoted to Systems Administrator, and Ray Liu has been hired as Software Engineer. The Department also had its first departmental retreat in several years, where the team brainstormed core values for the department and anticipated follow-up sessions.

- **Neighborhood Development Services** – Director James Freas (he/him)

An update on the Zoning Ordinance Rewrite was provided at the Dec 13 Planning Commission meeting, which included sharing the draft proposed zoning districts. The full description and rules for all zoning districts along with the use table and zoning map will be available at Jan/Feb timeframe.

Two new building inspectors will start Jan 3 marking the first time in over two years that the building division has been fully staffed. Plan review timeframes continue to improve towards the goal of building permits being issued within two weeks of submission.

- **Parks & Recreation** – Director Dana Kasler (he/him)

Staff is coordinating lighting upgrade at Tonsler Park in coordination with Dominion's Outdoor Lighting team to replace existing light with LEDs to improve lighting conditions with energy efficient technology.

2023 Winter/Spring Program registration opened on Monday, December 5 and went very well. We are offering a total of 154 classes and currently have 883 participants enrolled in those classes.

Smith Aquatic & Fitness Center New Year's promotions will begin January 2.

Holiday Market is occurring every Saturday from 8:00 am – 1:00 pm downtown until December 17.

- **Police Civilian Oversight Board – Deputy City Manager Ashley Marshall (she/her)**

The City Manager's Office is working with PCOB Chair William Mendez to ensure that the good work of the community leaders who paved the way for the PCOB continues through this time of transition. The job posting for the open Executive Director position for the Police Civilian Oversight Board was recently closed. The Office of the City Manager and the PCOB are beginning the process of application review and interview scheduling. Community members who may have a complaint or commendation may file those at any time on the PCOB website: <https://www.charlottesville.gov/1440/Police-Civilian-Oversight-Board>

- **Public Works** – Director Stacey Smalls (he/him)

Environmental Sustainability: **Climate Action Plan (CAP)**: Since the presentation of the 2022 Climate Action Plan to City Council on October 3, additional public feedback was invited, drop-in meetings were held, and presentations and discussions were had with the Bicycle and Pedestrian Advisory Committee, the Tree Commission, the Planning Commission, and several local climate advocacy groups. The CAP was recommended to move forward as a Comprehensive Plan amendment at the December 13 Planning Commission meeting.

Environmental Sustainability: **Energy and Water Management Program (EWMP) Report**: The EWMP has published the Fiscal Year 2022 Performance Report which provides an update of the EWMP and related actions that contributed to improving energy and water performance of municipal facilities throughout the 2022 fiscal year. The actions highlighted in the report show the City's progress and multiple approaches toward meeting our climate and efficiency goals and implementing essential improvements and upgrades to the municipal facilities. The report was presented to the CCS School Board on November 3rd, 2022. You can read the report and executive summaries on the EWMP website: [Charlottesville.gov/EnergyWater](https://charlottesville.gov/EnergyWater)

Environmental Sustainability: **Imagine a Day Without Water**: The City, Albemarle County Service Authority, and Rivanna Water & Sewer Authority held their 8th annual Imagine a Day without Water Art Contest. The contest received 248 art entries from Charlottesville and Albemarle County youth artistically conveying the Value of Water. The winners of the art contest, including a community voted fan favorite, were announced on December 7th via a [News Flash](#). Learn more about the Imagine a Day without Water Art Contest: [Charlottesville.gov/ArtContest](https://charlottesville.gov/ArtContest)

Environmental Sustainability: **Water Conservation Survey**: The City and Albemarle County Service Authority are conducting a Community Water Conservation Survey with the assistance of the UVA Center for Survey Research - BeHeardCVA. The survey focused on the community's awareness around the City and ACSA's water conservation programs and the community's water saving behaviors. The survey ran from November 16th - December 7th.

Facilities Development: **By-Pass Fire Station** – Based on our most recent cost estimates, we may be \$1M over budget on bid day for Bypass Fire Station (inflation, yet again). We have already value engineered the project to the point that we cannot design this project to reduce the cost, if it is over budget. If we want to proceed to Construction Documentation, we must release the A&E firm to continue designing, as they are contractual obligated to design to budget, unless instructed to proceed otherwise. We recommend we continue designing and find out through the bidding process what the project will cost to construct, as we are seeing wildly variant bids, and we may see a favorable bid environment. (If the City has no tolerance for increasing the budget beyond the approx. \$5.5M we have budgeted, it **may** make sense to curtail our design work not and save further outlay, but again, we think it makes sense to stay the course at this point, as the savings realized would be small. We have been working on this project for some time, and the Fire Department does not feel like the current facility is viable long term).

- **Social Services** – Director Sue Moffett (she/her)
The Department of Social Services celebrated National Adoption Month in November 2022. The Department celebrated sixteen (16) children who were adopted this year. In addition, the Department

was recently honored as the Champion Employer of the Year by the Charlottesville Regional Office of the Department of Aging and Rehabilitative Services. Finally, Blair Sith, Benefit Programs Supervisor, recently provided training on the Supplemental Nutrition Assistance Program (SNAP) application process for the Hunger Action Coalition members. Food justice partners are working to ensure every household knows about and accesses available SNAP benefits. Should any member of the Charlottesville community need assistance please contact the Department of Social Services at 434-970-3400 for additional information/ Comuníquese con el Departamento de Servicios Sociales al 434-970-3400 para obtener información adicional.

- **Utilities** – Director Lauren Hildebrand (she/her)

The colder months of winter increase the potential for frozen pipes, and the Department of Utilities wants to remind everyone of the importance of winterizing their home’s plumbing. Protecting your home from damage caused by ruptured water pipes due to freezing will save you the headache and inconvenience of costly repairs and interrupted service. Simple step-by-step instructions on measures that help prevent pipes from freezing will be sent to customers in the December edition of the Utilities electronic newsletter and can also be found by visiting www.charlottesville.gov/water.

The Department of Utilities provides customers with several resources to help ease the stress of paying their utility bill, including the Charlottesville Gas Assistance Program (GAP). GAP is designed to help those individuals heating with natural gas who, although in financial need, do not qualify for State Fuel Assistance or whose State Assistance allocation has been exhausted. More information on GAP, including program eligibility requirements, will be sent to customers in Utilities’ December electronic newsletter, and can also be found by visiting www.charlottesville.gov/utilities. If you would like to donate to GAP, donations can be mailed to Utility Billing at P.O. Box 591 Charlottesville, VA 22902. Please make checks payable to “City of Charlottesville” with “GAP” in the memo section. You can also make donations at City Hall during regular business hours Mon-Fri. Your contribution is greatly appreciated and helps ensure the program can assist the greatest number of people possible.

The Department of Utilities is plugged into state and federal resources that help customers decrease the burden of household expenses, such as the Low-Income Household Water Assistance Program (LIHWAP). Administered by The Virginia Department of Social Services and Promise Network, LIHWAP provides funds to help eligible households throughout the state pay their water and/or wastewater bill. More information on LIHWAP can be found at www.virginialihwap.com or by calling 888-373-9908 from 7AM-7PM, Mon-Sat. Charlottesville Utilities cannot accept or process applications.

APPOINTEES AND ELECTED OFFICIAL UPDATES

- **Circuit Court** – Honorable Lizelle Dugger, Clerk of Circuit Court (she/her)

No update at this time

- **Commissioner of the Revenue** – Commissioner Todd Divers (he/him)

No update at this time

- **Finance Office** – Director Chris Cullinan (he/him)

No update at this time

- **Treasurer's Office** - Treasurer Jason Vandever (he/him)

The Treasurer's office is currently processing the 2nd half of the 2022 real estate and personal property tax bills. As previously advertised, the due date was moved from December 5th to December 19th to allow taxpayers more time to make payments. Please get in touch with the Treasurer's Office if you did not receive a tax bill. Our office is also pleased to announce that in addition to appointments, we are now accepting walk-ins for our DMV Select services, Monday-Friday until 4 PM.

- **Voter Registrar** – Registrar Taylor Yowell (she/her)

No update at this time

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



Agenda Date:	December 19, 2022
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:	Public Hearing and Resolution of Appropriation to Amend the Fiscal Year 2023 Budget (1 of 2 readings)

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:

- 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 – adjusted for FY22 midyear salary adjustment and FY23 COLA = \$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.

- 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.
--------------------------	---------------------

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.
--------------------------	------------------------

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	December 19, 2022
Action Required:	Ordinance Adoption
Presenter:	Carrie Rainey, Urban Designer/City Planner
Staff Contacts:	Carrie Rainey, Urban Designer/City Planner Brenda Kelley, Redevelopment Manager Alexander Ikefuna, Director of Community Solutions
Title:	Considering a Zoning Map Amendment for the Mount View PUD (Planned Unit Development) (2nd reading)

Background

Kelsey Schlein of Shimp Engineering, PC, acting as agent for Mount View Baptist Church, Mount View Properties, LLC, and Route 250 Houses, LLC (collectively the “Owners”) has submitted an application pursuant to Section 34-490 seeking a zoning map amendment to change the zoning district classifications of 908 St. Clair Avenue, 1133 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle (Tax Map Parcels 490065000, 490072100, 490072000, and 490073000). The application proposes to change the zoning classification of the Subject Property from “R-2” (Two-Family Residential) to “PUD” (Planned Unit Development) subject to proffered development conditions.

Discussion

The Planning Commission considered this application at their meeting on September 13, 2022. The discussion centered on the affordable housing proffer; particularly concerns with the proposed duration of affordable housing unit availability and specifications for qualifying residents; and general support of the proposed density and proposed building form.

The staff report and supporting documentation presented to the Planning Commission can be found starting at page 18 of the [Planning Commission September 13th packet](#). **Subsequent to the September 13th Planning Commission meeting, the applicant provided a modified PUD Development Plan and updated proffer statement.** Per City Code Section 34-65, when an applicant adds to, expands, clarifies, or otherwise modifies proffers acted upon by the planning commission, the applicant must prepare a cover sheet listing the modifications (attached) and City Council has three options: **(1)** decline to consider the modifications, and consider only the application that was before the planning commission; **(2)** continue its consideration to another regular Council meeting date, and itself conduct an additional public hearing, **or (3)** refer the modified application back to the planning commission for review and recommendation, upon an additional public hearing with Council.

The modified PUD Development Plan (attached) now references the existing allowance for family day homes (5-12 children) with a provisional use permit in the R-2 zone and proposes the use be allowed per provisional use permit in both blocks of the PUD development, and removes reference to specific improvements along Landonia Circle as those improvements will be determined in the site plan review process. Staff has no concerns with these modifications, which provide additional clarification to the development plan but do not substantially alter the proposal.

The proffer revisions are described in the attached proffer modification cover letter. Analysis by the Office of Community Solutions is also attached. The Office of Community Solutions specifically noted:

- Staff would like to see a longer Rental Affordability Period.
- The applicant noted the right to make changes to the affordable units. The City would consider the changes if they are reasonable and would not result in the segregation of units or reduction in the size of the unit(s).

Staff also supports the modification to Proffer 3 to ensure the preferences of the adjacent property owners and the addition of Proffer 4 to improve pedestrian connectivity to the development.

Update: City Council continued action on the zoning map amendment at their December 5, 2022 meeting. The applicant has provided an updated final proffer statement which has extended the affordability period to 99 years.

Alignment with City Council's Vision and Strategic Plan

The additional housing density provided via this zoning map amendment may align with City Council's Vision Statement, *Quality Housing Opportunities for All*, as well as Goal 1 of City Council's Strategic Plan, *An Inclusive Community of Self-sufficient Residents*, and Objective 1.3, *Increase affordable housing options*.

Community Engagement

Per Section 34-41(c)(2), the applicant held a community meeting on March 9, 2022. (A City Planner was able to attend as the NDS representative). Neighborhood comments gathered from the community meeting include the following.

Many members of the public attended the meeting and voiced the following concerns:

- Quantity of multifamily residential units proposed.
- Increase in vehicular traffic and distribution of vehicular traffic.
- Availability of parking within the development and potential parking spill-over onto neighborhood streets.
- Lack of connection through Block 1 to Block 2.
- Architectural quality of the built development.
- Location of proposed balconies in relation to existing homes in the neighborhood.
- Stormwater management facilities and potential impacts to the Rivanna River.

The following items were supported by some speakers at the meeting:

- Central greenspace.
- Multifamily residential units are proposed in a series of smaller buildings.

The Planning Commission held a joint public hearing with City Council on this matter on September 13, 2022. Several members of the public spoke on the application. The members of the public raised concerns regarding:

- The proposal does not meet the Future Land Use Map of the 2021 Comprehensive Plan.
- Increase in vehicular traffic and distribution of vehicular traffic.
- Architectural quality of the built development.
- Proposed duration of the affordable housing proffer.
- Inefficient use of existing church parking lot.
- Stormwater management facility requirements.

Budgetary Impact

No direct budgetary impact is anticipated as a direct result of this zoning map amendment.

Recommendation

Staff recommended to Planning Commission the application be recommended for denial. The Planning Commission voted to recommend the application be denied.

If Council should decide to approve the application with the proffer modifications presented by the applicant after the Planning Commission meeting, Council should utilize the attached proposed Ordinance. ***Suggested motion: "I move the ORDINANCE approving a rezoning to authorize establishment of the Park Street PUD, subject to proffered development conditions, within the area of the parcels of land located at 908 St. Clair Avenue, 113 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle."***

Alternatives

City Council may :

- (1) by motion, take action to deny the zoning map amendment;
- (2) by defer action on the zoning map amendment; or
- (3) by motion, refer the zoning map amendment back to Planning Commission for review of the revised proffer statement.

