



CITY COUNCIL AGENDA

6:15 – 7:00 p.m.

Closed session as provided by Section 2.2-3712 of the Virginia Code
(Second Floor Conference Room)

TYPE OF ITEM

SUBJECT

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

ANNOUNCEMENTS

AWARDS/RECOGNITIONS 100th Anniversary of Pepsi-Cola Bottling Company of Central Virginia; Parks and Recreation Month Proclamation

MATTERS BY THE PUBLIC Public comment will be permitted until 7:35 p.m. (limit of 3 minutes per speaker) and at the end of the meeting on any item, including items on the agenda, provided that a public hearing is not planned or has not previously been held on the matter. Persons are asked to sign up in advance of the start of the meeting.

COUNCIL RESPONSES TO MATTERS BY THE PUBLIC

1. CONSENT AGENDA* (Items removed from the consent agenda will be considered at the end of the regular agenda)

- a. Minutes of June 2, 4 and 16
- b. APPROPRIATION: \$5,000 – First Tee Grant (2nd of 2 readings)
- c. APPROPRIATION: \$16,230 – State Criminal Alien Assistance Program Grant (1st of 2 readings)
- d. APPROPRIATION: \$244,789 - Transit Grant (1st of 2 readings)
- e. APPROPRIATION: \$30,000 – Homeland Security Grant (1st of 2 readings)
- f. RESOLUTION: Authorizing Application for Emergency Management Grant (1st of 1 reading)
- g. RESOLUTION: Special Permit for Increased Density at 1704 Gordon Avenue (1st of 1 reading)
- h. RESOLUTION: Amending Comprehensive Plan re: Affordable Housing (1st of 1 reading)
- i. ORDINANCE: Homeowner Tax Relief Grant Program (2nd of 2 readings)
- j. ORDINANCE: Conveying City Land on Avon Street to VDOT for Widening of Roadway (2nd of 2 readings)
- k. ORDINANCE: Renewing Sprint Franchise Agreement (1st of 2 readings)
- l. ORDINANCE: Renewing Ntelos Franchise Agreement (1st of 2 readings)
- m. ORDINANCE: Renewing Martha Jefferson Hospital Franchise Agreement (1st of 2 readings)
- n. ORDINANCE: Zoning Amending re: Compliance/Enforcement
- o. ORDINANCE: Establishing Criteria for Affordability with Respect to Imposition of Water and Sewer Connection Fees (1st of 2 readings)

2. REPORTS Department of Social Services
Social Services Advisory Board

3. DISCUSSION Poverty Issues for Future Work Session

4. REPORT* Quality of Service and Efficiency Study

5. Discussion* Task Force for South Fork Rivanna Reservoir Study

OTHER BUSINESS
MATTERS BY THE PUBLIC
ADJOURNMENT

July 7, 2008
7:00 p.m.

*ACTION NEEDED (appropriations require 2 readings; ordinances require 2 readings; resolutions require 1 reading)
Reasonable accommodations will be provided for persons with disabilities if requested.

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



Agenda Date:	June 16, 2008
Action Required:	Appropriation
Staff Contacts:	Phillip Seay, Director, The First Tee of Charlottesville Leslie Beauregard, Director, Budget and Performance Management
Presenter:	Phillip Seay, Director, The First Tee of Charlottesville
Title:	United State Golf Association Program Grant - \$5,000

Background: In 1997, the World Golf Foundation created The First Tee, a youth development organization designed to promote life skills and make golf accessible and affordable for all youth. In August of 2004, Charlottesville received an official charter from the World Golf Foundation. Currently Charlottesville is one of 205 Chapters worldwide. The Charlottesville Chapter is based and utilizes the facilities of the Meadowcreek Golf Course, McIntire Golf Park, and Farmington Country Club.

In 1997, the United States Golf Association established the *For the Good of the Game* Grants Initiative to provide “economically disadvantaged” youth and “individuals with disabilities” with “personal development” opportunities through the game of golf. The United States Golf Association is the largest financial supporter of The First Tee.

Discussion: On May 23rd of 2008, the United States Golf Association awarded a \$5,000 Program Grant to the City of Charlottesville Department of Parks and Recreation for The First Tee of Charlottesville. The United States Golf Association through the *For the Good of the Game* Grants Initiative offers financial assistance to new and established youth golf instructional programs. The Grant was requested to offset cost associated with hourly wages for PGA/LPGA and Apprentice instruction, and transportation cost (driver fees and bus services) to and from Summer programming and special events. This will allow City youth greater access to and from The First Tee of Charlottesville course offerings and events.

Alternatives: If not appropriated, The First Tee of Charlottesville will not have the additional funds to provide the afore-mentioned Professional instruction and transportation services for City participants.

Budgetary Impact: This grant has no impact on the General Fund. The First Tee program is operated through The First Tee Golf Fund.

Recommendation: Staff recommends approval and appropriation of funds.

Attachment: N/A

APPROPRIATION
United States Golf Association Program Grant - \$5,000

WHEREAS, the City of Charlottesville, through the Department of Parks and Recreation for The First Tee of Charlottesville, has received a Program Grant from the United States Golf Association in the amount of \$5,000.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$5,000, received from the United States Golf Association, is hereby appropriated in the following manner:

<u>Revenue</u> \$5,000	Fund: 609	Cost Center: 3821001000	G/L Account: 451022
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<u>Expenditures</u> \$5,000	Fund: 609	Cost Center: 3821001000	G/L Account: 599999
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**CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA**



Agenda Date:	July 7, 2008
Action Required:	Approval and Appropriation
Staff Contacts:	Leslie Beauregard, Director, Budget and Performance Management
Presenter:	Leslie Beauregard, Director, Budget and Performance Management
Title:	State Criminal Alien Assistance Program (SCAAP) Grant for 2007-AP-BX-0800: \$16,230

Background: The City of Charlottesville has received the State Criminal Alien Assistance Program Grant (SCAAP), on behalf of the Charlottesville Albemarle Nelson Regional Jail, in the amount of \$16,230. These are federal funds to reimburse the Charlottesville Albemarle Nelson Regional Jail for the expenses of housing alien inmates. Albemarle County is appropriating funds received under the same program that will also be passed through to the Regional Jail.

