

CHARLESTON CITY COUNCIL

Regular Meeting

August 19, 2019

at 7:00 PM



Council Chambers, Third Floor
City Hall, 501 Virginia St. E.
Charleston, WV

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

1. Claims 8-19-2019

PROCLAMATIONS

1. Proclamations 8-19-2019

COMMUNICATIONS

1. Communications 8-19-2019

REPORTS OF STANDING COMMITTEES

PLANNING, STREETS AND TRAFFIC

1. Bill No. 7823 - A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia by rezoning from a R-4 Single Family Residential District to a R-6 Medium Density Residential District, that certain parcel of land located at 806 Hendrix Avenue.

2. Bill No. 7829 - A BILL to amend the Code of the City of Charleston, all relating to creating the Charleston Land Reuse Agency (CLRA) and consolidating functions currently managed by other boards under the umbrella of the CLRA; reforming the Charleston Land Trust such that its functions are exclusively performed by the conservation division of the CLRA; establishing the CLRA with redevelopment and conservation divisions; detailing the purpose of the CLRA, Board membership of the CLRA, and its powers and duties; authorizing the CLRA to act in accordance with the authority granted by Chapter 31, Article 18E of the West Virginia Code; stating functions and activities of the CLRA; and requiring an annual report.
3. Bill No. 7830 - A BILL to amend and reenact Sections of the Code of the City of Charleston, as amended, all relating to updating the vacant structure registry; adding, amending, and deleting definitions; expanding the scope of the vacant structure registry; requiring an owner of vacant property to submit a plan of maintenance and repair; increasing registration fees; adjusting timeframe for registration to require properties to be registered quicker; creating a misdemeanor criminal violation for knowingly withholding or providing false information with respect to the registry; and increasing the penalty associated with failure or refusal of any owner to register a vacant structure or failure to comply with any of the requirements of the vacant structure registry.
4. Bill No. 7831 - A BILL to amend and reenact Section 14-33 and Section 14-71 of the Municipal Code of the City of Charleston, as amended, all relating to adjusting the penalties for violations of the Building Code and Housing Code by increasing the potential fine and removing the possibility of jail time.

FINANCE

1. Resolution No. 228-19 - Authorizing the Mayor or City Manager to submit a grant application to the Department of Justice - Edward Byrne Memorial Justice Assistance Grant program in the amount of \$140,665.00 and administer any funds awarded.
2. Resolution No. 229-19 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Commission designating the City as the applicant and fiscal agent for the Edward Byrne Memorial Justice Assistance Grant application.
3. Resolution No. 231-19 - Authorizing the Mayor or City Manager to enter into a 25-year agreement with the United States Geological Survey for the installation and maintenance of a stream gaging station on the South Side Bridge.
4. Resolution No. 232-19 - Authoring the Mayor or City Manager to submit an application to the Kanawha County Commission Public Safety Grant Committee in the amount of \$15,000 and administer any funds awarded.
5. Resolution No. 233-19 - Authorizing the Mayor or City Manager to renew a policy of insurance for cyber-attack coverage from Beazley Insurance Company.
6. Resolution No. 234-19 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with Kanawha Valley Collective, Inc., for the Family Reunification and Enhancement Opportunity Project.

7. Bill No. 7828 - A Bill granting a non-exclusive franchise to Shentel Communications, LLC for the use of the streets and other public rights-of-way for the purposes of constructing, installing and maintaining network facilities for telecommunication services.
8. Purchase of Portland Cement Concrete.
9. Resolution No. 230-19 - Authorizing settlement of claims against the City by juveniles XW and FW.

REPORTS OF OFFICERS

1. Reports of Officers 8-19-2019

NEW BILLS

1. New Bills 8-19-2019

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE HELD TUESDAY, SEPTEMBER 3, 2019 AT 7:00 P.M.

*THE AGENDA WAS AMENDED 8-15-2019

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk>**



AFFIDAVIT
Charleston Sanitary Board



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,
Scott & Pam Dunlap, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 124 Summers Drive

Telephone Number: 304-776-7173 cell # 304-549-0585

and that on the 31st day of July, 2018/2019, at approximately 9 (am)pm
in the City of Charleston, West Virginia, he/she sustained

damage to 2016 Chevy Silverado

Nature Of Injury And/Or Damage

As A Result Of:

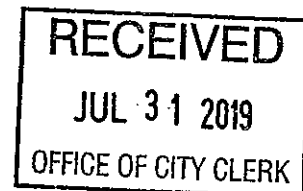
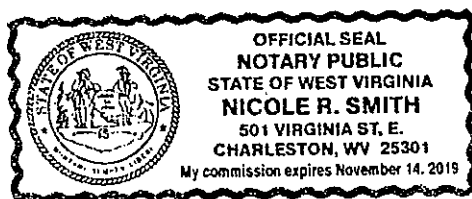
They were pumping the sewer at Starbucks in Kanawha City and it spewed out of the top of there hose and went all over truck. Damaged the paint.

As a result of which accident the Claimant, Scott or Pam Dunlap, does hereby make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by him/her in the future.

Pam Dunlap
Signature of Claimant

Taken, subscribed and sworn to before me this 31st day of July, 2019.
My commission expires November 14, 2019.

Nicole R. Smith
Notary Public





AFFIDAVIT City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,

CHARLES A. GANG, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 101 49TH ST S.E. CHARLESTON WV
Telephone Number: 304 345-6057 25304

and that on the 23 day of JULY, 2018/2019 at approximately 3:30 am/pm
in the City of Charleston, West Virginia, he/she sustained

TREE LIMB FROM OAK TREE SE CORNER OF
LOT FELL STRIKING DOOR OF CAR DRIVER SIDE
Nature Of Injury And/Or Damage REAR DOOR

As A Result Of:
TREE LIMB FALLING ON CAR

As a result of which accident the Claimant, CHARLES A. GANG, does hereby make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by him/her in the future.

Charles A. Gang
Signature of Claimant

Taken, subscribed and sworn to before me this 31 day of July, 2019.
My commission expires March 24, 2021.

Elizabeth J. Bays
Notary Public

RECEIVED
AUG 01 2019
OFFICE OF CITY CLERK

OFFICIAL SEAL
Notary Public, State of West Virginia
ELIZABETH J. BAYS
1447 Smoot Avenue
PO Box 158
Danville, WV 25053
My Commission Expires March 24, 2021



AFFIDAVIT City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,

JOHN DAVID JONES, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 2279 LEBB FORK ROAD

Telephone Number: 304-926-4517

and that on the 10th day of AUGUST, 2018 (2019), at approximately 3:00 am/pm
in the City of Charleston, West Virginia, he/she sustained

A FLAT TIRE ON PICKUP

Nature Of Injury And/Or Damage

As A Result Of:

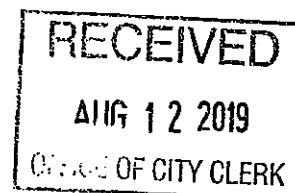
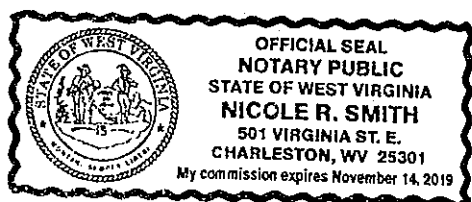
HITTING A PIECE OF REBAR STICKING
OUT OF THE ROADWAY CURB AT
DANIEL BOONE BOAT LAUNCH.

As a result of which accident the Claimant, JOHN DAVID JONES does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

John David Jones
Signature of Claimant

Taken, subscribed and sworn to before me this 12 day of August, 2019.
My commission expires November 14, 2019.

[Signature]
Notary Public





AFFIDAVIT
City of Charleston



STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, to-wit:

The Mayor, Recorder, and/or Municipal Attorney of the City of Charleston, West Virginia, will take notice that this day appeared before the undersigned authority,

Charles E Simmons, Claimant,
who, after being first by me duly sworn, deposes and says:

That this affiant resides at: 2202 Zabel Drive 25387

Telephone Number: 304-419-7803

and that on the 5th day of August, 2018/2019 at approximately 10:00 am/pm
in the City of Charleston, West Virginia, he/she sustained

damage to garage roof

Nature Of Injury And/Or Damage

As A Result Of:

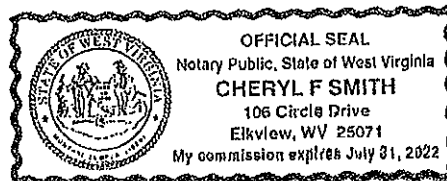
a city hitting the garage while working on the
creed beside our property

As a result of which accident the Claimant, Charles E. Simmons does hereby
make claim against the City of Charleston, West Virginia, for damages incurred and to be incurred by
him/her in the future.

Charles E Simmons
Signature of Claimant

Taken, subscribed and sworn to before me this 13th day of August, 2019.
My commission expires July 31, 2022.

C Cheryl F Smith
Notary Public



Charleston Police Department

In Honor and Appreciation of

Cara Chafin

In joint efforts with Lydia Fores for their unconditional bravery and actions taken on June 16th, 2019 on the South Side Bridge in Charleston, WV where they jointly saw a female presumably about to jump from the bridge, at a height of 100 feet, they called 911 and immediately grabbed onto and held the female until police arrived keeping her from jumping from the bridge. There actions and willingness to help, despite the danger likely saved the life of the female on this day. For these actions we say thank you and present you with the:

Charleston Police Dept.

Citizen Certificate
Of Appreciation



Mayor Andy Shuler-Goodwin

Chief of Police Opie E. Smith Jr.

Awarded This ____ Day of ____, 2019

Charleston Police Department

In Honor and Appreciation of

Lydia Flores

In joint efforts with Cara Chafin for their unconditional bravery and actions taken on June 16th, 2019 on the South Side Bridge in Charleston, WV where they jointly saw a female presumably about to jump from the bridge, at a height of 100 feet, they called 911 and immediately grabbed onto and held the female until police arrived keeping her from jumping from the bridge. There actions and willingness to help, despite the danger likely saved the life of the female on this day. For these actions we say thank you and present you with the:



Charleston Police Dept.
Citizen Certificate
Of Appreciation


Mayor Amy Shuler-Goodwin


Chief of Police Opie E. Smith Jr.

Awarded This ____ Day of ____, 2019

CITY OF CHARLESTON
OFFICE OF THE MAYOR



**TO: MILES CARY
CITY CLERK**

FROM: AMY SHULER GOODWIN 
MAYOR

RE: TRICK OR TREAT 2019

DATE: AUGUST 19, 2019

I recommend that October 31, 2019 from 6 p.m. – 8 p.m. be designated as Trick or Treat in the City of Charleston.

I respectfully request City Council's approval of this recommendation.

ASG/tls



PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

COMMITTEE REPORT

To: Miles Carey, City Clerk

From: Council's Committee on Planning, Streets and Traffic

Date: August 13, 2019

Subject: Bill No. 7823

The Committee on Planning, Streets and Traffic has had under consideration Bill No. 7823 and attached hereto and made a part thereof.

The Committee finds:

1. The rezoning is consistent with the future land use map which designates this property as "Traditional Neighborhood"; and
2. Rezoning from R-4 to R-6 is a good transition along the West Washington Street corridor.

and reports the same to Council with the recommendation that the Bill do pass.

Mary Beth Hoover
Chair
Naomi Bays
Rebecca C. Cepelley
Walter R. Law II
J. J. Rhew

1 **Bill No. 7823**

2 Passed by Council:

3 Introduced in Council

4 **August 5, 2019**

5 Introduced by:

Referred to:

6 **Bobby Haas**

7 **Municipal Planning Commission**
8 **Planning, Streets and Traffic**

9 **Bill No. 7823** - A Bill amending the Zoning Ordinance of the City of Charleston, West
10 Virginia, enacted the 1st day of January 2006, as amended, and the map made a part
11 thereof, by rezoning from a R-4 Single Family Residential District to a R-6 Medium
12 Density Residential District, that certain parcel of land located at 806 Hendrix Avenue
13 being Charleston West District, Map 10, Parcel 117.1, Charleston, West Virginia.

14
15 **Be it Ordained by the City Council of the City of Charleston, West Virginia:**

16
17 1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st
18 day of January 2006, as amended, is hereby amended by rezoning from a R-4 Single
19 Family Residential District to a R-6 Medium Density Residential District whole of the
20 following described parcels of land:

21
22 Parcel No. 117.1 as shown upon West Charleston Tax Map No. 10. Subject
23 Parcel commonly known as 806 Hendrix Avenue, Charleston, West Virginia.
24 Said tax map is of record in the Planning Office.

25
26 2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is
27 hereby amended in accordance with Article 29 of this ordinance.

28
29 3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are
30 hereby repealed to the extent of such inconsistency.

1 **Bill No. 7823**

2 Passed by Council:

3 Introduced in Council

4 **August 5, 2019**

5 Introduced by:

Referred to:

6 **Bobby Haas**

7 **Municipal Planning Commission**
8 **Planning, Streets and Traffic**

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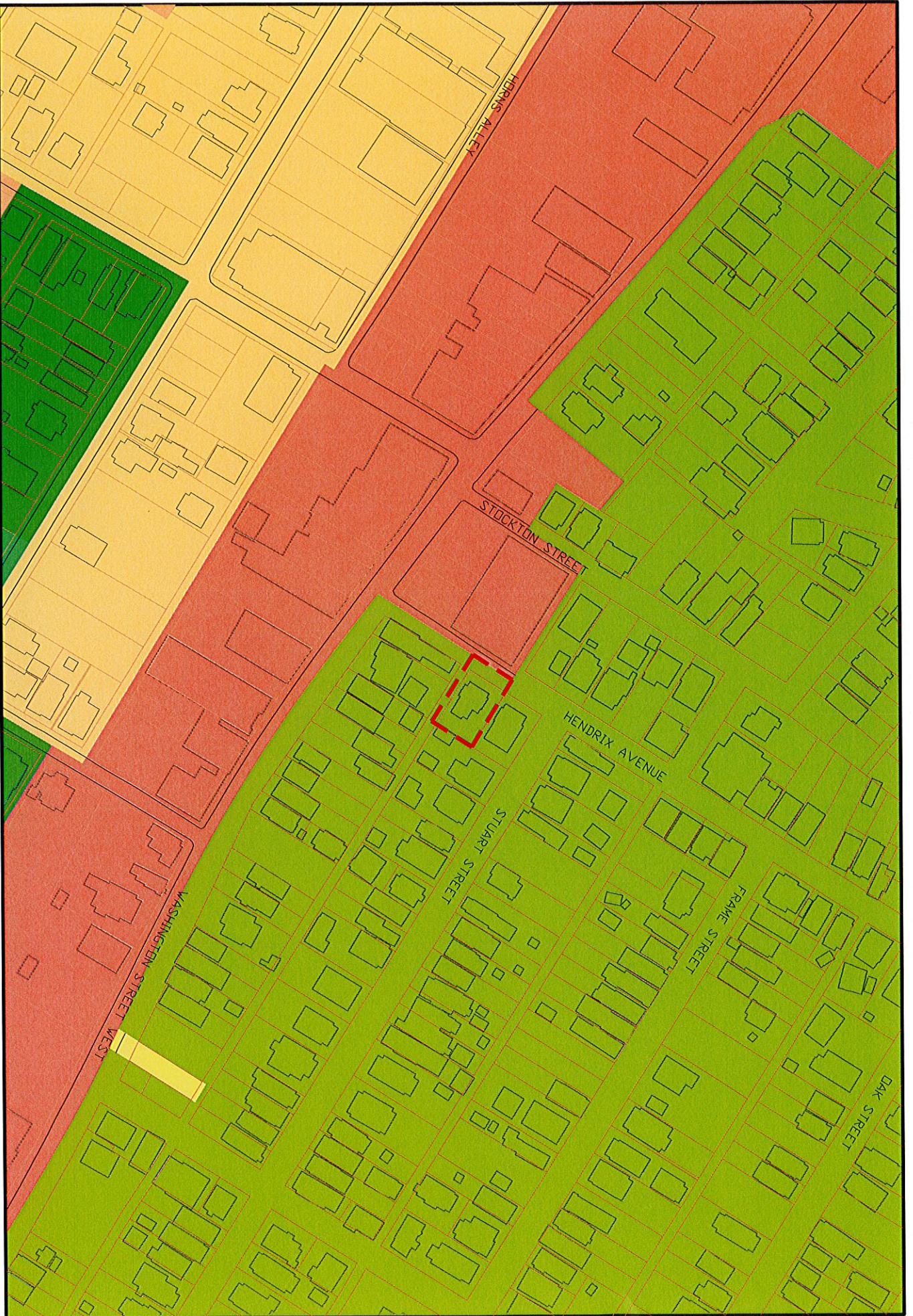
25
26 2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is
27 hereby amended in accordance with Article 29 of this ordinance.

28
29 3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are
30 hereby repealed to the extent of such inconsistency.



REZONING FROM R-4 TO R-6

EXHIBIT 1





PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

COMMITTEE REPORT

To: Miles Carey, City Clerk

From: Council's Committee on Planning, Streets and Traffic

Date: August 13, 2019

Subject: Bill No. 7829

The Committee on Planning, Streets and Traffic has had under consideration:

Bill No. 7829 - A BILL to amend the Code of the City of Charleston, as amended, by repealing Sections 2-686, 2-687, 2-688, and 2-689; by amending and reenacting Section 2-685; and by adding thereto a new Chapter, designated Chapter 65 consisting of Sections 65-1, 65-2, 65-3, 65-4, 65-5, 65-6, 65-10, 65-11, 65-12, 65-13, 65-14, 65-15, 65-20, 65-21, 65-22, and 65-23, all relating to creating the Charleston Land Reuse Agency (CLRA) and consolidating functions currently managed by other boards under the umbrella of the CLRA; reforming the Charleston Land Trust such that its functions are exclusively performed by the conservation division of the CLRA; establishing the CLRA with redevelopment and conservation divisions; detailing the purpose of the CLRA, Board membership of the CLRA, and its powers and duties; authorizing the CLRA to act in accordance with the authority granted by Chapter 31, Article 18E of the West Virginia Code; stating functions and activities of the CLRA; and requiring an annual report.

and reports to Council with the recommendation that the Bill do pass.

