

CHARLESTON CITY COUNCIL

Regular Meeting
February 4, 2019
at 7:00 PM



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

AGENDA

CALL TO ORDER BY THE MAYOR

INVOCATION AND PLEDGE OF ALLEGIANCE

ROLL CALL

PUBLIC SPEAKERS AND CLAIMS

COMMUNICATIONS

REPORTS OF STANDING COMMITTEES

PLANNING, STREETS AND TRAFFIC

1. Bill No. 7801- A Bill amending the Zoning Ordinance of the City of Charleston, West Virginia, by rezoning from an R-10 district to a C-8 district, that certain parcel of land situate at 706 Central Avenue, Charleston, West Virginia.

FINANCE

1. Resolution No. 161-19 - Authorizing the Mayor or City Manager to receive and administer \$5,000 from the Kanawha County Commission for the Violence Against Women Act (VAWA) grant. The funding from this grant reimburses the overtime expended by the CID Detective investigation domestic violence crimes. This grant requires a 10% match covering the FICA and pension costs of overtime hours. These costs are absorbed in the Charleston Police Department's police salary and wage budget.

2. Resolution No. 162-19 - Authorizing the Mayor or City Manager to receive and administer \$11,250 from the WV Division of Justice and Community Services for the Justice Assistance Grant (JAG) Task Force. Funding from this grant reimburses partial salary for four members of the Metropolitan Drug Enforcement Network Team which consists of the following agencies: Charleston PD, South Charleston PD, Nitro PD and St. Albans PD. This grant requires an in-kind minimum match of 25% that is met by the un-reimbursed salary portion that the agencies absorb into their city's budgets.
3. Resolution No. 163-19- Authorizing the Mayor or City Manager to receive and administer \$30,000 from the WV Division of Justice and Community Services for the Justice Assistance Grant (JAG) Prevention Resource Officers (PROs). The funding from this grant will reimburse partial salary for two Prevention Resource Officers from the Charleston Police Department stationed at Stonewall Middle School and Capital High School. This grant requires an in-kind minimum match of 25% that is met by the un-reimbursed salary portion that the Charleston Police Department absorbs into the salary budget.
4. Resolution No. 164-19 - Authorizing the Mayor or City Manager to submit a grant application to the WV Department of Health and Human Resources in the amount of \$179,030 for the Quick Response Team (QRT) grant. This grant will provide funds for the Project Coordinator salary, overtime reimbursement for the Charleston Police Department and the Charleston Fire Department, vehicle fuel, office supplies, laptops, tablets, and printed materials.
5. Resolution No. 165-19- Authorizing the City Manager to execute an equipment transfer/donation agreement with Pretera Center for the purpose of providing a vehicle for use by Pretera outreach workers.
6. Resolution No. 166-19: Ratifying a Memorandum of Agreement (MOA) between the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Charleston Police Department (CPD) setting forth the procedure for reimbursement of overtime salary costs and other costs, with prior ATF approval, incurred by CPD in providing resources to assist ATF, along with the responsibilities of both the CPD and ATF for those reimbursements.

REPORTS OF OFFICERS

NEW BILLS

UNFINISHED BUSINESS AND/OR MISCELLANEOUS BUSINESS

ROLL CALL

ADJOURNMENT

THE NEXT REGULAR MEETING OF COUNCIL WILL BE
Tuesday, February 19, 2019 at 7:00 p.m.

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

**TO: MILES CARY
CITY CLERK**

**FROM: AMY SHULER GOODWIN
MAYOR**

RE: POLICE CIVIL SERVICE COMMISSION

DATE: FEBRUARY 1, 2019

I recommend Stephanie Holbrook Daly, 1026 Forest Road, Charleston, WV 24314, be appointed to the Police Civil Service Commission. She is filling a Vacant position.

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

ASG/mls

**TO: MILES CARY
CITY CLERK**

**FROM: AMY SHULER GOODWIN
MAYOR**

RE: CHARLESTON COLISEUM & CONVENTION CENTER

DATE: FEBRUARY 1, 2019

I recommend Chad Robinson, 793 Lower Donnally Road, Charleston, WV 25304 and Samuel Minardi, 1526 Bedford Road, Charleston, WV 25314 be appointed to the Charleston Coliseum and Convention Center Board. They are replacing Jack Harrison and Mike Clowser as the City Council Representatives on the Board.

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

ASG/mls

**TO: MILES CARY
CITY CLERK**

**FROM: AMY SHULER GOODWIN
MAYOR**

RE: KANAWHA-CHARLESTON BOARD OF HEALTH

DATE: FEBRUARY 1, 2019

I recommend Paul L. Nusbaum, 2130 Presidential Drive, Charleston, WV 25314 be appointed to the Kanawha-Charleston Board of Health, with an initial term to expire June 30, 2023. He's replacing Bobby Reishman.