Discussion: The State Criminal Alien Assistance Program (SCAAP) provides federal payments to states and localities that incurred correctional officer salary costs for incarcerating certain undocumented criminal aliens. The award amount is based on the number of undocumented persons incarcerated at the Charlottesville Albemarle Nelson Regional Jail. As this is not a one-time grant, the Jail will receive future payments from the City as they are granted.

Alternatives: N/A

Budgetary Impact: There is no budgetary impact as 78% these funds will be passed through directly to the Regional Jail. The remaining 22% is sent to Justice Benefits, Inc., which provides administrative support for the regional jail.

Recommendation: Approve and Appropriate funds to the Regional Jail.

APPROPRIATION

State Criminal Alien Assistance Program (SCAAP) Grant for 2007
\$16,230

WHEREAS, the State Criminal Alien Assistance Program (SCAAP) grant, providing federal payments for correctional officer salary costs incurred for incarcerating certain undocumented criminals has been awarded the City of Charlottesville, on behalf of the Albemarle-Charlottesville-Nelson Regional Jail, in the amount of \$16,230.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that a total of \$9,403 be appropriated and passed through to the Albemarle-Charlottesville-Nelson Regional Jail.

Revenues

\$16,230.00 Fund: 211 Internal Order: 1900099 G/L Account: 431110

Expenses

\$12,659.40 Fund: 211 Internal Order: 1900099 G/L Account: 530550

\$ 3,570.60 Fund: 211 Internal Order: 1900099 G/L Account: 530670

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



Agenda Date:	July 7, 2008
Action Required:	Appropriation of Project Funding for Transit Division
Staff Contact:	Bill Watterson, Transit Manager Judith Mueller, Public Works
Presenter:	Bill Watterson, Transit Manager
Title:	FY 2009 Operating (\$212,114) and Capital (\$32,675) Transit Grants - \$244,789

Background and Discussion: With its February 19 Resolution Authorizing the Application for State Aid to Public Transportation, City Council authorized the Transit Division to provide the local match necessary to apply for Federal and State grants to fund Transit Division expenses, including both Capital and non-Capital projects. In order to proceed with implementation, a City Council appropriation is requested. Total project expenses include:

Capital Projects	Grant Amount	CIP Amount	TOTAL
Bus & Bus-Related Purchases*	\$360,255	\$62,397	\$422,652
TOTAL CAPITAL	\$360,255	\$62,397	\$422,652
Non-Capital Projects	Grant Amount	City Amount	TOTAL
Operating Assistance	\$2,371,908	\$1,405,630**	\$3,777,538
Night Routes 5, 7, 21, 22, 23, & 24	\$349,708	\$349,708	\$699,416
TOTAL NON-CAPITAL	\$2,721,616	\$1,755,338	\$4,476,954

*Bus-Related Purchases Include: Passenger shelters, benches, trash cans, fareboxes, display cases, real-time information units, diesel engines, bike racks, and radios

**The City amount is satisfied by the FY 2009 general fund contribution of the City to CTS in the amount of \$1,405,630. This amount is in the budget so only the grant amount needs to be appropriated.

Budget Impact: This action is appropriating the difference between the FY 2009 Adopted Budget and final grant amounts to be received from the State. In the FY 2009 Adopted Transit operating budget, \$2,159,794 in State and Federal funds has already been appropriated. This appropriation adds an additional **\$212,114**. In the FY 2009 Adopted Transit capital budget for bus purchases, \$327,580 has already been appropriated. This appropriation authorizes an additional **\$32,675** for bus purchases, which is a net number since Federal dollars are less than originally appropriated but State dollars are higher.

The funding for night routes, \$349,708, has already been appropriated as part of the FY 2009 Adopted Budget and needs no further action.

Recommendation: Approve appropriation.

Alternatives: City Council may choose not to appropriate funds for these Transit Division projects. Without an appropriation these projects will not be implemented and staff will work with the Federal Transit Administration and the Virginia Department of Rail and Public Transportation to de-obligate the grants.

APPROPRIATION
FY 2009 Operating (\$212,114) and Capital (\$32,675) Transit Grants
\$244,789

WHEREAS, Federal and State Capital Grant Funds have been awarded to the City of Charlottesville in the amount of \$291,424 (Federal capital) and \$68,831 (State capital) for a net increase to the FY 2009 Adopted Budget of \$32,675; and

WHEREAS, Federal and State Operating Grant Funds have been awarded to the City of Charlottesville in the amount of \$1,405,630 (Federal operating) and \$966,278 (State operating) for an increase to the FY 2009 Adopted Budget of \$212,114

WHEREAS, the City's FY 2009 Adopted Capital Improvement Program includes \$62,397 in City funds to secure these capital grant funds; and

WHEREAS, expenditure of these operating grant funds requires a City match of \$1,405,630 which has already been satisfied by the City general fund amount of \$1,585,371 for Charlottesville Transit Service operations in the FY 2009 budget.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Charlottesville, Virginia that the following is hereby appropriated in the following manner, contingent upon receipt of the grant funds:

Capital Budget (Bus Purchases)