Mary Beth Hoover
Chair
Naomi Davis
Sharon C. Cepuley
William R. Harts
J. J. Phares

Bill No. 7829:

Introduced in Council:

August 5, 2019

Introduced by:

**Becky Ceperley (by request of the Mayor),
Bruce King, Chad Robinson, Naomi Bays,
Mary Beth Hoover, Adam Knauff, Ben Adams,
Jeanine Faegre, Pat Jones and Will Laird**

Adopted by Council:

Referred to:

Planning, Streets & Traffic

Bill No. 7829 - A BILL to amend the Code of the City of Charleston, as amended, by repealing Sections 2-686, 2-687, 2-688, and 2-689; by amending and reenacting Section 2-685; and by adding thereto a new Chapter, designated Chapter 65 consisting of Sections 65-1, 65-2, 65-3, 65-4, 65-5, 65-6, 65-10, 65-11, 65-12, 65-13, 65-14, 65-15, 65-20, 65-21, 65-22, and 65-23, all relating to creating the Charleston Land Reuse Agency (CLRA) and consolidating functions currently managed by other boards under the umbrella of the CLRA; reforming the Charleston Land Trust such that its functions are exclusively performed by the conservation division of the CLRA; establishing the CLRA with redevelopment and conservation divisions; detailing the purpose of the CLRA, Board membership of the CLRA, and its powers and duties; authorizing the CLRA to act in accordance with the authority granted by Chapter 31, Article 18E of the West Virginia Code; stating functions and activities of the CLRA; and requiring an annual report.

WHEREAS, vacant, abandoned, blighted, condemned, and tax delinquent properties are a strain on neighborhoods throughout Charleston; and

WHEREAS, the City Code of Charleston has a number of boards, commissions, and sections of code that are focused on this issue; and

WHEREAS, the various entities and enforcement departments have a tendency to work in a manner that is disconnected from each other; and

WHEREAS, many of the current entities and enforcement departments are working from authorizing statutes that are antiquated; and

WHEREAS, the West Virginia Legislature authorized municipalities to create Land Reuse Agencies in order to address property matters in a more modern way in Chapter 31, article 18E of the West Virginia Code by authorizing the purchase, rehabilitation, improvement, or sale of real property and to promote the productive use of property within the City; and

31 **WHEREAS**, a Charleston Land Reuse Agency could consolidate and more efficiently
32 address the vacant, abandoned, blighted, condemned, and tax delinquent property issues
33 and general land use and development issues facing the City; and
34

35 **WHEREAS**, the consolidations and greater efficiency gained from the creation of a
36 Charleston Land Reuse Agency will ultimately save taxpayer money, generate enhanced
37 economic development, and improve neighborhoods throughout Charleston.
38

39 **Now, therefore, be it ordained by the Council of the City of Charleston:**
40

41 That the Code of the City of Charleston be amended, effective September 1, 2019, by
42 repealing Sections 2-686, 2-687, 2-688, and 2-689; by amending and reenacting Section 2-
43 685 of said code; and by adding thereto a new Chapter, designated Chapter 65 consisting
44 of Sections 65-1, 65-2, 65-3, 65-4, 65-5, 65-6, 65-10, 65-11, 65-12, 65-13, 65-14, 65-15,
45 65-20, 65-21, 65-22, and 65-23, all to read as follows:
46

47 **CHAPTER 2. – ADMINISTRATION.**
48

49 **ARTICLE VII. – BOARDS, COMMITTEES AND COMMISSIONS.**
50

51 **Division 9. – Charleston Land Trust.**
52

53 **Sec. 2-685. ~~Creation and purpose.~~ Reformation of Charleston Land Trust.**
54

55 ~~There is hereby created the~~ The Charleston Land Trust Commission, hereinafter
56 referred to and to be known as the Charleston Land Trust, which shall exist as an agency
57 of the city is hereby converted to the conservation division of the Charleston Land Reuse
58 Agency, as set forth in Chapter 65 of this Code. The purpose of the Charleston Land Trust
59 is to acquire, maintain, improve and preserve Any public trust lands owned by the City in
60 the name of the Charleston Land Trust shall be transferred to the Charleston Land Reuse
61 Agency within 90 days of the effective date of this section. All bank accounts or other
62 interest in property currently held by the Charleston Land Trust shall be transferred to the
63 Charleston Land Reuse Agency within 90 days of the effective date of this section. to foster
64 the donation of public trust lands to the city, to encourage the monetary support for public
65 trust lands and to maintain in trust lands and moneys which are owned by or contributed to
66 the city for the purposes of this division. The creation of the Charleston Land Trust is
67 authorized by W. Va. Code § 8-16-1, et seq.
68

69 **CHAPTER 65. – LAND REUSE AGENCY.**
70

71 **ARTICLE 1. – CREATION.**
72

73 **Sec. 65-1. Establishment and Divisions.**
74

75 There is hereby established, pursuant the Chapter 31, Article 18E of the West
76 Virginia Code, the "Charleston Land Reuse Agency", hereinafter also referred to as the
77 "Charleston LRA" or "CLRA". The Charleston LRA shall be composed of two divisions: (1)
78 the redevelopment division; and (2) the conservation division.

79
80 **Sec. 65-2. Purpose.**

81
82 The Charleston LRA shall promote the productive use of property by identifying
83 available properties suitable for public space, conservation, housing, and commercial use
84 and pursuing the acquisition, management, inventory, and disposition of those properties
85 according to the priorities set forth in this Chapter. The CLRA may exercise all powers
86 granted by this Code and Chapter 31, Article 18E of the West Virginia Code.

87
88 **Sec. 65-3. Board**

89
90 (a) The Charleston Land Reuse Agency shall operate under the control of a board of
91 directors composed of seven members, as follows:

- 92 (1) The Mayor, or his or her designee;
93 (2) The City Manager, or his or her designee;
94 (3) The City Attorney, or his or her designee;
95 (4) Two members of City Council, appointed by the Mayor; and
96 (5) Two members of the general public, who are residents of Charleston, appointed
97 by the Mayor with the advice and consent of City Council.

98 (b) The two members of the general public initially appointed to the Board shall
99 serve initial terms of two and four years, respectively. Thereafter, each term shall be for
100 four years.

101 (c) The two members of the general public shall each have expertise in one or more
102 of the following areas:

- 103 (1) Real estate transactions or financing;
104 (2) Development of commercial or residential property;
105 (3) Establishment, development, management, or use of public lands;
106 (4) Land conservation;
107 (5) Housing; or
108 (6) Public safety.

109 (d) Each member shall continue in office until a successor is duly appointed, except
110 in the event of a member's removal, death, or delivery of written resignation to Council. In
111 the case of such a vacancy, a new member shall be appointed to serve the remainder of
112 the term. If the Mayor, City Manager, or City Attorney no longer holds that position, then
113 the position they or their designee holds on the Board is immediately declared vacant and
114 filled by the person's duly qualified successor.

115 (e) Members of the Board shall serve without compensation. Any member of the
116 Board who is an employee of the City may spend regular work hours on matters related to
117 the Board and receive his or her regular salary, as approved by the employee's direct
118 supervisor.

119 (f) In addition to the voting members of the Board stated in this section, the following
120 persons shall be non-voting *ex officio* members to provide advice to the Board: The
121 Planning Director, the Building Commissioner, and the Director of the Mayor's Office of
122 Community and Economic Development. The Board may request assistance from any City
123 department or employee, as necessary.

124 125 **Sec. 65-4. Officers of the Board.**

126
127 The members of the board shall annually select from among their members a chair,
128 vice chair, secretary, treasurer, and any other officers as the board determines.

129 130 **Sec. 65-5. Public Input.**

131
132 In addition to the public members of the Board of the Charleston Land Reuse
133 Agency, the residents of Charleston shall have an opportunity to provide written or oral
134 input into all decisions of the CLRA at the regular meetings held by the CLRA. In addition,
135 the employees of the CLRA shall generally be available to answer resident questions and
136 receive input.

137 138 **Sec. 65-6. Official Filing with Secretary of State.**

139
140 Upon the effective date of this section, the Clerk of the City Council shall file a copy
141 of the ordinance with the West Virginia Housing Development Fund and the West Virginia
142 Secretary of State.

143 144 **ARTICLE 2. – POWERS AND DUTIES.**

145 146 **Sec. 65-10. General.**

147
148 (a) The Charleston Land Reuse Agency shall have all the powers necessary and
149 convenient to carry out and effectuate the purposes and provisions of this Chapter and
150 Chapter 31, Article 18E of the West Virginia Code. The powers may be authorized by the
151 Board or delegated to the staff of the CLRA pursuant to Board rules. The powers include
152 but are not limited to the following:

153 (1) To adopt, amend, and repeal bylaws, policies, and procedures for the regulation
154 of its affairs and the conduct of its business, including duties of officers, attendance and
155 participation of members in regular and special meetings, a procedure to remove a
156 member by a majority vote for failure to comply with a rule, general terms and conditions
157 for consideration to be received for the transfer of real property and interests in real
158 property, and other matters necessary to govern the conduct of the CLRA;

159 (2) To sue and be sued in its own name and be a party to a civil action, including in
160 any action to clear title to property or expedite quiet title actions;

161 (3) To adopt a seal and to alter the same;

162 (4) To borrow from federal government funds, from the state, from private lenders,

163 from municipalities, or from counties, as necessary, for the operation and work of the
164 CLRA;

165 (5) To issue negotiable revenue bonds and notes according to the provisions of
166 Chapter 31, Article 18E of the West Virginia Code;

167 (6) To procure insurance or guarantees from the federal government or the state on
168 the payment of debt incurred by the CLRA and pay premiums in connection with the
169 insurance or guarantee;

170 (7) To hire staff, including legal counsel, and to utilize the staff of other City
171 departments as approved by the Mayor, including the City Attorney's Office;

172 (8) To enter into contracts and other instruments necessary, incidental, or
173 convenient to the performance of its duties and the exercises of its powers, including to
174 enter into contracts and intergovernmental cooperation agreements with municipalities or
175 counties for the performance of functions by municipalities or counties on behalf of the
176 CLRA or by the CLRA on behalf of the City;

177 (9) To make and execute contracts and other instruments necessary or convenient
178 to the exercise of powers of the CLRA. Any contract or instrument signed shall be executed
179 by and for the CLRA if the contract or instrument is signed by both (A) the chair or vice-
180 chair of the CLRA Board and (B) the secretary or treasurer of the CLRA Board;

181 (10) To procure insurance against losses in connection with the real property,
182 assets, or activities of the Agency;

183 (11) To invest money of the CLRA in instruments, obligations, securities, or property
184 and to name and use depositories for its money;

185 (12) To enter into contracts for the management of, the collection of rent from, or the
186 donation or sale of real property to the CLRA;

187 (13) To design, develop, construct, demolish, reconstruct, deconstruct, rehabilitate,
188 renovate, relocate, and otherwise improve real property or rights or interests in real
189 property;

190 (14) To fix, charge, and collect rents, fees, and charges for the use of real property
191 of the CLRA and for services provided by the CLRA;

192 (15) To grant or acquire licenses, easements, leases, or options with respect to real
193 property;

194 (16) To enter into partnerships, joint ventures, and other collaborative relationships
195 with municipalities, counties, and other public and private entities for the ownership,
196 management, development, and disposition of real property;

197 (17) To organize and reorganize the executive, administrative, clerical, and divisions
198 of the CLRA;

199 (18) To hold title to property in its own name;

200 (19) To acquire property in any lawful way, including by acquiring an interest in tax
201 delinquent properties through regular tax sale, right of first refusal authority, or post-sale
202 where no person bids on a property, as authorized in West Virginia Code;

203 (20) To coordinate and cooperate with other entities, including but not limited to
204 public utilities and county-level agencies or departments, to improve data sharing in order
205 to help determine vacant and rental properties;

206 (21) To file liens against property where debts or fines are owed to the LRA or City,

and to enter into any agreements deemed beneficial by the Board to waive or modify those liens, debts, or fines; and

(22) To do all other things necessary or convenient to achieve the objectives and purposes of the CLRA, as further stated throughout this chapter.

(b) In order to promote the efficient operation of the CLRA, all of the CLRA's funds shall be placed in a special revenue fund in the city treasury hereby established to be known as the CLRA Fund, along with any subaccounts deemed necessary by the Board.

Sec. 65-11. Divisions of CLRA.

The CLRA shall initially be composed of two divisions with distinct focuses, as follows: (1) the redevelopment division; and (2) the conservation division. The Board shall work with the staff of the CLRA, which may be partially or solely composed of City employees who work for another City department, to determine which division property obtained or sought to be obtained by the CLRA fits into with the understanding that the Board may adjust any determination at a later date. Furthermore, the divisions may work together on projects and plans.

Sec. 65-12. Redevelopment Division.

The CLRA redevelopment division shall focus on properties in residential and commercial areas of the City that the CLRA owns or could own with the goal of rehabilitating the neighborhood and general area. The redevelopment division may recommend to the Board that the CLRA acquire property, convey or lease property owned by the CLRA, create land lease agreements for property owned by the CLRA, work with developers to create new redevelopment on CLRA owned property, or make any other recommendation regarding the acquisition, disposal, or development of property. The CLRA redevelopment division shall work with the Charleston Urban Renewal Authority (CURA) to assist in the planning and development of relevant property owned by CURA.

Sec. 65-13. Conservation Division.

The CLRA conservation division shall focus on properties across the City that the CLRA owns or could own with the goal of rehabilitating the area through land conservation, rather than development. The conservation division may recommend to the board that the CLRA acquire property, maintain, improve and preserve public trust lands, proposals to foster the donation of public trust lands to the city, to encourage the monetary support for public trust lands and to maintain in trust lands and moneys which are owned by or contributed to the city for the purposes of this division.

"Public trust lands" for purposes of this chapter shall mean and include: lands, easements, leases or any other interest in real property, whether possessory or nonpossessory, having scenic, recreation, historic, woodland, forestry, conservation, preservation or cultural value which are owned or acquired by the city. Public trust lands may include conservation and preservation easements as provided in W. Va. Code, Ch.

20, Art. 12.

Sec. 65-14. Priorities and Management.

The Charleston Land Reuse Agency shall act in accordance with the City's comprehensive plan, Imagine Charleston, and any other development plans adopted by the CLRA or the City Council in the future.

In order to promote transparency, the CLRA shall maintain and make available for public review and inspection an inventory of real property held by the CLRA. The CLRA shall evaluate each property it owns, uses, disposes of, or studies for its potential as a purely public space, as a location for housing, as a conservation area, and as a location for retail, commercial and industrial activities.

In order to properly manage the CLRA, the Board shall identify financing options and grant opportunities on an ongoing basis, as authorized by §31-18E-11 of the Code of West Virginia.

Sec. 65-15. Acquiring Property through Tax Sales.

(a) Pursuant to West Virginia Code §31-18E-9, the CLRA may acquire an interest in tax-delinquent property through the provisions of Chapter 11A of the West Virginia Code. The CLRA may exercise all of the authority granted by Chapter 31, Article 18E of West Virginia Code, including but not limited to obtaining lists of tax-delinquent properties, purchasing tax liens for unredeemed property, exercising the right of first refusal on eligible properties, and entering into similar arrangements to obtain property.

(b) In the event that the CLRA uses its right of first refusal to obtain tax-delinquent property, the CLRA shall notify adjacent property owners of the property acquisition pursuant to the requirements of West Virginia Code §31-18E-9. For the purposes of this requirement, "adjacent" means that the property acquired shares a boundary with the other property. There is no requirement to make notice to other property holders nearby who do not share a boundary with the property so acquired. If more than one adjacent property owner responds with an interest in purchasing the property within the time period authorized by West Virginia Code §31-18E-9, the CLRA shall provide an additional time period within which the owners may submit bids on the property and the property shall be sold to the highest bidder. The CLRA may adopt a policy governing this process that conforms with West Virginia Code §31-18E-9 and this Chapter.

(c) Notwithstanding the provisions of subsection (b) of this section, any property obtained by the CLRA through any means other than the right of first refusal on tax sales and any property obtained by right of first refusal where an adjacent land owner does not timely express the desire to purchase the property may still be conveyed to one or more adjacent land owners through the processes adopted by the CLRA and without the restrictions contained in West Virginia Code §31-18E-9(g).

ARTICLE 3. – BOARD MEETINGS AND ACTIVITIES.

295 **Sec. 65-20. Regular and Special meetings.**

296
297 (a) The CLRA Board shall meet in regular session according to a schedule adopted
298 by the Board.

299 (b) The CLRA Board may be convened by the chair or upon written notice signed by
300 a majority of the members.

301 (c) The CLRA Board must have a quorum present to conduct business. A majority of
302 the Board, excluding vacancies, constitutes a quorum. A member must be physically
303 present at a meeting for the purposes of establishing a quorum.

304 (d)(1) Except as provided in this subsection, action of the board is by the affirmative
305 vote of a majority of the board that is present and voting.

306 (2) Action of the board on the following matters must be approved by a majority of
307 the entire board membership:

308 (A) Adoption of bylaws;

309 (B) Adoption of rules under West Virginia Code §31-18E-5(d);

310 (C) Incurring of debt;

311 (D) Adoption or amendment of the annual budget; and

312 (E) Sale, lease, encumbrance, or alienation of real property or personal property
313 with a value of more than \$50,000.

314 (3) A resolution under West Virginia Code §31-18E-14, relating to dissolution of the
315 CLRA, must be approved by two-thirds of the entire board membership.

316
317 **Sec. 65-21. Public Records, Public Access, and Ethics.**

318
319 (a) The CLRA Board shall keep minutes and a record of its proceedings.

320 (b) The CLRA is subject to chapter 6, article 9A of the Code of West Virginia,
321 relating to open meetings.

322 (c) The CLRA is subject to chapter 29B of the Code of West Virginia, relating to
323 access to public records.

324 (d) The CLRA Board and employees are subject to Chapter 6B of the Code of West
325 Virginia, relating to ethics and conflicts of interest. The CLRA Board may adopt additional
326 requirements with respect to disclosures and conflicts of interests.

327
328 **Sec. 64-22. Resident Input.**

329
330 In addition to all other public access and transparency provisions of this chapter, as
331 well as having resident members of the board, the CLRA shall offer a public portion at each
332 regular meeting during which residents may speak about any item on the meeting agenda.
333 The CLRA shall also hold at least two public meetings per year in a Charleston
334 neighborhood where it listens to resident concerns and suggestions without a specific
335 agenda of the CLRA.

336
337 **Sec. 65-23. Annual Report.**

339 The CLRA shall submit an audit of income and expenditures, together with a report
340 of its activities for the preceding fiscal year to the West Virginia Housing Development
341 Fund within 120 days after the end of the fiscal year. A copy of the report shall be
342 submitted to the City Council and any political subdivision with which the CLRA has an
343 intergovernmental agreement.
344



PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

COMMITTEE REPORT

To: Miles Carey, City Clerk

From: Council's Committee on Planning, Streets and Traffic

Date: August 13, 2019

Subject: Bill No. 7830

The Committee on Planning, Streets and Traffic has had under consideration:

Bill No. 7830 - A BILL to amend and reenact Sections 14-202, 14-203, 14-204, and 14-206 of the Code of the City of Charleston, as amended, all relating to updating the vacant structure registry; adding, amending, and deleting definitions; expanding the scope of the vacant structure registry; requiring an owner of vacant property to submit a plan of maintenance and repair; increasing registration fees; adjusting timeframe for registration to require properties to be registered quicker; creating a misdemeanor criminal violation for knowingly withholding or providing false information with respect to the registry; and increasing the penalty associated with failure or refusal of any owner to register a vacant structure or failure to comply with any of the requirements of the vacant structure registry.

and reports to Council with the recommendation that the Bill do pass.