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

ASG/mls

**TO: MILES CARY
CITY CLERK**

**FROM: AMY SHULER GOODWIN
MAYOR**

RE: CHARLESTON CONVENTION & VISITORS BUREAU

DATE: FEBRUARY 1, 2019

I recommend Jennifer Susman, 1229 Edgewood Drive, Charleston, WV 25302 and Naomi Bays, 3 Warwick Place, Charleston, WV 25314, be appointed to the Charleston Convention & Visitors Bureau Board of Directors. Jennifer Susman is replacing Jack Harrison, with an initial term ending February 17, 2022 and Naomi Bays is replacing Mary Jean Davis as a City Council representative on the Board.

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

ASG/mls



PLANNING COMMITTEE REPORT

Mary Beth Hoover, Chair

To: Miles Carey, City Clerk

From: Council's Committee on Planning

Date: January 28, 2019

Subject: Bill No. 7801

Your Committee on Planning had under consideration Bill No. 7801 attached hereto and made a part thereof.

Your Committee finds the following:

1. The rezoning is consistent with the future land use map which designates this property as "Mixed Use Corridor".
2. The rezoning from R-10 to C-8 would allow for consistency between the development style of the property and the zoning classification.
3. Rezoning to C-8 allows for continued beneficial use in pursuit of the comprehensive plan's "Mixed Use Corridor" allowing for a variety of residential and commercial uses along Central Avenue, one of Charleston's main corridors.

and reports the same to Council with the recommendation that the Bill No. 7801 do pass.

Rebecca C. Ceperley
Clerk
Chad O'Brien

Mary Beth Hoover
Chairman
Monika Bays
Zane Rhoads
William R. Smith

Bill No. 7801

Introduced in Council

January 7, 2019

Introduced by

Deanna McKinney

Passed by Council

Referred to

Municipal Planning Commission
Planning Committee

1 Bill No. 7801 amending the Zoning Ordinance of the City of Charleston, West Virginia, enacted
2 the 1st day of January 2006, as amended, and the map made a part thereof, by rezoning from an
3 R-10 district to a C-8 district, that certain parcel of land situate at 706 Central Avenue,
4 Charleston, West Virginia.

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

7
8 1. The Zoning Ordinance of the City of Charleston, West Virginia, enacted the 1st
9 day of January 2006, as amended, is hereby amended by rezoning from an R-10 district to a
10 C-8 district the whole of the following described parcel of land:

11
12 Parcel No. 417.1 as shown on Charleston West Tax Map No. 21. Subject parcel
13 commonly known as 706 Central Avenue, Charleston, West Virginia. Said tax
14 map is of record in the Planning Office.

15
16 2. The Zoning Map, attached to and made a part of said Zoning Ordinance, is hereby
17 amended in accordance with Article 27 of this ordinance.

18
19 3. All prior ordinances, or parts of ordinances, inconsistent with this ordinance are
20 hereby repealed to the extent of such inconsistency.
21

**PETITION TO REZONE FROM R-10 TO C-8
THE LAND AT 706 CENTRAL AVENUE,
CHARLESTON, WEST VIRGINIA**

TO THE MAYOR AND COUNCIL OF THE CITY OF CHARLESTON, WEST VIRGINIA:

I

Petitioner is the owner of the property situate at 706 Central Avenue, Charleston, Kanawha County, West Virginia.

II

Petitioner wishes to have the subject property rezoned from an R-10 use to a C-8 use, said property described as follows: All of Parcel No. 417.1 as shown on Charleston West Tax Map No. 21. Subject parcel commonly known as 706 Central Avenue, Charleston, West Virginia The above-mentioned tax map is as of record in the Charleston Planning Department.

III

Petitioner proposes to utilize the property for food production while selling those prepared items on a mobile food truck. The property will also be used by an attorney for the practice of law in a designated portion of building. A healthy eating class, 'Millie Snyder's SUCCEED' teaching the Mediterranean lifestyle, meets at the site every Tuesday.