Revenue

\$(20,558) Fund: 245 Cost Center: 2804001000 G/L Account: 431010
\$ 53,233 Fund: 245 Cost Center: 2804001000 G/L Account: 430110

Expenditures

\$32,675 Fund: 245 Cost Center: 2804001000 G/L Account: 541040

Operating Budget

Revenue

\$ 22,287 Fund: 245 Cost Center: 2801001000 G/L Account: 431110
\$189,827 Fund: 245 Cost Center: 2801001000 G/L Account: 430080

Expenditures

\$212,114 Fund: 245 Cost Center: 2801001000 G/L Account: 510010

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



Agenda Date:	July 7, 2008
Action Required:	Approve and Appropriate Funds
Staff Contacts:	Britt Grimm, Deputy Fire Chief, CFD Mike Rogers, Captain, CFD Leslie Beauregard, Director, Budget and Performance Management
Presenter:	Mike Rogers, Captain, CFD
Title:	2007 State Homeland Security Program Grant - \$30,000

Background: The City is to receive \$30,000 in a Homeland Security Local Preparedness pass through Grant. These funds are part of the DHS funding program established by the United States Congress after 9/11, 2001. The Grant is managed by the DEM (Virginia Department of Emergency Management).

Discussion: The City is the location for many mass gatherings throughout the year, in a variety of sizes. Examples of events are concerts at the Pavilion, UVA football games, CHS athletic events, concerts and shows at the John Paul Jones Arena, and events at the Martin Luther King Center. In addition, citizens shopping, in school, or at their places of work all present larger numbers than might be commonly recognized. A hazardous materials incident at any of these places could present the Fire Department with a situation requiring the emergency decontamination of dozens to hundreds of people.

The equipment provided by the grant funds will allow the Fire Department's hazardous materials response team to be better prepared for emergency decontamination activities much earlier in an incident. This allows decontamination to start prior to the arrival of any mutual aid resources which would likely be called to assist with a large scale incident – mutual aid hazardous materials teams would likely be at least 2-3 hours away, as those teams would be responding from the Shenandoah Valley, Northern Virginia, or Richmond areas.

Budgetary Impact: The funds will be appropriated into the Grants Fund and therefore, there is no impact on the General Fund. No local match is required.

Alternatives: By not accepting and appropriating the grant, and Fire Department will not be able to purchase much needed equipment and provide valuable training to staff that will enhance the City's disaster response capabilities.

Recommendation: Approve Appropriation

Attachments: N/A

APPROPRIATION
2007 Homeland Security Local Preparedness Grant
\$30,000

WHEREAS, the Virginia Department of Emergency Management has awarded the City of Charlottesville the 2007 Homeland Security Local Preparedness Grant in the amount of \$30,000; and

WHEREAS, the grant award covers the period from July 1, 2008 to June 30, 2009.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Charlottesville, Virginia, that the sum of \$30,000, received as a grant from the Department of Homeland Security, through the Department of Justice, is hereby appropriated in the following manner:

Revenue – \$30,000

\$30,000 Fund: 209 Internal Order: 1900105 G/L Account: 430110

Expenditures - \$30,000

\$30,000 Fund: 209 Internal Order: 1900105 G/L Account: 520900

BE IT FURTHER RESOLVED, that this appropriation is conditioned upon reimbursement of up to \$30,000 from the Virginia Department of Emergency Management.

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



Agenda Date:	July 7, 2008
Action Required:	Approve Authorizing Resolution
Staff Contacts:	Charles Werner, Fire Chief, CFD Leslie Beauregard, Director, Budget and Performance Management
Presenter:	Charles Werner, Fire Chief, CFD
Title:	2007 State Homeland Security Interdependency Study Grant – Authorizing Resolution to Apply or Grant Funds

Background: The City of Charlottesville wishes to submit an application to the Virginia Department of Emergency Management (VDEM) for a State Homeland Security Interdependency Study Grant in the amount of \$160,000. As the City does not directly have the staff or expertise in this field, the study would be conducted through a cooperative contract (sub-recipient agreement) with the University of Virginia's (UVA) Center for Risk Management of Engineering Systems, and funded with this grant. Of the total grant, \$150,000 would be passed through to UVA and \$10,000 would remain with the City to cover grant administration and staffing costs associated with the study.

Discussion: To date, numerous interdependencies/risk assessments for critical infrastructure/key resources have been completed statewide at varying levels of granularity. With the development and completion and initial implementation of the Virginia Critical Infrastructure Protection and Resiliency Strategic Plan to comply with the National Infrastructure Protection Plan, there is a need for systems-driven, risk-based methods of analysis to support the development of these plans. The City is subject to the same need for such analysis and this funding would allow this study to be done by the Commonwealth of Virginia with direct benefits to the City of Charlottesville.

Budgetary Impact: At this time, there are no budgetary impacts and no local match is required. When the funds are actually awarded, a separate appropriation will be done.

Alternatives: By not accepting and appropriating the grant, this study will not be completed and neither the Commonwealth of Virginia nor Charlottesville will benefit from this invaluable analysis for the future protection of our critical infrastructure and key resources.

Recommendation: Approve authorizing resolution

Attachments: N/A

GOVERNING BODY RESOLUTION

BE IT RESOLVED BY THE City Council of the City of Charlottesville, Virginia, that Aubrey V. Watts, Jr., Chief Operating Officer/Chief Financial Officer (COO/CFO) for the City of Charlottesville, is hereby authorized to execute for and on behalf of the City of Charlottesville, a municipal corporation and public entity established under the laws of the Commonwealth of Virginia, an application for a State Homeland Security Interdependency Study Grant in the amount of \$160,000.00.