Attachments

1. RZO PUD Mt View
2. Mount View PUD Proffer Cover Letter
3. Mount View PUD Final Proffer Statement
4. Office of Community Solutions Analysis of Mount View PUD Final Proffer Statement
5. Mount View PUD Revised PUD Development Plan

ORDINANCE

APPROVING A REZONING, SUBJECT TO PROFFERED DEVELOPMENT CONDITIONS, OF PROPERTY LOCATED AT 908 ST. CLAIR AVE, 113 OTTER ST, 1221 LANDONIA CIRCLE, AND 1201 LANDONIA CIRCLE TO ESTABLISH A PLANNED UNIT DEVELOPMENT (“PARK STREET PUD”)

WHEREAS in order to facilitate a specific development referred to as the Park Street Planned Unit Development (the “Project”), Shimp Engineering, as the agent of Mount View Baptist Church, Mount View Properties, LLC, and Route 250 Houses, LLC (collectively “Landowner”), has submitted rezoning application ZM22-00002, proposing a change in the zoning classification of certain land fronting on St. Claire Avenue, Otter Street, Landonia Circle, and River Vista Avenue, identified within the City’s real estate assessment records by Real Estate Parcel Identification Nos. 490065000, 490072100, 490072000, and 490073000 (collectively, the “Subject Property”); and

WHEREAS the Subject Property is currently zoned “R-2” and the Landowners are requesting City Council to rezone and designate the Subject Property as a Planned Unit Development (“PUD”), subject to the provisions of the PUD Development Plan and further subject to development conditions proffered by the Landowners, all as set forth within the application materials for ZM22-00002, submitted by the Landowners through their agent (the “Proposed Rezoning”); and

WHEREAS a joint public hearing on the Proposed Rezoning was conducted by City Council and the Planning Commission on September 13, 2022, following notice to the public and to adjacent property owners as required by law; and

WHEREAS City Council has considered the proposal for the Project set forth within the application materials for ZM22-00002, the Staff Report, comments received from the public, the Planning Commission’s recommendation, and the Comprehensive Plan; and

WHEREAS this Council finds and determines that the public necessity, convenience, general welfare and good zoning practice require the Proposed Rezoning; that both the existing zoning classification (R-2) and the proposed PUD zoning district classification, inclusive of the PUD Development Plan and the proffered development conditions, are reasonable; and that the Proposed Rezoning is consistent with the Comprehensive Plan; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Zoning District Map incorporated in Section 34-1 of the Zoning Ordinance of the Code of the City of Charlottesville, 1990, as amended, shall be and is hereby amended and reenacted as follows:

Section 34-1.Zoning District Map. Rezoning from R-2 to PUD the parcels of land identified within the City’s tax assessment records by Real Estate Parcel Identification No. 490065000, 490072100, 490072000, and 490073000 (the land currently having the addresses of 908 St. Clair Avenue, 113 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle), subject to the PUD Development Plan for the Park Street PUD, and subject further to development conditions

proffered by the Landowners, which are hereby accepted by this City Council and set forth following below:

Approved Proffers

In furtherance of the Project, and if the Subject Property is rezoned as requested, the use and development of the Property will be subject to and in accordance with the following conditions:

1. AFFORDABLE HOUSING:

The Landowner shall provide affordable housing within the Property, as follows:

- a. For the purposes of this Proffer, the term “For-Rent Affordable Dwelling Unit” means a dwelling unit where the monthly cost of rent, including any tenant paid utilities, does not exceed the Maximum Affordable Rent for unit size for 60 percent of the Area Median Income (AMI) as published annually by the City of Charlottesville’s Inclusionary Zoning Policy. In the event the Inclusionary Zoning Policy is not established and the Maximum Affordable Rent is not published annually, the monthly cost of rent will be calculated by adjusting for unit size the then current Federal Department of Housing and Urban Development’s (HUD) Income Limit for the Charlottesville VA HUD Metro FMR Area for 60 percent AMI households. The monthly cost of rent will be adjusted per unit size where the rent, inclusive of tenant paid utilities, does not exceed 30% of the household income where the persons in family is one more than the number of unit bedrooms.
 - i. For-Rent Affordable Dwelling Units shall be reserved for rental to low- and moderate-income households having income less than 60 percent of the Area Median Income. Area Median income means the median income for Households within the Charlottesville, Virginia HUD Metropolitan FMR Area, as published annually by the U.S. Department of Housing and Urban Development.
- b. The Landowner shall cause seven (7) dwelling units constructed within the area of the Property to be For-Rent Affordable Dwelling Units (the “Required Affordable Dwelling Units”). The Required Affordable Dwelling Units shall be identified on a layout plan, by unit, prior to the issuance of any certificate of occupancy for a residential unit within the Property (“Initial Designation”). The Landowner reserves the right, from time to time after the Initial Designation, and subject to approval by the City, to change the unit(s) reserved as For-Rent Affordable Dwelling Units, and the City’s approval shall not unreasonably be withheld so long as a proposed change does not reduce the number or make-up of Required Affordable Dwelling Units and does not result in an Affordability Period shorter than required by these proffers with respect to any of the Required Affordable Dwelling Units.
 - i. The Required Affordable Dwelling Units shall be reserved as such throughout a period of at least twenty (20) years from the date on which the unit receives a certificate of occupancy from the City’s building official (“Rental Affordability Period”). All Required Affordable Dwelling Units shall be administered in accordance with one or more written declarations of covenants within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney.

- ii. The Required Affordable Dwelling Units shall be comprised of four efficiency units, one one-bedroom unit, one two-bedroom unit, and one three-bedroom unit.
 - iii. On or before January 10 of each calendar year, or an alternate date mutually agreed upon by the Landowner and the City, the then current owner of each Required Affordable Dwelling Unit shall submit an Annual Report to the City, identifying each Required Affordable Dwelling Unit by address and location, and verifying the Household Income of the occupant(s) of each Required Affordable Dwelling Unit.
 - iv. The Required Affordable Dwelling Units shall be constructed proportionally to the number of market rate units at a rate of 10 percent, so that for every ten (10) units constructed a minimum of one (1) is designated as a Required Affordable Dwelling Unit. Notwithstanding the foregoing, the Required Affordable Dwelling Units may be constructed at a rate that exceeds 10 percent of the total number of dwelling units. All Required Affordable Dwelling Units shall be constructed prior to the issuance of certificate of occupancy of the 59th dwelling unit.
 - v. Section 8 Housing Choice Vouchers will be accepted as a form of payment for the Required Affordable Dwelling Units.
 - vi. The Landowner shall provide a marketing plan to the Office of Community Solutions or comparable City Department prior to issuance of the first certificate of occupancy for a residential unit within Block 2. The marketing plan shall demonstrate how the affordable units will be advertised and will be prepared in a form acceptable to the Office of Community Solutions or comparable City Department.
 - c. The land use obligations referenced in 1.c.i and 1.c.ii shall be set forth within one or more written declarations of covenants recorded within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney, so that the Owner's successors in right, title and interest to the Property shall have notice of and be bound by the obligations. The Required Affordable Dwelling Units shall be provided as for-rent units throughout the Rental Affordability Period.
2. **CONSTRUCTION ENTRANCE:** Construction entrances for site development and construction on the Property shall not connect to River Vista Avenue.
 3. **SCREENING FENCE:** A screening fence shall be installed by the Landowners in the locations shown on Sheet 7 of the PUD Development Plan submitted by Shimp Engineering dated February 8, 2022 last revised **May 2022** (the "Park Street PUD Development Plan").
 - a. The screening fence may be comprised of masonry, composite, painted or stained lumber, or an alternate material approved by the City's site plan agent (Director of Neighborhood Development Services ("NDS") or designee). Chain link and screening mesh are expressly prohibited as screening fence materials.
 - b. The screening fence shall be a minimum of six (6) feet in height, unless a lesser height is agreed upon by the Landowner and the owners of adjacent property where the screening fence is installed along the common boundary line. If a lesser height is agreed upon, record of this agreement must be presented in writing to the City's site plan agent.

- c. If, at the time of construction of the screening fence, an adjacent landowner has already erected a fence along the common boundary line, the screening fence shall not be required in the location where the adjacent owner's existing fence is constructed.
- d. The screening fence must be constructed prior to the issuance of the first certificate of occupancy for a residential unit within Block 2; the limits of Block 2 are shown on Sheet 4 of the Park Street PUD Development Plan.

4. **RIVER VISTA SIDEWALK IMPROVEMENTS:** The Landowner shall construct a sidewalk to City standards within the River Vista public right-of-way, adjacent to parcels 4900638000 and 490064000, in order to establish a continuous pedestrian connection between the Subject Property's entrance from River Vista Ave continuing northwest to the intersection of River Vista Ave and St. Clair Avenue. The sidewalk shall be constructed prior to the issuance of certificate of occupancy of the tenth (10th) dwelling unit within the Project and shall be dedicated to the City for acceptance into the City's public street system for maintenance. If, at the time of construction, sufficient right-of-way does not exist to accommodate the construction of the sidewalk in the required location, and if the Landowner cannot reasonably obtain an easement from the respective owners of tax parcels 49000638000 and 490064000 to permit the construction of the sidewalk, then the Landowner shall make a cash contribution to the City's Sidewalk Fund in an amount equal to the construction of 270 linear feet of sidewalk, which contribution shall be calculated by using the then current Sidewalk Fund Calculator. The cash contribution shall be made prior to the issuance of certificate of occupancy of the tenth (10th) dwelling unit within the Project.

SHIMP ENGINEERING, P.C.
Design Focused Engineering

Carrie Rainey
City of Charlottesville
610 East Market Street
Charlottesville, Virginia 22902

RE: ZM22-00002 MOUNT VIEW PUD PROFFER MODIFICATIONS | COVER LETTER

Dear Carrie,

Attached with this cover letter is the revised proffer statement for ZM22-00002 “Mount View PUD”. Please note the following proffer revisions since the Planning Commission public hearing on September 13, 2022:

- Proffer 1 Affordable Housing:
 - Revised rent limit from HUD FMR and 125% HUD FMR to 60% AMI
 - Revised income limit from 80% AMI to 60% AMI
 - Revised affordability term from 10 to 20 years
 - *Further Revision since December 5, 2022 Council Meeting: Revised affordability term from 20 to 99 years*
 - Incorporated marketing plan provision (1.b.vi)
 - Incorporated unit break-down of affordable units (1.b.ii)
 - Removed 90-day limit on income restriction
 - Revised due date of annual report from January 1 to January 10
 - Revised trigger for completion of affordable units from the 55th dwelling unit to proportionally be constructed at a rate of 10% provided that all units are constructed by the issuance of certificate of occupancy of the 59th dwelling unit (1.b.iv)
- Proffer 3 Screening Fence:
 - Included additional language that if an adjacent owner prefers their existing fence over a new fence to be constructed by the Owner, that preference must be expressed in writing (3.c.)
- Proffer 4 Sidewalk Improvements:
 - Included additional proffer to complete sidewalk network along southern portion of River Vista between the project’s entrance to River Vista and the intersection of River Vista and St. Clair

If you have any questions, please do not hesitate to contact me at kelsey@shimp-engineering.com.

Best regards,



Kelsey Schlein
Shimp Engineering, P.C.

BEFORE THE CITY COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
IN RE: PETITION FOR REZONING (City Application No. ZM22-00002)
STATEMENT OF FINAL PROFFER CONDITIONS
For MOUNT VIEW PUD

City of Charlottesville Tax Map 49 Parcels 65, 721, 72, and 73

TO THE HONORABLE MAYOR AND MEMBERS OF THE COUNCIL OF THE CITY OF CHARLOTTESVILLE

Mount View Properties, LLC is the owner of Tax Parcel 490073000. Route 250 Houses LLC is the owner of Tax Parcels 490072000 and 490072100. Mount View Baptist Church is the owner of Tax Parcel 490065000. Mount View Properties LLC, Route 250 Houses LLC, and Mount View Baptist Church (collectively, the “Owners”) seek to rezone their aforementioned respective properties (collectively, the “Property”) which are the subject parcels of rezoning application ZM22-00002, a project known as Mount View PUD (the “Project”). The Owners seek to amend the current zoning of the Property subject to certain voluntary conditions set forth below. Each signatory below signing on behalf of the Owners covenants and warrants that it is an authorized signatory of the Owners for this Proffer Statement.

In furtherance of the Project, the Owners hereby proffer for City Council’s consideration voluntary development conditions, which the Owners agree are reasonable. The Owners agree that, if the Property is rezoned as requested, the use and development of the Property will be subject to and in accordance with the following conditions:

1. **Affordable Housing:**

The Owners shall provide affordable housing within the Project, as follows:

- a. For the purposes of this Proffer, the term “For-Rent Affordable Dwelling Unit” means a dwelling unit where the monthly cost of rent is affordable to households at 60 percent of the Area Median Income (AMI) for the Charlottesville, Virginia Metro Area as published annually by the Federal Department of Housing and Urban Development (HUD). For the purposes of this Proffer, the term “affordable” means that the cost of rent, including tenant paid utilities, does not exceed 30% of the monthly income of a 60 percent AMI household.
 - i. For-Rent Affordable Dwelling Units shall be reserved for rental to low and moderate-income households having income less than or equal to 60 percent of the AMI.
- b. The Owners shall cause seven (7) dwelling units constructed within the Project to be For-Rent Affordable Dwelling Units (the “Required Affordable Dwelling Units”). The Required Affordable Dwelling Units shall be identified on a layout plan, by unit, prior to the issuance of any certificate of occupancy for a residential unit within the Property (“Initial Designation”). The Owner reserves the right, from time to time after the Initial Designation, and subject to approval by the City, to change the unit(s) reserved as For-Rent Affordable Dwelling Units, and the City’s approval shall not unreasonably be withheld so long as a proposed change does not reduce the number or make-up of Required Affordable Dwelling Units and does not result in an Affordability Period shorter than required by these proffers with respect to any of the Required Affordable Dwelling Units.

- i. The Required Affordable Dwelling Units shall be reserved as such throughout a period of ninety-nine (99) years from the date on which the unit receives a certificate of occupancy from the City's building official ("Rental Affordability Period"). All Required Affordable Dwelling Units shall be administered in accordance with one or more written declarations of covenants within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney.
 - ii. The Required Affordable Dwelling Units shall be comprised of four efficiency units, one one-bedroom unit, one two-bedroom unit, and one three-bedroom unit.
 - iii. On or before January 10 of each calendar year, or an alternate date mutually agreed upon by the Owners and the City, the then current owner of each Required Affordable Dwelling Unit shall submit an Annual Report to the City on a template provided by the City's Office of Community Solutions, identifying each Required Affordable Dwelling Unit by address and location, and verifying the household income of the occupant(s) of each Required Affordable Dwelling Unit.
 - iv. The Required Affordable Dwelling Units shall be constructed proportionally to the number of market rate units at a rate of 10 percent, so that for every ten (10) units constructed a minimum of one (1) is designated as a Required Affordable Dwelling Unit. Notwithstanding the foregoing, the Required Affordable Dwelling Units may be constructed at a rate that exceeds 10 percent of the total number of dwelling units. All Required Affordable Dwelling Units shall be constructed prior to the issuance of certificate of occupancy of the 59th dwelling unit.
 - v. Section 8 Housing Choice Vouchers or similar housing vouchers will be accepted as a form of payment for the Required Affordable Dwelling Units.
 - vi. The Owners shall provide a marketing plan to the Office of Community Solutions prior to issuance of the first certificate of occupancy for a residential unit within the Project. The marketing plan shall demonstrate how the affordable units will be advertised and will be prepared in a form acceptable to the Office of Community Solutions.
- c. The land use obligations referenced in 1.a.i and 1.b.i through 1.b.vi shall be set forth within one or more written declarations of covenants recorded within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney, so that the Owner's successors in right, title and interest to the Property shall have notice of and be bound by the obligations. The Required Affordable Dwelling Units shall be provided as for-rent units throughout the Rental Affordability Period.

2. Construction Entrance: Construction entrances for site development and construction on the Property shall not be permitted to connect to River Vista Avenue.

3. Screening Fence: A screening fence shall be installed in the locations shown on Sheet 7 of the Development Plan prepared by Shimp Engineering, P.C. dated February 8, 2022 last revised October 7, 2022 (the "Development Plan").

- a. The screening fence may be comprised of masonry, composite, painted or stained lumber, or an alternate material approved by the Director of Neighborhood Development Services

- (“NDS”) or its designee. Chain link and screening mesh are expressly prohibited as screening fence materials.
- b. The screening fence shall be a minimum of six feet in height, unless a lesser height is agreed upon by the Owners and the owners of adjacent property where the screening fence is installed along the common boundary line. If a lesser height is agreed upon, record of this agreement must be presented in writing to the Director of NDS or its designee.
 - c. If, at the time of construction of the screening fence, an adjacent owner has erected a fence along the common boundary line, the screening fence requirement may be waived in the location where the adjacent owner’s fence is constructed if the adjacent owner prefers their existing fence instead of the screening fence to be installed by the Owners. The adjacent owner must state, in writing, their preference for their existing fence to the Owners and the Director of NDS for the screening fence requirement to be waived.
 - d. The screening fence must be constructed prior to the issuance of the first certificate of occupancy for a residential unit within Block 2; the limits of Block 2 are shown on Sheet 4 of the Development Plan.