IV

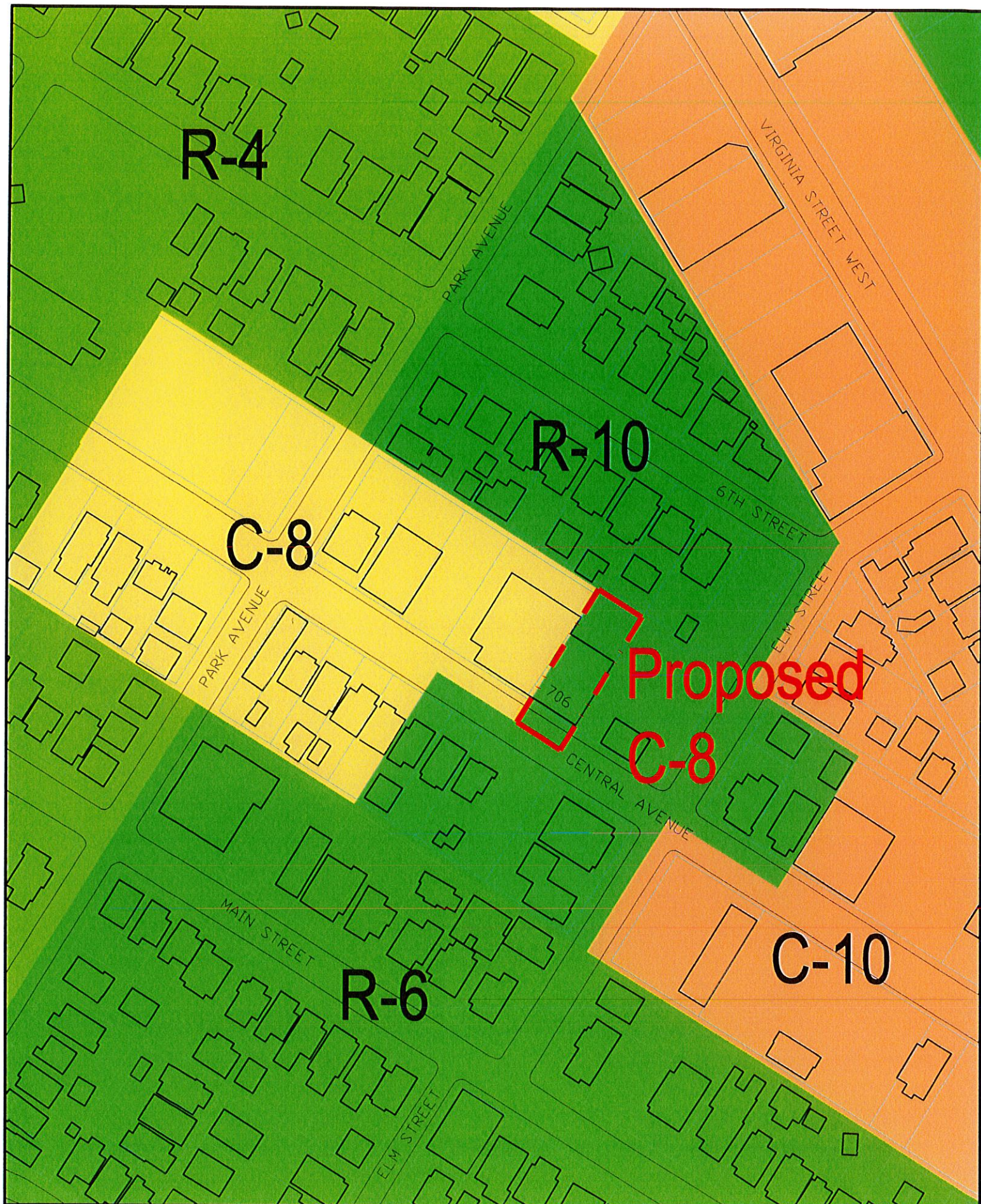
Although this area is zoned R-10 it is adjacent to a significant C-8 corridor area and the petitioner requests minor expansion of the district on Central Avenue.

V

Attached hereto is a Bill to accomplish the request rezoning a list of property owners who own property within 250 feet of the subject property, a map of the subject property, and a \$125.00 filing fee.

Respectfully submitted this 11th day of
November, 2018.

By: _____
 Mildred Snyder



REZONING FROM R-10 TO C-8

STAFF
EXHIBIT 1

Resolution No. 161-19

Introduced in Council

Passed by Council

February 4, 2019

Introduced by:
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 161-19: Authorizing the Mayor or City Manager to receive and
2 administer \$5,000 from the Kanawha County Commission for the Violence Against
3 Women Act (VAWA) grant. The funding from this grant reimburses the overtime
4 expended by the CID Detective investigation domestic violence crimes. This grant
5 requires a 10% match covering the FICA and pension costs of overtime hours. These
6 costs are absorbed in the Charleston Police Department's police salary and wage
7 budget.

8

9 Be it Resolved by the Council of the City of Charleston, West Virginia:
10

11 That the Mayor or City Manager is hereby authorized to receive and administer \$5,000
12 from the Kanawha County Commission for the Violence Against Women Act (VAWA)
13 grant. The funding from this grant reimburses the overtime expended by the CID
14 Detective investigation domestic violence crimes. This grant requires a 10% match
15 covering the FICA and pension costs of overtime hours. These costs are absorbed in the
16 Charleston Police Department's police salary and wage budget.

