



CITY OF CHARLESTON WEST VIRGINIA



Council Member – AT-LARGE

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Environment and Recycling Committee, Chair
Parks and Recreation Committee

TO: Environment and Recycling Committee
FROM: John Kennedy Bailey, Chair
RE: Committee Meeting

A meeting of the Council Committee on Environment and Recycling will be held on Monday, July 1, 2019. The meeting will begin promptly at 5:30 PM in Council Chambers, 3rd Floor of City Hall.

Agenda

PREVIOUS MINUTES

1. June 17, 2019

ERC MEETING ITEMS

1. Bill 7822
2. Discussion on Alternatives to Recycling Bags
3. Discussion on Adding Pedestrian Trash Cans

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JKB/jb

MINUTES

ENVIRONMENT & RECYCLING COMMITTEE MEETING

JUNE 17, 2019 - 5:30 P.M.

CITY COUNCIL CHAMBERS

Committee Members Present: John Kennedy Bailey, Chair - Deanna McKinney
Robert Sheets – Sam Minardi – Bobby Haas

Others Present: John Shannon-Brent Webster-Alexandra Gallo - Kevin Baker
Sam Strickland – Rebecca Caraballo – Linda Frame

The Chairman called the meeting to order. Moved for motion to approve previous minutes. Sam Minardi moved to approve. Deanna McKinney seconded. Minutes approved.

Next item on agenda was the Grant application. The chairman prefaced the discussion by telling the committee that periodically the State awards grant funds for promotion of recycling. The chairman asked Alex Gallo to provide the specifics. Alex began by giving the committee an overview of the grant and application process. The grant, known as the Rehabilitation Environmental Action Plan grant or REAP was through the State Department of Environmental Protection in the amount of \$150,000. She went on to say that the deadline for application is July 1, 2019 at 5 P.M. She informed that the grant would primarily be used for education, resident outreach, and revamping our website & materials. She advised that we should have an answer as to how we the funds can be utilized by January 1, 2020. She went on to say that once the grant money is received the City will have 14 months to spend down the funds.

The Chairman explained that the Resolution to apply for the REAP grant funds (Resolution #210-19) Has been referred to the City Finance Committee. After the reading of the Resolution the chairman opened the floor for comments. After some discussion about the Resolution, the Chairman asked if there was motion to endorse the Resolution. Robert Sheets moved for endorsement. Deanna McKinney seconded. The Committee unanimously recommended endorsement to City Council for passage.

Next item on agenda was the use of alternate containers for recycling. The Chairman began by reiterating that as of now the free clear recycling bags will not be available for recycling. He proposed allowing resident to use either the current bins, as well as some type of alternate containers that would meet the criteria John Shannon expressed that if the containers are not a weight issue for his employees, with 40 pounds being the maximum limit, already separated, clearly marked recycling, and is not contaminated, he does not see a major issue. Sam Minardi raised the possibility of the remaining bags being distributed to those residents on a need basis. Deanna McKinney suggested a possible hub, i.e. a church, for resident pick up.

The Chairman asked if the Committee would be in agreement with working with the City Attorney to formulate a Bill that would allow for use of acceptable alternate bins. The Committee unanimously agreed.

Next on the agenda, the discussion of sale of garbage & recycling bags in stores and surplus bags. The chairman said that he had been in communication with representative of Waste Zero about possibly providing the bags for sale in stores at a rate that would produce some margin of profit in order to provide us with bags to then give away. He was advised that the bags could be competitively priced if the retailer agreed to not mark them up which everyone agreed was something we could not control. The Chairman also added that another option could be using sponsors for paid advertising on the bags. He said that he does have some numbers as it relates to the sponsorship aspect and will have that information for the committee at the next meeting.

The Chairman asked if anyone had additional concerns, or questions. Sam Minardi asked if it was possible to get ballpark numbers from Waste Zero to continue providing the clear recycling bags only. The Chairman said he would try to get some numbers by next meeting. Deanna McKinney asked about the status of adding trash cans for pedestrian use. The Chairman asked if there was a list of sidewalk trash cans maintained by the City. Brent Webster informed that the City does not have surplus of cans, and that the Public Grounds department was responsible for installation. It was agreed that the appropriate parties meet at earliest convenience to determine cost, current locations and possible future areas to add the cans.