Mary Beth Hoover
Chair
Naomi Sayers
Rebecca C. Capenley
William R. Smith
J. F. Pharo

Bill No. 7830:

Introduced in Council:

August 5, 2019

Adopted by Council:

Introduced by:

Becky Ceperley (by request of the Mayor),
Shannon Snodgrass, Bobby Reishman,
Chuck Overstreet, Bruce King,
Chad Robinson, Mary Beth Hoover,
Adam Knauff, Brady Campbell, Jeanine Faegre,
Pat Jones and Will Laird

Referred to:

Planning, Streets and Traffic

Bill No. 7830 - A BILL to amend and reenact Sections 14-202, 14-203, 14-204, and 14-206 of the Code of the City of Charleston, as amended, all relating to updating the vacant structure registry; adding, amending, and deleting definitions; expanding the scope of the vacant structure registry; requiring an owner of vacant property to submit a plan of maintenance and repair; increasing registration fees; adjusting timeframe for registration to require properties to be registered quicker; creating a misdemeanor criminal violation for knowingly withholding or providing false information with respect to the registry; and increasing the penalty associated with failure or refusal of any owner to register a vacant structure or failure to comply with any of the requirements of the vacant structure registry.

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

That the Code of the City of Charleston, as amended, be amended, effective September 1, 2019, by amending and reenact Sections 14-202, 14-203, 14-204, and 14-206, all to read as follows:

ARTICLE V. – VACANT STRUCTURE REGISTRY.

Sec. 14-202. - Definitions.

(a) For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

(1) Abandoned building: Any structure on a parcel of real property which (i) has been a vacant structure for more than ninety (90) days, and (ii) is the subject of an order issued by the municipal court for a building or zoning violation which has not been remedied for at least thirty (30) days.

(2) Boarded: Vacant structure shall be deemed to be "boarded" if in place of one or more exterior doors, other than a storm door, or of one or more windows, there is a sheet or sheets of plywood or similar material covering the space for such door or window.

32
33 (2) ~~Exterior maintenance and major systems: The phrase "exterior maintenance and~~
34 ~~major systems" shall mean the safe and lawful maintenance of the facade, windows, doors,~~
35 ~~roof and other parts of the exterior of the building and the maintenance of its major~~
36 ~~systems consisting of the roof, the electrical and plumbing systems, the water supply~~
37 ~~system, the sewer system, and the sidewalk, driveway, if any, area of the lot, as applicable~~
38 ~~and as enforced by the building commissioner in connection with codes adopted by the city~~
39 ~~as well as all applicable local, state and federal laws.~~

40
41 (3) ~~Occupy/occupied/occupies: Any building or structure shall be deemed to be~~
42 ~~"occupied" if one or more persons actually conducts a lawful business or lawfully resides in~~
43 ~~the building as the licensed business occupant, or as the legal or equitable~~
44 ~~owner/occupant(s) or tenant(s) on a permanent, non-transient basis, or any combination of~~
45 ~~the same. For purposes of this section, evidence offered to prove that a building is so~~
46 ~~occupied may include, but shall not be limited to, the regular receipt of delivery of regular~~
47 ~~mail through the U.S. Postal Service; proof of continual telephone, electric, gas, heating,~~
48 ~~water and sewer services; a valid city business license, or the most recent, federal, state or~~
49 ~~city income tax statements indicating that the subject property is the official business or~~
50 ~~residence address of the person or business claiming occupancy.~~

51
52 (4) ~~Open: A vacant structure shall be deemed to be "open" if any one or more~~
53 ~~exterior doors other than a storm door is broken, open and/or closed but, without a properly~~
54 ~~functioning lock to secure it, or if one or more windows is broken or not capable of being~~
55 ~~locked and secured from intrusion, or any combination of the same.~~

56
57 (5) ~~Owner: An owner of the freehold of the premises or any lesser estate therein, to~~
58 ~~the extent permitted by law a mortgagee, a vendee-in-possession, assignee of rents,~~
59 ~~receiver, executor, trustee, lessee, agent or any other person, firm or corporation that is~~
60 ~~directly or indirectly in control of a parcel of real property on which a vacant structure or~~
61 ~~abandoned building is located.~~

62
63 (6) ~~Single-unit structure: A commercial or residential building or structure that is not~~
64 ~~a multi-unit structure.~~

65
66 (7) ~~Multi-unit structure: A commercial or residential building or structure with two or~~
67 ~~more separate living or working spaces/units constructed in a manner that would enable~~
68 ~~each separate working or living unit/space to be Occupied by, or held out for rent or lease~~
69 ~~to, two or more unrelated persons or entities.~~

70
71 (8) ~~(6) Vacant structure: A single-unit structure on a parcel of real property which for~~
72 ~~at least 60 days has lacked the habitual presence of human beings who have a legal right~~
73 ~~to be on the premises, or at which substantially all lawful business operations or residential~~
74 ~~occupancy has ceased, where no person or persons actually, currently occupies, conducts~~
75 ~~a lawfully licensed business, or lawfully resides, dwells, or lives in any part of the building~~
76 ~~as the legal or equitable owner(s), or tenant(s), on a permanent, non-transient basis for a~~
77 ~~period of six months in any calendar year. A multi-unit structure where no person or~~

persons actually, currently occupies, conducts a lawfully licensed business, or lawfully resides, dwells, or lives in each unit/space as the legal or equitable owner(s), or tenant(s), on a permanent, non-transient basis for a period of six months in any calendar year. A building or structure shall not be deemed vacant and subject to the registration, the registration fee and other provisions provided herein if: (i) the exterior maintenance and major systems of the building and the surrounding real property thereof are not in violation of any building codes or health and sanitation codes; and (ii) there is proof that all essential utility services including, but not limited to, water, electric and gas, if applicable, are active, uninterrupted, and capable of being used without any action being taken by any utility company.

(9) (7) Actively marketed: A property is being "actively marketed" when its owner is, in good faith, doing those things and performing those activities standard and effective in the industry necessary to sell or lease a structure, including, but not limited to, using the services of a realtor licensed in the State of West Virginia, or advertising the availability of the structure for sale or lease.

(40) (8) Building Commissioner: the City's building commissioner, or its designee.

(11) (9) City Collector: The city's collector, or its designee.

(12) (10) City manager: The city's manager, or its designee.

(13) (11) Vacant property registry: The property registry created pursuant to this article, specifically by section 14-204(a).

Sec. 14-203. - Applicability, obligation to register, automatic registration, exemptions.

(a) Applicability and obligation to register. Except as provided in subsection (c) below, this article is applicable to all vacant structures and their owners. It is the obligation of the owner of any property qualifying as a vacant structure to register the same with the building commissioner in accordance with the provisions of section 14-204. Registration shall be required for all vacant structures, whether vacant and secure, vacant and open or vacant and boarded, and shall be required on or before 30 days after a building qualifies as a vacant structure, subject to the exemptions contained herein. In no instance shall the registration of a vacant structure and the payment of registration fees be construed to exonerate the owner, agent or responsible party for compliance with any other building code or housing code requirement.

(b) Registration by building commissioner. When the building commissioner has reason to believe that a structure is a vacant structure and that the owner has failed to register in compliance with this article, the commissioner may post a notice on the subject structure indicating that the building commissioner has reason to believe that the building is a vacant structure and directing the owner to either (i) register the structure in accordance with the provisions of this article or (ii) provide the building commissioner with evidence

demonstrating that building is not a vacant structure as defined by this article. In addition to posting the aforementioned notice on the suspected vacant structure itself, the building commissioner shall, via registered mail or via regular mail if registered mail is unsuccessful, send a copy of the same notice to the record owner of the property according the tax or other public records maintained by the assessor or sheriff of Kanawha County. If, within 30 days of posting and mailing, the owner has neither registered the property in the vacant property registration created by this article nor demonstrated to the satisfaction of the building commissioner that the property is not a vacant structure, then the building commissioner shall add the structure to the vacant property registry using the information of record in the office of the assessor or sheriff of Kanawha County.

(c) Exemptions. The following are exempt from the requirements of this article:

(1) Any building owned by city, state, or federal government, or any of their respective agencies or political subdivisions;

(2) A new building under construction or property that is undergoing, in the reasonable discretion of the Building Commissioner, an active renovation or rehabilitation;

~~(3) A multi-unit structure with a vacancy rate that does not exceed 85 percent; or~~

~~(4) Any property being actively marketed; provided, however, this exemption shall only be available for up to 48 6 months for each structure otherwise meeting the Vacant Structure designation, unless owner provides justification satisfactory to the building commissioner supporting an extension of the exemption beyond 48 6 months.~~

Sec. 14-204. - Registry, registration information, amending information, fees, dedicated account, publication.

(a) Registry created. The vacant property registry is hereby created. The building commissioner is hereby charged with creating, compiling, monitoring and enforcing the vacant property registry. The city collector shall aid and assist the Building Commissioner with the administration and collection of fees and any other matter related to this Article deemed necessary or appropriate by the city.

(b) Registration information. Owners of a vacant structure shall register the same with the city on a form supplied by the city. The registration form shall require, ~~but may not be limited to,~~ the following information, at a minimum:

(1) The street address of the vacant structure;

(2) The type of vacant structure;

(3) The square footage of each vacant structure;

(4) The name, residence address, telephone number, and e-mail address, mobile

170 telephone number, and facsimile number of all owners of the vacant structure;

171
172 (5) The name, address, telephone number, and e-mail address, of the person
173 authorized to make or order repairs or services for the vacant structure, if in violation of city
174 or state codes, if the person is other than the owner;

175
176 (6) If an owner resides or is domiciled outside the city, the name, address and
177 telephone number of a person located within the city who is designated to accept all legal
178 notices of fees due or services of process with respect to the vacant structure;

179
180 (7) If the owner is a corporation or a limited liability company, the name(s),
181 address(es), and telephone number(s) of an officer of the corporation or limited liability
182 company who is designated to accept all legal notices of fees due or services of process
183 with respect to the vacant structure;

184
185 (8) If the owner is an estate, the name, address and telephone number of the
186 executor of the estate;

187
188 (9) If the owner is a trust, the name, address and telephone number of the trustee(s)
189 designated to accept all legal notices of fees due or services of process with respect to the
190 vacant structure;

191
192 (10) If the owner is a partnership, the names, addresses and telephone number of
193 all partners with an interest of ten percent or greater;

194
195 (11) If the owner is any other form of unincorporated association, the names
196 addresses and telephone numbers of all principals with an interest of ten percent or
197 greater;

198
199 (12) ~~The registration form may request proof~~ Proof of a liability insurance policy, if
200 any, in force for the protection of surrounding property owners, so as to ensure that the
201 purposes of this article are met;

202
203 (13) The owner's plan for maintenance and repair of the property, including the time
204 within which the owner anticipates completion of all repairs necessary to bring the property
205 into compliance with the City Building Code.

206
207 (c) Amending information. If the registration information collected in accordance with
208 this section changes or becomes inaccurate during the course of any calendar year, it is
209 the responsibility of the owner, responsible party or agent for the same to contact the
210 building commissioner within 30 days of the occurrence of such change and advise the
211 department of those changes in writing.

212
213 (d) Fees. There shall be a fee for each vacant structure subject to registration of the
214 vacant property registry. The fees shall be remitted to the city collector as determined by
215 the following:

(1) ~~No fee for a property that is on the vacant property registry for less than one year;~~

~~(2) A \$250.00 fee for a vacant structure that is placed on the vacant property registry; for at least one year but less than two consecutive years~~

~~(3) (2) A \$500.00 fee for a vacant structure that is an abandoned building and is placed on the vacant property registry; on the vacant property registry for at least two consecutive years but less than three years~~

~~(4) A \$750.00 fee for a vacant structure that is on the vacant property registry for at least three consecutive years but less than four years;~~

~~(5) (3) A \$1,000.00 fee for a vacant structure or abandoned building that is on the vacant property registry for twelve consecutive full months at least four consecutive years but less than five years; and~~

~~(6) (4) A \$1,250.00 An additional \$10 fee for each consecutive day that a vacant structure or abandoned building remains on the vacant property registry beyond twelve consecutive months a vacant structure that is on the vacant property registry for at least five years, and each year thereafter.~~

~~For the purposes of this article, a year is 365 days.~~

(e) Dedicated account. All fees collected pursuant to this article shall be deposited into a separate, dedicated account and shall only be used to:

(1) Repair, close or demolish a vacant structure as authorized in W. Va. Code § 8-12-16; or

(2) Improve public safety efforts, especially for police and fire personnel, who most often contend with the dangerous situations manifested in vacant properties; or

(3) Implement, monitor, and administer this article.

(f) Publication. The city may, from time to time and in its reasonable discretion, publish or disclose certain information contained in the vacant property registry, including, but not limited to:

(1) General demographic information about vacant structures registered on the vacant property registry;

(2) The address of vacant structures on the vacant property registry;

(3) The owners of each vacant structure;

(4) The amount of time any vacant structure has been on the vacant property registry; and

(5) The amount of any delinquent fees due under this article, or otherwise due city (e.g. refuse or fire fees) for any vacant structure.

(g) Changes in ownership. A change in ownership of a vacant structure shall not remove the vacant structure from the vacant properties registry or from the requirements of this article, nor shall it renew the time period for the ~~subsection 14-203(c)(4) exemption in subdivision (3), subsection (c) of section 14-203 of this code.~~ Fees arising under ~~subsection 14-203(d) this article~~ shall continue to accrue at the applicable rate until the structure either no longer constitutes a vacant structure or qualifies for an exemption, ~~under subsection 14-203(c)(1)–(3) all transfers of ownership notwithstanding. All fees arising under this article shall run with the property and failure to pay such fees may result in the City filing a lien that attaches upon the property.~~

Sec. 14-206. - Violations and penalties for failure to register.

The failure or refusal of any owner to register a vacant structure as required by this article, knowingly providing false information or withholding information required to be provided by the registration requirements, or failure to comply with any of the terms of this article shall constitute a violation misdemeanor offense, punishable upon conviction thereof by a fine in the amount of not less than one hundred dollars (\$100.00) nor more than ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) or confinement of up to 30 days, or both, for each violation. It shall be a separate violation for each month that an owner knowingly fails or refuses to register a vacant structure as required by this article.



PLANNING, STREETS AND TRAFFIC COMMITTEE

Mary Beth Hoover, Chair

COMMITTEE REPORT

To: Miles Carey, City Clerk
From: Council's Committee on Planning, Streets and Traffic
Date: August 13, 2019
Subject: Bill No. 7831

The Committee on Planning, Streets and Traffic has had under consideration:

Bill No. 7831 - A BILL to amend and reenact Section 14-33 and Section 14-71 of the Municipal Code of the City of Charleston, as amended, all relating to adjusting the penalties for violations of the Building Code and Housing Code by increasing the potential fine and removing the possibility of jail time.

and reports to Council with the recommendation that the Bill do pass.

Mary Beth Hoover
Chair
Naomi Bayne
Rebecca C. Cepulley
William R. Carver
J. L. Pham

Bill No. 7831:

Introduced in Council:

Adopted by Council:

August 5, 2019

Introduced by:

Referred to:

**Becky Ceperley (by request of the Mayor),
Shannon Snodgrass, Chuck Overstreet,
Bruce King, Chad Robinson, Mary Beth Hoover,
Adam Knauff, Brady Campbell, Jeanine Faegre,
Pat Jones and Will Laird**

Planning, Streets and Traffic

Bill No. 7831 - A BILL to amend and reenact Section 14-33 and Section 14-71 of the Municipal Code of the City of Charleston, as amended, all relating to adjusting the penalties for violations of the Building Code and Housing Code by increasing the potential fine and removing the possibility of jail time.

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

Sec. 14-33. - Adoption of state building code; exercise of authority beyond corporate limits.

(a) There is adopted the state building code as authorized by W. Va. Code § 8-12-13 and promulgated pursuant to W. Va. Code § 29-3-5b, and by the State of West Virginia in Title 87, Legislative Rule Series 4 (§ 87-4-1 et seq.), state building code, which are collectively adopted by reference as if fully restated herein, and the provisions of such code sections and regulations shall be controlling within the city.

(b) The following amendments are made and incorporated into the codes adopted by ~~14-33 subsection~~ (a) herein of this section:

Whenever referenced in the several ICC codes adopted herein, any reference to the International Fire Code should be substituted with the NFPA Life Safety Code 2015 edition.
--

The ANSI/ASHRAE/IESNA Standard 90.1-2010 edition for commercial buildings.
--

International Building Code 2015:

Section 101.1

Insert "the City of Charleston"

Section 1612.3	Insert "the City of Charleston" dated "April 3, 1985"
Section 3412.2	Insert "April 30, 2019"
Delete Section 101.4.5 Fire Prevention, in its entirety.	
Delete Section 113.3 Qualifications, in its entirety and replace with the following: 113.3 Qualifications. The Board of Appeals shall consist of five members, with up to three alternates, who are qualified by experience or training to pass on matters pertaining to building construction and are not employees of the jurisdiction. They may include, but are not limited to, a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor, with at least 10 years' experience, five of which shall be in responsible charge or work. No less than one of the members of such Board of Appeals shall be a WV Registered Professional Architect or Engineer, or a WV Licensed General Building, Residential, Electrical, Piping, Plumbing, Mechanical or Fire Protection Contractor.	
Section 4.1.k.l. Omit references to International Fire Code and substitute NFPA Life Safety Code 2009 Edition.	
International Residential Code for One and Two Family Dwellings 2015:	
Chapter 11 entitled "Energy Efficiency" is exempt from Title 87, Legislative Rule Series.	
Section R101.1	Insert "the City of Charleston"
Section G2415.12(404.10)	Delete and replace with: Minimum Burial Depth. Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner.