4. **River Vista Sidewalk Improvements:** The Owners shall construct a sidewalk to City standards within the River Vista public right-of-way adjacent to tax parcels 4900638000 and 490064000 to establish a continuous pedestrian connection between the Property’s entrance from River Vista Ave continuing northwest to the intersection of River Vista Ave and St. Clair. The sidewalk shall be constructed prior to the issuance of certificate of occupancy of the tenth dwelling unit within the Project and shall be conveyed to the City for acceptance and maintenance. If, at the time of construction, sufficient right-of-way does not exist to accommodate the construction of the sidewalk, and the Owners cannot reasonably obtain an easement from the respective owners of tax parcels 4900638000 and 490064000 to permit the construction of the sidewalk, then the Owners shall make a cash contribution to the City’s Sidewalk Fund in an amount equal to the construction of 270’ linear feet of sidewalk calculated by using the then current Sidewalk Fund Calculator. The cash contribution shall be made prior to the issuance of certificate of occupancy of the tenth dwelling unit within the Project.

WHEREFORE, the undersigned Owners stipulate and agree that the use and development of the Property shall be in conformity with the conditions hereinabove stated, and request that the Property be rezoned as requested, in accordance with the Zoning Ordinance of the City of Charlottesville.

By:  _____
 Mount View Properties LLC

Print Name: Samuel B. Craig

Owner’s Address: 338 Rio Rd W Charlottesville VA 22901

By: John Rodman Leavell
Mount View Baptist Church, Trustee

Print Name: John Rodman Leavell

Owner's Address: 1032 Martin St, Charlottesville VA 22901

By: Robert R. Henry Jr
Mount View Baptist Church, Trustee

Print Name: Robert R. Henry, JR.

Owner's Address: 607 Davis Ave. Chville, VA
22901

By: 
Route 250 Houses LLC

Print Name: Lynwood Nypica

Owner's Address: 17 Out of Bank Road
Palmyra, VA 22963

Mount View PUD

Rev 10/26/22

This application includes the Affordable Dwelling Unit (ADU) Ordinance Worksheet, which currently identifies that zero (0) ADUs are required pursuant to the gross floor area proposed in excess of 1.0 FAR (per Sec. 34-12. - Affordable dwelling units.).

We have received the applicant's revised STATEMENT OF FINAL PROFFER CONDITIONS For MOUNT VIEW PUD as of 10/24/22, which now offer the following regarding affordable housing:

... 1. Affordable Housing:

The Owners shall provide affordable housing within the Project, as follows:

- a. For the purposes of this Proffer, the term "For-Rent Affordable Dwelling Unit" means a dwelling unit where the monthly cost of rent is affordable to households at 60 percent of the Area Median Income (AMI) for the Charlottesville, Virginia Metro Area as published annually by the Federal Department of Housing and Urban Development (HUD). For the purposes of this Proffer, the term "affordable" means that the cost of rent, including tenant paid utilities, does not exceed 30% of the monthly income of a 60 percent AMI household.
 - i. For-Rent Affordable Dwelling Units shall be reserved for rental to low and moderate-income households having income less than or equal to 60 percent of the AMI.
- b. The Owners shall cause seven (7) dwelling units constructed within the Project to be For-Rent Affordable Dwelling Units (the "Required Affordable Dwelling Units"). The Required Affordable Dwelling Units shall be identified on a layout plan, by unit, prior to the issuance of any certificate of occupancy for a residential unit within the Property ("Initial Designation"). The Owner reserves the right, from time to time after the Initial Designation, and subject to approval by the City, to change the unit(s) reserved as For-Rent Affordable Dwelling Units, and the City's approval shall not unreasonably be withheld so long as a proposed change does not reduce the number or make-up of Required Affordable Dwelling Units and does not result in an Affordability Period shorter than required by these proffers with respect to any of the Required Affordable Dwelling Units.
 - i. The Required Affordable Dwelling Units shall be reserved as such throughout a period of at least twenty (20) years from the date on which the unit receives a certificate of occupancy from the City's building official ("Rental Affordability Period"). All Required Affordable Dwelling Units shall be administered in accordance with one or more written declarations of covenants within the land

records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney.

- ii. The Required Affordable Dwelling Units shall be comprised of four efficiency units, one one-bedroom unit, one two-bedroom unit, and one three-bedroom unit.
 - iii. On or before January 10 of each calendar year, or an alternate date mutually agreed upon by the Owners and the City, the then current owner of each Required Affordable Dwelling Unit shall submit an Annual Report to the City on a template provided by the City's Office of Community Solutions, identifying each Required Affordable Dwelling Unit by address and location, and verifying the household income of the occupant(s) of each Required Affordable Dwelling Unit.
 - iv. The Required Affordable Dwelling Units shall be constructed proportionally to the number of market rate units at a rate of 10 percent, so that for every ten (10) units constructed a minimum of one (1) is designated as a Required Affordable Dwelling Unit. Notwithstanding the foregoing, the Required Affordable Dwelling Units may be constructed at a rate that exceeds 10 percent of the total number of dwelling units. All Required Affordable Dwelling Units shall be constructed prior to the issuance of certificate of occupancy of the 59th dwelling unit.
 - v. Section 8 Housing Choice Vouchers or similar housing vouchers will be accepted as a form of payment for the Required Affordable Dwelling Units.
 - vi. The Owners shall provide a marketing plan to the Office of Community Solutions prior to issuance of the first certificate of occupancy for a residential unit within the Project. The marketing plan shall demonstrate how the affordable units will be advertised and will be prepared in a form acceptable to the Office of Community Solutions.
- c. The land use obligations referenced in 1.a.i and 1.b.i through 1.b.vi shall be set forth within one or more written declarations of covenants recorded within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney, so that the Owner's successors in right, title and interest to the Property shall have notice of and be bound by the obligations. The Required Affordable Dwelling Units shall be provided as for-rent units throughout the Rental Affordability Period.

Current Site Conditions:

Block 1: Mount View Baptist Church
Block 2: two single family dwellings
(1221 Landonia Circle @ 717 SF & 1133 Otter St. @ 887 SF)

PROJECT PROPOSAL

Mount View Properties LLC, Route 250 Houses LLC, and Mount View Baptist Church (collectively, the “owners”) own 3.4 acres of land in Charlottesville’s Locust Grove Neighborhood. The land is comprised of tax parcels 49-65, 49-721, 49-72, and 49-73 (collectively, the “property”). On behalf of the owners, we request to rezone the property from R-2 Residential to Planned Unit Development (PUD) to realize a residential development and to allow for complementary non-residential uses to take shape on the property at some point in the future. The PUD development plan proposes two blocks; Block 1 is approximately 1.4 acres and is the site of Mount View Baptist Church and Block 2 is approximately 2.0 acres and is currently comprised of an open field at the rear of Mount View Baptist Church, two single family dwellings, and a vacant parcel. Mount View Baptist Church plans to remain in operation if this PUD is approved however, approval of this PUD will give the church the opportunity to diversify the use of their property. The PUD development plan permits certain non-residential uses in Block 1 such as a preschool and an artist’s studio, with the preschool being the most desirable potential use for the church that they would like to establish in the future. If the church were to pursue these uses in Block 1, they would most likely utilize a portion of their basement level to serve such uses however, Block 1 has sufficient area to accommodate an additional structure in front of the existing parking lot and adjacent to the existing church building.

The development plan also permits residential density in Block 1, the church has expressed a desire to be able to build a few units at some point in the future that could serve parishioners in need of housing, provide potential church employee housing, or provide the church with an opportunity to have an additional revenue stream by operating a rental property. Although the church has no immediate plans to construct housing in Block 1, approval of this PUD would maintain the opportunity to realize housing in Block 1 at some point.

Block 2 envisions a unique residential development that is anchored by a central greenspace. A maximum of 60 units are proposed within five structures that are integrated into the landscape. The buildings utilize the slope of the site to minimize the scale and form of the structures; many of the structures, which are proposed to have three floors, will be comprised of two stories and a basement level. This building form is sensitive to the existing context, building height is minimized in areas that are in closest proximity to one-story residential structures. The buildings in the northern portion of the site will appear as two-story structures from the existing residences just north of the property that front on River Vista Avenue and will appear as three story units from the central greenspace, interior to the site. The units that are proposed to front along Landonia Circle are the only units currently proposed as slab on grade construction on the site however, the structure will step down to two stories along its sides to soften the scale of the structure in comparison to the existing residential units along Landonia Circle. The units along the southern portion of the property front along what is currently an unimproved portion of Otter Street; these units are directly behind Bank of America and are proposed to be two stories above grade facing the interior of the site and appear as three stories from the Otter St. right-of-way. These structures are not adjacent to or directly across from any existing residential structures.

The residential units will be a mixture of efficiency, one, two, and three bedroom units. From the exterior, the units will appear as a series of linked townhomes with separate doors, porches, and facade treatments. This variation in facade finishes and details will contribute to the human-scale feel of this development.

The development will have two points of vehicular access, one from Landonia Circle and one

from River Vista. Having multiple points of access will contribute to distributing trips from the site to various streets that are largely integrated into an existing grid network rather than having all traffic from the site concentrated through one point of access. The Landonia Circle entrance will provide convenient access to Route 250 West and easy access downtown as well as access to 250 East from the Locust Avenue ramp, without having to cross over the Route 250 median; the River Vista entrance will provide a another route to Downtown. This project intends to improve the inadequate portion of Landonia Circle serving this development which would open access to Route 250 from Landonia for nearby residents, offering another way to Route 250 for residents along Coleman or Landonia and other residential streets, rather than driving River Vista to access Route 250. The exact scope of proposed improvements to Landonia Circle will be determined at site plan. This project also proposes to construct a multi-use path within the portion of the Otter Street right-of-way that is adjacent to this site creating an additional point of access for pedestrians and cyclists.

Within Block 1, up to 6,000 sf of daycare facility use may take shape with the church. While daycare facilities are typically associated with increased trip generation occurring the morning and evening peak hour, the daycare facility within Mount View presents a unique opportunity in providing child care services within an established neighborhood that is walkable for many residents. While Mount View proposes to develop up to 72 units, the surrounding neighborhood is comprised primarily of single-family detached housing, a housing type that typically has higher averages of children affiliated with it. A daycare facility would be a great service for the community that should be located in and accessible to residential neighborhoods.

JUSTIFICATION OF PUD (SEC. 34-43(a)(3) CITY CODE)

One of the three major initiatives adopted in Charlottesville’s Affordable Housing Plan is to “adopt progressive and inclusionary zoning reforms” (Charlottesville Affordable Housing Plan adopted March 2021, 9). Charlottesville’s comprehensive zoning rewrite is currently in the works however that comprehensive rewrite will take time and in the interim before that rewrite is adopted, the strong demand for housing in Charlottesville remains. Changing the zoning on this property from R-2 to PUD will contribute to growing and diversifying the City’s housing stock; the R-2 district is one of the City’s lowest density and most restrictive zoning districts. Developing this property, which has convenient access to major transportation corridor Route 250, is well connected within an established gridded network of streets, is a large contiguous parcel, and is directly behind a commercial center, as an R-2 development is a missed opportunity for integrating alternative housing types into areas of the City where it historically hasn’t been realized. There is a strong need for housing in the Charlottesville that is well-documented in various City documents such as the adopted 2021 Comprehensive Plan, 2021 Affordable Housing Plan, and the 2018 Housing Needs Assessment prepared by FBCI and PES which states that “housing demand significantly exceeds the available supply.” There is a need for this zoning change and it is justified.

SATISFACTION OF PUD OBJECTIVES (SEC. 34-490 CITY CODE)

The following is an analysis of how this project will satisfy PUD objectives in Sec. 34-490 of the City of Charlottesville’s Zoning Ordinance:

(1) To encourage developments of equal or higher quality than otherwise required by the strict application of zoning district regulations that would otherwise govern;

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022

Revised 8 June 2022

Revised 20 May 2022

Submitted 08 February 2022

project: 21.047

The Mount View PUD establishes an effective design program that takes advantage of the land opportunities that are available on a relatively large contiguous tract; the shared green spaces, the proposed multi-use path, and this approach to residential density would not be realized in the underlying R-2 zoning district.

(2) To encourage innovative arrangements of buildings and open spaces to provide efficient, attractive, flexible and environmentally sensitive design.

The Mount View PUD proposes residential buildings flanked along the edges of the property, a central greenspace that ties together the development, and purposeful placement of screening buffers. The buildings internal to the site are largely connected with sidewalks and the PUD is connected to the greater neighborhood context by the two new proposed entrances to the site and the proposed construction of the multi-use path within the Otter St. right-of-way. There are no identified environmentally sensitive features on the property.

(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;

The Mount View PUD will establish a range of unit sizes including efficiency; one, two, and three bedroom units.

(4) To encourage the clustering of single-family dwellings for more efficient use of land and preservation of open space;

Although there are no single-family dwellings proposed within this PUD, this proposal does promote efficient use of land on a relatively large site in the City that is well connected to nearby transportation networks and destinations. The proposed open space within the PUD will meet the 15% requirement.

(5) To provide for developments designed to function as cohesive, unified projects;

The Mount View PUD will function as a cohesive, unified project. Sidewalks connect residential units, parking areas, and green spaces in Block 2 to one another. A sidewalk proposed along the shared boundary between Blocks 1 and 2 will connect the blocks with another. The central green space is not only accessible to future residents of Block 2 but it is sited in a location where it is also accessible from Block 1, and is fairly centrally located within the PUD as a whole. Block 2 is slated to continue operating as a church for the foreseeable future however, this PUD allows for the opportunity for complementary limited commercial uses to take shape within that block as well. The limited allowable commercial uses, such as a preschool or an artist's studio are complementary to the residential development proposed within Block 2 and the surrounding residential context, as the uses allowable would directly serve many residents in the area.

(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;

The property is uniquely sited to function as a transitional site between Route 250 and the commercial uses that front along that heavily-traveled corridor just south of the property and

the less intense residential areas just north of the property. As a property positioned between commercial and residential development, a residential development of greater intensity than much of the surrounding residential context is appropriate for this site as the development proposed is in accordance with the existing transect of development where the most intense development is along Route 250 and less intense development takes shape just north of the property. The development will be harmonious with the existing uses and character surrounding the property.

(7) To ensure preservation of cultural features, scenic assets and natural features such as trees, streams and topography;

There are no streams or critical slopes on the property and so there is no proposed disturbance to those environmentally sensitive features with this development plan. There are several mature trees on the property, mostly concentrated along the eastern portion of what is proposed as Block 2, that are slated to be removed with this development however, the landscape plan provided with this application proposes a robust landscape plan that will result in 10-year tree canopy in excess of half an acre.

Mount View Baptist Church is rightfully named, as there are Mountain Views of the Southwest Mountains from the site. The church is at a high point on the property and the site slopes downhill from St. Clair Avenue and the church building location. Since much of the site is at a lower elevation than the adjacent properties to the north and west and the height limitation is set to be consistent with R-2 district, impacts to scenic resources are expected to be minimal.

(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

The massing diagrams presented with this PUD application demonstrate coordinated architectural styles internally as well as with adjacent properties along the perimeter of the development.

(9) To provide for coordinated linkages among internal buildings and uses, and external connections, at a scale appropriate to the development and adjacent neighborhoods;

Coordinated pedestrian linkages are provided throughout the development to connect internal buildings. A sidewalk is provided adjacent to the new entrance proposed off of River Vista and a new multi-use path is proposed within the Otter St. ROW to connect the development to areas further west. The proposed sidewalk improvements along River Vista Avenue will establish a complete pedestrian connection between the project and the existing CAT bus stop at the intersection of Calhoun St. and St. Clair Ave.

(10) To facilitate access to the development by public transit services or other single-vehicle-alternative services, including, without limitation, public pedestrian systems.

The sidewalk proposed adjacent to the new entrance that will connect to River Vista will connect to the south side of River Vista Ave. The sidewalk network on the south side of River Vista Ave between its intersection with St. Clair Ave. and the property is proposed to be completed with this project; there is a CAT bus stop at the intersection of Calhoun St. and St. Clair Ave that is approximately 850' walking distance from the property.