Passed and approved this _____ day of _____, 2008.

Certification

I, Jeanne Cox, Clerk of Council for the City of Charlottesville, Virginia, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the Charlottesville City Council on the _____ day of _____, 2008.

Jeanne Cox, Clerk of Council

Date: _____

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	7/07/08
Action Required:	Approval of Special Use Permit
Presenter:	Ebony Walden, Neighborhood Planner
Staff Contacts:	Ebony Walden, Neighborhood Planner
Title:	1704 Gordon Avenue Special Use Permit for Increased Density

Background and Discussion:

Development Management II seeks approval of a special use permit for the property located at 1704 Gordon Avenue/419 17th Street to allow for increased density of 22 DUA (8 units) from the by right density of 21 DUA (7 units) in an R-3 district. Between 22 and 87 DUA are allowed by Special Use Permit. The applicant proposes to construct a 2 story, 8 unit development with 24 parking spaces located on the lower level.

This property is within a historic district and requires a recommendation on the special permit from the Board of Architectural Review (BAR) as to whether the application has adverse impacts on the district. At their May meeting the BAR recommended 4 to 3 in favor of this special use permit application. Staff recommends approval with conditions.

The Planning Commission spoke primarily about parking and landscaping on the site. The prevailing issue was how to mitigate the impact of the additional 4 bedroom unit and the overall development on already tense on-street parking. The Planning Commission recommended the inclusion of 8 bike racks and 8 off-street parking spaces to mitigate the impact of potentially having 32 residents and only 24 parking spaces on site. They also recommended that the applicant attempt to plant trees in an existing planting strip along the 17th St right of way.

Alternatives:

1. Approval
2. Approval with conditions recommended by the Planning Commission
3. Approval with conditions other than those recommended by the Planning Commission
4. Denial

Budgetary Impact: none

Recommendation:

Mr. Farruggio made the motion to approve the application and Ms. Lewis seconded, the vote was 6-1 for the motion recommending approval with the following conditions:

- (a) Inclusion of 8 lockers
- (b) Planning Commission Approval of the Preliminary Site Plan
- (c) Issuance of a Certificate of Appropriateness from the BAR
- (d) Providing 8 off-site parking spaces
- (e) An attempt by the applicant to plant trees in the existing planting strip adjacent to the property along the 17th St right of way.

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Attachments: Site Plan, Staff Report, Applicant's Narrative



APPLICATION FOR A SPECIAL USE PERMIT

**PLANNING COMMISSION AND CITY COUNCIL JOINT
PUBLIC HEARING**

DATE OF HEARING: June 10th, 2008
APPLICATION NUMBER: SP-08-05-06

Project Information

Project Planner: Ebony Walden, Neighborhood Planner
Applicant: Development Management II
Applicants Representative: Susan Riddle of Wassenaar Design Group
Applicable City Code Provisions: 34-156 through 34-164 (Special Use Permits), 34-800 through 34-827 (Site Plans), 34-867 (Landscape Plans), Section 34-420 Use Matrix

Application Information

Property Street Address: 1704 Gordon Avenue/419 17th Street NW
Tax Map/Parcel #: TM 9, Parcel 2
Total Square Footage/Acreage Site: 16,115 sf or .36 Acres
Comprehensive Plan (Land Use Plan) Designation: Multi-Family
Current Zoning Classification: R-3 with Historic District Overlay
Tax Status: No delinquent taxes

Applicant's Request:

Susan Riddle of Wassenaar Design Group acting as agent for Development Management II seeks approval of a special use permit for the property located at 1704 Gordon Avenue/419 17th Street to allow for increased density of 22 DUA (8 units) from the by right density of 21 DUA (7 units) in an R-3 district. Between 22 and 87 DUA are allowed by Special Use Permit.

Vicinity Map:



Executive Summary:
The applicant is requesting a special use permit for increased density of 22 DUA to construct a new 2 building, 8 unit residential development. The proposal includes underground parking with 24 spaces. This property is further identified on City Real Property Tax Map #9 as parcel 2, having 56 feet of frontage on Gordon Avenue and containing approximately 16,115 square feet of land or 0.361 acres. There are currently 6 units in 3

buildings on this property. There are four units in a 2 story apartment building and 2 one bedroom cottages.

Increased density (up to 87 DUA) is allowed in the R-3 zoning district with a special use permit. The R-3 zoning designation allows a by-right maximum of 21 dwelling units per acre (7.56 units for this site). This development is proposing a total of 8 dwelling units (or 21.6 DUA). This would allow an additional unit, containing 4 bedrooms, than allowed by right. The general uses called for in the Land Use Plan of the Comprehensive Plan are for Multi-family.

This property is within a historic district and requires a recommendation on the special permit from the Board of Architectural Review as to whether the application has adverse impacts on the district. At their May meeting the BAR recommended 4 to 3 in favor of this special use permit application. Staff recommends approval with conditions.

Standard of Review: The Planning Commission must make an advisory recommendation to the City Council concerning approval or disapproval of a special permit or special use permit for the proposed development based upon review of the site plan for the proposed development and upon the criteria set forth.

Section 34-157 of the City Code sets the general standards of issuance for a special use permit.