Table R301.2(1)	Insert into blank spaces as follows: Ground Snow Load - "20 psf" Wind Speed - "115 mph" Seismic Design Category - "C" Weathering - "Severe" Frost Line Depth - "24 inch" Termite - "Moderate to Heavy" Decay - "Slight to Moderate" Winter Design Temper-ature - "11 degrees" Ice Shield Underlayment - No Flood Hazards - "see FIRM 1985 Floodplain Ordinance" Air Freezing Index - 500 Mean Annual Temp - 54.5 Topographic effects - "No"
Section P2603.6.1	Insert "30 inches" and "12 inches"
Delete Section 303.5.1 Light Activation, in its entirety.	
Delete sections R 311.3.1 Landings at doors in its entirety.	
International Plumbing Code 2015:	
Section 101.1	Insert "the City of Charleston"
Section 106.6.2	Insert "See the Building Department Administrative Manual, Appendix A"
Section 106.6.3	In No. 2 Insert "100%" In No. 3 Insert "100%"
Section 108.4	Insert "misdemeanor", " \$500 <u>\$1,000</u> ", " 30 days <u>0 days</u> "
Section 108.5	Amend last sentence in paragraph to read as follows: Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to

	perform to remove a violation or unsafe condition, shall be liable for a fine up to \$500.00 <u>\$1,000.00</u> "
Section 305.6.1	Insert "30 inches" and "12 inches"
Section 904.1	Insert "12 inches"
International Mechanical Code 2015:	
Section 101.1	Insert "the City of Charleston"
Section 106.5.2	Insert "See the Building Department Administrative Manual, Appendix A"
Section 106.5.3	In No. 2 Insert "100%" In No. 3 Insert "100%"
Section 108.4	Insert "misdemeanor", " \$500 <u>\$1,000</u> ", " 30 days <u>0 days</u> "
Section 108.5	Amend last sentence in paragraph to read as follows: Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine up to \$500.00 <u>\$1,000.00</u> "
International Existing Building Code 2015:	
Section 101.1	Insert "the City of Charleston"
Section 1301.2	Insert "April 30, 2019"
International Energy Conservation Code 2009:	

Section 101.1	Insert "the City of Charleston"
International Fuel Gas Code 2015:	
Section 101.1	Insert "the City of Charleston"
Section 106.6.2	Insert "See the Building Department Administrative Manual, Appendix A"
Section 106.6.3	In No. 2 Insert "100%" In No. 3 Insert "100%"
Section 108.4	Insert "misdemeanor", "\$500 <u>\$1,000</u> ", "30-days <u>0 days</u> "
Section 108.5	Amend last sentence in paragraph to read as follows: Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine up to \$500.00 <u>\$1,000.00</u>
Section 404.10	Section 404.10 is deleted in its entirety and replaced with the following: "Underground piping systems shall be installed a minimum depth of 12 inches (305 mm) below grade. If the minimum depth cannot be maintained, the piping system shall be installed in conduit or shielded in an approved manner."
International Property Maintenance Code 2015:	
Section 101.1	Insert "the City of Charleston"
Section 103.5	Insert "See the Building Department Administrative Manual, Appendix A"

Section 110.3	Modified as follows: Unless authorized by W. Va. Code §8-12-16, or absent the express consent of the owner, if the owner of a premises fails to comply with a demolition order within the time prescribed, the legal counsel of the jurisdiction shall institute appropriate action in the Circuit Court of the County in which the property is located against the owner of the premises where the structure is or was located seeking an order causing the structure to be demolished and removed. Thereafter, the local jurisdiction, through an available public agency or by contract or arrangement with private persons, shall demolish and remove the structure and the costs thereof, as well as all fees and costs incurred in the legal action, shall be a lien upon such real estate.
Section 112.4	Amend last sentence in paragraph to read as follows: Any person who shall continue any work on the system after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable for a fine up to \$500.00 <u>\$1,000.00</u>"
Section 302.4	Insert "10 inches"
Section 303.14	Insert "January 1 st to December 31 st "
Section 602.3	Insert "January 1 st to December 31 st "
Section 602.4	Insert "September 1 st to June 1 st "
2014 National Electrical Code, NFPA 70:	
2009 ICC/ANSI A117.1 American National Standards for Accessibility & Usable Buildings and Facilities:	
Title 87 Legislative Rule, State Fire Commission, Series 4 § 87-4-5 Fire Protection of Floors in Residential Buildings	

5.1 New one and two family dwellings over one level in height, new one and two family dwellings containing a basement, and new one and two family dwellings containing a crawl space containing a fuel burning appliance below the first floor, shall provide one of the following methods for fire protection of floors: (1) A ½ inch (12.7 mm) gypsum wallboard membrane, 5/8 inch (16 mm) wood structural panel membrane, or equivalent on the underside of the floor framing member; (2) Wood floor assemblies using dimension lumber or structural composite lumber equal or greater than 2 inch by 10 inch (50.8 mm by 254 mm) nominal dimension, or other approved floor assemblies demonstrating equivalent fire performance; or (3) An automatic fire sprinkler system as set forth in section R313.2 of the 2009 edition of the International Residential Code for One and Two Family Dwellings, provided that floor assemblies located directly over a space protected by an automatic sprinkler system as set forth in section R313.2 of the 2009 edition of the International Residential Code for One and Two Family Dwellings are exempt from this requirement.

(c) Nothing in this section hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause of action acquired or existing, under any provision hereby repealed; nor shall any right or remedy of any character be lost, impaired or affected by this chapter.

Sec. 14-71. - Violations and penalty.

Any person who shall violate or fail to comply with any of the provisions of this article shall be deemed guilty of a separate offense for each day or portion of a day during which the offense is committed, continued or permitted; and upon conviction of any such violation or noncompliance, such person shall be punishable by a fine of not more than \$500.00 \$1,000.00, notwithstanding the provisions of subsection (c) of Section 1-8 of this code, or ~~by imprisonment for not more than 30 days, or by both such fine and imprisonment:~~ Provided, that, if the penalty prescribed in any of the adopted state codes conflicts, the more stringent penalties shall be imposed.

Resolution No. 228-19

Introduced in Council

Passed by Council

August 19, 2019

Introduced by
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 228-19 - Authorizing the Mayor or City Manager to submit a grant
2 application to the Department of Justice - Edward Byrne Memorial Justice
3 Assistance Grant program in the amount of \$140,665.00 and administer any funds
4 awarded. The Charleston Police Department will use \$104,059.00 to provide
5 training and equipment for the Hybrid Unit, radios, one pole camera and overtime.
6 The Kanawha County Sheriff's Department will utilize \$36,606.00 to purchase
7 crime scene investigation supplies.

8

9 Be it Resolved by the Council of the City of Charleston, West Virginia:

10

11 That the Mayor or City Manager is hereby authorized to submit a grant application
12 to the Department of Justice - Edward Byrne Memorial Justice Assistance Grant
13 program in the amount of \$140,665.00 and administer any funds awarded.

Resolution No. 229-19

Introduced in Council

Passed by Council

August 19, 2019

Introduced by
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 229-19 - Authorizing the Mayor or City Manager to enter into a
2 Memorandum of Understanding with the Kanawha County Commission
3 designating the City as the applicant and fiscal agent for the Edward Byrne
4 Memorial Justice Assistance Grant application.

5

6 Be it Resolved by the Council of the City of Charleston, West Virginia:

7

8 That the Mayor or City Manager is hereby authorized to enter into a Memorandum
9 of Understanding with the Kanawha County Commission designating the City as
10 the applicant and fiscal agent for the Edward Byrne Memorial Justice Assistance
11 Grant application.

Resolution No. 231-19

Introduced in Council:

August 19, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance Committee

Resolution No. 231-19 - Authorizing the Mayor or City Manager to enter into a 25-year agreement with the United States Geological Survey for the installation and maintenance of a stream gaging station on the South Side Bridge for the purpose of streamflow measurement and/or water quality sampling of the Kanawha River.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to enter into a 25-year agreement with the United States Geological Survey for the installation and maintenance of a stream gaging station on the South Side Bridge for the purpose of streamflow measurement and/or water quality sampling of the Kanawha River.

Close

Form 9-1482
Revised (October 2002)

U.S. DEPARTMENT OF THE INTERIOR
U.S. Geological Survey

Agreement Number

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF GAGING STATION *

The landowner agrees that the U.S. Geological Survey (USGS), VA-WV Water Science Center may install and maintain a gaging station on the landowner's property at a mutually agreed-upon site at the location listed below. The landowner also agrees that the USGS will have access to the site, as it reasonably deems necessary for streamflow measuring and/or water-quality sampling during the life of this agreement.

Description of the gaging station, located at Lat. 38.347284 Long. -81.636512
and/or

South Side Bridge, Charleston, WV, located on railing on downstream side of bridge near right bank.

(Provide other location description and/or attach map, plat, drawings, photographs, or other descriptive information)

Excavation and/or installation of the gaging station, at the USGS's own expense, may begin any time after this agreement is fully executed. The gaging station shall be excavated, installed, and properly maintained by the USGS. This Agreement shall be regarded as granting a license or easement, whichever may most appropriately characterize it under applicable state law, in favor of USGS to enter landowner's property for the purposes noted herein.

At the expiration of this agreement, the gaging station may be disposed of in one of the following ways:

1- Removal by the USGS, at its own cost and expense, within a reasonable time after the expiration of this agreement. Upon removal of the station, the USGS shall restore the landowner's property, also at its own expense, as nearly as possible to the condition when installed, or

2- Transfer to a state, local, or tribal government agency or Federal Energy Regulatory Commission licensee under a separate written agreement, if approved by the landowner and the USGS Regional Executive.

During the life of this agreement, the Federal Government will be liable for any loss related to the installation, operation, maintenance, and other activities associated with the gaging station described above in accordance with, and to the extent permitted under, the Federal Tort Claims Act (28 U.S.C. §§1346(b) and 2671 et seq).

This agreement shall become effective when fully executed and shall remain in full force for 25 year(s) 0 month(s) unless terminated earlier by USGS upon 60 days written notice.

After 25 year(s) 0 month(s), the agreement will continue in force until terminated by either the USGS or the landowner upon 60 days written notice to the other party.

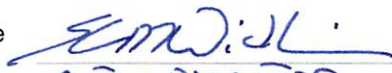
* For the purpose of this agreement, "gaging station" includes all stilling wells and structure, including cableways and equipment, used in the operation and maintenance of the monitoring site.

Landowner City of Charleston
Address 501 Virginia Street East, Charleston, WV 25301
Telephone Number 304-348-8014

USGS Water Science Director Bennett, Mark R.
Address 1730 E Parham Road, Richmond, VA 23228
Telephone Number 804-261-2600

USGS Project Chief White, Jeremy S.
Telephone Number 304-347-5130 x246

U.S. Geological Survey Signature/Date


Acting Director

8/13/19

Landowner Signature/Date

As consideration for the rights and privileges granted herein, the USGS will pay the landowner the sum of \$0 upon presentation of a bill, subject to the availability of appropriations by the Congress.

Landowner	City of Charleston
Address	501 Virginia Street E, Charleston, WV 25301
Telephone Number	304-348-8014

USGS Water Science Director	Bennett, Mark R.
Address	1730 E Parham Rd, Richmond, VA 23228
Telephone Number	804-261-2600

USGS Project Chief	White, Jeremy S.
Telephone Number	304-347-5130 x246

U.S. Geological Survey
Signature/Date


Acting Director

8/13/19

Landowner Signature/Date

Notary Seal:

Resolution No. 232-19

Introduced in Council:

Adopted by Council:

August 19, 2019

Introduced by:

Referred to:

Joseph Jenkins

Finance Committee

1 Resolution No. 232-19 - Authoring the Mayor or City Manager to submit an application to the
2 Kanawha County Commission Public Safety Grant Committee in the amount of \$15,000 and
3 administer any funds awarded. These funds will be utilized by the Charleston Fire Department
4 to purchase active shooter response kits for mass casualty trauma response. There is no match
5 required on these funds.

6

7 Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

8

9 That the Mayor or City Manager is hereby authorized to submit an application to the Kanawha
10 County Commission Public Safety Grant Committee in the amount of \$15,000 and administer
11 any funds awarded.

Resolution No. 233-19

Introduced in Council:

August 19, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance Committee

1 **Resolution No. 233-19** - Authorizing the Mayor or City Manager to renew a policy of
2 insurance for cyber-attack coverage from Beazley Insurance Company with a
3 \$5,000,000 policy limit and an annual premium of \$34,766.01, where the policy of
4 insurance will cover both the City of Charleston and the Charleston Sanitary Board with
5 premium costs to be shared between the two entities.

6

7 **Now, therefore, be it Resolved by the Council of the City of Charleston, West**
8 **Virginia:**

9

10 The Mayor or City Manager is authorized to renew a policy of insurance for cyber-attack
11 coverage from Beazley Insurance Company with a \$5,000,000 policy limit and an
12 annual premium of \$34,766.01, where the policy of insurance will cover both the City of
13 Charleston and the Charleston Sanitary Board with premium costs to be shared
14 between the two entities.

City of Charleston and Charleston Sanitary Board

Cyber Coverage & Pricing Comparison

Presented by:

**Frank A. Baer III, J.D., CIC
Chairman & CEO**

08/20/19 - 08/20/20



City of Charleston:

Insurance Co./Coverage:	Beazley Insurance Company 2018 Coverage	Beazley Insurance Company 2019 Renewal Quote
Annual or Policy Aggregate as Indicated:	There are three (3) annual aggregates: (1) aggregate for up to 250,000 Notifications;(1) Aggregate for up to \$1MM of Crisis Management Services;(1) Policy Aggregate	There are three (3) annual aggregates: (1) aggregate for up to 250,000 Notifications;(1) Aggregate for up to \$1MM of Crisis Management Services;(1) Policy Aggregate
1st Party Liability Limits:		
Cyber Incident Response Fund:1st Party Expenses Incurred as the result of a Privacy/Security breach including but not limited to forensic expenses, public relation expenses, notification & legal expenses.	One (1) Aggregate for up to 250,000 notifications; One (1) Aggregate for up to \$1,000,000 for Crisis Management Services	One (1) Aggregate for up to 250,000 notifications; One (1) Aggregate for up to \$1,000,000 for Crisis Management Services
Electronic Business Interruption & Extra Expense Loss Caused by a Network Security Breach:1st party expenses for loss of income and extra expenses	\$3,000,000 (Waiting Period = 10 Hours)	Option 1 = \$3,000,000 Option 2 = \$5,000,000 (Waiting Period = 10 Hours)
Electronic Business Interruption & Extra Expense Loss Caused by a Network System Failure: 1st party expenses for loss of income and extra expenses	\$3,000,000 (Waiting Period = 10 Hours)	Option 1 = \$3,000,000 Option 2 = \$5,000,000 (Waiting Period = 10 Hours)
Dependent Electronic Business Interruption & Extra Expense Loss Caused by a security breach at a 3rd Party Vendor: 1st party expenses for loss of income and extra expenses.	\$1,000,000 Across All Options (Waiting Period =10 Hours)	\$1,000,000 Across All Options (Waiting Period =10 Hours)

Insurance Co./Coverage:	Beazley Insurance Company 2018 Coverage	Beazley Insurance Company 2019 Renewal Quote
Dependent Electronic Business Interruption & Extra Expense Caused by a Systems Failure at the 3rd Party Vendor: 1 st party expenses for loss of income and extra expenses	\$1,000,000 Across All Options (Waiting Period = 10 Hours)	\$1,000,000 Across All Options (Waiting Period = 10 Hours)
Digital Data Recovery: 1 st Party Expenses associated with the recovery of damaged data on an insured computer system as the result of a cyber breach	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
Electronic Extortion: Payments to prevent or ameliorate a cyber breach or ransomware attack	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
3rd Party Liability Limits:		
Cyber, Privacy and Network Security Liability: This provides liability coverage if an insured fails or their computer system fails to prevent a Privacy or Security Breach.	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
Internet Media Communications: Coverage is provided for those circumstances where an insured commits a personal injury peril including the theft of intellectual property.	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
Regulatory Defense, Fines & Penalties: Coverage is provided for the defense of any type of regulatory investigation or lawsuit including potential payment of fines & penalties.	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
Other Insurance Coverage:		
PCI Fines & Penalties:	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000
HIPAA/HITECH Fines & Penalties:	\$3,000,000	Option 1 = \$3,000,000 Option 2 = \$5,000,000

Insurance Co./Coverage:	Beazley Insurance Company 2018 Coverage	Beazley Insurance Company 2019 Renewal Quote
GDPR Cyber Endorsement:	Yes	Yes
Post Breach Remedial Services Endorsement:	Yes Provided for up to 100 Hours of free risk management service	Yes Provided for up to 100 Hours of free risk management service
Amendatory Endorsement for Utilities:	Yes Provided per the endorsement wording	Yes Provided per the endorsement wording
*Cryptojacking Endorsement:	Not Provided	Yes, Provided up to a sub limit = \$250,000
*California Consumer Privacy Act Endorsement:	Not Provided	Yes Provided to match policy limits
*Amend Other Insurance Clause:	Not Provided	Primary with respect to Breach Response Services, Cyber Extortion and Data Loss Recovery
*Voluntary Shutdown Coverage:	Not Provided	Yes for an additional 5% Premium charge specific to a Business Interruption Loss
*Reputation Loss:	A sub limit of \$1,000,000 on the 2017 version	A sublimit of \$1,000,000 for both options; 2019 Version provides additional coverages
Telecommunications Fraud:	\$250,000	\$250,000
Social Engineering/ Fraudulent Instruction:	\$250,000	\$250,000
Electronic Crime/Funds Transfer Fraud:	\$250,000	\$250,000
Criminal Reward Coverage	\$50,000	\$50,000
Retentions/ Agreement:	\$25,000 per Insuring Agreement; \$10,000 for Forensic, Public Relations & Crisis Management Expenses; \$5,000 for Legal Expenses	\$25,000 per Insuring Agreement; \$10,000 for Forensic, Public Relations & Crisis Management Expenses; \$5,000 for Legal Expenses
Continuity Date/Pending or Prior Acts Date:	August 20, 2018	August 20, 2018
Retroactive Date:	Full Prior Acts	Full Prior Acts
Annual Premium: (Does Not Include any Taxes or Fees)	\$3,000,000 = \$22,088	\$3,000,000 = \$23,192 \$5,000,000 = \$33,153

City of Charleston and Charleston Sanitary Board
Cyber Coverage & Pricing

Beazley

Limit	Retention	Expiring Premium	Renewal Premium
\$3,000,000	\$25,000	\$23,197.56	\$24,351.79
\$5,000,000	\$25,000	N/A	\$34,766.01

Note:

Including Taxes and Fees



Lloyd's Certificate

This Insurance is effected with certain Underwriters at Lloyd's, London.

This Insurance is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Insured is requested to read their Policy, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

All inquiries regarding the Policy should be addressed to the following Correspondent:

Beazley USA

SLC-3 (USA) NMA2868 (24/08/2000) (amended)



One Lime Street London EC3M 7HA

SPECIMEN

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

CHOICE OF LAW AND SERVICE OF SUIT

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that **GENERAL CONDITIONS** is amended to include:

Service of Suit

It is agreed that in the event of the Underwriters' failure to pay any amount claimed to be due under this Insurance, the Underwriters will, at the **Insured's** request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this provision constitutes or should be understood to constitute a waiver of the Underwriters' rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It is further agreed that service of processing such suit may be made upon the Underwriters' representative:

Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829

and that in any suit instituted against any one of them upon this contract, the Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

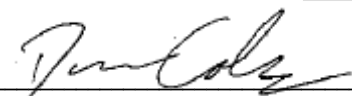
The person or entity named above is authorized and directed to accept service of process on the Underwriters' behalf in any such suit and/or upon the **Insured's** request to give a written undertaking to the **Insured** that they will enter a general appearance upon the Underwriters' behalf in the event such a suit shall be instituted.

Pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Underwriters hereby designate the Superintendent, Commissioner, or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on the **Insured's** behalf or any beneficiary hereunder arising out of this Policy, and hereby designate the person or entity named above as the persons to whom said officer is authorized to mail such process or a true copy thereof.

Choice of Law

Any disputes involving this Policy will be resolved applying the law of the state of New York.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. Referred to in this endorsement as either the "Insurer" or the "Underwriters"

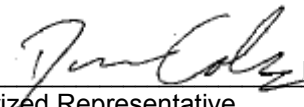
SANCTION LIMITATION AND EXCLUSION CLAUSE

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, law or regulations of the European Union, United Kingdom or United States of America.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

BEAZLEY BREACH RESPONSE

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or

possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

SPECIMEN

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. Referred to in this endorsement as either the "Insurer" or the "Underwriters"

LLOYD'S SECURITY SCHEDULE

Syndicate 2623 82%

Syndicate 623 18%

ALL OTHER TERMS, conditions and limitations of said Certificate shall remain unchanged.

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Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

**POLICYHOLDER DISCLOSURE NOTICE OF
TERRORISM INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, as amended ("TRIA"), insurance coverage provided by this Policy includes losses arising out of acts of terrorism, **as defined in Section 102(1) of the Act, as amended:** The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Any coverage you purchase for "acts of terrorism" shall expire at 12:00 midnight December 31, 2020, the date on which the TRIA Program is scheduled to terminate, or the expiry date of the policy whichever occurs first, and shall not cover any losses or events which arise after the earlier of these dates.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THIS FORMULA, THE UNITED STATES PAYS 85% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 AND 80% BEGINNING ON JANUARY 1, 2020; OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURER(S) PROVIDING THE COVERAGE. YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A USD100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS USD100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED USD100 BILLION, YOUR COVERAGE MAY BE REDUCED.

(LMA 9104 amended)

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

ASBESTOS, POLLUTION, AND CONTAMINATION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

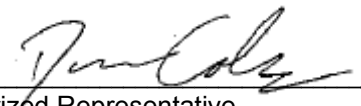
In consideration of the premium charged for the Policy, it is hereby understood and agreed that the coverage under this Policy will not apply to any **Loss** arising out of either in whole or in part, directly or indirectly arising out of or resulting from or in consequence of, or in any way involving:

1. asbestos, or any materials containing asbestos in whatever form or quantity;
2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins;

The Underwriters will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly, arises out of or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property; or
4. the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

WAR AND CIVIL WAR EXCLUSION

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

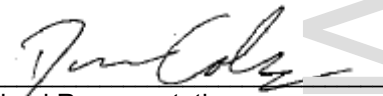
In consideration of the premium charged for the Policy, it is hereby understood and agreed that **EXCLUSIONS** is amended to include:

War and Civil War

For resulting from, directly or indirectly occasioned by, happening through or in consequence of: war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, that this exclusion will not apply to **Cyber Terrorism**.

For purposes of this exclusion, "**Cyber Terrorism**" means the premeditated use of disruptive activities, or threat to use disruptive activities, against a computer system or network with the intention to cause harm, further social, ideological, religious, political or similar objectives, or to intimidate any person(s) in furtherance of such objectives.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. Referred to in this endorsement as either the "Insurer" or the "Underwriters"

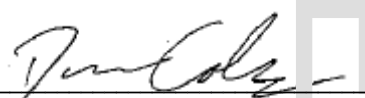
CAP ON LOSSES ARISING OUT OF CERTIFIED ACT OF TERRORISM

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

- A. If aggregate insured losses attributable to "Certified Acts of Terrorism" exceed \$100,000,000,000 in a calendar year and the Underwriters meet the applicable insurer deductible under the Terrorism Risk Insurance Act, the Underwriters are not liable for the payment of any portion of the amount of the losses exceeding \$100,000,000,000. Insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.
- B. As used in this endorsement, "Certified Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- C. Terrorism exclusions, or the inapplicability or omission of a terrorism exclusion, do not create coverage for injury or damage otherwise excluded under this Policy.

All other terms, exclusions and conditions of the policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

**OTHER INSURANCE CLAUSE – PRIMARY WITH RESPECT TO
FIRST PARTY LOSS**

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

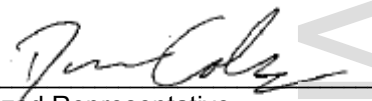
In consideration of the premium charged for the Policy, it is hereby understood and agreed that **Other Insurance** under **GENERAL CONDITIONS** is deleted in its entirety and replaced with the following:

Other Insurance

The insurance under this Policy shall apply in excess of any other valid and collectible insurance available to any **Insured** unless such other insurance is written only as specific excess insurance over this Policy; provided that this Policy shall be primary solely with respect to **Cyber Extortion Loss** and **Data Recovery Costs** covered under the First Party Loss insuring agreements.

The existence of other insurance available to an **Insured** shall not affect the Underwriters' obligations toward an **Insured** in paying **Loss** covered under this Policy nor shall it delay payment of such **Loss**.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's, referred to in this endorsement as either the "Insurer" or the "Underwriters"

REPUTATION LOSS

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

1. Limit listed in the Declarations under **COVERAGE SCHEDULE** is amended to include:

Reputation Loss: USD \$1,000,000

2. Retention listed in the Declarations under **COVERAGE SCHEDULE** is amended to include:

Each incident giving rise to **Reputation Loss:** USD To Match Elected Retention

3. **INSURING AGREEMENTS** is amended by the addition of:

Reputation Loss

To indemnify the **Insured Organization** for **Reputation Loss** that the **Insured Organization** sustains solely as a result of an **Adverse Media Event** that occurs during the **Policy Period**, concerning:

1. a **Data Breach, Security Breach, or Extortion Threat** that the **Insured** first discovers during the **Policy Period**; or
2. if this policy is a **Renewal**, a **Data Breach, Security Breach, or Extortion Threat** that the **Insured** first discovers during the last 90 days of the prior policy period.

4. **DEFINITIONS** is amended to include:

Adverse Media Event means:

1. publication by a third party via any medium, including but not limited to television, print, radio, electronic, or digital form of previously non-public information specifically concerning a **Data Breach, Security Breach, or Extortion Threat**; or
2. notification of individuals pursuant to part 4. of the **Breach Response Services** definition.

Multiple **Adverse Media Events** arising from the same or a series of related, repeated or continuing **Data Breaches, Security Breaches, or Extortion Threats**, shall be considered a single **Adverse Media Event**, and shall be deemed to occur at the time of the first such **Adverse Media Event**.

Claims Preparation Costs means reasonable and necessary costs that the **Named Insured** incurs to contract with a third party to prepare a proof of loss demonstrating **Reputational Loss**.

Protection Period means the period beginning on the date the **Adverse Media Event** occurs, and ends after the earlier of:

1. 180 days; or
2. the date that gross revenues are restored to the level they would have been but for the **Adverse Media Event**.

Renewal means an insurance policy issued by the Underwriters to the **Named Insured** for the policy period immediately preceding this **Policy Period** that provides coverage for a **Data Breach**, **Security Breach**, or **Extortion Threat** otherwise covered under this Policy.

Reputation Loss means:

1. the net profit or loss before interest and tax that the **Insured Organization** would have earned during the **Protection Period** but for an **Adverse Media Event**; and
2. continuing normal operating expenses incurred by the **Insured Organization** (including payroll), but only to the extent that such operating expenses must necessarily continue during the **Protection Period**.

When calculating any **Reputation Loss**, due consideration will be given to any amounts made up during, or within a reasonable time after the end of, the **Protection Period**.

Reputation Loss will not mean and no coverage will be available under this endorsement for any of the following:

- (i) loss arising out of any liability to any third party;
- (ii) legal costs or legal expenses of any type;
- (iii) loss incurred as a result of unfavorable business conditions;
- (iv) loss of market or any other consequential loss;
- (v) **Breach Response Services**; or
- (vi) **Cyber Extortion Loss**;

There will be no coverage available under this endorsement if there is an actual interruption of the **Insured Organization's** business operations for any period of time.

5. **Limits of Liability** under **LIMIT OF LIABILITY AND COVERAGE** is amended to include:

Reputational Loss and **Claims Preparation Costs** covered under this Policy arising from an **Adverse Media Event** concerning any **Data Breach**, **Security Breach**, or **Extortion Threat** (including a series of related, repeated or continuing **Data Breaches**, **Security Breaches**, or **Extortion Threats**) first discovered during the last 90 days of the prior policy period, will be considered to have been noticed to the Underwriters during the prior policy period and will be subject to the **Policy Aggregate Limit of Liability** of the prior policy period. Under such circumstances, if the **Policy Aggregate Limit of Liability** of the prior policy period is exhausted due to payments made under the prior policy, the Underwriter's obligation to pay **Reputational Loss** or **Claims Preparation Costs** under this Policy shall be completely fulfilled and extinguished.

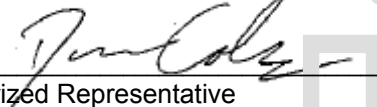
6. **Notice of Claim or Loss** under **GENERAL CONDITIONS** is amended to include:

With respect to **Reputation Loss**, the **Named Insured** must notify the Underwriters through the contacts listed for **Notice of Claim, Loss or Circumstance** in the Declarations as soon as practicable after discovery of the circumstance, incident or event giving rise to such loss.

All **Reputation Loss** must be reported, and all proofs of loss must be provided, to the Underwriters no later than four (4) months after the end of the **Protection Period**.

7. This Policy will cover up to USD 50,000 of **Claims Preparation Costs** in excess of the Retention stated in Section 2. of this endorsement.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

POST BREACH REMEDIAL SERVICES ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that, following a covered **Data Breach** or **Security Breach** involving the actual **Unauthorized Access or Use** of the **Insured Organization's Computer Systems**, the **Insured Organization** is eligible to receive **Post Breach Remedial Services**.

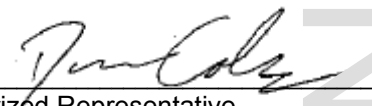
Post Breach Remedial Services means up to 100 hours per **Policy Period** of post-breach computer security consultation and remedial services to be provided by Lodestone Security ("Lodestone"). Such services will be provided at the **Insured Organization's** request as per the description of services attached to this endorsement. **Post Breach Remedial Services** will be considered **Breach Response Services**, and will be available in response to incidents in which forensic services and costs covered under parts 2. and 3. of the definition of **Breach Response Services** have been provided, subject to the applicable Retention. **Post Breach Remedial Services** will not include any costs to purchase or upgrade any hardware or software.

To access **Post Breach Remedial Services**, the **Insured Organization** must:

1. notify the Underwriters that they desire to receive such services; and
2. enter into an engagement agreement with Lodestone to receive such services,

within sixty (60) days following a determination of the actual **Unauthorized Access or Use** of the **Insured Organization's Computer Systems**.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND DATA RECOVERY COSTS

This endorsement modifies insurance provided under the following:

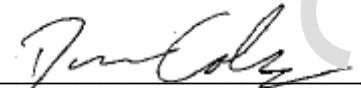
BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the Data Recovery Costs insuring agreement is deleted in its entirety and replaced with the following:

Data Recovery Costs

Data Recovery Costs that the **Insured Organization** incurs as a direct result of a **Security Breach** or **System Failure** that the **Insured** first discovers during the **Policy Period**.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMENDATORY ENDORSEMENT FOR UTILITIES

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

1. The definition of **Computer Systems** is deleted in its entirety and replaced with the following:

Computer Systems means computers, any software residing on such computers and any associated devices or equipment (including SCADA and other industrial control systems used for generation, production, transmission, or distribution):

1. operated by and either owned by or leased to the **Insured Organization**; or
2. with respect to coverage under the Breach Response and Liability insuring agreements, operated by a third party pursuant to written contract with the **Insured Organization** and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data.

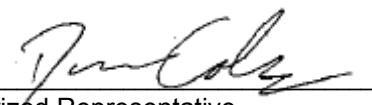
2. The definition of **Regulatory Proceeding** is deleted in its entirety and replaced with the following:

Regulatory Proceeding means a request for information, civil investigative demand, or civil proceeding brought by or on behalf of an Electrical Reliability Organization, any federal, state or local Public Utilities Commission, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

3. The definition of **Extra Expense** is deleted in its entirety and replaced with the following:

Extra Expense means reasonable and necessary expenses incurred by the **Insured Organization** during the **Period of Restoration** to minimize, reduce or avoid **Income Loss**, over and above those expenses the **Insured Organization** would have incurred had no **Security Breach, System Failure** or failure of computer security occurred, including reasonable and necessary expenses incurred by the **Insured Organization** to purchase replacement power on the spot market.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

COMPUTER HARDWARE REPLACEMENT COST

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for this Policy, it is hereby understood and agreed that:

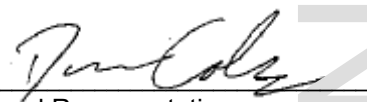
1. The definition of **Extra Expense** is deleted in its entirety and replaced with the following:

Extra Expense means reasonable and necessary expenses incurred by the **Insured Organization** during the **Period of Restoration** to minimize, reduce or avoid **Income Loss**, over and above those expenses the **Insured Organization** would have incurred had no **Security Breach, System Failure, Dependent Security Breach** or **Dependent System Failure** occurred; and includes reasonable and necessary expenses incurred by the **Insured Organization** to replace computers or any associated devices or equipment operated by, and either owned by or leased to, the **Insured Organization** that are unable to function as intended due to corruption or destruction of software or firmware directly resulting from a **Security Breach**, provided however that the maximum sublimit applicable to **Extra Expense** incurred to replace such devices or equipment is USD 500,000.

2. Part 2. of the **Bodily Injury or Property Damage** exclusion is deleted in its entirety and replaced with the following:

2. physical injury to or destruction of any tangible property, including the loss of use thereof; but this will not apply to the loss of use of computers or any associated devices or equipment operated by, and either owned by or leased to, the **Insured Organization** that are unable to function as intended due to corruption or destruction of software or firmware directly resulting from a **Security Breach**. Electronic data shall not be considered tangible property;

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

GDPR CYBER ENDORSEMENT

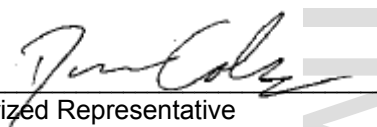
This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the Data & Network Liability insuring agreement is amended to include:

5. non-compliance with the following obligations under the EU General Data Protection Regulation (or legislation in the relevant jurisdiction implementing this Regulation):
 - (a) Article 5.1(f), also known as the Security Principle;
 - (b) Article 32, Security of Processing;
 - (c) Article 33, Communication of a Personal Data Breach to the Supervisory Authority; or
 - (d) Article 34, Communication of a Personal Data Breach to the Data Subject.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND DEFINITION OF DATA

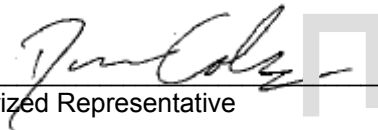
This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged, it is hereby understood and agreed that the definition of **Data** is deleted in its entirety and replaced with the following:

Data means any software or electronic data that exists in **Computer Systems**.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

AMEND OTHER INSURANCE CLAUSE – PRIMARY WITH RESPECT TO BREACH RESPONSE SERVICES AND FIRST PARTY LOSS

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

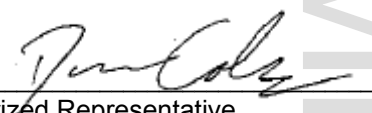
In consideration of the premium charged for the Policy, it is hereby understood and agreed that **Other Insurance** under **GENERAL CONDITIONS** is deleted in its entirety and replaced with the following:

Other Insurance

The insurance under this Policy shall apply in excess of any other valid and collectible insurance available to any **Insured** unless such other insurance is written only as specific excess insurance over this Policy; provided that this Policy shall be primary solely with respect to **Breach Response Services, Cyber Extortion Loss** and **Data Recovery Costs** covered under the Breach Response and First Party Loss insuring agreements.

The existence of other insurance available to an **Insured** shall not affect the Underwriters' obligations toward an **Insured** in paying **Loss** covered under this Policy nor shall it delay payment of such **Loss**.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

CALIFORNIA CONSUMER PRIVACY ACT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

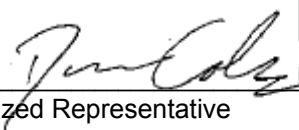
1. The Policy is amended to include the following insuring agreement:

California Consumer Privacy Act

To pay **Penalties** and **Claims Expenses** which the **Insured** is legally obligated to pay because of any **Regulatory Proceeding** first made against any **Insured** during the **Policy Period** for a violation of the California Consumer Privacy Act.

2. The definition of **Claim** is amended to include institution of a **Regulatory Proceeding** against any **Insured** under the California Consumer Privacy Act insuring agreement for a violation of the California Consumer Privacy Act.
3. The **Trade Practices and Antitrust** exclusion will not apply to the California Consumer Privacy Act insuring agreement, provided no member of the **Control Group** participated or colluded in the activities or incident giving rise to coverage under such insuring agreement.
4. The **Governmental Actions** exclusion and part 1. of the **Gathering or Distribution of Information** exclusion will not apply to the California Consumer Privacy Act insuring agreement.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's. referred to in this endorsement as either the "Insurer" or the "Underwriters"

VOLUNTARY SHUTDOWN COVERAGE

This endorsement modifies insurance provided under the following:

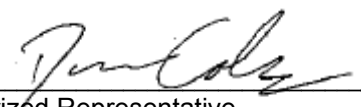
BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the definition of **Security Breach** is deleted in its entirety and replaced with the following:

Security Breach means:

1. A failure of computer security to prevent:
 - (i) **Unauthorized Access or Use of Computer Systems**, including **Unauthorized Access or Use** resulting from the theft of a password from a **Computer System** or from any **Insured**;
 - (ii) a denial of service attack affecting **Computer Systems**;
 - (iii) with respect to coverage under the Liability insuring agreements, a denial of service attack affecting **Computer Systems** that are not owned, operated or controlled by an **Insured**; or
 - (iv) infection of **Computer Systems** by malicious code or transmission of malicious code from **Computer Systems**; or
2. Solely with respect to the **Business Interruption Loss** insuring agreement:
 - (i) the voluntary and intentional shutdown of **Computer Systems** by the **Insured Organization**, but only to the extent necessary to limit the **Loss** during an active or on-going **Unauthorized Access or Use of Computer Systems** or infection of **Computer Systems** by malicious code, as covered by 1.(i) or 1.(iv) above.
 - (ii) the intentional shutdown of **Computer Systems** by the **Insured Organization** as expressly required by any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity resulting from a situation described in 1.(i) or 1.(iv) above.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative

Effective date of this Endorsement: 20-Aug-2019

This Endorsement is attached to and forms a part of Policy Number:

Syndicate 2623/623 at Lloyd's, referred to in this endorsement as either the "Insurer" or the "Underwriters"

CRYPTOJACKING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BEAZLEY BREACH RESPONSE

In consideration of the premium charged for the Policy, it is hereby understood and agreed that:

1. The aggregate sublimit applicable to all loss under this endorsement is USD \$250,000.
2. The Retention applicable to each incident, event, or related incidents or events, giving rise to an obligation to pay loss under this endorsement shall be USD To Match Elected Retention.
3. **INSURING AGREEMENTS** is amended to include:

Cryptojacking

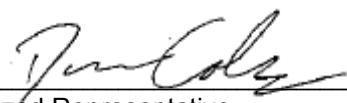
To indemnify the **Insured Organization** for any direct financial loss sustained resulting from **Cryptojacking** that the **Insured** first discovers during the **Policy Period**.