Resolution No. 162-19

Introduced in Council

Passed by Council

February 4, 2019

Introduced by:
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 162-19: Authorizing the Mayor or City Manager to receive and
2 administer \$11,250 from the WV Division of Justice and Community Services for the
3 Justice Assistance Grant (JAG) Task Force. Funding from this grant reimburses partial
4 salary for four members of the Metropolitan Drug Enforcement Network Team which
5 consists of the following agencies: Charleston PD, South Charleston PD, Nitro PD and St.
6 Albans PD. This grant requires an in-kind minimum match of 25% that is met by the un-
7 reimbursed salary portion that the agencies absorb into their city's budgets.

8

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

10

11 That the Mayor or City Manager is hereby authorized to receive and administer \$11,250
12 from the WV Division of Justice and Community Services for the Justice Assistance Grant
13 (JAG) Task Force. Funding from this grant reimburses partial salary for four members of
14 the Metropolitan Drug Enforcement Network Team which consists of the following
15 agencies: Charleston PD, South Charleston PD, Nitro PD and St. Albans PD. This grant
16 requires an in-kind minimum match of 25% that is met by the un-reimbursed salary
17 portion that the agencies absorb into their city's budgets.

Resolution No. 163-19

Introduced in Council

Passed by Council

February 4, 2019

Introduced by:
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 163-19: Authorizing the Mayor or City Manager to receive and
2 administer \$30,000 from the WV Division of Justice and Community Services for the
3 Justice Assistance Grant (JAG) Prevention Resource Officers (PROs). The funding from
4 this grant will reimburse partial salary for two Prevention Resource Officers from the
5 Charleston Police Department stationed at Stonewall Middle School and Capital High
6 School. This grant requires an in-kind minimum match of 25% that is met by the un-
7 reimbursed salary portion that the Charleston Police Department absorbs into the salary
8 budget.

9

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

11

12 That the Mayor or City Manager to receive and administer \$30,000 from the WV
13 Division of Justice and Community Services for the Justice Assistance Grant (JAG)
14 Prevention Resource Officers (PROs). The funding from this grant will reimburse partial
15 salary for two Prevention Resource Officers from the Charleston Police Department
16 stationed at Stonewall Middle School and Capital High School. This grant requires an in-
17 kind minimum match of 25% that is met by the un-reimbursed salary portion that the
18 Charleston Police Department absorbs into the salary budget.

Resolution No. 164-19

Introduced in Council

Passed by Council

February 4, 2019

Introduced by:
Joseph Jenkins

Referred from
Finance Committee

1 Resolution No. 164-19: Authorizing the Mayor or City Manager to submit a grant
2 application to the WV Department of Health and Human Resources in the amount of
3 \$179,030 for the Quick Response Team (QRT) grant. This grant will provide funds for
4 the Project Coordinator salary, overtime reimbursement for the Charleston Police
5 Department and the Charleston Fire Department, vehicle fuel, office supplies, laptops,
6 tablets, and printed materials.

7

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

9

10 That the Mayor or City Manager to submit a grant application to the WV Department of
11 Health and Human Resources in the amount of \$179,030 for the Quick Response Team
12 (QRT) grant. This grant will provide funds for the Project Coordinator salary, overtime
13 reimbursement for the Charleston Police Department and the Charleston Fire
14 Department, vehicle fuel, office supplies, laptops, tablets, and printed materials.

Resolution No. 165-19 :

Introduced in Council:

Adopted by Council:

February 4, 2019

Introduced by:

Referred to:

Joe Jenkins

1 Resolution No. 165-19: Authorizing the City Manager to execute an equipment
2 transfer/donation agreement with Prestera Center for the purpose of providing a vehicle
3 for use by Prestera outreach workers.
4

5 WHEREAS, on December 19, 2016, the City entered into a Memorandum of
6 Understanding with Prestera Center for the provision of outreach workers to work with
7 the Charleston Police Department, businesses, residents, and homeless individuals to
8 help implement and execute the City's Homeless Encampment and Transient Outdoor
9 Temporary Living Policy, and to help advance the City's goal that all its residents have
10 permanent housing; and
11

12 WHEREAS, since January of 2017, outreach workers have provided significant
13 assistance to the Police Department when homeless encampments or transient outdoor
14 living situations are identified, and have continued efforts to initiate and maintain contact
15 with homeless individuals within the City to try to begin their transition to permanent
16 housing; and
17