In summary, the Chairman expressed that the following be included for next meeting agenda: (1) Discussion of Resolution 210-19 (2) Providing the info he has on selling bags (3) Future meeting regarding the pedestrian trash cans (4) Discussion & Committee recommendation of Bill #7822.

Sam Minardi and Deanna McKinney again expressed the issue of City Committee meetings conflicting. The issue has been acknowledged and hopefully can be resolved in near future. With that the Chairman entertained a motion to adjourn. Sam Minardi moved Deanna McKinney seconded. Meeting adjourned.

Next Meeting Scheduled for: July 1, 2019 - 5:30PM – Council Chambers

Bill No. 7822

Introduced in Council:

June 17, 2019

Introduced by:

John Kennedy Bailey

Adopted by Council:

Referred to:

Environment & Recycling

Bill No. 7822 - A BILL to repeal Sections 102-300 and 102-303; to amend and reenact Sections 102-301, 102-302, and 102-304 of Division I of Article VIII, Chapter 102 of the Municipal Code of the City of Charleston, known as the "City of Charleston Illicit Discharge Detection and Elimination Ordinance"; and to amend and reenact Sections 102-314, 102-315, 102-316, 102-317, 102-318, and 102-319 of Division II of Article VIII, Chapter 102 of the Municipal Code of the City of Charleston, known as the "City of Charleston Construction Site Erosion and Sediment Control Ordinance."

WHEREAS, the 1972 amendments to the Federal Water Pollution Control Act (referred to as the Clean Water Act or "CWA"), 33 U.S.C. §§ 1251-1387, prohibit the discharge of any Pollutant to navigable waters of the United States from a point source unless the discharge is authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") required by CWA § 402, 33 U.S.C. §§ 1342; and

WHEREAS, Municipal Separate Storm Sewer Systems ("MS4s") which convey urban runoff, including, but not limited to Stormwater runoff, are point sources under the CWA; and

WHEREAS, the US EPA reports that in some municipalities illicit connections of sanitary, commercial and industrial discharges to storm sewer systems have had a significant adverse impact on the water quality of receiving waters; and

WHEREAS, pursuant to the CWA, the US EPA has defined "illicit discharges" as any discharge to a MS4 that is not composed entirely of Stormwater or not covered by a NPDES permit; and

WHEREAS, Section 402(p)(3)(B) of the CWA requires that NPDES permits for discharges from MS4s are to include a requirement to "effectively prohibit" non-stormwater discharges into MS4s; and

WHEREAS, US EPA regulations implementing the CWA require a municipality to demonstrate that it has the authority to control, through ordinance or other authority, discharge to the MS4 of spills, dumping or disposal of materials other than stormwater; and

WHEREAS, soil is highly vulnerable to erosion by wind and water during the construction process. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and the dredging of waterways. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat; and

WHEREAS, US EPA regulations require a municipality to implement a stormwater management plan that adopts measures for the protection of water quality by addressing erosion and sediment control during land disturbing activities; and

WHEREAS, the City of Charleston, as the owner and operator of its MS4, has the right and the duty to protect the integrity of its MS4 against Pollutants entering the MS4; and

WHEREAS, under the Constitution of West Virginia, West Virginia Code, and the City of Charleston Municipal Code, the City of Charleston has the authority to define public nuisances and to protect the environment and the public health and safety of the residents of and visitors to the City, by abating public nuisances.

Now, therefore, be it ordained by the Council of the City of Charleston:

That Sections 102-300 and 102-303 of Division I of Article VIII of Chapter 102 are hereby repealed, and Sections 102-301, 102-302, and 102-304 of Division I of Article VIII, Chapter 102 are hereby amended and reenacted; and Sections 102-314, 102-315, 102-316, 102-317, 102-318, and 102-319 of Division II, Article VIII, Chapter 102 of the Municipal Code of the City of Charleston are hereby amended and reenacted, all to read as follows:

**CHAPTER 102 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES
ARTICLE VIII – STORMWATER POLLUTION PREVENTION
DIVISION 1 – ILLICIT DISCHARGE DETECTION AND ELIMINATION**

~~Sec. 102-300. – Stormwater Management Board created.~~

~~There is hereby created in and for the City, the City of Charleston Stormwater Management Board, which shall hear and decide appeals of any order or decision of a Compliance Officer or any denial of a request for reconsideration by the City Engineer issued pursuant to this Division.~~

