



**JOURNAL of the PROCEEDINGS
of the
CITY COUNCIL**

CITY OF CHARLESTON, WEST VIRGINIA

Regular Meeting – Monday, August 19, 2019

at 7:00 P.M.

Council Chamber – City Hall – Charleston, West Virginia

OFFICIAL RECORD

Amy Shuler Goodwin
Mayor

Miles C. Cary II
City Clerk

CALL TO ORDER

The Council met in the Chambers of the City Building at 7:00 P.M., for the second meeting in the month of August on the 19th day, in the year 2019, and was called to order by the Honorable Mayor, Amy Shuler Goodwin. The invocation was delivered by Councilmember Adams and the Pledge of Allegiance was led by Councilmember Bailey. The Honorable Clerk, Miles C. Cary II, called the roll of members and it was found that there were present at the time:

**ADAMS
BURTON
COOK
HOOVER
KING
MCKINNEY
PERSINGER
ROBINSON
STEELE**

**BAILEY
CAMPBELL
FAEGRE
JENKINS
KNAUFF
MINARDI
PHARR
SHEETS
WESLEY-PLEAR**

**BAYS
CEPERLEY
HAAS
JONES
LAIRD
OVERSTREET
REISHMAN
SNODGRASS
MAYOR GOODWIN**

With twenty-seven members being present, the Mayor declared a quorum present.

Pending the reading of the Journal of the previous meeting, the reading thereof was dispensed with and the same duly approved.

PUBLIC SPEAKERS

NONE

CLAIMS

1. A claim of Scott Dunlap, 124 Summers Drive, Charleston, WV;
alleges damage to vehicle.
Refer to City Solicitor
2. A claim of Charles A. Gang, 101 49th Street SE, Charleston, WV;
alleges damage to vehicle.
Refer to City Solicitor
3. A claim of John David Jones, 2279 Legg Fork Road, Charleston, WV;
alleges damage to vehicle.
Refer to City Solicitor
4. A claim of Charles E. Simmons, 2202 Zabel Drive, Charleston, WV;
alleges damage to property.
Refer to City Solicitor

COMMUNICATIONS

1.



The Certificate of Appreciation was presented to Carah Chafin.

2.

Charleston Police Department

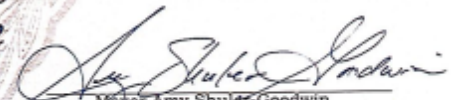
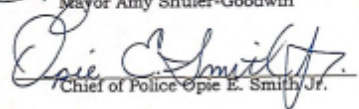
In Honor and Appreciation of

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. Their 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.

The Certificate of Appreciation was presented to the parents of Lydia Flores.

3.

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

Councilmember Ceperley moved to approve the recommendation. Councilmember Hoover seconded the motion. By unanimous vote, the recommendation was approved.

REPORTS OF COMMITTEES

COMMITTEE ON PLANNING, STREETS AND TRAFFIC

Councilmember Hoover, Chair of the Council Committee on Planning, Streets and Traffic, submitted the following reports:

1. Your committee on Planning, Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7823 do pass.

Bill No. 7823 - A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st day of January 2006, as amended, and the map made a part thereof, 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 being Charleston West District, Map 10, Parcel 117.1, Charleston, West Virginia.

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

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

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

2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby amended in accordance with Article 29 of this ordinance.
3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

Councilmember Hoover added that the rezoning is consistent with the future land use map which designates the property as “Traditional Neighborhood,” and it is a good transition along the West Washington Street corridor.

Councilmember Hoover moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Bill No. 7823 passed.



2. Your committee on Planning, Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7829 do pass.

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

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

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

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

That the Code of the City of Charleston be amended, effective September 1, 2019, by repealing Sections 2-686, 2-687, 2-688, and 2-689; by amending and reenacting Section 2-685 of said code; 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 to read as follows:

CHAPTER 2. – ADMINISTRATION.

ARTICLE VII. – BOARDS, COMMITTEES AND COMMISSIONS.