18 WHEREAS, in addition to the assistance to the Police and other members of the
19 community, the Prestera outreach workers also transport homeless individuals and their
20 belongings to service provider's locations, and may transport homeless individuals and
21 their belongings to transportation hubs as part of the City's Family Reunification and
22 Enhanced Opportunity Pilot Project; and
23

24 WHEREAS, the City owns vehicles which have been retired from service with the
25 City, and the City no longer has need for these vehicles; and
26

27 WHEREAS, Prestera has need for a vehicle to be used for the public purpose of
28 providing efficient and effective response when fulfilling the obligations of the
29 Memorandum of Understanding and the City's policy, and is willing to enter into an
30 agreement for the transfer of a vehicle, a copy of which is attached hereto as Exhibit A;
31 and
32

33 WHEREAS, the lease or conveyance of City property to non-profit organizations
34 for less than fair market value and without public auction is permitted by the Municipal
35 Code of the City of Charleston Chapter 3, Section 3-13; and

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WHEREAS, such transfer would result in an overall benefit to the public;

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

That the City Manager is hereby authorized to execute an equipment transfer/donation agreement with the Prestera Center, for a vehicle for use by Prestera outreach workers, a copy of which is attached hereto as Exhibit A.

CITY OF CHARLESTON
EQUIPMENT TRANSFER/DONATION AGREEMENT

This Equipment Transfer/Donation Agreement (hereinafter "Agreement") by and between the CITY OF CHARLESTON, (hereinafter "CITY"), and PRESTERA CENTER, (hereinafter "RECIPIENT"), a non-profit organization, is entered into as of February __, 2019 (the Effective Date").

Whereas, the transfer of a Dodge Durango (the "Equipment") to a non-profit entity for less than market value and without auction is authorized by Charleston City Code Chapter 3, Section 3-13;

Whereas, the CITY is not currently utilizing the Equipment to be transferred, RECIPIENT has need for and will utilize the Equipment for a public purpose, and the transfer will result in an overall benefit to the public;

Whereas, the RECIPIENT agrees that in the event it should cease to provide services to the public, the Equipment shall by operation of law, revert to and vest in the CITY, and the RECIPIENT shall thereafter have no right, title, or interest therein or thereto;

Therefore, RECIPIENT agrees to the transfer and receipt of the Equipment subject to the following:

1. Scope. This Agreement sets forth the terms and conditions for receipt and use of the Equipment by RECIPIENT. The Equipment is more fully described in Exhibit A hereto. This transfer does not constitute a sale of the Equipment.

2. Exclusion of Warranties. **THE EQUIPMENT TRANSFERED UNDER THIS AGREEMENT IS PROVIDED "AS IS". CITY MAKES NO WARRANTIES, REPRESENTATIONS OR OTHER AGREEMENTS, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. ALL WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

3. Maintenance and Training. CITY shall have no obligation or responsibility whatsoever to provide maintenance for the Equipment, or training on the use of the Equipment.

4. Compliance with Laws. RECIPIENT shall obtain all licenses, permits and approvals required by all government entities applicable to the Equipment, and shall comply with all applicable federal, state, and local laws, regulations, statutes, and ordinances, now or hereafter enacted, related in any way to the receipt, possession and use of the Equipment.

5. No resale or use by/transfer to third party. RECIPIENT represents that it shall at all times maintain possession of the Equipment for its own use and agrees that the Equipment shall not be used by any other person or entity. RECIPIENT further acknowledges that the Equipment shall not be resold, remarketed or distributed or transferred to any other person or entity. If RECIPIENT discontinues use or desires to relinquish possession of Equipment, it shall immediately notify CITY of such intention, and shall return the Equipment upon the request of the CITY.

6. Limitation of Liability; assumption of all risk and liability by RECIPIENT. **RECIPIENT AGREES TO ACCEPT AND TO BE SOLELY RESPONSIBLE FOR THE EQUIPMENT, SUBJECT TO ANY AND ALL DEFECTS, WHETHER KNOWN OR UNKNOWN BY CITY OR RECIPIENT, AT THE TIME OF TRANSFER. BY ACCEPTING THE EQUIPMENT, RECIPIENT ASSUMES ALL RISK ASSOCIATED WITH THE EQUIPMENT AND AGREES TO BE SOLELY RESPONSIBLE FOR ALL LIABILITY RESULTING FROM THE USE OF OR RELATED IN ANY WAY TO THE EQUIPMENT. RECIPIENT ACKNOWLEDGES AND AGREES THAT, IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL CITY BE LIABLE FOR ANY LOSS OR DAMAGE INCURRED BY RECIPIENT OR ANY THIRD-PARTY RESULTING FROM THE USE OF OR RELATED IN ANY WAY TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, INJURY OR DEATH TO ANY PERSON OR DAMAGE TO ANY PROPERTY, AND ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF USE, DELAYS OR ANY OTHER DIRECT OR INDIRECT DAMAGES OF ANY KIND WHATSOEVER.**

7. General.

7.1. Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of West Virginia, and the state and federal courts of West Virginia shall have exclusive jurisdiction and venue over any dispute hereunder.