- (1) Whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood;
- (2) Whether the proposed use or development and associated public facilities will substantially conform to the city's comprehensive plan;
- (3) Whether proposed use or development of any buildings or structures will comply with all applicable building code regulations;
- (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts. Potential adverse impacts to be considered include, but are not necessarily limited to, the following:
 - a. Traffic or parking congestion;
 - b. Noise, lights, dust, odor, fumes, vibration, and other factors which adversely affect the natural environment;
 - c. Displacement of existing residents or businesses;
 - d. Discouragement of economic development activities that may provide desirable employment or enlarge the tax base;
 - e. Undue density of population or intensity of use in relation to the community facilities existing or available;
 - f. Reduction in the availability of affordable housing in the neighborhood;
 - g. Impact on school population and facilities;
 - h. Destruction of or encroachment upon conservation or historic districts; and,
 - i. Conformity with federal, state and local laws, as demonstrated and certified by the applicant;
- (5) Whether the proposed use or development will be in harmony with the purposes of the specific zoning district in which it will be placed; and
- (6) Whether the proposed use or development will meet applicable general and specific standards set forth within the zoning ordinance, subdivision regulations, or other city ordinances or regulations.

City Council may grant an applicant a special permit or special use permit, provided that the applicant's request is in harmony with the purposes and standards stated in the zoning ordinance (Sec. 34-157(a)(1)). Council may attach such conditions to its approval, as it deems necessary to bring the plan of development into conformity with the purposes and standards of the comprehensive plan and zoning ordinance.

Background: (Relevant Code Section)

- Section 34-350 - R-3 zoning designation consists of medium-density residential areas in which medium-density residential developments, including multifamily uses, are encouraged

Density

- Section 34-420 Use Matrix allows residential developments with a density of 22-87 DUA by special use permit in the R-3 Multi-family Residential District.

Overall Analysis:

1. Proposed Use of the Property.

The applicant proposes to construct a 21, 826 square foot multi-family apartment building. This is proposed to be a 2 building, 8 unit development with 24 parking spaces located on the lower level. There will be 2,080 square feet of recreational space as required (260 sf per unit) by code for R-3 districts. The parcel contains 16,115 square feet of land and is currently zoned R-3 Multifamily.

2. Zoning History

In 1949 this property was zoned A-1 residential. In 1958 this property was changed to R-3 multi-family residential which allowed for the following uses: multiple dwellings, religious and educational institutions, fraternities, hospitals and dorms. The 1978 zoning map indicates that this property was zoned R-3 and allowed the following uses: R-2 uses, townhouses, tourist & rooming houses & day care centers. The property remained R-3 in 1991 which allowed R-2 uses, townhouses & day care centers. R-3 with a Historic District overlay is the current zoning designation.

3. Character and Use of Adjacent Properties

Direction	Use	Zoning
North	Single Family/Fraternity houses/Multi-Family	R-3
South	Westminster Church/Multi-family	R-3/UMD
East	Multi-Family/Frat Houses/Single Family/Church/Offices/Library/Nursing Home	R-3/UMD
West	Fraternity houses/Multi-family dwellings/Church	R-3

4. Reasonableness/Appropriateness of Current Zoning

The current zoning is reasonable and appropriate. This portion of the Venable neighborhood is close to the University of Virginia and other low to medium density multifamily housing occupied by university students. This designation allows for apartments with a density of up to 21 dwelling units per acre. This property has also been zoned R-3 since 1958 and this area has provided housing for students for over 50 years.

5. Reasonableness/Appropriateness of Proposed Zoning

This request for a special use permit to allow added density is reasonable and can be

appropriate on this site. The increase in density is to allow 1 additional unit. This development is surrounded by numerous apartments, fraternities and churches with some single family homes in this area. Therefore the increase in density would not be significantly out of character in this area. Though it will be a higher density than adjacent properties in this R-3 area (namely because a number of those properties are fraternities).

6. Consistency with Comprehensive Plan

Multifamily housing allowed with a special use permit is consistent with the land use designation. The plan allows for medium-density housing for this area.

7. Potential Uses of the Property (By-Right)

By-right uses in a R-3 zoning district include multifamily developments, single family detached dwellings, single family attached dwellings, townhouses, two family dwellings, bed-and-breakfasts, convents and monasteries, houses of worship, health clinics, educational facilities, libraries and day care facilities among others. Uses allowed by special permit are: fraternities and sororities, boarding houses, adult assisted living facilities, nursing homes, developments with density of 22-87 DUA, private clubs, funeral homes and outdoor recreational facilities, among others.

PROJECT REVIEW

1. Conformity with comprehensive plan and policies

- Multifamily housing allowed with a special use permit is consistent with the land use designation. The plan allows for medium-density housing for this area.

2. Impact on the neighborhood

(a) Traffic or parking congestion

- **Traffic congestion:** The proposed development will likely increase the density from approximately 28 people in 7 units to 32 people in 8 units. Though this additional unit will not have a significant impact on traffic congestion, there can potentially be 4 more cars in this area which already has parking concerns. One can reasonably assume that though most students will have a car, most of them will walk to campus and use their cars less than non-student residents.
- **Parking:** The applicant proposes 24 spaces, which is 8 spaces above what is required. This will provide 3 spaces for every 4 bedroom unit. Vehicles currently park on the grassy portion of the ROW. The proposed development will provide street trees and a sidewalk in this area that would improve the appearance and help better delineate on-street parking and pedestrian access. However, this development will likely put pressure on on-street parking as there is the potential to house at least 32 people and there are 24 parking spaces provided. This area is already crowded by student parking and this development and the additional density has the potential to make on-street parking worst.

(b) Noise, light, dust, odor fumes, vibrations, and other factors, which adversely affect the natural environment, including quality of life of the surrounding community.

- This property is dilapidated and is currently a community eyesore; the proposed development will be a significant improvement from what is currently there. This development would add more students to this area, which has been perceived as

increasing noise and litter in the neighborhood. Generally, this is a significant development on a tight site.

(c) Displacement of existing residents or businesses;

- This property is currently occupied; therefore current residents will have to be displaced to begin construction. Approval for demolition of the 3 buildings on the property has been granted.