Division 9. – Charleston Land Trust.

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

~~There is hereby created the The Charleston Land Trust Commission, hereinafter referred to and to be known as the Charleston Land Trust, which shall exist as an agency of the city is hereby converted to the conservation division of the Charleston Land Reuse Agency, as set forth in Chapter 65 of this Code. The purpose of the Charleston Land Trust is to acquire, maintain, improve and preserve Any public trust lands owned by the City in the name of the Charleston Land Trust shall be transferred to the Charleston Land Reuse Agency within 90 days of the effective date of this section. All bank accounts or other interest in property currently held by the Charleston Land Trust shall be transferred to the Charleston Land Reuse Agency within 90 days of the effective date of this section. 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. The creation of the Charleston Land Trust is authorized by W. Va. Code § 8-16-1, et seq.~~

CHAPTER 65. – LAND REUSE AGENCY.

ARTICLE 1. – CREATION.

Sec. 65-1. Establishment and Divisions.

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

Sec. 65-2. Purpose.

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

Sec. 65-3. Board

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

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

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

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

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

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

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

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

Sec. 65-4. Officers of the Board.

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

Sec. 65-5. Public Input.

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

Sec. 65-6. Official Filing with Secretary of State.

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

ARTICLE 2. – POWERS AND DUTIES.

Sec. 65-10. General.

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

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

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

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

(4) To borrow from federal government funds, from the state, from private lenders, from municipalities, or from counties, as necessary, for the operation and work of the CLRA;

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

(6) To procure insurance or guarantees from the federal government or the state on the

payment of debt incurred by the CLRA and pay premiums in connection with the insurance or guarantee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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.Sec. 65-20. Regular and Special meetings.

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

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

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

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

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

(A) Adoption of bylaws;

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

(C) Incurring of debt;

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

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

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

Sec. 65-21. Public Records, Public Access, and Ethics.

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

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

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

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

Sec. 64-22. Resident Input.

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

Sec. 65-23. Annual Report.

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

Councilmember Hoover added that there are abandoned, blighted, condemned and tax delinquent properties that are straining neighborhoods throughout the City. The proposed bill will more effectively address the vacant, abandoned structures, and will also create the new Charleston Land Reuse Agency.

Councilmember Hoover moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Bill No. 7829 passed.

3. Your committee on Planning, Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7830 do pass.

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.

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

~~state and federal laws.~~

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

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

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

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

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

~~(8) (6) Vacant structure: A single-unit structure on a parcel of real property which for at least 60 days has lacked the habitual presence of human beings who have a legal right to be on the premises, or at which substantially all lawful business operations or residential occupancy has ceased. where no person or persons actually, currently occupies, conducts a lawfully licensed business, or lawfully resides, dwells, or lives in any part of the building 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 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.

~~(10)~~ (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 18 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 18 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 telephone number, and facsimile number of all owners of the vacant structure;

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

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

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

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

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

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

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

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

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

(c) Amending information. If the registration information collected in accordance with this

section changes or becomes inaccurate during the course of any calendar year, it is the responsibility of the owner, responsible party or agent for the same to contact the building commissioner within 30 days of the occurrence of such change and advise the department of those changes in writing.

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

Councilmember Hoover added that the bill is strengthening the current vacant structure ordinance, in part, by increasing fines.

Councilmember Wesley-Plear wanted to ensure the owners of these properties were also made aware of existing programs that assist with maintaining properties.

Councilmember Hoover moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Bill No. 7830 passed.

4. Your committee on Planning, Streets and Traffic has had under consideration the following bill, and reports the same to Council with the recommendation that Bill No. 7831 do pass.

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.~~

Councilmember Hoover added that some language is being changed to increase the fine and remove jail time.

Councilmember Faegre asked what would happen if the fines were not paid. City Attorney, Kevin Baker, answered that the fines in question could be collected in the same way that any other fine is collected. If unpaid, the City could institute actions to ensure the fines are

collected.

Councilmember Hoover moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Bill No. 7831 passed.