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

CONSISTENCY WITH THE COMPREHENSIVE PLAN

It is noted in the recently adopted 2021 Charlottesville Comprehensive Plan that “one of the primary goals of [the] Comprehensive Plan update is to support the opportunity to provide more housing in all neighborhoods in the city [...]” The Locust Grove Neighborhood is primarily developed with single family detached and some duplex/attached residences. Several main thoroughfares, such as River Road, Route 250, and Park Street define boundaries of this neighborhood and in recent years, housing types other than single family detached have begun to take shape along these corridors. New apartments along River Road are nearing completion and the recently approved MACAA and Park St. Christian Church rezonings will see the construction of multi-family and single family attached dwellings at deeply affordable rates. The Comprehensive Plan supports the opportunity to provide more housing in all neighborhoods in the city and this project will help to realize that goal.

This project is consistent with various goals and objectives put forth in the Comprehensive Plan:

Goal 3. Balance Conservation and Preservation with Change

Protect and enhance the existing distinct identities of the city’s neighborhoods and places while promoting and prioritizing infill development, housing options, a mix of uses, and sustainable reuse in our community.

This project plans for effective density in building forms that are context aware of the historic building patterns surrounding the property. This PUD will establish infill development on relatively large contiguous parcel in the City. The regulations of the PUD allow for a mix of uses and allows for the existing church building to be adapted in a way to serve multiple users.

Goal 6. Design Excellence

Continue Charlottesville’s history of architectural and design excellence by maintaining traditional urban design features and valuing historic resources while encouraging creative, context-sensitive, contemporary planning and design that supports the goals of the Comprehensive Plan.

The massing renderings presented with this PUD application demonstrate a creative, context-sensitive design in a location that is well-connected, transit accessible, and in close proximity to jobs, schools, and neighborhood amenities.

Objectives for Residential Areas

Foster walkable, bikeable, and transit accessible neighborhoods.

The property is within a 15-20 minute walk to downtown and within a 5 minute walk of River Road. There’s a CAT bus stop several hundred feet away from the property.

Increase opportunities to develop diverse housing options near schools, parks, shopping districts, and employment centers.

This project would increase diverse housing options in this portion of the Locust Grove neighborhood. The property is directly behind a commercial strip and is within a 10 minute walk of Burnley-Moran elementary school.

The property is designated as General Residential on the land use map. This category sets forth form guidelines that buildings should be up to 2.5 stories and recommendations for new infill

housing and for consideration of townhomes on a site-specific basis. Most of the buildings on the site utilize the grade to provide for two above grade stories over a basement, minimizing the scale of the proposed buildings in relation to the surrounding context. The structures will appear as a series of townhomes, although the interior of the buildings will be divided into various unit types.

ANALYSIS OF IMPACTS ON PUBLIC FACILITIES AND INFRASTRUCTURE

American Community Survey (ACS) 5 year estimates indicate the average household size in Charlottesville is 2.38 people. Using the ACS average, a multi-family development with a maximum of 72 proposed units could potentially yield 171 new residents within Police District 3 and the Bypass Fire. It should be noted this household size is for all unit sizes and is not limited to multi-family households. The number of people per dwelling unit in this development especially in efficiency, one, and two bedrooms units may be less than the overall household average.

The traffic study included with this PUD submission provides an analysis of projected impacts to roadways.

Impacts on Schools:

This property lies within the Burnley-Moran Elementary School district. After attending neighborhood elementary schools, all Charlottesville students attend Walker Upper Elementary School, Buford Middle School, and Charlottesville High School.

ACS 2018 5 year estimates show that there are an estimated 4,800 residents between the ages of 5-17 within City limits. By dividing this estimate by the number of occupied housing units in the city, 18,613, it can be approximated that there are approximately .26 children per housing unit in Charlottesville. Since a maximum of 72 units are proposed on the site, it is estimated there may be an additional 19 school-aged children within the development.

Impacts on Environmental Features:

All design and engineering for improving the property will comply with applicable City and State regulations for erosion and sediment control and stormwater management.

ANALYSIS OF FURTHERANCE OF THE ZONING ORDINANCE & GENERAL WELFARE (SEC. 34-43(a)(2) CITY CODE)

Sec. 34-3 lists the purposes of the Zoning Ordinance below are descriptions of how this development proposal will further the purposes of Chapter 34 and the general welfare of the entire community:

(1) To provide for adequate light, air, and convenience of access, and to protect against obstruction of light and air;

This development proposal is well integrated into a City block network and will have convenience of access without having significant transportation impacts on the nearby corridors. Adequate light and air will not be compromised with this development proposal.

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
 Revised 8 June 2022
 Revised 20 May 2022
 Submitted 08 February 2022

project: 21.047

(2)To regulate and restrict the location of trades, industries and residences;

This PUD proposal is predominantly residential however, some limited commercial uses are proposed; the commercial uses, such as a daycare facility or a small retail space are proposed at neighborhood-scale and will provide services to directly serve the surrounding neighborhood.

(3)To reduce or prevent congestion in the public streets, to facilitate transportation and to provide for safe and convenient vehicular and pedestrian travel;

This development proposal is not expected to have a significant impact on public streets. The Mount View PUD proposes several roadway improvements to increase connectivity in the neighborhood; the travelway through the development will connect River Vista to Landonia Circle and if the PUD is approved, the developer and City Staff would work together to realize the full Circle connection. Additionally, the multi-use path proposed within Otter Street will create a new connection for pedestrians and cyclists.

(4)To facilitate the creation of a convenient, attractive and harmonious community, to protect against overcrowding of land and undue density of population in relation to the community facilities existing or available, and to protect the natural beauty and special features of the city;

The Mount View PUD proposes a creative housing development that will contribute to varying the housing stock in the Locust Grove neighborhood.

(5)To provide for safety from fire, flood, crime and other dangers, and to facilitate the provision of adequate public safety services, disaster evacuation, civil defense, and flood protection;

This property does not lie within a floodplain. All building construction will comply with the then-current building code.

(6)To facilitate the provision of water, sewerage, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;

The Mount View PUD is anchored by a central greenspace and will meet PUD requirements for open space. The City currently has adequate water and sewer capacity to serve this project.

(7)To protect and enhance the character and stability of neighborhoods;

The Mount View PUD will contribute to the character of the Locust Grove neighborhood by diversifying the housing stock, which is primarily two-family and single family detached; the neighborhood character will be enhanced by welcoming neighbors into the area who may desire an alternate unit type or who may not be able to afford to live in the larger units that currently surround the property. The Mount View PUD will also contribute to the stability of this neighborhood by offering smaller units than what is currently available that may be desirable to those individuals looking to age in place in their neighborhood while reducing their maintenance responsibilities.

(8)To protect against destruction of or encroachment upon historic areas;

The Mount View PUD will not contribute to the destruction of historic areas.

(9)To encourage economic development activities that provide desirable employment and enlarge the tax base;

The Mount View PUD proposes neighborhood-scale commercial activity that could provide desirable employment. This new housing opportunity in the City will allow for new residents to live in the City closer to existing employment centers.

(10)To provide a balance of housing opportunities suitable for meeting the current and future needs of residents of the city;

The Mount View PUD proposes a housing opportunity that will contribute to meeting residents' housing needs.

(11)To protect and maintain the environmental quality in the city.

All development affiliated with the Mount View PUD will comply with applicable local and state environmental protections related to erosion and sediment control and stormwater management.

PROFFERS

The owners have proffered seven affordable units, committed to restricting construction traffic from River Vista, committed to providing a screening fence, and to install sidewalk improvements on River Vista Avenue.

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
 Revised 8 June 2022
 Revised 20 May 2022
 Submitted 08 February 2022

project: 21.047

MOUNT VIEW
PLANNED UNIT DEVELOPMENT
500' RADIUS

ADJ. PARCEL INVENTORY

Sheet 1 of 13

Parcel	Owner	Address	Zone
48-95.1	ALISON, JANE, TRUSTEE JANE ALISON REVOCABLE LIVING TR	964 LOCUST AVE	R-1S
48-104	WINNER, ANTHONY, TRUSTEE	950 LOCUST AVE	R-1S
48-98	NAGRAJ, VIJAY PETER	1100 CALHOUN ST	R-1S
48-103	SHEPPE, SUZANNE S, TRUSTEE	929 ST CLAIR AVE	R-1S
48-98.1	WHITED, SHANN	1102 CALHOUN ST B	R-1S
48-99	RAMAZANI, DAVID K	1104 CALHOUN ST	R-1S
48-102.1	WHITED, SHANN	0 CALHOUN ST	R-1S
48-107	FARIELLO, JENNIFER L CONKLIN, CHRISTIAN J	940 LOCUST AVE	R-1S
48-100	GIBBS, JENNIFER LOUISE	1106 CALHOUN ST	R-1S
48-102	FOSTER, ROBERT D, JR	931 ST CLAIR AVE	R-1S
49-28	DFWM, LLC	1004 ST CLAIR AVE	R-1S
48-108	ALLER, JAMES DAVID & SUZANNE R	932 LOCUST AVE	R-1S
48-101	PITRE, DWAYNE	933 ST CLAIR AVE	R-1S
49-30	BURBAGE, AMANDA CURRERI, MATTHEW	1203 BELLEVIEW AVE	R-1S
49-31	SWINSON, LINDA JEAN	1205 BELLEVIEW AVE	R-1S
49-29	CONNORS, BRADLEY D & KARA L B	1201 BELLEVIEW AVE	R-1S
48-104.3	HICKS, ALVIN S	927 ST CLAIR AVE	R-1S
49-32	KLOOSTERMAN, ANDREW S & ROSEN, PAMELA	1207 BELLEVIEW AVE	R-1S
48-109	DAVIS, JAMES H & MARGARET A	930 LOCUST AVE	R-1S
49-33	DOWDY, DENNIS R	1209 BELLEVIEW AVE	R-1S
48-104.2	SOLOMOND, JOHN PAUL, TRUST	925 ST CLAIR AVE	R-1S
49-33.1	MEHLICH, NANCY E	1211 BELLEVIEW AVE	R-1S
49-34	ROSENTHAL, FAYE S & JERRY S, TRUSTEES	1213 BELLEVIEW AVE	R-1S
48-110	FARLEY, ROBERT C JR & PATRICIA C	918 LOCUST AVE	R-1S
49-51	SUGG, WILLIAM N	930 ST CLAIR AVE	R-2
48-104.1	SNOW-AUST, LAURA K & AUST, ELIJAH S	923 ST CLAIR AVE	R-1S
49-35	HOWE, GRAHAM W & ELIZABETH	1215 BELLEVIEW AVE	R-1S
48-105	SCHRANK, ELIZABETH E	921 ST CLAIR AVE	R-1S
48-113	WARFIELD-BROWN, ROSALIND	912 LOCUST AVE	R-1S
48-106	LAURIE, GORDON W & SUSAN M	919 ST CLAIR AVE	R-1S
49-37	NYIMA, JAMYANG	1217 BELLEVIEW AVE	R-1S
48-118	ALLER, JAMES D & SUZANNE R	910 MARTIN ST	R-1S
49-50	WARD PROPERTIES, LLC	1206 BELLEVIEW AVE	R-2
49-52	STURGILL, BEATTIE GRAHAM	1203 RIVER VISTA AVE	R-2
49-38	RICHARDSON, JAMES	1219 BELLEVIEW AVE	R-1S
49-49	HUNT, MARTHA M	1210 BELLEVIEW AVE	R-2
48-114	WARFIELD-BROWN, ROSALIND	0 LOCUST AVE	R-1S

Parcel	Owner	Address	Zone
49-53	BROWN, EDWIN H, JR & TAVIA K F	1205 RIVER VISTA AVE	R-2
48-111	MARTIN, LAWRENCE J, ETAL	911 MARTIN ST	R-1S
49-39	FRASER, DYLAN R BOSLEY, JAYME C	1225 BELLEVIEW AVE	R-1S
49-53.1	DOUGLAS, GREGORY & VIRGINIA MARIE C	1207 RIVER VISTA AVE	R-2
49-40	DOWDY, CARRIE C	1227 BELLEVIEW AVE	R-1S
48-108.1	KANE, CATHERINE F	913 ST CLAIR AVE	R-1S
49-53.2	JOLLY, W F & BARBARA N	1209 RIVER VISTA AVE	R-2
48-112	ROBERTS, GREGORY W & MARY E	907 MARTIN ST	R-1S
49-64	RONAYNE, THOMAS J, III & ELIZABETH HAMPTON	922 ST CLAIR AVE	R-2
49-53.3	TENNYSON, LINDSEY M	1211 RIVER VISTA AVE	R-2
49-53.4	MYERS, THOMAS R & DIANE E	1213 RIVER VISTA AVE	R-2
48-119	RUSSO, EDWARD A	909 ST CLAIR AVE	R-1S
48-117.1	EICHER, CORY L & SHERRY P	908 MARTIN ST	R-1S
48-115	ROBERTS, GREGORY W & MARY E	0 MARTIN ST	R-1S
49-65	MOUNT VIEW BAPTIST CHURCH	908 ST CLAIR AVE	R-2
49-63.9	BERTHOUD, HEIDI	1206 RIVER VISTA AVE	R-2
48-117	SIMON, ROBERT T	906 MARTIN ST	R-1S
49-63	HICKS, ALVIN S	1210 RIVER VISTA AVE	R-2
48-120	HAND, JASON W & ELIZABETH S	907 ST CLAIR AVE	R-1S
48-116	MAXEY, BETTY JO	904 MARTIN ST	R-1S
49-63.8	WALTON, STUART K	1212 RIVER VISTA AVE	R-2
48-121	MCDERMOTT, GAIL E HANCHAK, LAINA N	905 ST CLAIR AVE	R-1S
48-124	CITY OF CHARLOTTESVILLE	0 MARTIN ST	R-1S
48-122	SISSON, TERRE G	901 ST CLAIR AVE	R-1S
49-63.7	HARVEY, ALLAN LEE	1216 RIVER VISTA AVE	R-2
49-63.6	MAXEY, HAZEL PATTERSON	1218 RIVER VISTA AVE	R-2
49-101	YOUNG, JOSEPH D D'URSO, LAURA M	1300 BELLEVIEW AVE	R-2
48-123	CITY OF CHARLOTTESVILLE	0 ST CLAIR AVE	R-1S
49-63.5	RYANN, MELINA	1220 RIVER VISTA AVE	R-2
49-63.4	LINDSAY, CHRISTINE M	1222 RIVER VISTA AVE	R-2
49-66	SMITH, CHARLES R & ANNA D	902 ST CLAIR AVE	R-2
51-100.1	MCNAB, JENNA	1010 LONG ST	R-1S
49-63.3	ROWLAND, DONNA & PATTI LONG	1224 RIVER VISTA AVE	R-2
49-58	AGEE, JOHN B & ELAINE	912 COLEMAN ST	R-2
49-69	THACKER, RONNIE S & JUDY G	900 ST CLAIR AVE	R-2
49-72	WRIGHT & NAPIER, LLC	1221 LANDONIA CIR	R-2
51-100	HAMLETT, LEROY R JR & T J MICHIE TR	1012 LONG ST	R-1S
49-69.A	WARD, DAVID J & VIRGINIA V	1128 OTTER ST	R-2

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW
PLANNED UNIT DEVELOPMENT
500' RADIUS