(d) Discouragement of economic development activities that may provide desirable employment or enlarge the tax base;

- Not applicable.

(e) Undue density of population or intensity of use in relation to the community facilities existing or available;

- The proposed plans have been reviewed by the City's utility and the engineering divisions. They have determined that one additional unit over the by-right allowance is not going to have a significant impact on the existing community facilities.

(f) Reduction in the availability of affordable housing which will meet the current and future needs of the city;

- Not applicable.

(g) Impact on school population and facilities;

- This will likely be a student apartment development and it is not anticipated that school aged children will not reside in this development.

(h) Destruction of or encroachment upon conservation or historic districts; and

- This property is within a historic district and will have to be granted a Certificate of Appropriateness from the BAR. At their May 20th meeting, the BAR made a recommendation (4-3) that an SUP for one additional unit would not have an adverse impact on the ADC district. Some members thought two additional parking spaces that would be provided for the additional unit would be problematic because the garage is problematic, and the SUP would add to that; others thought the parking would be there anyway, and the SUP would not alter that. In regards to design some members thought the building design was nice, just needed refinements; others thought it was flawed and that parking needed to be minimized in order to make the building more agreeable.

(i) Conformity with federal, state and local laws

- This project will conform to all applicable laws

(j) Massing and scale of the project

- Site rendering and elevations are attached. This is a tight site and the project utilizes the total zoning envelope provided. This is a two story development and designed to be similar to the character of the buildings in the surrounding neighborhood.

Low Impact Development Strategies:

Submission of a Low Impact Development worksheet is a requirement for special use permit applications for new developments. The applicant tentatively proposes having 10 points on the LID worksheet for capturing roof run-off and having swales, bio-retention facilities and rain gardens. Whether this site will be able to achieve these points is questionable because the applicant has not finalized their storm water management plan for their preliminary site plan to verify these mechanisms. The engineering division would also like the applicant to provide more information as to how their design justifies the points they have claimed. There are no specific requirements for points for regular special use permits (only Infill SUP's have specific 10 points requirements, but the applicants use the same form).

Attachments: Site Plan, SUP Narrative, Building Elevations, Low Impact Development Worksheet

Public Comments Received:

A site plan conference for this project was held on May 7th, 2008, one member of the public from Westminster Presbyterian Church attended the meeting. In previous discussions, other 17th Street residents were concerned about potential increases in the already crowded on-street parking, but were generally pleased with redeveloping this eyesore. Westminster Presbyterian Church had concerns with previous iterations of this site plan, but those plans have been withdrawn and this current plan is a new design that does not directly impact their property entrance, like previous plans. The church also has general concerns about the impact of this development on on-street parking.

I have received one comment from a property owner on Madison Lane, who opposes the density increase because she believes Charlottesville does not need more housing.

Staff Recommendation:

This special use permit for increased density is reasonable and appropriate. However, this additional density will add 1 unit (4 bedrooms) which would be 4 additional residents and potentially 4 cars. This could put further pressure on on-street parking, which is already a concern in this area. Therefore staff recommends the incorporation of at least 4 bike racks or lockers to mitigate the impact of additional cars caused by this density increase. Staff has also encouraged the applicant to incorporate some other measures to discourage car use or provide incentives for students to not have cars such as parking passes from a University parking garage or providing incentives for residents that do not have cars. At the time of this report, the applicant had not responded to the feasibility of such measures.

Staff recommends approval with conditions.

Suggested Motions:

1. "I move to recommend the approval of this Special Use Permit application for increased density of 22 DUA at 1704 Gordon Avenue on the basis that the proposal would serve the interests of the general public welfare and good zoning practice."
2. "I move to recommend the approval of this Special Use Permit application for increased density of 22 DUA at 1704 Gordon Avenue with the following conditions, exceptions and/or modifications:
 - a) Inclusion of at least 4 bike racks or lockers to help mitigate the impact of additional cars due to the increase in density.

- b) Planning Commission Approval of the Preliminary Site Plan
- c) Issuance of a Certificate of Appropriateness from the BAR

On the basis that the proposal would serve the interests of the general public welfare and good zoning practice”

- 3. I move to recommend denial of this Special Use Permit application for increased density of 22DUA at 1704 Gordon Avenue on the basis that the proposal would not serve the intent of the general public welfare due to the following:
 - a)
 - b)
 - c)

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



Agenda Date:	July 7, 2008
Action Required:	Approval of Comprehensive Plan Amendment
Staff Contacts:	Nick Rogers, Neighborhood Planner
Reviewed By:	Gary O'Connell, City Manager
Title:	Comprehensive Plan Amendment for Affordable Housing

Background

The General Assembly earlier this year passed House Bill 883, giving Charlottesville broader authority to obtain affordable housing units. Specifically, the legislation allows the City to adopt requirements in the zoning ordinance for the provision of affordable units in development projects of 1.0 floor area ratio (FAR) or greater. This new authority would apply to rezoning petitions or special use permit applications for projects that meet the above specifications.

Discussion

The legislation can only be adopted if the City's comprehensive plan is updated to reflect the need for this legislation. Once the comprehensive plan is updated, staff can develop a zoning text amendment to include the attached provisions in the code.

Budgetary Impact

Should developers wish to donate to the City's affordable housing fund in lieu of providing affordable units, this would create additional funding that would need to be allocated by City Council.

Recommendations

The Planning Commission considered this application in a joint public hearing held on June 10, 2008. The discussion topics included the ultimate implementation of the legislation along with incentives for affordable housing for other projects that do not qualify under this authority.