~~The Stormwater Management Board shall be comprised of the City Manager, the City Director of Emergency Services, and three persons appointed by the Mayor, two of whom must be current members of Charleston City Council (one of whom must serve on the Environmental and Recycling Committee) and one person not employed by the City who is qualified by knowledge and experience in matters pertaining to construction and/or engineering. Members of the Board shall serve for terms of three years and do not receive compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.~~

~~(c) — Notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with an owner or Person that regularly conducts business in front of the Stormwater Management Board may also serve as a member of the Stormwater Management Board and shall not be disqualified from serving as a member because of a conflict of interest as defined in West Virginia Code §61-10-15 and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the owner or Person. The member must, however, recuse himself or herself from any vote, discussion, participation or other activity regarding any colorable conflict recognized under West Virginia law.~~

~~(d) — Notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with an owner or Person that regularly conducts business in front of the Stormwater Management Board may also serve as a member of the Stormwater Management Board and shall not be in violation of WV Code §6B-2-5(g) if the member recuses himself or herself from any vote, discussion, participation or other activity regarding any conflict: *Provided*, That such members do not constitute a majority of the members of the Stormwater Management Board at the same time.~~

Sec. 102-301. – Notice of violation.

(a) When a Compliance Officer determines after reasonable observation or investigation that a Person has violated a prohibition or failed to meet a requirement of this Division, he/she may order compliance by written notice of violation to that Person. Such notice may require, without limitation:

- (1) the performance of monitoring, analyses and reporting;
- (2) the elimination of Illicit connections or discharges;
- (3) that discharges, practices or operations that are in violation shall cease and desist;
- (4) the abatement or remediation of Stormwater Pollution or contamination hazards and the restoration of any affected property; and/or
- (5) the implementation of source control or treatment BMPs.

(b) Notice(s) of violation shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a Compliance Officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the notice of the violation is refused, the Compliance Officer, promptly upon the receipt of the notice of such refusal, shall mail to the Person being noticed, by first class mail, postage prepaid, (1) a copy of the notice of the violation(s) (2) a notice that despite such refusal, the notice of the violation(s) is valid, and (3) advising that the City will proceed to enforce the notice of violation(s). So long as such first class mailing is not returned as undeliverable by the

U.S. Postal Service, service of the notice of violation(s) will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.

(c) Any notice of violation(s) under this section shall be in writing and shall contain the following:

(1) the date the notice of violation is given;

(2) the name and address of the Person(s) charged with the violation;

(3) the nature of the violation;

(4) a statement of the action required to be taken in order to correct the violation and further prevent it;

(5) the time period allowed for the violation to be corrected. When determining the time period allowed for correction, a Compliance Officer shall take into consideration the threat posed by the violation to the health, safety and welfare of the public and the nature of the work required to correct the violation;

(6) the maximum fines that may be assessed if the violation is not corrected and a citation is issued; and

(7) the name, business address and telephone number of the Compliance Officer issuing the notice of violation.

(d) Nothing in this section shall limit the authority of Compliance Officers to take any other lawfully prescribed enforcement action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

Sec. 102-302. – Request for reconsideration; ~~appeal of decision of the City Engineer.~~

~~(a)~~ Any Person receiving a notice of violation from a Compliance Officer may submit a written request for reconsideration to the City Engineer by mailing said request to The Office of the City Engineer, City of Charleston, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the Office of the City Engineer, 114 Dickenson Street, Charleston, West Virginia. The request for reconsideration must be received within 10 days from the date of the notice of violation and shall include a written explanation of the basis for the request. Upon receipt of a timely request for reconsideration, the City Engineer shall review the request and shall (1) uphold the notice of violation (2) reverse the notice of violation or (3) modify the notice of violation and shall provide written notice by certified mail of his or her decision to the Person within 15 days of receipt thereof.