4. **DEFINITIONS** is amended to include:

Cryptojacking means the **Unauthorized Access or Use of Computer Systems** to mine for **Digital Currency** that directly results in additional costs incurred by the **Insured Organization** for electricity, natural gas, oil, or internet (the "**Utilities**"); provided, however, that such additional costs for the **Utilities** are:

1. incurred pursuant to a written contract between the **Insured Organization** and the respective utility provider, which was executed before the **Cryptojacking** first occurred;
2. billed to the **Insured Organization** by statements issued by the respective utility provider, which include usage or consumption information;
3. not charged to the **Insured Organization** at a flat fee that does not scale with the rate or use of the respective utility; and
4. incurred pursuant to statements issued by the respective utility provider and due for payment during the **Policy Period**.

All other terms and conditions of this Policy remain unchanged.


Authorized Representative



BEAZLEY BREACH RESPONSE

QUOTE

QUOTE ISSUED: 23-Jul-2019

Renewal of: W243BD180101

AP Specialty a div of ProAccess - Cranford, NJ
John Ercolani
20 Commerce Drive
Cranford, New Jersey 07016

RE: City of Charleston West Virginia
INSURANCE QUOTE: BEAZLEY BREACH RESPONSE

Dear John,

We are pleased to offer the following quote for the above captioned account.

This quote is through a non-admitted insurance carrier on whose behalf we are authorized to act. Compliance with applicable laws including filings and payment of taxes and fees is the responsibility of the insured, the insurance agent or insurance broker. If coverage is bound, please advise the license number of the producer making the filing.

This quote is strictly conditioned upon no material change in risk occurring between the date of this letter and the inception date of the proposed policy (including but not limited to any claim or notice of circumstances which may reasonably be expected to give rise to a claim under any policy of which the policy being proposed by this letter is a renewal or replacement). In the event of such change of risk, the Insurer may in its sole discretion, whether or not this offer has already been accepted by the Insured, modify and/or withdraw this offer.

For additional information on this product offering, please access our [marketing](#) materials.

Please be advised that if coverage is bound, premium must be remitted by the due date on the invoice.

Thank you for the opportunity to quote.

Best Regards,

Janice Stevenson
Beazley Group
45 Rockefeller Plaza, 16th Floor
New York, NY 10111
t: +1 212 801 7145
e: janice.stevenson@beazley.com

INSURED: City of Charleston West Virginia
This quote will remain in effect until 20-Aug-2019.

COVERAGE SCHEDULE (Currency in USD)		
LIMITS	OPTION #1	OPTION #2
Breach Response		
Notified Individuals:	250,000	250,000
Legal, Forensic & Public Relations/Crisis Mgmt:	\$1,000,000	\$1,000,000
THE BREACH RESPONSE LIMITS ABOVE ARE IN ADDITION TO THE POLICY AGGREGATE LIMIT OF LIABILITY		
Policy Aggregate Limit of Liability:	\$3,000,000	\$5,000,000
Additional Breach Response Limit		
Additional Breach Response Limit:	\$3,000,000	\$5,000,000
First Party Loss		
Business Interruption Loss:		
<i>Resulting from Security Breach</i>	\$3,000,000	\$5,000,000
<i>Resulting from System Failure</i>	\$3,000,000	\$5,000,000
Dependent Business Loss:		
<i>Resulting from Dependent Security Breach:</i>	\$1,000,000	\$1,000,000
<i>Resulting from Dependent System Failure</i>	\$1,000,000	\$1,000,000
Cyber Extortion Loss	\$3,000,000	\$5,000,000
Data Recovery Costs	\$3,000,000	\$5,000,000
Liability		
Data & Network Liability	\$3,000,000	\$5,000,000
Regulatory Defense & Penalties	\$3,000,000	\$5,000,000
Payments Cards Liabilities & Costs	\$3,000,000	\$5,000,000
Media Liability	\$3,000,000	\$5,000,000
eCrime		
Fraudulent Instruction	\$250,000	\$100,000
Funds Transfer Fraud	\$250,000	\$100,000
Telephone Fraud	\$250,000	\$100,000
Criminal Reward		
Criminal Reward	\$50,000	\$50,000
RETENTIONS	OPTION #1	OPTION #2
Breach Response		
Legal, Forensic & Public Relations/Crisis Mgmt	\$10,000; \$5,000 for Legal	\$10,000; \$5,000 for Legal
Each Incident, Claim or Loss	\$25,000	\$25,000
PREMIUM	\$23,192	\$33,153

INSURED: City of Charleston West Virginia
This quote will remain in effect until 20-Aug-2019.

GENERAL INFORMATION

Quote Effective Until: 20-Aug-2019

Broker: John Ercolani
AP Specialty a div of ProAccess - Cranford, NJ
20 Commerce Drive
Cranford, New Jersey 07016

Named Insured: City of Charleston West Virginia
501 Virginia Street E
Charleston, WV 25301-2137

Insurer: Syndicate 2623/623 at Lloyd's (Non-Admitted)

Underwriter: Janice Stevenson
+1 212 801 7145
janice.stevenson@beazley.com

POLICY INFORMATION

Policy Period: From: 20-Aug-2019 To: 20-Aug-2020
Both at 12:01 a.m. Local Time at the Named Insured Address

Continuity Date: 20-Aug-2018

Optional Extension Period: 12 Months

Optional Extension Premium: 100% of the Annual Policy Premium

Notified Individuals Threshold: 100 Notified Individuals

Waiting Period: 10 Hours

Commission: 17.50% of the Policy Premium

Policy Form: Beazley Breach Response (F00653 112017 ed.) with
BBR Information Pack

This policy provides coverage, for no additional charge, for loss arising out of "Certified Acts of Terrorism", as that term is defined in The Terrorism Risk Insurance Act of 2002, as amended. See your policy for complete information regarding this coverage.

SUBJECTIVITIES

In accordance with your request for a proposal and based on the information submitted, this quote is provided, subject to receipt, favorable review and written acceptance of the following information:

1. Completed, signed and dated Higher Limit Warranty Statement - Option 2

In order to complete the underwriting process, we require that you send us any additional information requested above. We are not required to bind prior to our receipt and underwriting approval of the above information. However, if we do bind coverage prior to such approval, the terms and conditions as indicated could be amended until such receipt and acceptance.

ENDORSEMENTS EFFECTIVE AT INCEPTION

- | | | |
|-----|--------------|---|
| 1. | BSLMUNMA2868 | Lloyd's Certificate - No policy language |
| 2. | E02804032011 | Sanction Limitation and Exclusion Clause |
| 3. | NMA1256 | Nuclear Incident Exclusion Clause - Liability -Direct (Broad) (U.S.A.) |
| 4. | NMA1477 | Radioactive Contamination Exclusion Clause-Liability-Direct (U.S.A.) |
| 5. | SCHEDULE2019 | Lloyd's Security Schedule 2019 |
| 6. | E06928042015 | Policyholder Disclosure Notice of Terrorism Insurance Coverage |
| 7. | E10595112017 | Asbestos, Pollution, and Contamination Exclusion Endorsement |
| 8. | E10602112017 | War and Civil War Exclusion |
| 9. | E11122012018 | Cap on Losses Arising out of Certified Acts of Terrorism |
| 10. | E12605012019 | Other Insurance Clause – Primary w/ Respect to First Party Loss (Cyber Extortion and Data Recovery Costs) |
| 11. | E13038062019 | Reputation Loss <ul style="list-style-type: none">• Note: \$1,000,000 sublimit |
| 12. | E10944032019 | Post Breach Remedial Services Endorsement |
| 13. | E11294032018 | Amend Data Recovery Costs |
| 14. | E10880012018 | Amendatory Endorsement for Utilities |
| 15. | E11783072018 | Computer Hardware Replacement Cost <ul style="list-style-type: none">• Note: \$500,000 sublimit |
| 16. | E11290032018 | GDPR Cyber Endorsement |
| 17. | E12604012019 | Amend Definition of Data |
| 18. | E12698022019 | Amend Other Insurance Clause – Primary With Respect To Breach Response Services And First Party Loss |
| 19. | E13100062019 | California Consumer Privacy Act Endorsement |
| 20. | E12967052019 | Voluntary Shutdown Coverage |
| 21. | E12968052019 | Cryptojacking Endorsement <ul style="list-style-type: none">• Note: \$250,000 sublimit |
| 22. | E10596112017 | Choice of Law and Service of Suit |

INSURED: City of Charleston West Virginia
This quote will remain in effect until 20-Aug-2019.

- Note: *Choice of Law: New York*

Beazley Breach Response (BBR) Information Pack

Our BBR information pack is now available online. To access the information pack visit www.beazley.com/cyberservices.

We have migrated from a PDF to a web based version so you will always have access to the most up to date information.

Visit our cyber services page to access:

- A listing of your breach response services and our current panel of service providers.
- Information on the risk management tools and resources included with your policy including information on our in-house risk management portal, www.beazleybreachsolutions.com
- The process for notifying Beazley of a breach and the ability to report a breach or breach incident online.

Visit www.beazley.com/cyberservices

Resolution No. 234-19

Introduced in Council

Passed by Council

August 19, 2019

Introduced by
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 234-19 - Authorizing the Mayor or City Manager to enter into a
2 Memorandum of Understanding with Kanawha Valley Collective, Inc., for the
3 Family Reunification and Enhancement Opportunity Project.

4

5 Be it Resolved by the Council of the City of Charleston, West Virginia:

6

7 That the Mayor or City Manager is hereby authorized to enter into a Memorandum
8 of Understanding with the with Kanawha Valley Collective, Inc., for the Family
9 Reunification and Enhancement Opportunity Project.

10

MEMORANDUM OF UNDERSTANDING FOR THE FAMILY REUNIFICATION AND ENHANCED OPPORTUNITY PROJECT

This Memorandum of Understanding (MOU) is entered into this ___ day of August, 2019, by and between The City of Charleston ("City"), a West Virginia Municipal Corporation, and Kanawha Valley Collective, Inc., including its participating members and agents ("KVC"), a West Virginia Non-Profit Corporation. The City and KVC are collectively referred to herein as "the Parties."

WHEREAS, the City of Charleston is a West Virginia Municipal Corporation organized and existing under the laws of the State of West Virginia and located in Kanawha County, West Virginia; and

WHEREAS, KVC is a West Virginia Non-Profit corporation with its principal offices located at 1 United Way Square, Charleston WV 25301, and is a collaborative network dedicated to preventing and ending homelessness; and

WHEREAS, the Family Reunification and Enhanced Opportunity Project (the "Project") is an outreach project designed to assist homeless and other at-risk individuals found in the City of Charleston to be reunited with family members who are located outside of the City of Charleston and its surrounding areas, or to assist such individuals with employment and/or service and/or programming opportunities that are located outside of the City of Charleston and its surrounding areas, by providing transport to the locale where the family members or opportunities are located;

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

A. *Identification and Outreach.* The City and KVC agree that they will work together to identify persons who may benefit from participation in the Project and to facilitate outreach and transportation as part of the Project.

B. *Destination Contacts.* KVC agrees to use reasonable efforts to verify that the participants in the Project have family members living at the destination to which the participants are seeking relocation, or have employment and/or service and/or programming opportunities at such destination. KVC further agrees to document those efforts and provide them upon request to the City.

C. *Transportation.* The City and KVC agree work together to provide transport of participants in the Project to public transportation or common carrier service in an effort

to reunite them with identified family members, or to relocate participants for the purpose of taking advantage of employment and/or service and/or programing opportunities. KVC shall provide the City with an estimated cost of the relocation and information regarding the destination contacts prior to the City's approval of the relocation. Upon approval by City of the participant's relocation, KVC agrees to purchase one-way tickets on public transportation or common carrier, the cost of which shall be reimbursed by City as set forth below. In the event that participants are leaving incarceration, the City, through the Charleston Police Department, shall provide transport to the appropriate public transportation or common carrier service.

D. *Reimbursement.* In order to reimburse KVC for the cost of one-way transportation for participants in the Project, KVC agrees to provide a monthly invoice setting forth the name of the participant, the destination, the name of the transport service provider, the cost of the ticket, and the family member, employment, service, or programming opportunity that the participant will be meeting with or receiving at the destination. The City will process invoices in a reasonable time upon receipt and provide reimbursement for the cost of the tickets for approved participants' relocations.

E. *Liability.* KVC shall indemnify, defend, and hold harmless the City from and against any and all liabilities, demands, losses, claims and damages of any kind whatsoever, whether on account of injury to or death of any person or persons, damage to or loss of property, violation of any law or regulation, breach of any of the provisions of this MOU, or otherwise arising out of or attributable directly or indirectly to the negligent or intentional acts or omissions of KVC, its employees, officers, and agents. The duty to indemnify and defend shall specifically extend to include any and all costs and expenses, including reasonable attorney's fees and expenses that may be incurred by the City in connection therewith.

F. *Amendments.* Any amendment to this MOU shall be made in writing and shall be executed by all Parties.

G. *Term.* This MOU shall take effect immediately upon execution by the parties, and continue until terminated by agreement of the Parties, or as detailed in this MOU.

H. *Termination.* This MOU may be terminated at any time and for any reason by either party by providing ninety (90) days' written notice to the other. If either party terminates this MOU, KVC shall be entitled to payment for all months of work performed to the satisfaction of the City prior to the date of termination.

I. *Assignment.* Notwithstanding any provision of this MOU, no Party may assign or transfer any of the rights and privileges granted hereunder without the approval of the Parties hereto, which approval shall not be unreasonably withheld.

J. *Choice of Law, Dispute Resolution, and Venue.* This MOU shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by

the laws of the State of West Virginia. If any breach, default, or other dispute arises out of this MOU, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation. If the parties cannot resolve the matter through negotiation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation.

K. *Severability.* In the event that any of the provisions of this MOU are determined to be illegal or unenforceable, all other terms shall remain in full force and effect.

L. *Conflicts of law.* If there is a conflict between the provisions of this MOU and any laws, whether federal, state, or city, including all future laws and ordinances, the contract provision will be superseded by any such law.

M. *Notices.* Notice pursuant to this MOU shall be in writing and addressed as follows:

For Kanawha Valley Collective:

Traci Strickland
Executive Director
1 United Way Square
Charleston, WV 25302

For City of Charleston:

Jonathan Storage
City Manager
501 Virginia Street E
Charleston, WV 25301

IN WITNESS WHEREOF, the undersigned have caused this MOU to be properly executed by an officer thereunto duly authorized.

City of Charleston,
A West Virginia Municipal Corporation

Kanawha Valley Collective,
A West Virginia Non-Profit Corporation

By:_____

By:_____

Its:_____

Its:_____

Date:_____

Date:_____

Bill No. 7828

Introduced in Council

Adopted by Council

August 5, 2019

Introduced by:

Bobby Reishman

Referred to:

Finance Committee

Bill No. 7828 - A Bill granting a non-exclusive franchise to Shentel Communications, LLC for the use of the streets and other public rights-of-way of the City of Charleston, West Virginia, for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of Charleston.

Therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That Shentel Communications, LLC is hereby granted a non-exclusive franchise and is authorized to have access to the public rights-of-way in the City of Charleston for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of Charleston upon the following terms and conditions which are agreed to by Shentel Communications, LLC as evidenced by its signature below:

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter “Agreement”) is made and entered into this ____ day of _____, 2019 by and between the City of Charleston (the “City”) and Shentel Communications, LLC (“Shentel”).

RECITALS

WHEREAS, Shentel is a limited liability company duly organized and existing under the laws of the Commonwealth of Virginia, and has been authorized by the West Virginia Public Service Commission to provide all forms of telephone service in the State of West Virginia; and

WHEREAS, Shentel is a telecommunications provider that seeks to construct, install and maintain network facilities for telecommunications services within the City of Charleston using the Public Rights-of-Way (“PROW”), which are limited resources; and

WHEREAS, in accordance with the provisions of W. Va. Code § 8-31-1, the City of Charleston has the authority to grant access to its PROW; and

WHEREAS, Section 37 of the Charter of the City of Charleston authorizes the City to enter into franchise agreements with public utilities by ordinance duly passed by the council; and

WHEREAS, Section 102-212 of the Code of the City of Charleston requires a franchise agreement before any person may occupy the PROW; and

WHEREAS, The City is mindful that access to the PROW for the installation of new facilities by multiple firms may have an adverse impact upon the community unless facilities are installed and maintained pursuant to an overall plan that manages the use of the PROW; and

WHEREAS, the City has determined that service to be provided by Shentel through its facilities to be located and maintained within the City is beneficial to the public and businesses within the City and further desires to promote the entry and operation of fiber optic service providers and facilities in a competitively neutral manner; and

WHEREAS, this ordinance is designed to protect the health, welfare and general economic wellbeing of the City of Charleston; and

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, the City and Shentel agree as follows:

ARTICLE I GENERAL AND DEFINITIONS

A. General. Shentel promises to remain in good standing with West Virginia and the City by being licensed to do business and remaining current on all taxes and fees. Shentel further promises to notify the City immediately of the change of any of the following current information:

1. Responsible official and telephone and mailing address:
Edward H. McKay, Senior Vice President Engineering and Operations, 500 Shentel Way, Edinburg, VA 22824; 540-984-5303.
2. Local agent, address and telephone for service of process:
Corporate Creations Network Inc., 126 East Burke Street, Martinsburg, WV 25401.
3. Business name and type of business entity: Shentel Communications, LLC, a Virginia limited liability company.