Their specific action was as follows:

Ms. Lewis moved to amend the housing chapter of the Comprehensive Plan with the following strategy:

Implement the affordable housing legislation adopted by the General Assembly, which will amend the City's zoning code with provisions for affordable dwelling units or a cash contribution to the City's affordable housing fund in lieu of units.

Ms. Keller seconded. The Planning Commission voted unanimously, 7-0, for the amendment.

Attachments

Staff memorandum

HB 883 legislation text

CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES



MEMORANDUM

To: Charlottesville Planning Commission
From: Nick Rogers, Neighborhood Planner
Date: May 19, 2008
Re: Affordable housing legislation

Governor Kaine signed into law earlier this year the attached General Assembly bill that expands the City's authority for requiring affordable dwelling units in rezoning and special use permit applications. While the authority has been granted, the City must take steps to incorporate it into the zoning ordinance. As prescribed in the bill, the provisions must be a part of the City's comprehensive plan in order to be adopted.

Staff has analyzed the legislation, and recommends amending the housing chapter of the Comprehensive Plan with the following strategy:

Implement the affordable housing legislation adopted by the General Assembly, which will amend the City's zoning code with provisions for affordable dwelling units or a cash contribution to the City's affordable housing fund in lieu of units.

If the amendment is adopted by City Council, staff will develop a zoning text amendment for the Planning Commission's review. The General Assembly bill contains the exact text for the amended zoning ordinance.

NAR

Attachment

MEMORANDUM



TO: City Council
Gary O'Connell

FROM: R. Lee Richards, Commissioner of the Revenue

DATE: June 6, 2008

RE: Homeowner Tax Relief Grant (2008)

Attached is an ordinance for your consideration for the Homeowner Tax Relief grant program for calendar year 2008, for certain low- and moderate-income homeowners.

This Ordinance shows in ~~strikeout~~/underlining the changes from the ordinance adopted last year on June 18, 2007. The potential grant amounts have been increased and are tied to the adjusted gross income of the applicant. More property owners will be eligible for grants as the maximum assessed value of real estate has been increased to \$365,000. The ordinance implements what Council approved in the annual budget appropriation for fiscal year 2009.

AN ORDINANCE TO ESTABLISH A GRANT PROGRAM TO PROMOTE AND PRESERVE HOMEOWNERSHIP BY LOW- AND MODERATE-INCOME PERSONS WITHIN THE CITY OF CHARLOTTESVILLE

WHEREAS, effective July 1, 2006, §50.7 of the Charter of the City of Charlottesville authorizes City Council to make grants and loans of funds to low- or moderate-income persons to aid in the purchase of a dwelling within the City; and

WHEREAS, this City Council desires to offer a monetary grant for Fiscal Year 2008-2009, to aid low- and moderate-income citizens with one of the ongoing expenses associated with the purchase of a dwelling, *i.e.* real estate taxes; and

WHEREAS, public funding is available for the proposed grant;

NOW, THEREFORE, effective July 1, 2008 and for calendar year 2008, the Charlottesville City Council hereby ordains:

Grant—provided.

(a) There is hereby provided to any natural person, at such person's election, a grant in aid of payment of the taxes owed for the taxable year on real property in the city which is owned, in whole or in part, and is occupied by such person as his or her sole dwelling. The grant provided within this section shall be subject to the restrictions, limitations and conditions prescribed herein following.

(b) If, after audit and investigation, the commissioner of revenue determines that an applicant is eligible for a grant, the commissioner of revenue shall so certify to the city treasurer, who shall implement the grant as a prepayment on the applicant's real estate tax bill due on December 5 of the taxable year.

(c) The amount of each grant made pursuant to this ordinance shall be \$525 for taxpayers with a household income of \$0-25,000, and shall be \$375 for taxpayers with a household income from \$25,001-\$50,000, to be applied against the amount of the real estate bill due on December 5, 2008.

Definitions.

The following words and phrases shall, for the purposes of this division, have the following respective meanings, except where the context clearly indicates a different meaning:

(1) *Applicant* means any natural person who applies for a grant authorized by this ordinance.

(2)*Dwelling* means a residential building, or portion such building, which is owned, at least in part, by an applicant, which is the sole residence of the applicant and which is a part of the real estate for which a grant is sought pursuant to this ordinance.

(3)*Grant* means a monetary grant in aid of payment of taxes owed for the taxable year, as provided by this ordinance.

(4)*Spouse* means the husband or wife of any applicant who resides in the applicant's dwelling.

(5)*Real estate* means a city tax map parcel containing a dwelling that is the subject of an grant application made pursuant to this ordinance.

(6)*Taxes owed for the current tax year* refers to the amount of real estate taxes levied on the dwelling for the taxable year.

(7)*Taxable year* means the calendar year beginning January 1, 2008 .

(8)*Household income* means (i) the adjusted gross income, as shown on the federal income tax return as of December 31 of the calendar year immediately preceding the taxable year, or (ii) for applicants for whom no federal tax return is required to be filed, the income for the calendar year immediately preceding the taxable year: of the applicant, of the applicant's spouse, and of any other person who is an owner of and resides in the applicant's dwelling. The commissioner of revenue shall establish the household income of persons for whom no federal tax return is required through documentation satisfactory for audit purposes.

Eligibility and restrictions, generally.

A grant awarded pursuant to this ordinance shall be subject to the following restrictions and conditions:

(1)The household income of the applicant shall not exceed \$50,000.

(2)The assessed value of the real estate owned by the applicant shall not exceed \$365,000.

(3)The applicant shall own an interest in the real estate that is the subject of the application (either personally or by virtue of the applicant's status as a beneficiary or trustee of a trust of which the real estate is an asset) and the applicant shall not own an interest in any other real estate (either personally or by virtue of the applicant's status as a beneficiary or trustee of a trust of which the real estate is an asset).