COMMITTEE ON FINANCE

Councilmember Jenkins, Chair of the Council Committee on Finance, submitted the following reports:

1. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 228-19 do pass.

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. The Charleston Police Department will use \$104,059.00 to provide training and equipment for the Hybrid Unit, radios, one pole camera and overtime. The Kanawha County Sheriff's Department will utilize \$36,606.00 to purchase crime scene investigation supplies.

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

That the Mayor or City Manager is hereby authorized 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.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 228-19 adopted.

2. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 229-19 do pass.

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.

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

That the Mayor or City Manager is hereby authorized 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.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 229-19 adopted.

3. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 231-19 do pass.

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 gauging 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 gauging station on the South Side Bridge for the purpose of streamflow measurement and/or water quality sampling of the Kanawha River.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 231-19 adopted.

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 Signature/Date

Notary Seal:

4. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 232-19 do pass.

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. These funds will be utilized by the Charleston Fire Department to purchase active shooter response kits for mass casualty trauma response. There is no match required on these funds.

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

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

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 232-19 adopted.

5. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 233-19 do pass.

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

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

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

Councilmember Burton abstained from voting as the agency he works for helps place this coverage.

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative, with one abstention for Burton, the Mayor declared Resolution 233-19 adopted.

6. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 234-19 do pass.

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.

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

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

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 234-19 adopted.

**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 programming 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: _____

7. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Bill No. 7828 do pass.

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
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- | | | |
|-------|---|-----------------------------|
| (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 charged 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.

Councilmember Jenkins moved to approve the bill. Councilmember Ceperley seconded the motion. A roll call was taken:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Bill No. 7828 passed.

8. Your committee on Finance has had under consideration the following committee report, and reports the same to Council with the recommendation that committee report do pass.

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

Councilmember Persinger asked how many yards of concrete the City purchases. That information was not readily available, but will be researched.

Councilmember Jenkins moved to approve the Committee Report. Councilmember Ceperley seconded the motion. With a majority of members elected recorded thereon as voting in the affirmative the Mayor declared the Committee Report adopted.

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.

9. Your committee on Finance has had under consideration the following resolution, and reports the same to Council with the recommendation that Resolution No. 230-19 do pass.

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

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

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

Councilmember Jenkins moved to approve the Resolution. Councilmember Ceperley seconded the motion. With a majority of members present recorded thereon as voting in the affirmative the Mayor declared Resolution 230-19 adopted.

REPORTS OF OFFICERS

1. Municipal Court Report to City Council Month Ending July 2019.
Received and Filed.
2. City Treasurer's Report to City Council Month Ending July 2019.
Received and Filed.

NEW BILLS

Introduced by Councilmember Deanna McKinney
on August 19, 2019:

Bill No. 7832 – A Bill to establish a Handicapped parking zone on south side of Roane Street from a point 30 feet west of Tennessee Avenue to a point 74 feet west of Tennessee Avenue and amending the Traffic Control Map and Traffic Control File.

Refer to Planning, Streets and Traffic Committee

MISCELLANEOUS/UNFINISHED BUSINESS

1. Councilmember Jones thanked the Mayor and the Administration for the bills passed that concerned abandoned structures.

ADJOURNMENT

The Clerk, Miles C. Cary II, called the closing roll call:

YEAS: Adams, Bailey, Bays, Burton, Campbell, Ceperley, Cook, Faegre, Haas, Hoover, Jenkins, Jones, King, Knauff, Laird, McKinney, Minardi, Overstreet, Persinger, Pharr, Reishman, Robinson, Sheets, Snodgrass, Steele, Wesley-Plear, Mayor Goodwin

NAYS: NONE

ABSENT:

At 7:28 p.m., by a motion from Councilmember Ceperley, Council adjourned until Tuesday, September 3, 2019, at 7:00 p.m., in the Council Chamber in City Hall.

Amy Shuler Goodwin, Honorable Mayor

Miles C. Cary, City Clerk