ADJ. PARCEL INVENTORY
Sheet 2 of 13

Parcel	Owner	Address	Zone
49-63.2	FELDMAN, GARY A & DEBRA J TULER	1226 RIVER VISTA AVE	R-2
49-69.1	LEE, HSIU CHU	1130 OTTER ST	R-2
49-72.1	WRIGHT & NAPIER, LLC	1133 OTTER ST	R-2
49-63.1	BLAKE, LINDA D & DANIEL E	1228 RIVER VISTA AVE	R-2
51-101	STURGEON, KYLE A & SHIRLEY, LAUREN S	1014 LONG ST	R-1S
49-69.2	SZAKOS, JOSEPH A & KRISTIN LAYNG	1132 OTTER ST	R-2
49-73	LANDONIA, LLC	0 LANDONIA CIR	R-2
49-59	KIRSCHNICK, DAVID M	926 COLEMAN ST	R-2
49-71	SOVRAN BANK	1205 LONG ST	B-1
51-94.1	BARNARD, CHRISTOPHER & PAMELA	841 ST CLAIR AVE	R-1S
51-102	FLEMING, JACOB L & LINDSAY J	1016 LONG ST	R-1S
49-60	THOMAS, ROY S JR & NELLIE P	908 COLEMAN ST	R-2
49-74	CRITZER, JESSIE	1205 LANDONIA CIR	R-2
49-75	CRITZER, PAUL C	1207 LANDONIA CIR	R-2
49-62	TSERING, PASANG & NGAWANG DOLKAR	904 COLEMAN ST	R-2
49-76	DEANE, ELLIS R, JR & VIVIAN C	1209 LANDONIA CIR	R-2
51-103	JACKSON, TREATROUS & KEITH GROOMES, JR	1200 LONG ST	R-2
49-84	HENRY, THOMAS E, TRUSTEE	1200 LANDONIA CIR	R-2
49-77	TAYLOR, WILLIAM E & MARGARET C	902 COLEMAN ST	R-2
49-95	RIVERVIEW LAND AND DEVELOPMENT, LLC	921 RIVER RD	CC
51-104	CARTER, NANCY D	1202 LONG ST	R-2
49-84.A	HENRY, THOMAS E, TRUSTEE	1202 LANDONIA CIR	R-2
51-113	SIPE, MARGARET B	840 ST CLAIR AVE	R-2
49-78	DIXON, MATTHEW J	900 COLEMAN ST	R-2
51-105	CARTER, NANCY D	1206 LONG ST	R-2
49-82	HENRY, THOMAS E, TRUSTEE	1204 LANDONIA CIR	R-2
51-106	CARTER, NANCY D	1210 LONG ST	R-2
49-79	LONG STREET LLC	909 LANDONIA CIR	B-1
49-85	KIMCO, L C	1305 LONG ST	B-2
51-114	BARNARD, PAMELA G	838 ST CLAIR AVE	R-2
51-112	BROWN, JASON T & PHEOBE B	1205 MOWBRAY PL	R-2
51-107	CARTER, NANCY D	1212 LONG ST	R-2
51-111	K & C RESIDENCES LLC	1207-09 MOWBRAY PL	R-2
51-108	CARTER, NANCY D & MATTHEW R, JR	1214 LONG ST	R-2
51-110	WRIGHT, MORGAN G C & JESSIE J	1211 MOWBRAY PL	R-2
50-1	CITY OF CHARLOTTESVILLE	1300 LONG ST	R-2
49-94	TIGER, FUEL COMPANY	0 LONG ST	B-2

Parcel	Owner	Address	Zone
49-94.1	TIGER FUEL COMPANY	1315 LONG ST	B-2
51-99.A	SAGA HOMES, LLC	1008 LONG ST	R-1S
51-99	USMANOV, ZAKARYA & OLIMZHON	1006 LONG ST	R-1S
49-48	FISHER, LARA L	1212 BELLEVIEW AVE	R-2
49-53.5	DEMAIO, EDWARD K & FRANCES M	1215 RIVER VISTA AVE	R-2
49-54	1217 RIVER VISTA AVE CVILLE, LLC	1217 RIVER VISTA AVE	R-2
49-47	WELCH, CAMERON R	1214 BELLEVIEW AVE	R-2
49-54.1	FOSTER, DWIGHT & IRENE	1219 RIVER VISTA AVE	R-2
49-55.1	DUFFY, AIMEE E BOUDOURIS, KATHRYN L	1221 RIVER VISTA AVE	R-2
49-45	MORRIS, DONNA M & LORI A HANGER	1220 BELLEVIEW AVE	R-2
49-46	KORMAN, AMANDA F SIMALCHIK, BRIAN T	1218 BELLEVIEW AVE	R-2
49-55	COMFORT, JASON E & CARRIE A	1223 RIVER VISTA AVE	R-2
49-44	WAMPLER, ERIC M	1222 BELLEVIEW AVE	R-2
49-55.2	HUCK, JENNIFER A & ADAM F SLEZ	1225 RIVER VISTA AVE	R-2
49-43	LUDWIG, DALE & CHRIS ANN	1226 BELLEVIEW AVE	R-2
49-56	BABER, JAMES A & NATALIE A	1227 RIVER VISTA AVE	R-2
49-42	LANG, PEARON, JR & JEAN, TRUSTEES	1228 BELLEVIEW AVE	R-2
49-41	HICKS, RANDOLPH L	1230 BELLEVIEW AVE	R-2
49-57	LACE LEAF, LLC	1229 RIVER VISTA AVE	R-2
49-57.1	GORMAN, TIMOTHY P & SUSAN H & FISHER, LARA L	1231 RIVER VISTA AVE	R-2

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW

PLANNED UNIT DEVELOPMENT
BLOCK NETWORK

Sheet 4 of 13



TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW
PLANNED UNIT DEVELOPMENT
USE TABLE
Sheet 5 of 13

“A”	Ancillary Use	“S”	Special Use Permit
“B”	By-Right	“T”	Temporary Use Permit
“P”	Provisional Use Permit	■	Change Proposed Between Existing R-2 Zoning & PUD

1. Existing R-2 zoning included for reference purposes only

USE TYPES			
Residential & Related Uses	Existing R-2 Zoning ¹	Block 1 Mount View Baptist Church	Block 2 Residential
Accessory apartment, external	P	B	
Accessory apartment, internal	P	B	
Accessory buildings, structures and uses	B	B	B
Adult assisted living:			
1—8 residents	B	B	
Dwellings:			
Multifamily		B	B
Single-family attached	B	B	
Single-family detached	B	B	
Two-family	B	B	
Family day home:			
1—4 children	B	B	B
5—12 children	P	P	P
Home occupation	P	P	P
Occupancy, residential:			
3 unrelated persons	B	B	B
4 unrelated persons	B	B	B

USE TYPES			
Non-Residential: General & Misc. Commercial	Existing R-2 Zoning ¹	Block 1 Mount View Baptist Church	Block 2 Residential
Accessory buildings, structures and uses		B	B
Art studio, GFA 4,000 SF or less		B	
Art workshop		B	
Assembly (indoor):			
Houses of worship	B	B	B
Assembly (outdoor):			
Temporary (outdoor church services, etc.)	T	T	
Daycare facility	S	B	
Offices:			
Property management			B
Parking:			
Surface parking lot		A	A
Surface parking lot (more than 20 spaces)		A	A
Temporary parking facilities		T	T
Outdoor: Parks, playgrounds, ball fields and ball courts, swimming pools, picnic shelters, etc. (city owned), and related concession stands	B	B	B
Outdoor: Parks, playgrounds, ball fields and ball courts, swimming pools, picnic shelters, etc. (private)	S	B	B
Utility lines	B	B	B

USE TYPES			
Non-Residential: Retail	Existing R-2 Zoning ¹	Block 1 Mount View Baptist Church	Block 2 Residential
Accessory buildings, structures and uses		B	B
Consumer service businesses:			
Up to 2,000 SF, GFA		B	
Temporary sales, outdoor (flea markets, craft fairs, promotional sales, etc.)		T	
Other retail stores (non-specified):			
Up to 2,000 SF, GFA		B	

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW PLANNED UNIT DEVELOPMENT LAND USE PLAN

Sheet 6 of 13

Portion of River Vista Avenue
entrance within public ROW to
meet local street standards unless
design waivers are approved



Setbacks	
Block 1 Mount View Baptist Church	Refer to land use plan for required minimum setbacks
Block 2 Residential	Refer to land use plan for required minimum setbacks
Density	
Total Density of PUD	72 dwelling units / 3.4 AC = 22 DUA Not to exceed 22 DUA
Residential Unit Count	
Block 1 Mount View Baptist Church	Max 12 units
Block 2 Residential	Max 60 units
Non-Residential Uses	
Block 1 Mount View Baptist Church	Church - Max 20,000 SF Daycare Facility - Max 6,000 SF Other permitted uses - Max 2,000 SF
Block 2 Residential	Property Management Office - 1,500 SF
Building Height	
Block 1 Mount View Baptist Church	Maximum 35'
Block 2 Residential	Maximum 35'
Parking	
Parking to comply with Sec. 34-984 of the City Zoning Ordinance unless reductions are pursued at site plan per Sec. 34-985 and are administratively approved	

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022



ROUTE 250

project: 21.047

MOUNT VIEW PLANNED UNIT DEVELOPMENT OPEN SPACE & SCREENING EXHIBIT

Sheet 7 of 13



Open Space

Total PUD Site	3.4 AC
Required Open Space [Sec. 34-493]	15%
Minimum Required Open Space in Mount View	0.5 AC or 21,780 SF

Per Sec. 34-493, open space must be useable for recreational purposes, or provide visual, aesthetic, or environmental amenities.

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

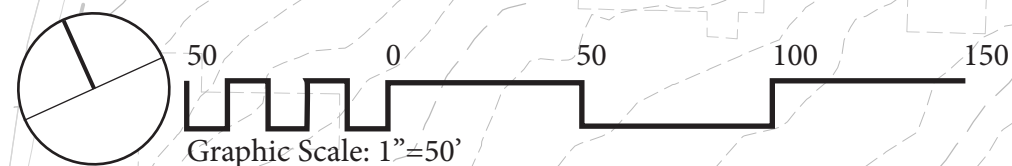
Revised 7 October 2022

Revised 8 June 2022

Revised 20 May 2022

Submitted 08 February 2022

project: 21.047



MOUNT VIEW
PLANNED UNIT DEVELOPMENT
LANDSCAPE PLAN
Sheet 8 of 13

Plant Symbol	Planting Type	Botanical Name	Common Name	Quantity	Total Height (ft) in 10 Yrs	Canopy SF	Total Canopy SF
	Large Deciduous Tree	Betula nigra	River Birch	16	25	397	6352
	Large Deciduous Tree	Platanus x acerifolia	London Planetree	8	28	368	2944
	Large Deciduous Tree	Tilia americana	American Basswood	15	26	191	2865
	Large Deciduous Tree	Ulmus americana	American Elm	7	25	397	2779
	Evergreen Tree	Cryptomeria japonica	Cryptomeria	6	25	123	738
	Medium Deciduous Tree	Carpinus betulus	European Hornbeam	6	20	177	1062
	Ornamental Tree	Cercis canadensis	Eastern Redbud	14	17	124	1736
	Ornamental Tree	Cornus kousa	Kousa Dogwood	20	15	128	2560
	Ornamental Tree	Magnolia x soulangiana	Saucer Magnolia	8	17	145	1160
	Ornamental Tree	Amelanchier canadensis	Shadblow Serviceberry	5	19	130	650
	Evergreen Shrub	Ilex glabra	Inkberry Holly	13	6	23	299
	Evergreen Shrub	Viburnum x burkwoodi	Burkwood Viburnum	70	8	22	1540
	Evergreen Shrub	Rhododendron	Azalea	36	4	10	-
	Evergreen Shrub	Prunus laurocerasus 'Schipkaensis'	Skip Cherry Laurel	83	4	10	-
	Deciduous Shrub	Cornus sericea	Red Twig Dogwood	31	8	72	2232
	Deciduous Shrub	Salix discolor	Pussy Willow (Male)	18	6	64	1152
	Deciduous Shrub	Viburnum nudum	Possumhaw Viburnum	33	6	28	924
	Deciduous Shrub	Fothergilla major	Large Fothergilla	23	6	20	460
	Deciduous Shrub	Lindera benzoin	Spicebush	7	6	23	161
						TOTAL SF:	29614

Landscape coverage requirements shall comply with Sec. 34-869(b)(2) of the City Zoning Ordinance



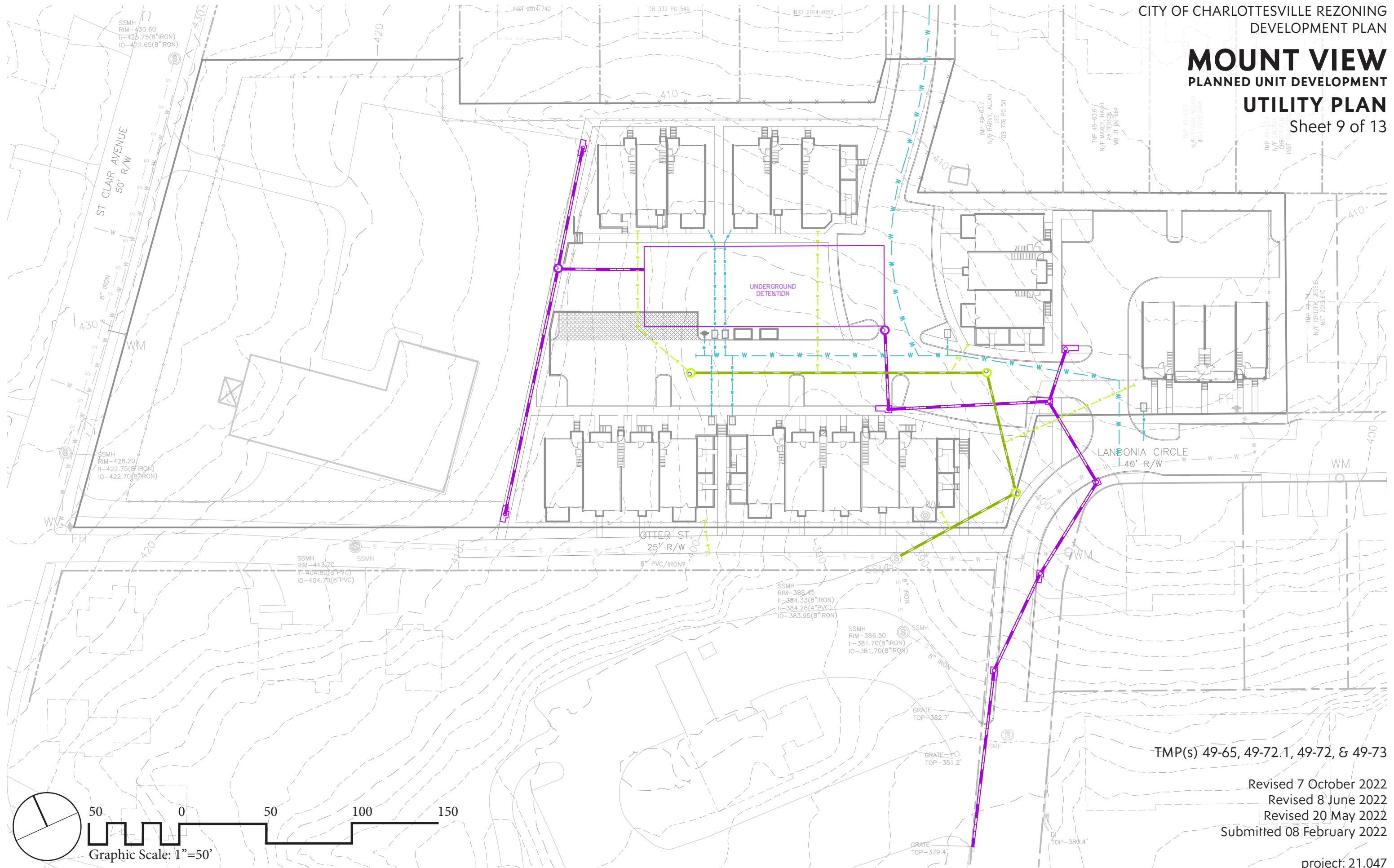
TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW PLANNED UNIT DEVELOPMENT UTILITY PLAN