B. Defined Terms:

1. Fiber Optic or Other Cable and Related Facilities (sometimes hereinafter

referred to as “Facilities” and/or “Equipment”) means fiber optic cables or other cable facilities, conduits, lines, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related Facilities located or to be located by Shentel within the PROW of the City of Charleston and used or useful for the transmission of Telecommunications Services.

2. Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement as amended, now in effect or subsequently enacted or issued during the term of this Agreement.

3. Public Rights-of-Way (“PROW”) means the surface and area across, in, over, along, upon and below the surface of the public streets, rights of way, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may thereafter exist that are under jurisdiction of the City of Charleston.

4. Telecommunications Services means all telecommunications services that Shentel may provide under Law.

ARTICLE II

GRANT OF AUTHORITY AND PERMISSION TO PLACE FACILITIES IN PUBLIC RIGHTS-OF-WAY

A. Access. Subject to the terms of this Agreement, the City hereby grants to Shentel the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace Fiber Optic or Other Cable and Related Facilities in any PROW of the City. Shentel shall be solely responsible for obtaining any required consents from State or County agencies, or private parties, to the extent that its operations affect State, County, or private property. For purposes of this Agreement, Shentel is only authorized to install underground Facilities but may access and use the PROW above ground for the installation, maintenance, repair, of its Facilities and Equipment, and for other related legitimate purposes authorized herein. It is expressly agreed that this Agreement does not give Shentel the right to occupy any PROW with permanent above ground cabinets, pads and other similar above-ground structures or facilities that require the installation of new poles or construction. If Shentel desires to occupy any PROW with such a structure or facility, a separate permit and city approval will be required. This paragraph does not limit Shentel’s ability to contract with other entities for access to Facilities and Equipment in the PROW.

1. This grant of authority is exclusive to Shentel and its agents. Shentel is not authorized to rent space or allow use to providers who do not have a franchise or license agreement with the City and approval by the City to access.

2. Shentel acknowledges and understands that the City desires to minimize installation and maintenance work within the PROW. Therefore, Shentel shall follow a process consistent with the West Virginia Division of Highways Dig Once Policy to make fair and reasonable accommodation to share installation costs if competitors elect to place Facilities along the same PROW as described in the permit sought. To comply with the West Virginia Division of Highways Dig Once Policy, Shentel shall follow the process set forth in West Virginia Code § 17-2E-5, as of the effective date of this Agreement, with the following changes:

- A. References to the “council” or the “division” shall be interpreted as being to the City Engineer;
- B. The rules promulgated by the commissioner of the division pursuant to West Virginia Code § 17-2E-5(f) shall similarly apply as if promulgated by the City Engineer. Any issues in applying the rules shall be brought to the attention of the City Engineer directly.

3. All installation and maintenance of fiber-optic Facilities to be installed within the PROW require the written approval of City in accordance with the City’s standard permitting process.

4. Shentel recognizes and accepts the risk that the City retains the right to amend existing, and pass new, PROW ordinances governing its PROW within the term of this Agreement, subject to applicable law. In the event the City passes any such ordinance which might affect Shentel’s operations under this Agreement, both Shentel and the City agree to enter into good faith negotiations to enable Shentel to conform its activities under this Agreement within a reasonable period of time. Shentel expressly acknowledges that any changes to City Code made by City Council regarding issues impacting Shentel’s operations under this Agreement will be controlling and the possibility and outcome of such changes is expressly understood and contemplated by Shentel in this Agreement.

5. With respect to the PROW, Shentel shall provide the City with detailed Plans of the Project so the City can have appropriate verification that:

- A. The installation of the Facilities will not adversely affect the safety, design, construction, operation, maintenance or stability of the City’s street system;
- B. Operation under the Agreement will not interfere with or impair the present use or anticipated future expansion of the affected street;
- C. The direct and indirect environmental and economic effects that would result from disapproval of the use of the PROW for the accommodation of the Facilities would be contrary to the public interest;
- D. The installation will not involve tree removal or tree trimming that conflicts with City policy;
- E. The installation shall be located in an area that is as far along the outer limit of the PROW as is practicable; and

B. No Property Interest. This Agreement is not a grant by the City of any fee simple or superior property interest and is made subject and subordinate to the prior and continuing right of the City to control and use the PROW as a street and/or sidewalk and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles and for other municipal uses and with the right of ingress and egress, along, over, across and in said PROW.

C. No Interference. In the performance and exercise of its rights and obligations under this Agreement, Shentel shall not interfere in any manner with the existence and operation of any and all PROW, and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television cables, public works, telecommunication or utility Facilities, or City of Charleston property without the prior approval of the owner(s) of the affected property or properties, including the City.

Nothing in this Agreement abrogates the right of the City to perform any public works or public improvements. If Facilities of Shentel interfere with the installation, construction, operation, maintenance, repair or removal of such public works or public improvements, Shentel at its own expense, within sixty (60) days after notice by the City (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), shall protect, alter, remove or relocate Facilities, as directed by the City. If Shentel refuses or neglects to so protect, alter, remove or relocate Facilities or Equipment within the sixty (60)days after notice or the agreed negotiated time, the City may break through, remove, alter or relocate Facilities or Equipment without any liability to City, and Shentel shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation provided that reasonable efforts shall be used to minimize any damage to Shentel's Facilities or Equipment. The City may collect these costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction and by the City exercising the City's rights to draw on bonds or letters of credit. The City shall also have a lien on the property of Shentel in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

D. Relocation of Facilities for Government. Except as provided below, Shentel will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any legitimate and reasonably necessary or convenient governmental purpose at Shentel's expense. Except in an emergency, the City will provide written notice describing where the work is to be performed at least sixty (60) days before the deadline for performing the work. Shentel may seek an extension of the time to perform the work where it cannot be performed within sixty (60) days even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

E. Relocation of Facilities for a Third Party. If any removal, relaying, or relocation is required to accommodate the installation, construction, operation, or repair of the facilities or equipment of another party (“Third Party”) authorized to use the PROW, Shentel will, after thirty (30) days’ advance written notice, take action to effect the necessary changes requested by such Third Party. Unless the matter is governed by a valid contract or applicable law, or unless Shentel’s Facilities or equipment were improperly installed, and if installed properly the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by such Third Party requesting the removal, relaying, or relocation.

F. Term. The period of this Agreement shall be for an initial term of fifteen (15) years commencing at the date of the signing of this Agreement, with the right to renew for consecutive additional five (5) year terms, unless either party notifies the other in writing at least sixty (60) days prior to the expiration of the term of its intent to seek a modification or termination of the Agreement.

G. Regulatory Approvals. Shentel shall obtain all necessary approvals from the appropriate federal and state authorities to offer Telecommunications Services through its Facilities and Equipment, and shall, upon the City’s request, submit evidence of such approvals to the City.

H. Street Closings. Nothing in this Agreement waives or releases the rights of the City in and to the streets. If all or part of the streets are eliminated, discontinued, closed or demapped in accordance with applicable law, the Agreement shall cease with respect to such streets upon the later to occur of (a) the effective date that such streets become eliminated, discontinued, closed or demapped and conditions specified by the City are met; or (b) in the case of any transfer of title to such streets to a private Person, the closing date of such transfer.

ARTICLE III INSTALLATION OF FACILITIES

A. Permits. As required by Law, Shentel shall apply for a permit for all work and each job within the PROW, and shall comply with all terms and conditions of any such permit. Shentel shall furnish City detailed plans of the work and other such information as required by Law, and shall pay all standard permitting and related processing, field marking, engineering and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Improvements shall be constructed and installed in accordance with the Law. Shentel shall comply with all existing PROW ordinances and permitting requirements and with any future or revised ordinances and requirements.

B. Facilities Map. Shentel shall maintain an accurate map showing the location of its existing Facilities, including conduit lines, equipment, and any other details of the Facilities as may be requested by the City. If any of the requested information is

considered proprietary, Shentel will notify the City of this opinion, and the City will strive to keep it confidential, as permitted by law. Shentel will submit an existing Facilities Map as a condition of this Agreement. As for new installations, after the effective date of this Agreement, Shentel shall submit the proposed mapping of its plans for new installation to the City prior to any installation. As-built drawings of any new installation of Facilities shall be furnished to the city within sixty (60) days of completion of such installation. All mapping shall be provided in a format compatible to the City's GIS System, including, but not limited to, AutoCAD, Civil 3D or such other format agreed to by the Parties.

C. Exclusion of Certain Locations/Facilities. Prior to its installation of any Facilities in the PROW, and after Shentel provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations for Facilities in the PROW to be excluded from use by Shentel for its Facilities, which, in the reasonable judgment of the City Engineer, are incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other locations that have been designated or planned for other use or are not otherwise available for use by Shentel due to engineering, technological, proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of Shentel, City will cooperate in good faith with Shentel and exercise commercially reasonable efforts to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor may Shentel require the City to acquire new locations for Shentel.

D. City's Trees. In installing or maintaining its Facilities or structures along the PROW, Shentel shall not injure or in any manner cut or trim the trees or branches of trees in such PROW without the permission of the City. All such trimmings shall be performed in a safe and orderly manner and in accordance with applicable Law. Shentel shall be responsible for removing all trimmings from the PROW upon completion.

E. Installation, operation, maintenance, repair, relocation and removal of Facilities. The installation, operation, maintenance, repair and removal of Shentel's Fiber Optic or Other Cable and Related Facilities shall be accomplished without cost or expense to the City and in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access thereon within the PROW. During the performance of installation, along with any subsequent maintenance, repair, relocation or removal, Shentel shall be solely responsible for putting in place adequate safety measures and warnings for both pedestrians and vehicular traffic, including, but not limited to, barricades, flashing lights, flaggers, and all other measures required by law or necessary under the circumstances. Shentel shall notify the City Traffic Engineering Department and City Engineer of traffic and parking disruptions prior to beginning work. Shentel will maintain its Facilities in good order and operating condition and in compliance with all applicable PROW construction and other applicable federal, state and local regulatory codes throughout the term of this Agreement. Shentel shall justly compensate owners of property for any damages caused by installing, operating, maintaining, repairing, relocating or removing its Facilities.

F. Restoration of Public Rights-of-Way. After the installation, along with any subsequent maintenance, repair, relocation or removal, of the Fiber Optic or Related Facilities, Shentel shall, at its own cost, repair and return the PROW at a minimum to the same or similar condition existing before such installation, maintenance, repair, relocation or removal, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. Shentel shall be responsible for damage to City of Charleston street pavements, existing utilities, curbs, gutters and sidewalks related to Shentel's installation, construction, operation, maintenance, repair, relocation or removal of its Fiber Optic or Other Cable and Related Facilities in PROW, and shall repair, replace and restore in kind, any such damaged property at its sole expense. Upon failure of Shentel to repair, replace and restore any such damaged property in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City Engineer, after thirty (30) days notice in writing shall have been given by the City (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), the City may cause such necessary repair, replacement or restoration to be made and may collect the costs and expenses incurred for such repair, replacement or restoration from Shentel. The City may collect these costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction.

G. Insurance. Shentel shall provide proof to City of and shall maintain throughout the term of this Agreement liability insurance with regard to all damages in the minimum types and amounts of:

- (1) General Liability - including premises, products and complete operations.
 - (i) Bodily injury liability \$1,000,000 each person
\$1,000,000 each occurrence
 - (ii) Property damage liability, or \$1,000,000 each occurrence
 - (iii) Bodily injury and property
damage combined \$1,000,000 single limit
- (2) Comprehensive - Automobile Liability Insurance, including owned, non-owned and hired vehicles.
 - (i) Bodily injury liability \$1,000,000 each person
\$1,000,000 each occurrence
 - (ii) Property damage liability \$1,000,000 each occurrence
 - (iii) In lieu of (1) and (2)
Bodily injury and property
damage combined \$1,000,000 single limit
- (3) Shentel agrees that with respect to the above-required insurance, the contracts will contain the following required provisions:

- (i) The City of Charleston and its officers, agents, employees, and elected officials shall be named as additional insureds (as the interests of each may appear) as to the general liability coverage;
- (ii) Policies shall provide primary coverage and shall reflect that Shentel is responsible for any and all deductibles; and
- (iii) Thirty (30) days notice shall be provided to the City of Charleston prior to cancellation, revocation, non-renewal or material change.

H. Construction Bond or letter of credit. Upon commencement of installation of the Facilities, Shentel shall deposit with the City of Charleston a surety bond or irrevocable letter of credit naming the City of Charleston as an obligee in the amount of Fifty Thousand Dollars (\$50,000.00). Shentel's obligation to maintain the surety bond shall terminate upon the satisfactory completion of the installation and the approval of the City Engineer. The City of Charleston may draw against the surety bond, up to its full face amount, for any loss or damage to the PROW utilized by Shentel due to damage caused to the PROW and not remedied to City's reasonable satisfaction after notice to Shentel of the loss or damage and a reasonable opportunity for Shentel to remedy said loss or damage. This bonding requirement is in addition to bonding requirements for obtaining construction permits, if any. Following the release of the Bond or letter of credit upon completion of installation, Shentel may undertake maintenance and repairs of its installed Fiber Optic or Other Cable and Related Facilities upon obtaining the necessary permits and the payment of associated fees; provided that in the event Shentel undertakes repairs on an emergency basis at a time when permitting offices are closed, Shentel will notify the City Engineer of said emergency repair on the next business day following initiation of the emergency repair.

I. Indemnification. To the fullest extent permitted by law, Shentel agrees to indemnify, defend and hold harmless the City of Charleston its officers, employees, agents, and officials from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of or related to: the installation, operation, maintenance, repair, relocation or removal of the Fiber Optic and Related Facilities; the negligent or wrongful acts or omissions of Shentel, its officers, employees, and agents; or, any breach by Shentel of its obligations described in this Agreement; provided, Shentel shall not be responsible for any liability arising from the sole negligence or willful misconduct of the City of Charleston, its officers, employees, and agents.

J. Timing of Cable/Line Installation Work

The City shall be consulted before the installation of Fiber Optic or Other Cable and Related Facilities so it has the ability to approve final locations and timing of construction/installation and to coordinate such work with other City or public projects including, but not limited to, street paving.

ARTICLE IV
FRANCHISE FEE, INTEREST, AND CITY USE OF FACILITIES

A. Franchise Fee. Upon completion of installation of its Facilities or any part thereof in the PROW, Shentel shall provide to the City, for its share of the City's costs of managing the PROW as contemplated by this Agreement, \$0.25 per linear foot per year for Facilities placed in the PROW.

B. No credits or deductions towards Other Fees. Shentel shall pay all standard, permit, right of way and user fees to the City of Charleston in accordance with Law. The compensation and other payments made pursuant to this agreement shall be in addition to any and all taxes or other fees or charges that Shentel shall be required to pay to the City, pursuant to current and future ordinances, or to any state or federal agency, all of which shall be separate and distinct obligations of Shentel.

C. Interest on Late Payments. If any payment required by this Agreement is not actually received by the City on or before the applicable dates fixed in this Agreement or applicable law, Shentel shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then changed by the City for late payment of business and occupation taxes.

D. Nonpayment of Franchise Fee. Failure of Shentel to pay its Franchise Fee within sixty (60) days of its due date shall constitute a breach of this Agreement and subject to the Termination provisions set forth in Article V.

E. City Use of Shentel Facilities. Upon prior written notice to Shentel of the City's desire to do so, Shentel shall reserve space for the City to place fire, police, or other signal wires, including but not limited to, data and voice wires, for the City's use in conduit and on any poles owned by Shentel and to place traffic signs on any poles and above-ground fixtures owned by Shentel; provided, that any such use by the City shall be made in a manner that shall not interfere with Shentel's use of said conduit, poles, or fixtures, or cause damage to said conduit, poles, or fixtures, or to Shentel's Facilities. Such permission shall not extend to conduit, poles, or fixtures used by Shentel, but owned by others. The City shall be solely responsible for the installation, operation, maintenance and repair of signal wires or traffic signs placed pursuant to this permission, including all costs thereof, in accordance with the National Electric Safety Code and other applicable laws. Shentel shall make said space in its conduit and on its poles and fixtures available at no charge or cost to the City.

ARTICLE V GENERAL PROVISIONS

A. Notices. Notices pursuant to this Agreement shall be in writing and addressed as follows:

To the City of Charleston, care of the City Manager, P. O. Box 2749, Charleston, WV 25301, with a copy to the City Attorney at the same address.

To Shentel: Shentel Communications, LLC, 500 Shentel Way, Edinburg, VA 22824, Attention: Senior Vice President – Engineering and Operations, with a copy to the General Counsel at the same address.

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

B. Assignment. Notwithstanding any provision of this agreement, Shentel may not assign, transfer, lease, or sell any of the rights and privileges granted hereunder without approval of City, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that, unless otherwise provided by applicable law, no consent need be obtained to assign, transfer, lease or sell any rights and privileges granted hereunder to any of Shentel's affiliates or any party providing financing to Shentel; provided, however, that no assignment, transfer, lease or sale shall be effective until the assignee, transferee, lessee, or the purchaser, including an affiliate, has filed with the City a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of the Agreement and agreeing to perform all of the conditions thereof.

C. Abandonment or Termination. Shentel shall notify the City at least thirty (30) days in advance of Shentel's intent to abandon the Facilities, or any portion thereof, or to terminate this Agreement. Upon receipt of such notice of abandonment or termination, the City may, at the City's sole discretion, permit some or all of the Facilities to remain in place and ownership of such Facilities shall, if requested by City, be transferred to the City. If the City elects not to accept ownership of the Facilities within thirty (30) days after the receipt of notice of abandonment or termination by Shentel, Shentel shall, upon reasonable request by City, remove its Facilities at its own expense within thirty (30) days of the City's election not to accept ownership. In the event Shentel fails to remove or is not reasonably capable of removing its Facilities within thirty (30) days after abandonment or termination (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), the City may, at City's reasonable discretion, permit the Facilities to remain abandoned in place, or City may undertake removal of the Facilities itself, without further notice, and charge the cost for removal to Shentel who shall pay said costs within thirty

(30) days of the demand to do so. The City may collect its verifiable costs incurred from Shentel by exercising the City's rights to draw on bonds, letters of credit, or Guaranteed Fees, if any, and, to the extent such bonds, letters of credit, or Guaranteed Fees are not sufficient to cover such costs, the City may collect the remaining costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction. The City shall also have a lien on the property of Shentel in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

D. Dispute Resolution, Choice of Law and Venue. If any breach, default, or other dispute arises out of this Agreement, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation. Consistent with that agreement, each party agrees to disclose all material facts relevant to any dispute to the other party during any such negotiation. If the parties cannot resolve the matter without litigation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation. The law of West Virginia shall govern any dispute that arises out of this Agreement.

E. Severability. In the event any of the provisions of this agreement are determined to be illegal or unenforceable, all other terms shall remain in full force and effect.