~~(b) — When a notice of violation is upheld by the City Engineer as outlined in (a) above, the Person may appeal the decision of the City Engineer to the City of Charleston Stormwater Management Board by mailing a notice of appeal to City of Charleston Stormwater Management Board, c/o Office of the City Manager, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the City of Charleston Stormwater Management Board, Office of the City Manager, 501 Virginia Street East, Charleston, West Virginia. When appealing a decision by the City Engineer, the notice of appeal to the Stormwater Management Board must be received within 10 days from the date of the receipt of the written notice of the City Engineer's decision. Hearing on the appeal shall be before the City of Charleston Stormwater Management Board and said hearing shall take place within 30 business days from the date of receipt of the notice of appeal. At the conclusion of the hearing, the Stormwater Management Board shall either grant or deny the appeal in writing within 10 days, and provide written notice by certified mail of its decision to the Person who appealed. The decision of the Stormwater Management Board shall be final. Failure to file a notice of appeal within the period set forth herein shall constitute a waiver of the right to appeal to the Stormwater Management Board, shall result in the decision of the City Engineer being final, and the notice of violation shall be fully enforceable as set forth in this Division.~~

Sec. 102-303. – ~~Appeal of notice of violation.~~ Reserved.

~~Any Person receiving a notice of violation who chooses not to request reconsideration by the City Engineer may appeal the notice of violation directly to the City of Charleston Stormwater Management Board by mailing a notice of appeal to the City of Charleston Stormwater Management Board, c/o Office of the City Manager, P.O. Box 2749, Charleston, WV 25330, or by hand delivering said request to the City of Charleston Stormwater Management Board, Office of the City Manager, 501 Virginia Street East, Charleston, West Virginia. When appealing a notice of violation where no reconsideration by the City Engineer has been requested, the notice of appeal to the Stormwater Management Board must be received within 10 days from the date of the notice of violation. Hearing on the appeal shall be before the City of Charleston Stormwater Management Board and said hearing shall take place within 30 business days from the date of receipt of the notice of appeal. At the conclusion of the hearing, the Stormwater Management Board shall either grant or deny the appeal in writing within 10 days, and provide written notice by certified mail of its decision to the Person who appealed. The decision of the Stormwater Management Board shall be final. Failure to file a notice of appeal within the period set forth herein shall constitute a waiver of the right to appeal to the Stormwater Management Board and the notice of violation shall be fully enforceable as set forth in this Division.~~

Sec. 102-304. – Enforcement measures ~~after~~ appeal.

(a) If the violation has not been corrected within 10 days or any other period specified by the ~~Stormwater Management Board~~ City Engineer in ~~its~~ his or her decision ~~in the case of a request for reconsideration~~, then the Compliance Officer shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or bring the property into compliance.

(b) If refused access to the subject property, the Compliance Officer may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property.

CHAPTER 102 - STREETS, SIDEWALKS AND OTHER PUBLIC PLACES ARTICLE VIII - STORMWATER POLLUTION PREVENTION DIVISION 2 - CONSTRUCTION SITE EROSION AND SEDIMENT CONTROL

Sec. 102-314. - Approval of Land Disturbing Activity.

(a) Any Person applying for a City of Charleston building permit that proposes a Construction project involving LDA exceeding 5000 square feet, or an increase in Impervious Area by 1000 square feet or greater, is required to obtain approval for such LDA from the City Building Department and/or City Engineer's Office. Requests for approval shall be made at the time of application for a building permit; provided, however, that a building permit shall not be issued in the absence of prior approval of LDA ~~by the City Engineer's Office~~.

(b) Notwithstanding Sec. 102-314(a) herein, approval for LDA shall not be required for the following activities:

- (1) Interior renovations;
- (2) Roof repair;
- (3) Building facade maintenance;
- (4) Milling and repaving of existing asphalt or concrete streets, parking lots, or sidewalks;
- (5) Maintenance of existing landscaping or gardens;
- (6) Cutting of trees and brush (provided the area remains vegetated and no grubbing of root system occurs); and
- (7) Maintenance of pervious sports fields such as replacement of the clay surface to baseball infields, turf plugging of golf fairways and greens.

Sec. 102-315. - Submission of Erosion and Sediment Control Plan; modifications.

(a) Any Person requesting approval of LDA is required to submit an Erosion and Sediment Control Plan ("ESCP") to the City Building Department as part of the building permit application for review and approval ~~by the City Engineer's Office~~. The ESCP shall comply with the provisions set forth in the City of Charleston Stormwater Management Guidance Manual regarding Erosion and Sediment Control measures. The Stormwater Management Guidance Manual will be available to the public on the City's Stormwater website, as well as on file at the City Engineer's Office.