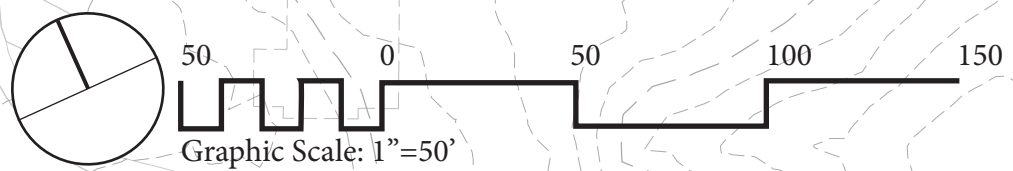
Sheet 9 of 13



TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047



MOUNT VIEW
PLANNED UNIT DEVELOPMENT
MASSING DIAGRAM

Sheet 10 of 13



TMP(S) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 18 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

MOUNT VIEW

PLANNED UNIT DEVELOPMENT
MASSING DIAGRAM

Sheet 11 of 13

Homes on River Vista Ave



TMP(s) 49-65, 49-72.1, 49-72, &

Revised 7 October 2022

Revised 8 June 2022

Revised 20 May 2022

Submitted 08 February 2022

proj: 17413

MOUNT VIEW

PLANNED UNIT DEVELOPMENT
MASSING DIAGRAM

Sheet 12 of 13



Homes on St. Clair Ave

Homes on River Vista Ave

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

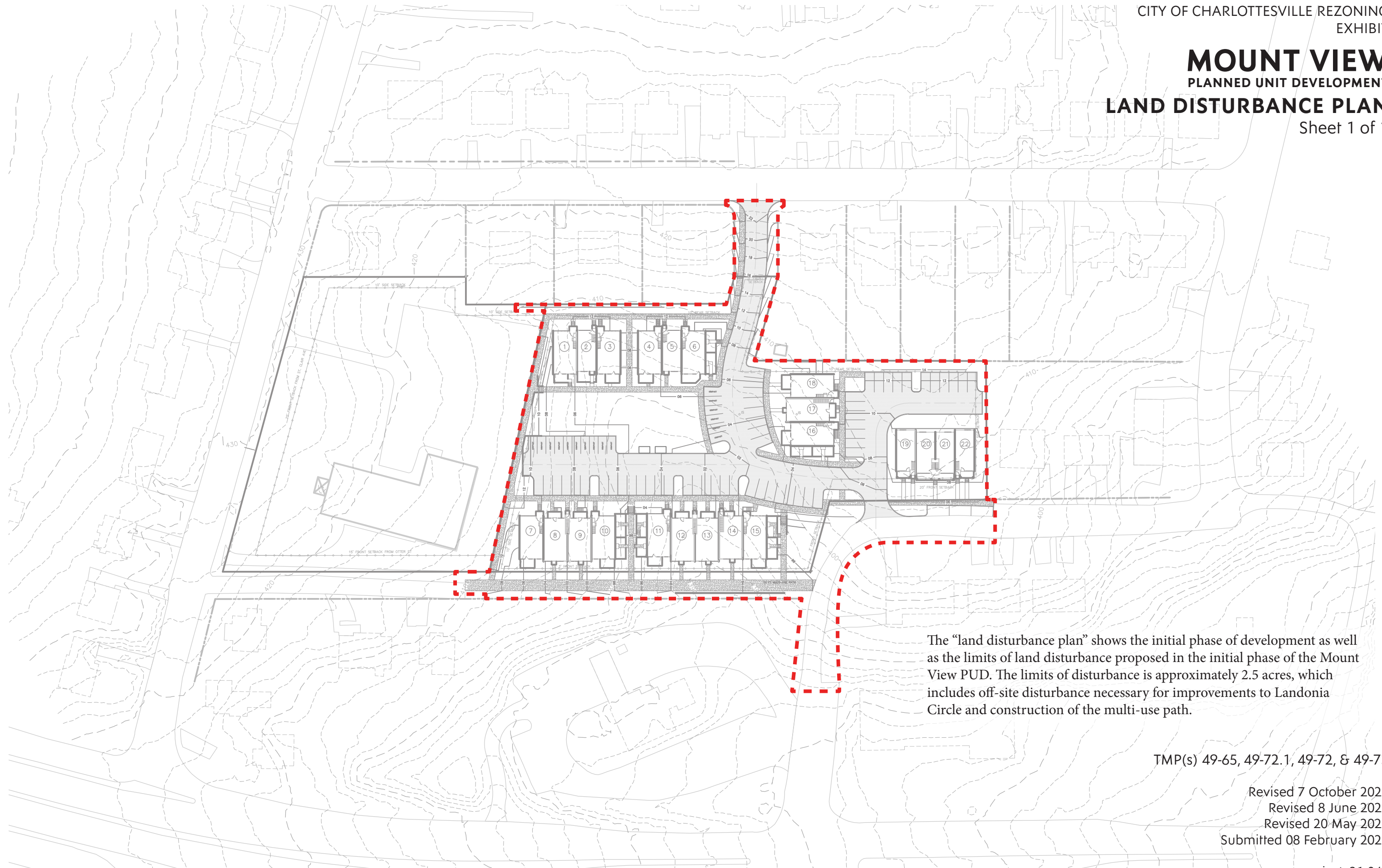
MOUNT VIEW

PLANNED UNIT DEVELOPMENT
MASSING DIAGRAM
Sheet 13 of 13



MOUNT VIEW

PLANNED UNIT DEVELOPMENT
LAND DISTURBANCE PLAN
Sheet 1 of 1



The “land disturbance plan” shows the initial phase of development as well as the limits of land disturbance proposed in the initial phase of the Mount View PUD. The limits of disturbance is approximately 2.5 acres, which includes off-site disturbance necessary for improvements to Landonia Circle and construction of the multi-use path.

TMP(s) 49-65, 49-72.1, 49-72, & 49-73

Revised 7 October 2022
Revised 8 June 2022
Revised 20 May 2022
Submitted 08 February 2022

project: 21.047

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	December 19, 2022
Action Required:	Resolution Approval
Presenter:	Carrie Rainey, Urban Designer/City Planner
Staff Contacts:	Carrie Rainey, Urban Designer/City Planner Jack Dawson, City Engineer
Title:	Considering a Sidewalk Waiver Request for the Mount View PUD (Planned Unit Development) (1 reading; tabled from December 5)

Background

Previously, it was the practice for the Planning Commission to approve sidewalk waiver requests, as referenced within Section 29-182(j) of the subdivision ordinance; however, in 2013 the Virginia Supreme Court decided that only City Council may grant this type of waiver. This is one of many updates that are necessary to the City’s various development ordinances. The current practice for sidewalk waiver requests presented by developers pursuant to Section 29-182 is for the approval of the requested waivers to be presented to City Council for review and decision.

Kelsey Schlein of Shimp Engineering, P.C., on behalf of Mount View Baptist Church, Mount View Properties, LLC, and Route 250 Houses, LLC (collectively the “Owners”), requests a waiver from the requirement of Section 29-182(j)(2) of the City Code for construction of sidewalks to approved City standards on both sides of every new street. The waiver request seeks to waive the sidewalk requirement for the eastern side of a portion of the River Vista Avenue right-of-way, which the applicant proposes to improve to support a new multifamily development. The Owners have also submitted an application pursuant to Section 34-490 seeking a zoning map amendment to change the zoning district classifications of 908 St. Clair Avenue, 1133 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle (Tax Map Parcels 490065000, 490072100, 490072000, and 490073000). The application proposes to change the zoning classification of the Subject Property from “R-2” (Two-Family Residential) to “PUD” (Planned Unit Development) subject to proffered development conditions.

Update: City Council deferred action on the sidewalk waiver at their December 5, 2022 meeting.

Discussion

Per Section 29-182(j)(5), the authority granting the waiver shall consider not only the factors set forth within Section 29-182(j)(5) but also Section 29-36. The applicant’s analysis of these factors is included in the Application Materials, attached.

Public Works Engineering has provided the following analysis: The proposed right-of-way (ROW) is

40-ft. From the Standards and Design Manual (SADM), minimum "Local" standards include: 2x 5-ft sidewalks, 2x10-ft lanes, 2 X 0.5-ft curbs, and 2 x 1-ft buffer. This totals a total required cross section of 33-ft. This would still provide for 7-ft for retaining walls if required. There seems to be no reason that this is not feasible. The applicant's reference to the further complications regarding providing a road in accordance with street standards does not seem relevant as the road as shown on this plan exceeds street standards even with just one sidewalk. (12% slope shown exceeds 10% required by SADM). The road should meet all design standards, including sidewalk requirements.

As previously noted, the authority granting the waiver shall consider the factors set forth within Section 29-36, which state that due to the unusual size, topography, shape of the property, location of the property or other unusual conditions (excluding the proprietary interests of the subdivider) the requirement that is proposed to be varied or excepted would result in substantial injustice or hardship and would not forward the purposes of this chapter or serve the public interest. **Public Works Engineering has confirmed that no hardships due to the physical site exist.**

Per Section 29-182(j)(5), the authority shall also consider the following factors: Whether a surface other than concrete is more appropriate for the subdivision because of the character of the proposed subdivision and the surrounding neighborhood. **Alternative surfaces are not under consideration in this application.**

Whether sidewalks on only one (1) side of the street may be appropriate due to environmental constraints such as streams, stream buffers, critical slopes, floodplain, tree cover, or wetlands, or because lots are provided on only one (1) side of the street. **There are no environmental constraints limiting sidewalk installation on both sides of the street.**

Whether the sidewalks reasonably can connect into an existing or future pedestrian system in the area. **While the existing sidewalk network on River Vista Avenue is incomplete, sidewalks installed on the area of the River Vista to be improved through the application would connect to both existing segments and future additions. The associated Planned Unit Development (PUD) rezoning application does not propose sidewalk on site to connect with the eastern portion of River Vista Avenue, where this sidewalk waiver is requested.**

Whether the length of the street is so short and the density of the development is so low that it is unlikely that the sidewalk would be used to an extent that it would provide a public benefit. **While the applicant does not propose sidewalk connections on-site to the eastern side of River Vista Avenue, the applicant proposes to add up to 72 residential units as a part of the associated Planned Unit Development (PUD) rezoning application. Therefore, staff believes there is a public benefit to providing public sidewalk on both sides of River Vista Avenue.**

Whether an alternate pedestrian system including an alternative pavement could provide more appropriate access throughout the subdivision and to adjoining lands, based on a proposed alternative profile submitted by the subdivider. **No proposed alternative is under consideration.**

Whether the sidewalks would be publicly or privately maintained. **Section 29-182(j)(2) states sidewalks shall be constructed to approved city standards on both sides of every new street, and the dedicated right-of-way for a public street shall be sufficient to permit installation of the sidewalk within the right-of-way on both sides of such street. Therefore, sidewalks would be constructed in the public right-of-way and, after approved and accepted by the City, the**

sidewalk improvements would be maintained by the City.

Whether the waiver promotes the goals of the comprehensive plan, including the applicable neighborhood plan; and (viii) whether waiving the requirement would enable a different principle of the neighborhood plan to be more fully achieved. **The requested waiver will not promote the goals and objectives of the 2021 Comprehensive Plan, such as: Chapter 6 (Transportation): Strategy 2.2 Through development processes, implement and incentivize improved facilities and amenities for non-motorized travelers, including those needed to support multimodal travel by residents, workers, and visitors.**

Alignment with City Council's Vision and Strategic Plan

Sidewalk construction contributes to City Council's Vision Statement, *A Connected Community*, as well as Goal 3 of City Council's Strategic Plan, *A Beautiful and Sustainable Natural and Built Environment*, and Objective 3.2, *to provide reliable and high quality infrastructure*, and objective 3.3, *to provide a variety of transportation and mobility options*.

Community Engagement

Property owners within 500-feet of the subject properties were notified of the applicant-held community meeting per Section 34-41(c)(2) on March 9, 2022, and the joint public hearing with Planning Commission and City Council on September 13, 2022. Discussions at both meetings and written comments received by staff regarding the project note concerns with increasing vehicular traffic, walkability of the community, and gaps in the existing sidewalk network.

Budgetary Impact

If City Council grants a sidewalk waiver to an applicant in connection with the proposed development of a new subdivision/ city street, then if the City later wishes to establish a sidewalk adjacent to the developed street, the City will be required to pay for and complete that construction in accordance with its approved CIP. If City Council does not grant this waiver, and a new sidewalk is established on both sides of the new city street, then the City's long-term maintenance costs will be slightly higher than if no sidewalk is constructed.

Recommendation

Public Works Engineering has confirmed there are no hardships per Section 29-36 preventing the installation of new sidewalk on the eastern side of River Vista Avenue. While the applicant has chosen to not provide a private sidewalk connection within the site to the eastern side of River Vista Avenue, staff believes the public pedestrian network should be installed as required by the standards of Chapter 29 in support of the 2021 Comprehensive Plan. Staff recommends the waiver is denied.

Should City Council decide to grant the waiver request, the following is ***suggested for a motion: "I move the RESOLUTION approving a sidewalk waiver request for the Mount View PUD, for property located at 908 Saint Clair Avenue, 113 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle"***

Alternatives

City Council may :

- (1) by motion, take action to deny the sidewalk waiver;
- (2) by motion, defer action on the sidewalk waiver.

Attachments

1. Res Sidewalk Waiver Mount View PUD
2. Mount View PUD Sidewalk Waiver Application

RESOLUTION

Approving a Sidewalk Waiver Request for the Mount View PUD, for the property located at 908 Saint Clair Avenue, 113 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle

WHEREAS application has been made by Shimp Engineering as the agent of Mount View Baptist Church, Mount View Properties, LLC, and Route 250 Homes, LLC (collectively, “Landowners”), who are the current owners of property located at 908 St. Clair, 113 Otter Street, 1221 Landonia Circle, and 1201 Landonia Circle, further identified, respectively, within the City’s real estate assessment records by Real Estate Parcel Identification Nos. 490065000, 490072100, 490072000, and 490073000 (collectively, the “Subject Property”), to seek a waiver of the sidewalk requirement set forth within City Code Sec. 34-1124(b) with respect to the proposed development of a planned unit development referred to as the Mount View PUD on the Subject Property, and, more specifically, the Landowners request City Council to waive certain of the sidewalk requirements to allow the construction of a sidewalk only on the western side of River Vista Avenue; and

WHEREAS City staff has submitted to Council comments and recommendations regarding the sidewalk waiver request, and Council has reviewed the staff recommendations and the information and materials submitted with the application; and

WHEREAS City Council has considered the factors set forth within Sec. 34-1124(b) and has determined that the sidewalk waiver request should be approved; now, therefore,

BE IT RESOLVED by the Council for the City of Charlottesville, Virginia THAT the requested sidewalk waiver is approved in connection with the development of the Subject Parcel referred to as the Mount View PUD.



Application for a Sidewalk Waiver

Department of Neighborhood Development Services

P. O. Box 911, City Hall

Charlottesville, VA 22902

Telephone: (434) 970-3182

Tax Map and Parcel Number(s) 49-65, 49-72.1, 49-72, 49-73

Address(es) 908 St. Clair Ave., 1133 Otter St., 1221 Landonia Circ., 0 Landonia Circ.