7.2. No Waiver. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

7.3. Assignment. This Agreement shall not be assigned or otherwise transferred by RECIPIENT.

7.4. Severability. In the event that any of the terms of this Agreement become or are declared to be illegal by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

7.5. Attorneys' Fees. In the event of a breach of this Agreement by RECIPIENT, RECIPIENT shall pay CITY any and all reasonable attorneys' fees and other costs and

expenses incurred by CITY in connection with the enforcement of any provisions of this Agreement.

7.6. No Agency. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

7.7. Entire Agreement. This Agreement is the entire agreement between the parties hereto concerning the subject matter hereof and replaces any prior oral or written communications between the parties. This Agreement may only be modified by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the duly authorized representative of the RECIPIENT has caused this Agreement to be duly executed as of the date first written above.

RECIPIENT: Prestera Center

By: _____

Its: _____

CITY OF CHARLESTON:

By: _____

Its: _____

Exhibit A
Contribution of CITY Property

2007 Dodge Durango
VIN: 1D8HB38P77F517143

Resolution No. 166-19:

Introduced in Council:

February 4, 2019

Introduced by:

Joe Jenkins

Adopted by Council:

Referred to:

1 Resolution No. 166-19: Ratifying a Memorandum of Agreement (MOA) between the
2 U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives
3 (ATF) and the Charleston Police Department (CPD) setting forth the procedure for
4 reimbursement of overtime salary costs and other costs, with prior ATF approval,
5 incurred by CPD in providing resources to assist ATF, along with the responsibilities of
6 both the CPD and ATF for those reimbursements.

7
8 WHEREAS, Council of the City of Charleston ratified a Memorandum of
9 Understanding (MOU) between ATF and CPD formalizing the procedures and utilization
10 of resources in order to maximize interagency cooperation and coordination in violent
11 crime investigations and other incidents within the jurisdiction of the CPD and ATF on
12 November 5, 2018; and

13
14 WHEREAS, the MOU required a separate MOA regarding reimbursement of
15 overtime pay from ATF to CPD for certain overtime work related to the coordinated work
16 between ATF and CPD in order for CPD to be reimbursed for any overtime associated
17 with the ATF Task Force;

18
19 Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

20
21 That the City Council ratifies the Memorandum of Agreement (MOA) between the U.S.
22 Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and
23 the Charleston Police Department (CPD) setting forth the procedure for reimbursement
24 of overtime salary costs and other costs, with prior ATF approval, incurred by CPD in
25 providing resources to assist ATF, along with the responsibilities of both the CPD and
26 ATF for those reimbursements.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
AND THE
CHARLESTON POLICE DEPARTMENT

This Memorandum of Understanding (MOU) is entered into by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Charleston Police Department, Charleston, West Virginia, as it relates to the Violent Crimes Task Force (herein referred to as the "Task Force").

AUTHORITIES

Offenses investigated and enforced pursuant to this MOU are those falling within ATF's jurisdiction, including 28 U.S.C. § 599A; 27 CFR Part 0, Subpart W; 18 U.S.C. §§ 921 et. seq.; 26 U.S.C. §§ 5861 et. seq.; and 18 U.S.C. § 3051;

PURPOSE

The Task Force will perform the activities and duties described below:

- a. Investigate firearms trafficking
- b. Investigate firearms related violent crime
- c. Gather and report intelligence data relating to trafficking in firearms
- d. Conduct undercover operations where appropriate and engage in other traditional methods of investigation in order that the Task Force's activities will result in effective prosecution before the courts of the United States and the State of West Virginia

MEASUREMENT OF SUCCESS

The success of this initiative will be measured by the participating agencies' willingness to share certain information, (i.e. crime statistics) for the purpose of measuring the success of the task force as well as its performance.

PHYSICAL LOCATION

Officers/troopers/agents assigned to this Task Force by their employer shall be referred to as Task Force Officers (TFOs). TFOs will be assigned to the ATF Charleston Field Office and will be located at the Charleston Police Department.

SUPERVISION AND CONTROL

The day-to-day supervision and administrative control of TFOs will be the mutual responsibility of the participants, with the ATF Special Agent in Charge or his/her designee having operational control over all operations related to this Task Force.