(b) All control measures set forth in an approved ESCP shall be followed and maintained at all times during the Construction project unless modified with the approval of the City Building Department and/or City Engineer's Office. Any significant modifications to an ESCP

262 must be approved by the City Building Department and/or City Engineer's Office via written
263 authorization to the permittee. Minor modifications to the ESCP may be approved by the City
264 Building Department and/or City Engineer's Office at the Construction Site.

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266 (c) A copy of the approved ESCP shall be kept on the Construction Site during all stages of a
267 Construction project and shall be made available for review upon request by a Compliance Officer.

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269 **Sec. 102- 316. - Erosion and Sediment Control Design Requirements.**

270

271 (a) Grading, Erosion Control practices, Sediment Control practices, and Waterway crossings
272 shall meet the design criteria set forth in the most recent version of the City's Stormwater
273 Management Guidance Manual and shall be adequate to prevent transportation of Sediment from
274 the Construction Site ~~to the satisfaction of the City Engineer's Office.~~

275

276 (b) Clearing and Grading of natural resources, such as protected habitats and wetlands, shall
277 not be permitted, except when in compliance with the Stormwater Management Guidance Manual.

278

279 (c) Clearing, except to the extent necessary to establish Sediment Control devices, shall not
280 begin until all Sediment Control devices have been installed and have been stabilized.

281

282 (d) Minimum Erosion Control requirements shall include:

283

284 (1) Temporary seeding must be applied if the Construction Site is idle for more than 21 days.

285 (2) Special techniques that meet the design criteria outlined in the Stormwater Management
286 Guidance Manual on steep slopes or in Drainage Ways shall be used to ensure Stabilization.

287 (3) Soil stockpiles must be stabilized or covered at all times.

288 (4) The entire Construction Site must be stabilized at the close of the Construction season,
289 which may include but is not limited to, temporary seeding, mulching, and the use of Erosion
290 Controls.

291 (5) Techniques shall be employed to prevent the transportation of dust or Sediment from the
292 Construction Site.

293 (6) Techniques shall be employed to divert upstream runoff away from LDA without causing
294 any additional Erosion.

295

296 (e) Minimum Sediment Control requirements shall include: Sediment basins, Stormwater
297 inlet protection, Sediment traps, and/or Perimeter controls.

298

299 (f) Minimum Waterway and Watercourse protection requirements shall include:

300

301 (1) Approval of a Waterway or Watercourse crossing by all applicable federal and state agencies
302 having jurisdiction, which may include, but is not limited to, West Virginia Department of Natural
303 Resources, United States Army Corps of Engineers, and the United States Environmental Protection
304 Agency.

305 (2) Stabilization of a Watercourse before, during, and after any in-channel work.

306 (3) All on-site stormwater conveyance channels designed according to the criteria outlined in
307 the Stormwater Management Guidance Manual.

(4) Stabilization adequate to prevent Erosion located at the outlets of all pipes and paved channels.

(g) Construction Site access requirements shall include: establishment and maintenance of a stabilized Construction Site entrance as outlined in the Stormwater Management Guidance Manual.

Sec. 102-317. - Review and approval of Land Disturbing Activity and Erosion and Sediment Control Plan ~~by City Engineer's Office.~~

The City Engineer's Office and/or City Building Department shall review each request for approval of LDA and the corresponding ESCP to determine conformance with the requirements of this Division. Within 10 days after receiving a building permit application and corresponding ESCP, the City Engineer's Office and/or City Building Department shall, in writing:

- (1) approve the requested LDA and corresponding ESCP;
- (2) approve the requested LDA and corresponding ESCP subject to conditions as may be necessary to satisfy the objectives of this Division; or
- (3) deny the requested LDA and corresponding ESCP, indicating the reason(s) for denial and the procedure for submitting a revised ESCP, if appropriate.

Sec.102-318.- Inspection of Construction Site.