Note: This application is only for a "waiver" to the City's sidewalks, curbs and gutters regulations. Applicants wishing to contribute funds to a sidewalk improvement fund in an amount equivalent to the cost of dedication of land for and construction of the required sidewalk, curb and gutter must use the Funds In Lieu of Sidewalk Application.

Applicant Contact Information

Name Kelsey Schlein

Company Shimp Engineering, P.C.

Phone 434-227-5140

Email kelsey@shimp-engineering.com

Owner Contact Information

Name Mount View Baptist Church (49-65), Route 250 Houses, LLC (49-72 & 49-72.1), Mount View Properties LLC (49-73)

Address 49-65: 908 St. Clair Ave. Charlottesville, VA 22901 | 49-72 & 49-72.1: 205 12th St. NE, Charlottesville, VA 22902 |

Phone Contact applicant 49-73: 338 Rio Road W, Charlottesville, VA 22901

Email Contact applicant

Owner's Signature:

Kelsey Schlein 07/07/2022

Owner (see attached authorization to submit application) Date

Required application materials and fee:

- All required materials. Contact City Planner for more information.
- Correct application fee. Checks payable to "City of Charlottesville".

Note: Incomplete applications will not be processed.

Date Received: <u>7/11/2022</u>	Received by: <u>O. Eubank</u>
Fee: <u>250.00</u>	Cash/Check #: <u>35531</u>

Revision Date: May 19, 2022

0722 00252

January 13, 2022

Charlottesville Dept. of Neighborhood Development Services
610 E Market St.
Charlottesville, VA 22902

Re: AUTHORIZATION TO SUBMIT LAND USE APPLICATIONS

Route 250 Houses LLC, a Virginia limited liability company (the "Owner"), is the Owner of Charlottesville tax parcels 490072000 and 490072100 (the "Property"). The Owner desires to submit land use applications affecting the Property, such as, but not limited to, Zoning Amendment Applications, Site Plan Applications, and other similar land use applications affecting the Property (collectively, the "Land Use Applications"). The Owner hereby authorizes the following individuals and entities to submit Land Use Applications on behalf of the Owner in connection with the Property: Justin M. Shimp and Kelsey Schlein of Shimp Engineering. This authorization includes the authority to take any other steps, and submit any other documentation to the City of Charlottesville necessary to effectuate the Land Use Applications on behalf of the Owner.

ROUTE 250 HOUSES LLC
a Virginia Limited Liability Company

By: Ly L. Nappier
[Member]

Date: 1-21-22

January 13, 2022

Charlottesville Dept. of Neighborhood Development Services
610 E Market St.
Charlottesville, VA 22902

Re: AUTHORIZATION TO SUBMIT LAND USE APPLICATIONS

Mount View Baptist Church (the "Owner") is the Owner of Charlottesville tax parcel 490065000 (the "Property"). The Owner desires to submit land use applications affecting the Property, such as, but not limited to, Zoning Amendment Applications, Site Plan Applications, and other similar land use applications affecting the Property (collectively, the "Land Use Applications"). The Owner hereby authorizes the following individuals and entities to submit Land Use Applications on behalf of the Owner in connection with the Property: Justin M. Shimp and Kelsey Schlein of Shimp Engineering. This authorization includes the authority to take any other steps, and submit any other documentation to the City of Charlottesville necessary to effectuate the Land Use Applications on behalf of the Owner.

MOUNT VIEW BAPTIST CHURCH

By: Robert R. Henry
TRUSTEE

Date: January 21, 2022

By: John R. Lowell
TRUSTEE

Date: January 21, 2022


January 13, 2022

Charlottesville Dept. of Neighborhood Development Services
610 E Market St.
Charlottesville, VA 22902

Re: AUTHORIZATION TO SUBMIT LAND USE APPLICATIONS

Mount View Properties LLC, a Virginia limited liability company (the "Owner"), is the Owner of Charlottesville tax parcel 490073000 (the "Property"). The Owner desires to submit land use applications affecting the Property, such as, but not limited to, Zoning Amendment Applications, Site Plan Applications, and other similar land use applications affecting the Property (collectively, the "Land Use Applications"). The Owner hereby authorizes the following individuals and entities to submit Land Use Applications on behalf of the Owner in connection with the Property: Justin M. Shimp and Kelsey Schlein of Shimp Engineering. This authorization includes the authority to take any other steps, and submit any other documentation to the City of Charlottesville necessary to effectuate the Land Use Applications on behalf of the Owner.

MOUNT VIEW PROPERTIES LLC
a Virginia Limited Liability Company

By:  _____ [Partner]
Date: 1/25/22 _____

Mr. James Freas, Director of Neighborhood Services
City of Charlottesville
PO Box 911
Charlottesville, VA 22902

June 8, 2022

RE: MOUNT VIEW PUD SIDEWALK EXCEPTION REQUEST (SEC. 29-182(j)(5))

Dear Mr. Freas and Members of the Planning Commission,

In accordance with Sec. 182(j)(5) of Chapter 29 – Subdivision of Land of the City Code, we respectfully request an exception from Sec. 29-182(j)(2) which requires sidewalks to be constructed on both sides of every new street; specifically this exception request applies to the eastern side of the street proposed within the existing right-of-way that runs perpendicular to River Vista Avenue. See attached “Exhibit A” which shows the proposed improvements in the right-of-way and the area where sidewalks are not proposed, which is the subject of this exception request. In your evaluation of this request, please consider the following:

Sec. 29-36 – Variations

(a) Whenever this chapter contains provisions for variation or exception to a requirement, the agent or commission in considering a request for a variation or exception, shall consider whether, because of unusual size, topography, shape of the property, location of the property or other unusual conditions (excluding the proprietary interests of the subdivider) the requirement that is proposed to be varied or excepted would result in substantial injustice or hardship and would not forward the purposes of this chapter or serve the public interest.

In the right-of-way that is perpendicular to River Vista Ave, the Mount View PUD proposes the construction of a road to City street standards with the exception of a providing a sidewalk along the eastern edge of the proposed street. The existing right-of-way is 40’ in width and is bound on the east and west by privately owned residential lots. The proposed street will feature a sidewalk along the western side and will feature street trees along the eastern side. There are no residential units proposed to front on this portion of right-of-way and the sidewalk proposed along the western side of the street is well integrated into a larger sidewalk network within the Mount View PUD. The 40’ right-of-way width limits the improvements that can be accommodated within the right-of-way and this limitation is further compounded by the earthwork necessary to design a road in accordance with street standards. Although a sidewalk is not provided on the eastern side of the street, pedestrian connectivity is not compromised within the PUD. There is a clear pedestrian connection running through the site connecting Landonia Circle to River Vista and there are pedestrian connections provided east to west through the site as well, providing connection points to Otter St., Mount View Church, and adjacent properties. In summary, in your consideration of this request please consider the site constraints within the right-of-way, the well-connected pedestrian network elsewhere within the PUD including on the western side of the proposed street, and that no units will be fronting on this portion of the right-of-way.

Sec. 29-182(j)(5)(i-vii)

(i) whether a surface other than concrete is more appropriate for the subdivision because of the character of the proposed subdivision and the surrounding neighborhood;

This consideration is not applicable for this particular request.

SHIMP ENGINEERING, P.C.

Design Focused Engineering

(ii) whether sidewalks on only one (1) side of the street may be appropriate due to environmental constraints such as streams, stream buffers, critical slopes, floodplain, tree cover, or wetlands, or because lots are provided on only one (1) side of the street;

There are no environmental constraints within the right-of-way and there are no residential units proposed on the street. Sidewalks are proposed only on one side of the street due to the right-of-way width and existing site grade which must be reworked within the existing right-of-way to meet City street standards.

(iii) whether the sidewalks reasonably can connect into an existing or future pedestrian system in the area;

The sidewalk proposed on the western portion of the street is well integrated into the internal sidewalk network proposed within the Mount View PUD; there are clear north/south and east/west pedestrian connections provided.

(iv) whether the length of the street is so short and the density of the development is so low that it is unlikely that the sidewalk would be used to an extent that it would provide a public benefit;

The public street portion of the travel way is short; approximately 70' in length and it is not expected for there to be significant vehicular traffic along this portion of right-of-way to the point where it would be unsafe for pedestrians to cross to the western sidewalk within the development.

(v) whether an alternate pedestrian system including an alternative pavement could provide more appropriate access throughout the subdivision and to adjoining lands, based on a proposed alternative profile submitted by the subdivider;

No alternative surfaces are proposed with this request. The pedestrian connections proposed provide access to adjacent streets and properties.

(vi) whether the sidewalks would be publicly or privately maintained;

The majority of the pedestrian connections affiliated with the development will be privately maintained however all improvements proposed within the right-of-way will be publicly maintained.

(vii) whether the waiver promotes the goals of the comprehensive plan, including the applicable neighborhood plan; and

The Mount View PUD promotes many goals of the comprehensive plan; the PUD Development Plan details the various consistencies. This development proposes a well-connected pedestrian network that promotes walkability within and around the proposed PUD. Granting of this waiver will not compromise pedestrian connectivity in this particular location.

(viii) whether waiving the requirement would enable a different principle of the neighborhood plan to be more fully achieved.

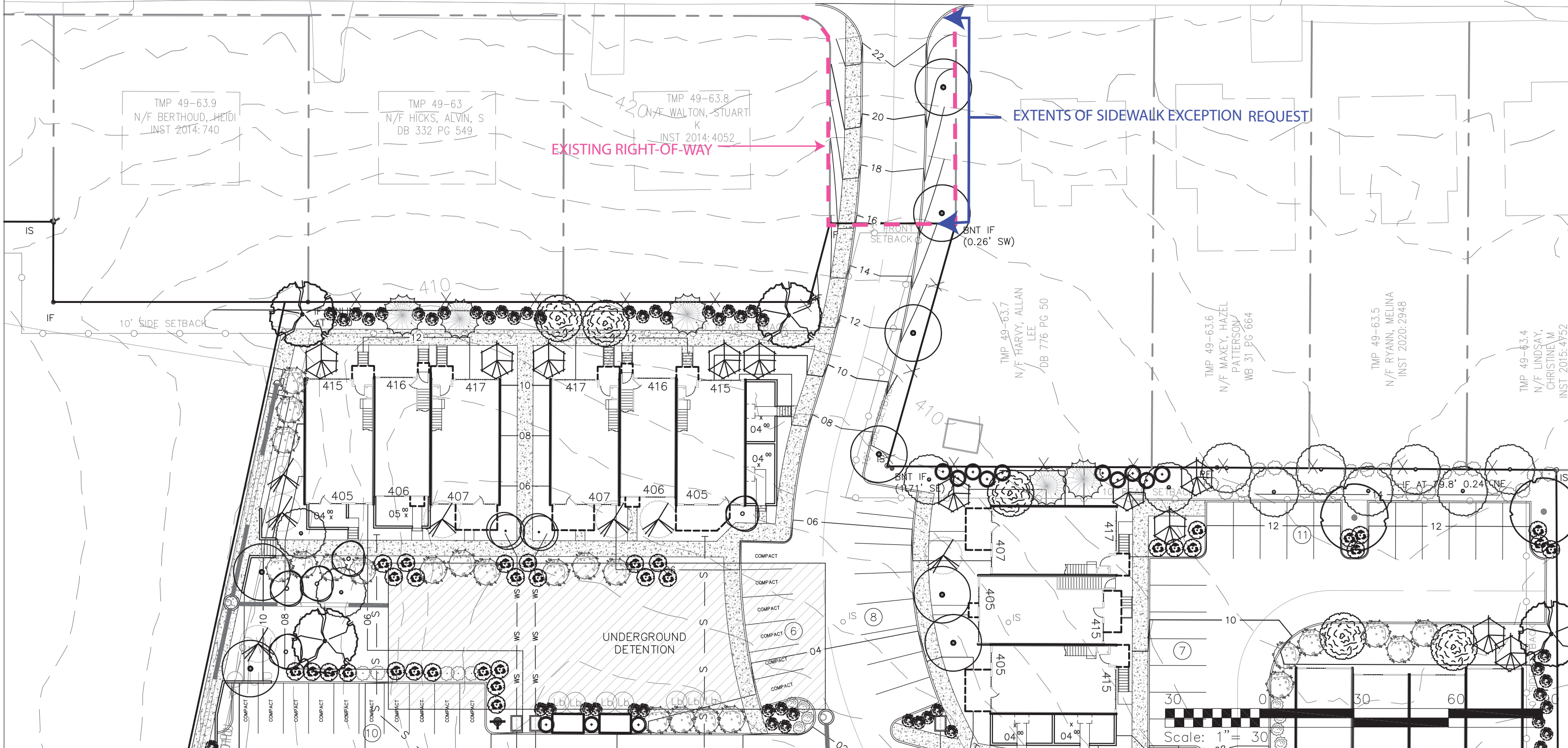
Waiving the sidewalk requirement on the eastern side of the proposed street would allow for the construction of these street improvements within the existing 40' right-of-way without encroaching on adjacent properties. These improvements are necessary to provide safe and convenient access to the proposed Mount View PUD.

SHIMP ENGINEERING, P.C.
Design Focused Engineering

Thank you for your consideration of this request.

TA AVE.
R/W

RIVER VISTA



TMP 49-63.9
N/F BERTHOUD, HEIDI
INST 2014: 740

TMP 49-63
N/F HICKS, ALVIN, S
DB 332 PG 549

420
TMP 49-63.8
N/F WALTON, STUART
K
INST 2014: 4052

EXTENTS OF SIDEWALK EXCEPTION REQUEST

TMP 49-63.7
N/F HARVY, ALLAN
LEE
DB 776 PG 50

TMP 49-63.6
N/F MAXEY, HAZEL
PATTERSON
WB 31 PG 664

TMP 49-63.5
N/F RYANN, MELINA
INST 2020: 2948

TMP 49-63.4
N/F LINDSAY,
CHRISTINE M
INST 2015: 4752



CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: December 19, 2022
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 (1 of 2 readings)**

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.