F. Bankruptcy. Shentel agrees to notify the City of any bankruptcy filings and any significant proceeding or motion that might affect the City's interests. The parties agree that this Agreement is personal and cannot be assigned without the consent of the City. If property is abandoned due to bankruptcy, Shentel will adhere to requirements of the subsection C titled "Abandonment or Termination" above.

G. Conflicts of law. If there is a conflict between the provisions of this Agreement and any laws, whether federal, state, or city, including all future laws and ordinances, the contract provision will be superseded by any such law and have no effect notwithstanding the contract clause of the United States Constitution.

I. Termination. The City of Charleston has the right to terminate this Agreement upon thirty (30) days written notice to Shentel, if Shentel commits a material breach of the terms of this Agreement, and such breach remains uncured during such 30-day period. Among other things, the failure of Shentel to remove or relocate Facilities as provided in Article II of this Agreement or the failure of Shentel to pay its Franchise Fee as provided in Article IV of this Agreement will be considered a material breach of this Agreement.

J. Survival. The insurance and indemnity obligations contained in Article III, Sections G and I herein shall remain in full force and effect and shall survive the completion or earlier termination of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

Shentel Communications, LLC

By: _____

Dated: _____

STATE OF _____,
COUNTY OF _____, TO-WIT;

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, in the capacity as _____ of **Shentel Communications, LLC**.

My commission expires: _____.

Notary Public

CITY OF CHARLESTON

By: _____

Dated: _____

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT;

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by _____, in the capacity as _____ of the **City of Charleston**, West Virginia.

My commission expires: _____.

Notary Public

COMMITTEE REPORT

TO: Clerk of the Council of the City of Charleston, West Virginia

FROM: The Committee on Finance

Your Committee on Finance has had under consideration:

A bid submitted by Hanson Ready Mix, for purchase of Portland Cement Concrete to be used by the Public Works Department on an as needed basis at the prices listed on the attached tabulation sheet

To be charged to Account No. 001-750-00-000-3-341, Street—Materials & Supplies

and reports the same to Council with the recommendation that the
committee report be adopted

CHAIRMAN

Portland Cement - Public Works
Bid Opening: July 31, 2019 @ 11:00am

		Rumble Ready Mix 7 Scary Creek, Industrial Park Winfield, WV 25213 P: (304) 755-2595 PB@rumblereadymix.com	Hanson Ready Mix 1011 Bullit Street Charleston, WV 25301 P: (304) 346-6704 david.hescht@lehighhanson.com
Full Load* per cubic yard delivered to job site *unload in 30 minutes or less	Class A: 3500# Concrete	\$135.00	\$130.00
	Class B: 3000# Concrete	\$127.00	\$132.00
	Class C: 2500# Concrete	\$125.00	\$128.00
	Class D: 2000# Concrete	\$120.00	\$123.00
	Controllable Low Strength Material	\$105.00	\$106.00
Partial Load Charge (if applicable)		\$100.00	\$100.00
Unloading Charge past 30 minutes		1.00 per minute	\$85.00
Cost of adding Fiber to Concrete		\$7.50/yard	\$6.50/cubic yard
Fuel Surcharge		\$25.00	\$15.00

**** Received a late bid on 8/6/2019
from Claxton Smith & Sons Concrete -
Bid Rejected received after the official
bid opening date of July 31, 2019.

Resolution No. 230-19

Introduced in Council:

August 19, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance Committee

1 **Resolution No. 230-19** - Authorizing settlement of pending disputed claims against the
2 City by juveniles, known as X.W. and F.W., as recommended by the City Solicitor.

3

4 **Now, therefore, be it Resolved by the Council of the City of Charleston, West**
5 **Virginia:**

6

7 That the City Council hereby authorizes and approves the settlement of pending
8 disputed claims against the City by X.W. in the amount of \$105,000 and F.W. in the
9 amount of \$25,000, as recommended by the City Solicitor. The City Council
10 acknowledges that due to the involvement of juveniles, the settlement will not be
11 finalized until it is approved by the Circuit Court of Kanawha County. The City Council
12 authorizes the City Solicitor and City Manager to take all necessary steps to finalize
13 resolution of the claims.

14

**MUNICIPAL COURT
CITY OF CHARLESTON**
Post Office Box 2749
Charleston, West Virginia 25330
(304) 348-8079

Anne B. Charnock, Judge

Conrad Lucas, Clerk

TO: Mayor Amy Shuler Goodwin
FROM: Conrad Lucas, Clerk
DATE: Friday, August 1, 2019
RE: July 2019 Financial Information, Charleston Municipal Court

TOTAL CITATIONS FILED: 1,488
Criminal Violations: 172
Traffic Violations: 1,315
Parking: 0
Building Search Warrants: 1 Property

RESTITUTION COLLECTED (paid to victims): \$0.00

Primarily related to shoplifting cases, restitution monies are collected and refunded to the store/victim.

FINANCIAL REPORT ATTACHED

cc: Judge Anne B. Charnock
Miles Cary, City Clerk
Victor Grigoraci, Treasurer
Lieutenant Paul Perdue, Deputy Chief of Police
Tony Harmon, Building Department
David Potters, Office of the City Attorney
Captain Mark Abbott, CPD
Nikki Smith, City Clerk's Office

Violations by Filed Date...

CRIMINAL	172	
TRAFFIC	1,315	
BUILDING SEARCH WARRANT	1	
Total Filed Violations		1,488

Completed Cases...

Paid Fine...

CRIMINAL	13	
TRAFFIC	409	
BUILDING SEARCH WARRANT	0	
Total Paid Fines		422

Before Judge...

CRIMINAL	8	
TRAFFIC	11	
BUILDING SEARCH WARRANT	0	
Total Before Judge		19

Total Completed		441
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Other Completed...

DISMISS- OFFICER NOT WITH CITY

CRIMINAL	16	
TRAFFIC	23	
BUILDING SEARCH WARRANT	0	
Total		39

DISMISSED (BY COMPLAINANT)

CRIMINAL	2	
TRAFFIC	0	
BUILDING SEARCH WARRANT	0	
Total		2

DEFENDANT DECEASED

CRIMINAL	13	
TRAFFIC	10	
BUILDING SEARCH WARRANT	0	
Total		23

DISMISSED OFFICER FAIL TO PROS

CRIMINAL	10	
TRAFFIC	15	
BUILDING SEARCH WARRANT	0	
Total		25

DISMISSED(PRESENTED INSURANCE)

CRIMINAL	0	
TRAFFIC	41	
BUILDING SEARCH WARRANT	0	
Total		41
DISMISSED (BY JUDGE'S ORDER)_		
CRIMINAL	0	
TRAFFIC	4	
BUILDING SEARCH WARRANT	0	
Total		4
DISMISSED E-PROOF		
CRIMINAL	0	
TRAFFIC	4	
BUILDING SEARCH WARRANT	0	
Total		4
DISMISSED (PRESENTED DL)		
CRIMINAL	0	
TRAFFIC	10	
BUILDING SEARCH WARRANT	0	
Total		10
DISMISSED STORE CLOSED		
CRIMINAL	3	
TRAFFIC	0	
BUILDING SEARCH WARRANT	0	
Total		3
DISMISSED OFF FAIL TO PROV VIN		
CRIMINAL	0	
TRAFFIC	7	
BUILDING SEARCH WARRANT	0	
Total		7
DISMISSED (PROSECUTOR'S ORDER)		
CRIMINAL	88	
TRAFFIC	84	
BUILDING SEARCH WARRANT	0	
Total		172
DISMISSED PRESENTED RECORDS		
CRIMINAL	1	
TRAFFIC	92	
BUILDING SEARCH WARRANT	0	
Total		93
DISMISSED AFTER PT DIVERSION		
CRIMINAL	14	
TRAFFIC	9	
BUILDING SEARCH WARRANT	0	
Total		23
DISMISSED VICTIM/WITNESS FTA		

CRIMINAL	4	
TRAFFIC	0	
BUILDING SEARCH WARRANT	0	
Total		4
DISMISSED WITHOUT PREJUDICE		
CRIMINAL	64	
TRAFFIC	38	
BUILDING SEARCH WARRANT	0	
Total		102
VOIDED DOCKET		
CRIMINAL	1	
TRAFFIC	7	
BUILDING SEARCH WARRANT	0	
Total		8
Total Other Completed		560
Grand Total Completed		1,001
Net Difference Filed/Complete		487

Warrants...

Issued...

CRIMINAL	404	
TRAFFIC	444	
BUILDING SEARCH WARRANT	0	
Total Violations		848
Total Warrants Issued		848

Cleared...

CRIMINAL	349	
TRAFFIC	377	
BUILDING SEARCH WARRANT	0	
Total Violations		726
Total Warrants Cleared		726

Change in Total Warrants 122

Other Paid Cases...

Paid Fine...

Total Other Paid Fines 97

FINE FINE	\$36,224.00
CVC CRIME VICTIM'S FUND	\$3,119.00
LAWFND LAW ENFORCE. TRAIN STATE	\$777.00
LAWLOC LAW ENFORCE. TRAIN (LOCAL)	\$1,821.00

ADMIN ADMINISTRATIVE COST	\$772.00
JAILF REGIONAL JAIL CORR.	\$15,070.00
REST RESTITUTION	\$1,019.75
CCF COMMUNITY CORRECTIONS FUND	\$223.00
OP OVER PAYMENT	\$21.00
ABF APPEAL BOND FEE	\$4.00
Total Fees/Fines Paid	\$59,050.75

Block No.	Person Name	Source	Address
SW20190043	CARTER, SHARON L	SEARCH WARRANT ISS	862 SHERWOOD RD

Monthly Report – Definition Key

Violations by Filed Date:

Violations keyed into the Court software during the month

Completed Cases:

Cases where the fine and court costs were paid in full and the case was closed during the month.

Before Judge:

Number of violations where a case set for trial before the judge; the defendant was found guilty or entered a guilty plea at trial and the defendant paid off all costs/fines in full thereby closing the case.

Other Completed -Dismissed (By Complainant):

The City Attorney moved to dismiss cases because the person who filed the complaint no longer wishes to pursue the charges.

Defendant Deceased:

Cases dismissed because the defendant died.

Dismissed Officer Fail to Pros:

Cases dismissed because the officer failed to appear in Court.

Dismissed (presented insurance):

Cases dismissed because the defendant presented valid proof of insurance for the offense date.

Dismissed (presented DL):

Cases dismissed because the defendant presented a valid driver's license.

Dismissed Mistaken Identity:

Cases dismissed cases on the City Attorney's motion due to mistaken identity.

Dismissed (Prosecutor's Order):

Cases dismissed on the City Attorney's motion or as a result of a plea agreement.

Dismissed Presented Records:

Cases dismissed because the defendant presented records to satisfy a code or Court requirement.

Dismissed After PT Diversion:

Cases dismissed because the defendant entered into a Pre-Trial Diversion agreement with the City and satisfied the requirements of the Pre-Trial Diversion.

Dismissed Victim/Witness FTA:

Cases dismissed because the witness or victim did not appear in Court for trial.

Dismissed without prejudice:

Cases dismissed but the City having the option to re-file the case within one (1) year of the date of the offense.

Dismissed No Drug Results:

Drug results were not received for trial.

Dismissed – Officer Not With City

Officer/Witness is no long employed by the City.

Warrants

The Court issues warrants for Failure to Appear in Court for court sessions. These warrants are printed and copied to the CPD Warrants Division.

Cleared:

The Court clears warrants once the warrant is served by an officer or when a defendant self reports to the Court.

The Court also clears warrants if a person is deceased, posts bond and or, in some cases, enters a plea.

Other Paid Cases:

The Court received a partial payment for a case; however, the defendant still has a balance due.

Search Warrant Issued:

A search warrant document was prepared and presented to the court by the City Attorney's office with regard to safety and public health concerns of a structure/property.

This report is not indicative of the case volume in Municipal Court. Rather, this information reflects payment status/coding for cases.



City of Charleston West Virginia

Miles C. Carey II, City Clerk

City Treasurer's Report To City Council

Month Ended

July 2019

Please Note:

1. Here is the July 2019 Page 1
"All Funds Collections & Withdrawals"
that shows the total of each fund balance.
2. A full copy of the July 2019 Report has
been emailed to you.
3. The Report is searchable.
4. If you would like a paper copy of the full
report, or if you need assistance in any
way, please contact my office
at 304-348-8029.

Respectfully submitted,

Victor Grigoraci, CPA – City Treasurer

<u>Fund / Description</u>	<u>Balance July 2018</u>	<u>Balance June 2019</u>	<u>Collections July 2019</u>	<u>Withdrawals July 2019</u>	<u>Balance July 31, 2019</u>
001 General Fund	6,291,982.02	4,695,341.31	12,487,763.11	8,842,211.70	8,340,892.72
002 Coal Severance Tax	17.08	64.03	52,102.94	46,644.00	5,522.97
003 Municipal Stabilization	4,200,625.05	4,286,026.08	8,554.44	0.00	4,294,580.52
009 Community Development	4,923.68	205.35	177,830.64	175,557.87	2,478.12
010 Supportive Housing	0.00	0.00	12,804.09	12,804.09	0.00
011 FEMA - WV Grant	37,129.26	0.00	0.00	0.00	0.00
012 West Side Improvement	0.00	29.75	29.75	29.75	29.75
014 IT Infrastructure	0.00	89,377.00	276.22	0.00	89,653.22
016 Charleston Land Trust	44,963.85	45,531.22	90.88	0.00	45,622.10
017 Project West Invest	31,114.23	516.31	1.03	0.00	517.34
026 Uniform Pension Reserve Fund	17,994,150.94	17,152,547.81	2,020,643.92	662,499.00	18,510,692.73
035 Municipal Beautification	31,508.40	32,148.97	624.78	0.00	32,773.75
036 Special Demolition	15,109.50	18,091.00	36.11	0.00	18,127.11
037 Sister Cities	26,676.96	27,219.33	54.33	0.00	27,273.66
038 Solid Waste	363,198.64	288,324.42	398,671.43	54,602.74	632,393.11
039 Waste Disposal	0.00	0.00	41,006.60	41,006.60	0.00
040 Landfill Closure	3,198,510.01	3,317,326.80	10,034.07	0.00	3,327,360.87
041 Police Contributions	7,962.52	11,377.90	22.71	0.00	11,400.61
042 Police Evidence	31,898.31	1,261,036.67	3,710.35	25,145.10	1,239,601.92
043 Forfeited Funds	350,384.39	263,369.01	22,681.46	3,170.27	282,880.20
044 Municipal Court	170,160.83	198,052.31	58,474.75	34,931.52	221,595.54
045 Homeland Security	0.00	13,078.00	0.00	0.00	13,078.00
047 Health Insurance Reserves	6,034,920.11	6,157,613.38	12,289.92	0.00	6,169,903.30
048 Wayfinding Commission	72,871.61	73,627.47	146.95	0.00	73,774.42
049 Live On The Levee	28,459.35	48,477.53	9,275.82	22,156.17	35,597.18
080 Human Rights	176,793.29	176,793.29	0.00	0.00	176,793.29
081 Home Program	6,959.12	13,684.46	44,372.33	31,550.44	26,506.35
085 Firefighters Assistance Grant	77.08	77.08	0.00	0.00	77.08
088 SBA Riverfront Project Donation Account	9.18	9.18	0.00	0.00	9.18
088 SBA Riverfront Project Grant Account	10,167.71	10,167.71	0.00	0.00	10,167.71
095 Police Grants	99,502.79	192,734.88	21,662.42	4,574.70	209,822.60
096 Historic Preservation	2,601.00	2,601.00	0.00	0.00	2,601.00
099 Public Arts Grant	166,160.00	146,264.34	0.00	0.00	146,264.34
100 Sinking Fund	3,994,970.63	4,072,960.98	8,129.18	0.00	4,081,090.16
200 Infrastructure	148,383.98	151,400.72	302.18	0.00	151,702.90
207 South Side Recreation	9,946.67	0.00	0.00	0.00	0.00
214 Civic Center Capital Improvement	338,399.22	367,306.95	733.10	0.00	368,040.05
215 Municipal Auditorium Capital Improvement	138,594.22	159,938.05	419.38	0.00	160,357.43
218 Soccer Fields	3,080.92	0.00	0.00	0.00	0.00
220 General Maintenance	807,398.98	2,208,740.64	4,408.40	0.00	2,213,149.04
221 City Service Fee Capital Project	4,609,936.71	3,176,321.50	6,339.59	0.00	3,182,661.09
222 Facilities Maintenance	2,114,279.22	305,606.01	594.69	21,415.61	284,785.09
255 Ballpark Maintenance	90,835.19	55,356.12	110.48	0.00	55,466.60
402 Civic Center Revenue	145,538.93	67,355.10	568,524.10	366,800.40	269,078.80
406 Parking System Revenue	3,791,554.56	4,250,981.35	288,783.00	162,349.56	4,377,414.79
426 Parking Operation and Maintenance	1,604,085.21	1,762,558.70	3,516.80	907.49	1,765,168.01
427 Civic Center TIF Project	1,400,309.79	33,077.10	2,029.51	2,879.69	32,226.92
900 M - DENT	540,774.81	753,861.60	41,594.93	20,530.88	774,925.65
901 Pending Forfeiture	2,173,034.28	899,728.16	39,439.63	48,794.59	890,373.20
Working Cash Advance Fund	37,460.00	32,925.00	0.00	0.00	32,925.00
Total All Funds	61,347,420.33	56,819,831.57	16,348,086.02	10,580,562.17	62,587,355.42

1 **Bill No. 7832**

2 Passed by Council:

3 Introduced in Council:

4 **August 19, 2019**

6 Introduced by:

Referred to

7 **Deanna McKinney**

Planning, Streets and Traffic

9 **Bill No. 7832** - A Bill to establish a Handicapped parking zone on south side of Roane
10 Street from a point 30 feet west of Tennessee Avenue to a point 74 feet west of
11 Tennessee Avenue and amending the Traffic Control Map and Traffic Control File,
12 established by the code of the City of Charleston, West Virginia, two thousand and
13 three, as amended, Traffic Laws, Section 263, Division 2, Article 4, Chapter 114, to
14 conform therewith.

15 **Be it Ordained by the Council of the City of Charleston, West Virginia:**

16 Section 1. Handicapped parking zone on south side of Roane Street from a point 30
17 feet west of Tennessee Avenue to a point 74 feet west of Tennessee Avenue

18 Section 2. The Traffic Control Map and Traffic Control File, established by the code
19 of the City of Charleston, West Virginia, two thousand and three, as amended, Traffic
20 Laws, Section 263, Division 2, Article 4, Chapter 114, shall be and
21 hereby are amended, to conform to this Ordinance.

22
23 Section 3. All prior Ordinances, inconsistent with this Ordinance are hereby
24 repealed to the extent of said inconsistency.