(a) All Construction Sites involving LDA and requiring an approved ESCP shall be inspected and approved by a Compliance Officer ~~at each stage of Construction consistent with the seven stages set forth in this subsection.~~ Compliance Officers shall inspect Construction Sites as authorized by this Section and shall either approve that portion of the work completed or shall notify the Person receiving approval for the LDA that the work is not in compliance with the approved ESCP. ~~Plans for Grading, stripping, excavating, and filling work bearing the stamp of approval of a Compliance Officer shall be maintained at the Construction site during all stages of the project.~~ To obtain the required permits and inspections for each stage of Construction, the Person receiving approval for the LDA shall notify the City Engineer's Office and/or City Building Department of the Construction start date. If there is to be a change in said start date, the City Engineer's Office and/or City Building Department is to be notified at least two working days before each of the following stages: start of Construction. Compliance Officer inspections may consist of, but not be limited to, the following stages:

- (1) Installation of Erosion and Sediment Control measures;
- (2) Start of Construction Completion of Demolition;
- (3) Completion of Site Clearing and rough Grading;
- (4) Installation of any stormwater conveyance structures; and
- (5) Completion of final Grading;
- (5) Close of the Construction season; and
- (5) Completion of project.

(b) The Person receiving approval for LDA and corresponding ESCP shall make regular

inspections of all control measures in accordance with the inspection schedule outlined in the approved ESCP. The purpose of such inspections will be to determine the overall effectiveness of the ESCP and the potential need for additional control measures. All inspections shall be documented in writing and shall be kept on site ~~for inspection submitted to the City Engineer's Office at the time intervals specified in the Stormwater Management Guidance Manual.~~

Sec. 102-319. - Notice of Noncompliance and Order to Correct.

(a) When a Compliance Officer determines after reasonable observation or investigation that a Person has not complied with any provision of this Division or has failed to comply with an approved ESCP, the Compliance Officer may order compliance by written Notice of Noncompliance and Order to Correct.

(b) Notice(s) of Noncompliance and Order(s) to Correct shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that a method of service effectuated by a mailing by the clerk of a court (e.g., service pursuant to West Virginia Rule of Civil Procedure 4(d)(1)(D)) shall be deemed to be effectuated by a mailing by a Compliance Officer. If service is made by certified mail consistent with West Virginia Rule of Civil Procedure 4(d)(1)(D) and delivery of the Notice of Noncompliance and Order to Correct is refused, the Compliance Officer, promptly upon the receipt of the notice of such refusal, shall mail to the Person being noticed, by first class mail, postage prepaid, (1) a copy of the Notice of Noncompliance and Order to Correct (2) a notice that despite such refusal, the Notice of Noncompliance and Order to Correct is valid, and (3) advising that the City will proceed to enforce the Notice of Noncompliance and Order to Correct. So long as such first class mailing is not returned as undeliverable by the U.S. Postal Service, service of the Notice of Noncompliance and Order to Correct will be conclusively presumed to have been effectuated. Proof of service shall be made at the time of service by a written declaration, under oath, executed by the enforcement official effecting service and shall declare the time, date and manner by which service was made.

(c) Any Notice of Noncompliance and Order to Correct under this section shall be in writing and shall contain the following:

- (1) the date the Notice of Noncompliance and Order to Correct is given;
- (2) the name and address of the Person(s) charged with the noncompliance;
- (3) the nature of the noncompliance;
- (4) a statement of the action required to be taken in order to correct the noncompliance and further prevent it;
- (5) the time period allowed for correction. When determining the time period allowed for correction, a Compliance Officer shall take into consideration the threat posed by the noncompliance to the health, safety and welfare of the public and the nature of the work required to correct the noncompliance;
- (6) the maximum fines that may be assessed if the noncompliance is not corrected and a citation is issued; and

400 (7) the name, business address and telephone number of the Compliance Officer issuing the
401 Notice of Noncompliance and Order to Correct.

402

403 (d) Nothing in this section shall limit the authority of Compliance Officers to take any other
404 lawfully prescribed enforcement action, including emergency actions or any other enforcement
405 action, without first issuing a Notice of Noncompliance and Order to Correct.

406

407 (e) Failure to correct the noncompliance by the date set forth in the Notice of Noncompliance
408 and Order to Correct shall be reported to the Building Department. Any subsequent work
409 performed shall constitute work being performed in a dangerous or unsafe manner or in a manner
410 contrary to the W.Va. State Building Code, as adopted by Charleston Municipal Code Section 14-
411 33(a), and the Person charged with the noncompliance may be issued a stop work order or the
412 building permit may be revoked.

413