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

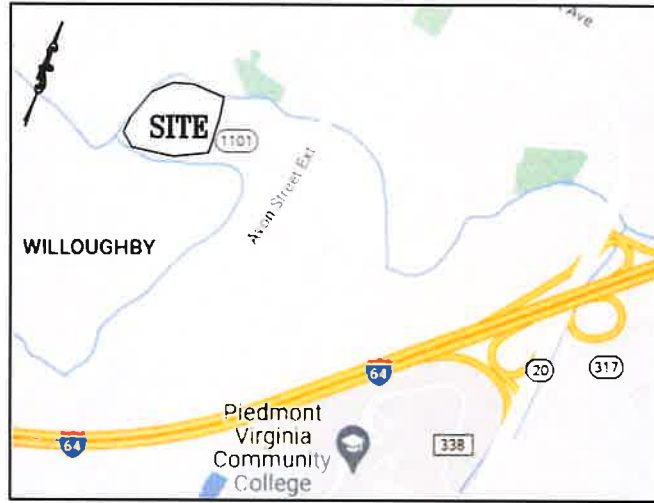
TMP 77-8C

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: 435 MERCHANT WALK SQ SUITE 300-159 CHARLOTTESVILLE, VA 22902
PHONE: 434-977-0205 WWW.ROUDABUSH.COM

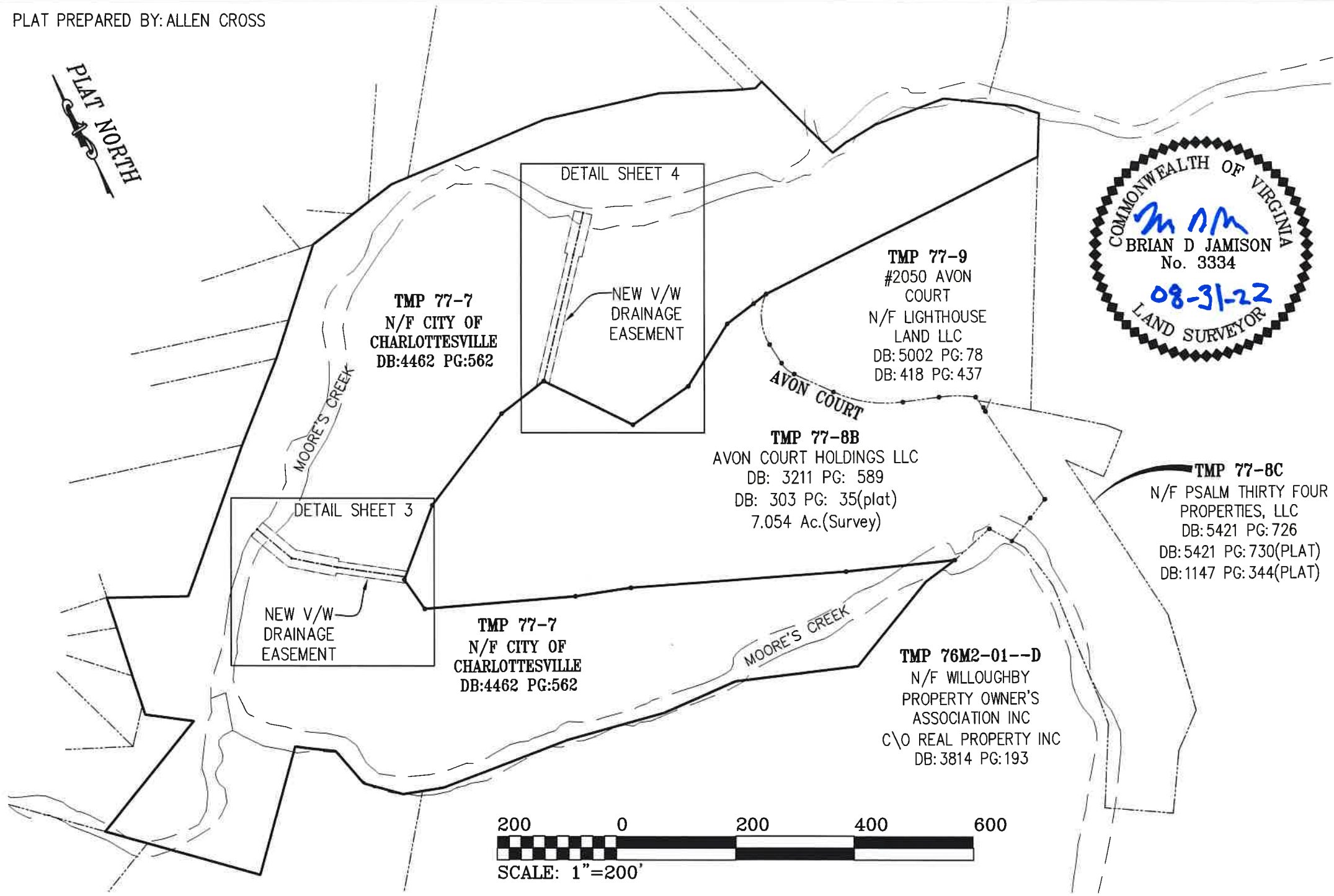
PLAT CREATING PRIVATE DRAINAGE
EASEMENTS
AVON COURT HOLDINGS
TAX MAP 77 PARCEL 7
ALBEMARLE COUNTY, VIRGINIA

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

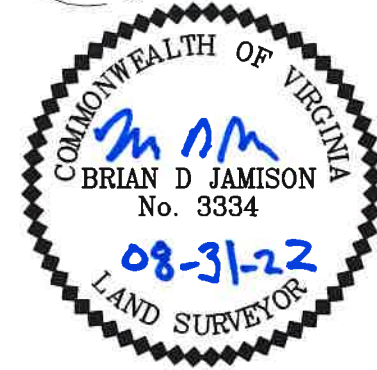


TMP 77-7
 N/F CITY OF
 CHARLOTTESVILLE
 DB:4462 PG:562

DETAIL SHEET 4

NEW V/W
 DRAINAGE
 EASEMENT

TMP 77-9
 #2050 AVON
 COURT
 N/F LIGHTHOUSE
 LAND LLC
 DB: 5002 PG: 78
 DB: 418 PG: 437



TMP 77-8B
 AVON COURT HOLDINGS LLC
 DB: 3211 PG: 589
 DB: 303 PG: 35(plat)
 7.054 Ac.(Survey)

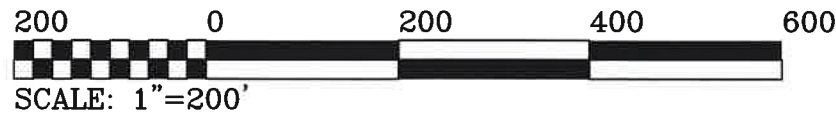
DETAIL SHEET 3

NEW V/W
 DRAINAGE
 EASEMENT

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

TMP 77-8C
 N/F PSALM THIRTY FOUR
 PROPERTIES, LLC
 DB: 5421 PG: 726
 DB: 5421 PG: 730(PLAT)
 DB: 1147 PG: 344(PLAT)

TMP 76M2-01--D
 N/F WILLOUGHBY
 PROPERTY OWNER'S
 ASSOCIATION INC
 C/O REAL PROPERTY INC
 DB: 3814 PG: 193



ROUDABUSH, GALE & ASSOC., INC.

A PROFESSIONAL CORPORATION
 SERVING VIRGINIA SINCE 1956

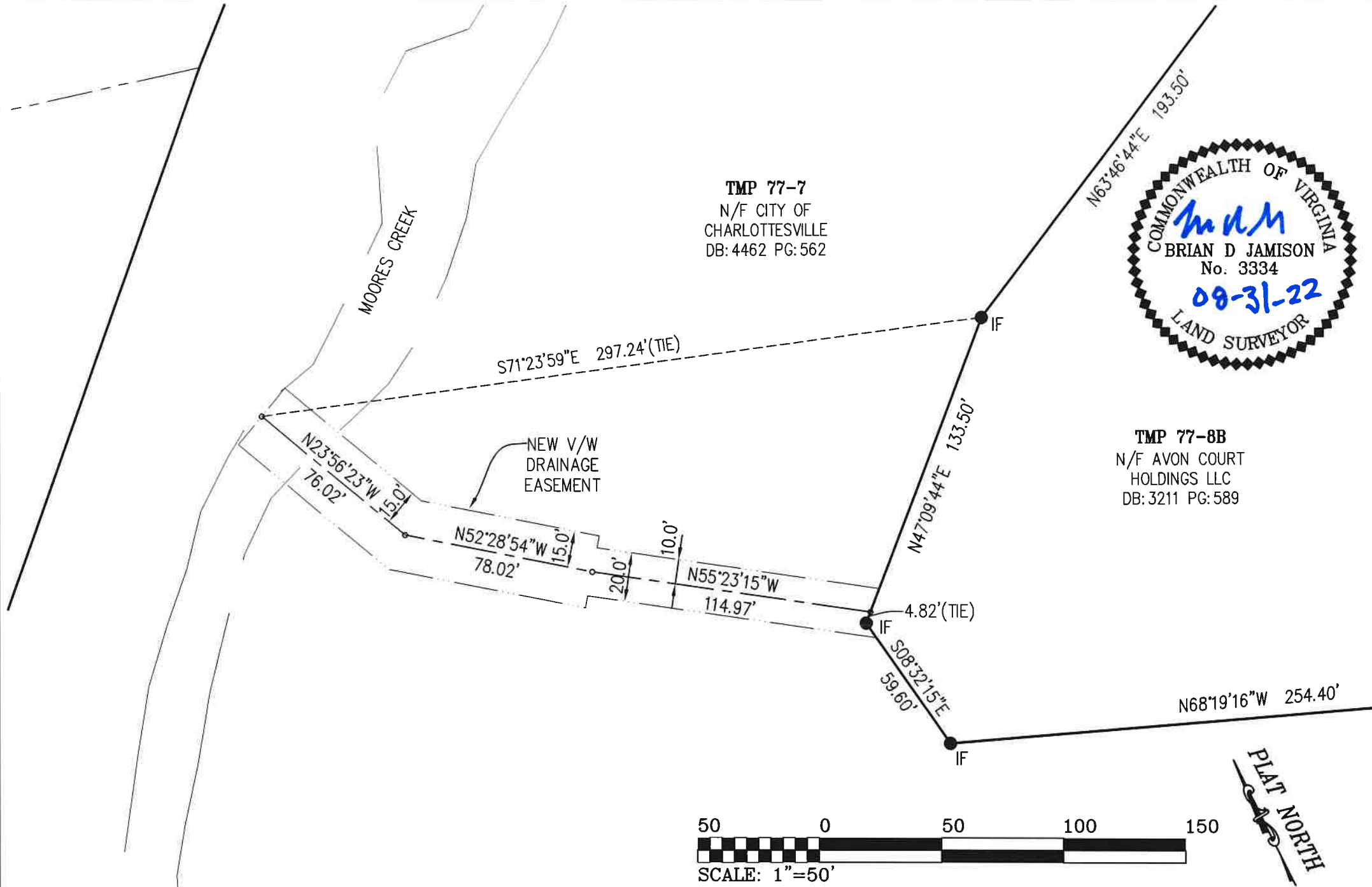


999 SECOND STREET SE
 CHARLOTTESVILLE, VA 22902
 PHONE 434-977-0205 WWW.ROUDABUSH.COM

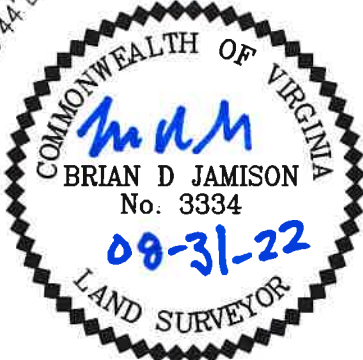
PLAT CREATING PRIVATE DRAINAGE
 EASEMENTS
 AVON COURT HOLDINGS
 TAX MAP 77 PARCEL 7
 ALBEMARLE COUNTY, VIRGINIA

OVERVIEW SHEET

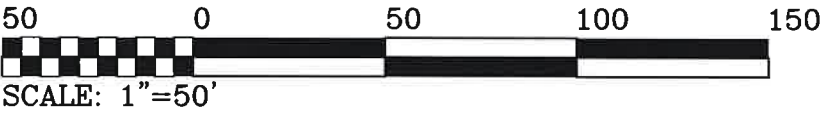
DATE:	08-31-2022
REV:	
REV:	
REV:	
SCALE:	1"=200'
JOB:	20.2022
FILE:	20.2022
SHEET:	02 OF 04



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

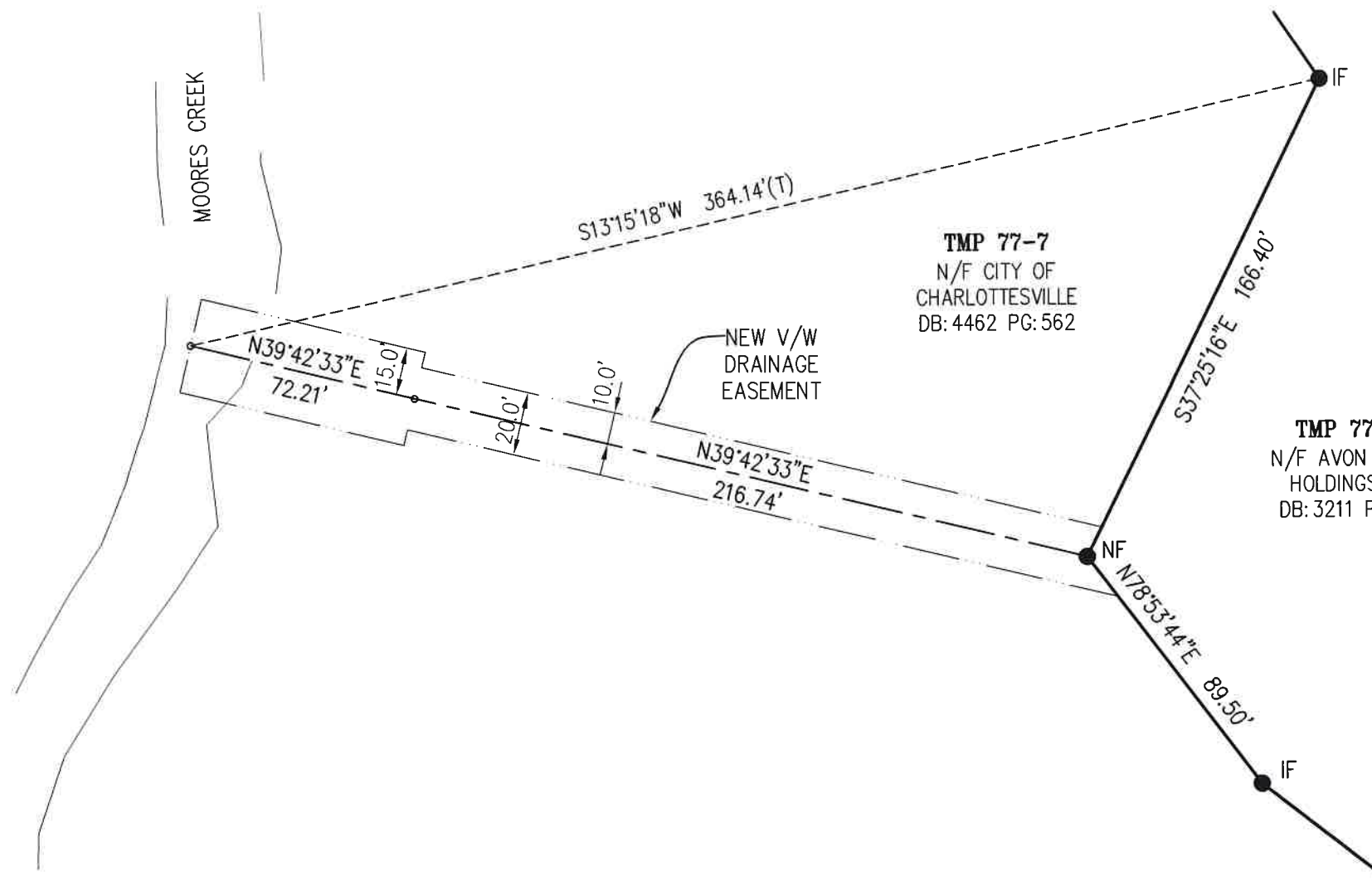
ROUDABUSH, GALE & ASSOC., INC.
 A PROFESSIONAL CORPORATION
 SERVING VIRGINIA SINCE 1966

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**

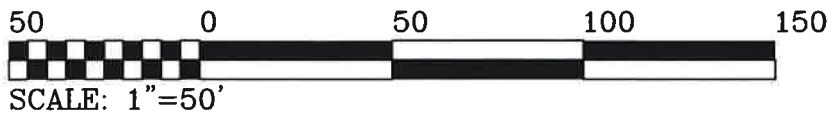
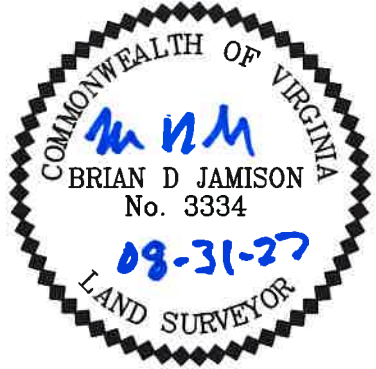
NEW EASEMENT

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: December 19, 2022
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 (1 of 2 readings)

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.