Each TFO shall remain subject to their respective agencies' policies, and shall report to their respective agencies regarding matters unrelated to this agreement/task force. With regard to matters related to the Task Force, TFOs will be subject to Federal law and Department of Justice (DOJ) and ATF orders, regulations and policy, including those related to standards of conduct, sexual harassment, equal opportunity issues and Federal disclosure laws.

Failure to comply with this paragraph could result in a TFO's dismissal from the Task Force.

PERSONNEL, RESOURCES AND SUPERVISION

To accomplish the objectives of the Task Force, ATF will assign one (1) Special Agent to the Task Force. ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the Task Force. This support may include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items.

Each participating agency agrees to make available to their assigned task force members any equipment ordinarily assigned for use by that agency. In the event ATF supplies equipment (which may include vehicles, weapons or radios), TFOs must abide by any applicable ATF property orders or policy, and may be required to enter into a separate agreement for their use.

To accomplish the objectives of the Task Force, the Charleston Police Chief agrees to detail one (1) full-time TFO and/or one (1) part-time TFO to the Task Force for a period of not less than two (2) years.

All TFOs shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy.

SECURITY CLEARANCES

All TFOs will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or

punishment, disciplinary, punitive or otherwise, may disqualify one from eligibility to join the Task Force. ATF has final authority as to the suitability of TFOs for inclusion on the Task Force.

DEPUTATIONS

ATF, as the sponsoring Federal law enforcement agency, may request at its sole discretion that the participating agency's TFOs be deputized by the U.S. Marshal Service to extend their jurisdiction, to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal grand jury subpoenas for records and evidence involving violations of Federal laws. Such requests will be on an individual basis as determined by ATF.

The participating agencies agree that any Federal authority that may be conferred by a deputation is limited to activities supervised by ATF and will terminate when this MOU is terminated or when the deputized TFOs leave the Task Force, or at the discretion of ATF.

ASSIGNMENTS, REPORTS AND INFORMATION SHARING

An ATF supervisor or designee will be empowered with designated oversight for investigative and personnel matters related to the Task Force and will be responsible for opening, monitoring, directing and closing Task Force investigations in accordance with ATF policy and the applicable United States Attorney General's Guidelines.

Assignments will be based on, but not limited to, experience, training and performance, in addition to the discretion of the ATF supervisor.

All investigative reports will be prepared utilizing ATF's investigative case management system, (N-Force) utilizing ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual, which can be duplicated as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation (ROI), unless otherwise agreed to by ATF and the participating agency(ies). This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.

Information will be freely shared among the TFOs and ATF personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the Task Force, to include informal communications between TFOs and ATF personnel, may be disseminated to any third party, non-task force member by any task force member without the express permission of the ATF Special Agent in Charge or his/her designee.

Any public requests for access to the records or any disclosures of information obtained by task force members during Task Force investigations will be handled in accordance with applicable

statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act and other applicable Federal and/or state statutes and regulations.

INVESTIGATIVE METHODS

The parties agree to utilize Federal standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by state and local law enforcement agencies shall conform to those requirements, pending a decision as to a venue for prosecution.

The use of other investigative methods (search warrants, interceptions of oral communications, etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF. All Task Force operations will be conducted and reviewed in accordance with applicable ATF and Department of Justice policy and guidelines.

None of the parties to this MOU will knowingly seek investigations under this MOU that would cause a conflict with any ongoing investigation of an agency not party to this MOU. It is incumbent upon each participating agency to notify its personnel regarding the Task Force's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively carried out by all parties to this MOU.

INFORMANTS

ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency with regard to handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

DECONFLICTION

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the Task Force, which, if disclosed to unauthorized persons, could endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein:

- a. Each participating agency will assign primary and secondary points of contact.
- b. Each participating agency agrees to keep its points of contact list updated.

The points of contact for this Task Force are:

ATF: Resident Agent in Charge Adam W. Black

Charleston Police Department: Corporal John Weaver

EVIDENCE

Evidence will be maintained by the lead agency having jurisdiction in the court system intended for prosecution. Evidence generated from investigations initiated by a TFO or ATF special agent intended for Federal prosecution will be placed in the ATF designated vault, using the procedures found in ATF orders.

All firearms seized by a TFO must be submitted for fingerprint analysis and for a National Integrated Ballistics Information Network (NIBIN) examination. Once all analyses are completed, all firearms seized under Federal law shall be placed into the ATF designated vault for proper storage. All firearms information/descriptions taken into ATF custody must be submitted to ATF's National Tracing Center.

JURISDICTION/PROSECUTIONS

Cases will be reviewed by the ATF Special Agent in Charge or his/her designee in consultation with the participating agency and the United States Attorney's Office and appropriate State's attorney offices, to determine whether cases will be referred for prosecution to the U.S. Attorney's Office or to the relevant State's attorney's office. This determination will be based upon which level of prosecution will best serve the interests of justice and the greatest overall benefit to the public. Any question that arises pertaining to prosecution will be resolved through discussion among the investigative agencies and prosecuting entities having an interest in the matter.

In the event that a state or local matter is developed that is outside the jurisdiction of ATF or it is decided that a case will be prosecuted on the state or local level, ATF will provide all relevant information to state and local authorities, subject to Federal law. Whether to continue investigation of state and local crimes is at the sole discretion of the state or local participating agency.

USE OF FORCE

All full-time TFOs will comply with ATF and the Department of Justice's (DOJ's) use of force policies, unless a TFO's agency's Use of Force policy is more restrictive, in which case the TFO may use their respective agency's use of force policy. TFOs must be briefed on ATF's and DOJ's use of force policy by an ATF official, and will be provided with a copy of such policy.

MEDIA

Media relations will be handled by ATF's and the U.S. Attorney's Office's public information officers in coordination with each participating agency. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, who will take part in press conferences. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation or prosecution under this MOU without the concurrence of the other participants and, when appropriate, the relevant prosecutor's office.

All personnel from the participating agencies shall strictly adhere to the requirements of Title 26, United States Code, § 6103. Disclosure of tax return information and tax information acquired during the course of investigations involving National Firearms Act (NFA) firearms as defined in 26 U.S.C., Chapter 53 shall not be made except as provided by law.

SALARY/OVERTIME COMPENSATION

During the period of the MOU, participating agencies will provide for the salary and employment benefits of their respective employees. All participating agencies will retain control over their employees' work hours, including the approval of overtime.

ATF may have funds available to reimburse overtime to the State and Local TFO's agency, subject to the guidelines of the Department of Justice Asset Forfeiture Fund. This funding would be available under the terms of a memorandum of agreement (MOA) established pursuant to the provisions of 28 U.S.C. section 524. The participating agency agrees to abide by the applicable Federal law and policy with regard to the payment of overtime from the Department of Justice Asset Forfeiture Fund. The participating agency must be recognized under State law as a law enforcement agency and their officers/troopers/investigators as sworn law enforcement officers. If required or requested, the participating agency shall be responsible for demonstrating to the Department of Justice that its personnel are law enforcement officers for the purpose of overtime payment from the Department of Justice Asset Forfeiture Fund. **This MOU is not a funding document.**

In accordance with these provisions and any MOA on asset forfeiture, the ATF Special Agent in Charge or designee shall be responsible for certifying reimbursement requests for overtime expenses incurred as a result of this agreement.

AUDIT INFORMATION

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. Participating agencies agree to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for expenses either incurred during the course of this Task Force or for a period of not less than three (3) years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

FORFEITURES/SEIZURES

All assets seized for administrative forfeiture will be seized and forfeited in compliance with the rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies

DISPUTE RESOLUTION

In cases of overlapping jurisdiction, the participating agencies agree to work in concert to achieve the Task Force's goals and objectives. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, case assignments and workload at the lowest level possible.

LIABILITY

ATF acknowledges that the United States is liable for the wrongful or negligent acts or omissions of its officers and employees, including TFOs, while on duty and acting within the scope of their Federal employment, to the extent permitted by the Federal Tort Claims Act.

Claims against the United States for injury or loss of property, personal injury, or death arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of his or her office or employment are governed by the Federal Tort Claims Act, 28 U.S.C. sections 1346(b), 2672-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other for such acts or omissions. Legal representation by the United States is determined by the United States Department of Justice on a case-by-case basis. ATF cannot guarantee the United States will provide legal representation to any State or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be the sole responsibility of the respective agent or officer and agency involved.

DURATION

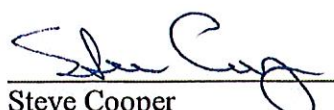
This MOU shall remain in effect until it is terminated in writing (to include electronic mail and facsimile). All participating agencies agree that no agency shall withdraw from the Task Force without providing ninety (90) days written notice to other participating agencies. If any participating agency withdraws from the Task Force prior to its termination, the remaining participating agencies shall determine the distributive share of assets for the withdrawing agency, in accordance with Department of Justice guidelines and directives.

The MOU shall be deemed terminated at the time all participating agencies withdraw and ATF elects not to replace such members, or in the event ATF unilaterally terminates the MOU upon 90 days written notice to all the remaining participating agencies.

MODIFICATIONS

This agreement may be modified at any time by written consent of all participating agencies. Modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

SIGNATURES

 / 10-1-18
Steve Cooper Date
Chief
Charleston Police Department

 04-02-18
Stuart Lowrey Date
Special Agent in Charge
ATF, Louisville Field Division