(4)As of January 1 of the taxable year and on the date a grant application is submitted, the applicant must occupy the real estate for which the grant is sought as his or her sole residence and must intend to occupy the real estate throughout the remainder of the

taxable year. An applicant who is residing in a hospital, nursing home, convalescent home or other facility for physical or mental care shall be deemed to meet this condition so long as the real estate is not being used by or leased to another for consideration.

(5)An applicant for a grant provided under this ordinance shall not participate in the real estate tax exemption or deferral program provided under Chapter 30, Article IV of the City Code (Real Estate Tax Relief for the Elderly and Disabled Persons) for the taxable year, and no grant shall be applied to real estate taxes on property subject to such program.

(6)An applicant for a grant provided under this division shall not be delinquent on any portion of the real estate taxes to which the grant is to be applied.

(7)Only one grant shall be made per household.

Procedure for application.

(a)Between July 1 and September 1 of the taxable year, an applicant for a grant under this ordinance shall file with the commissioner of revenue, in such manner as the commissioner shall prescribe and on forms to be supplied by the city, the following information:

(1)the name of the applicant, the name of the applicant's spouse, and the name of any other person who is an owner of and resides in the dwelling;

(2)the address of the real estate for which the grant is sought;

(3) the household income;

(4)such additional information as the commissioner of revenue reasonably determines to be necessary to determine eligibility for a grant pursuant to this ordinance.

(b)Changes in household income, ownership of property or other eligibility factors occurring after September 1, but before the end of the taxable year, shall not affect a grant once it has been certified by the commissioner of the revenue, in which case such certified grant shall be applied to the subject real estate.

(c)Any person who willfully makes any false statement in applying for a grant under this division shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$500 for each offense.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	June 16, 2008
Action Required:	Approve conveyance of land
Presenter:	Scott Hendrix, City of Charlottesville Project Manager
Staff Contacts:	Judy Mueller, Mike Mollica, Scott Hendrix
Title:	Convey City land to VDOT for Widening of Avon Street Ext.

Background and Discussion: The City of Charlottesville is preparing to begin physical development of a City-owned 6 acre site located at 1545 Avon St. Extended. This development will include major site work, building construction, and modifications to Avon St. Extended (owned by VDOT) for the purpose of housing a new CTS Operations Facility. Roadway modifications will affect 3 contiguous City-owned parcels located in Albemarle County identified on the Albemarle County Tax Maps as Parcels 77E1-1, 77E2-1, and 77E2-3.

Development of the property requires that there be several modifications made to Avon St. Extended as required by VDOT. Those modifications include: added turning lanes, widening, installation of curb and gutter, and drainage work. As such, a small portion of City property contained on the three parcels needs to be conveyed to VDOT to provide Right Of Way (ROW) as required by VDOT guidelines. The conveyance includes City-owned land directly adjacent to the proposed Avon St. Extended improvements in the following amounts:

Parcel 77E1-1	1,801 square feet
Parcel 77E2-1	356 square feet
Parcel 77E2-3	<u>3,121 square feet</u>
Total Conveyance	5,278 square feet (0.12 acre)

Alternatives: VDOT directs the road design standards and required Right of Ways. For this project to proceed and be constructed, the conveyance must occur.

Budgetary Impact: None.

Recommendation: Public Works Facilities Management Staff recommends approval of the planned Right Of Way conveyance.

Attachments: Plat by Kirk Hughes and Associates; Proposed Ordinance and Deed.

**AN ORDINANCE
TO CONVEY A PORTION OF CITY-OWNED LAND
LOCATED ON AVON STREET EXTENDED IN ALBEMARLE COUNTY
TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION**

WHEREAS, the Commonwealth of Virginia, through the Virginia Department of Transportation (VDOT), owns and controls the roadway known as Avon Street Extended in the County of Albemarle; and

WHEREAS, the City owns parcels of land on Avon Street Extended designated on Albemarle County Tax Maps as Parcels 77E1-1, 77E2-1, and 77E2-3, and wants to construct a new Transit Service facility on said parcels, which will include new turn lanes, installation of curb and gutter, and drainage facilities; and

WHEREAS, VDOT guidelines require the conveyance of a small portion of each of the three (3) above-referenced parcels, as shown on the attached plats dated May 25, 2008, in order to meet the state road design standards, for a total conveyance of 5,278 square feet (0.12 acre) of City-owned land; and

WHEREAS, in accordance with Virginia Code Sec. 15.2-1800(B), a public hearing was held to give the public an opportunity to comment on the conveyance of this land; and

WHEREAS, City staff have reviewed the request and have no objection to the conveyance of said land to VDOT; now, therefore,

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that the Mayor is hereby authorized to execute a deed of conveyance, in form approved by the City Attorney, to convey to the Commonwealth of Virginia (Virginia Department of Transportation) the following described land, shown on the attached three (3) plats dated May 25, 2008, made by Kirk Hughes & Associates:

1. 1,801 square feet of land to be conveyed from Albemarle County Tax Map Parcel 77E1-1;
2. 332 square feet of land (Parcel A), and 24 square feet of land (Parcel B) to be conveyed from Albemarle County Tax Map Parcel 77E2-1; and
3. 3,121 square feet of land to be conveyed from Albemarle County Tax Map Parcel 77E2-3.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: July 7, 2008

Action Required: Ordinance adoption (first of two readings)

Presenter: Francesca Fornari, Assistant City Attorney

Staff Contacts: Francesca Fornari

Title: New Franchise Agreement for Sprint

Background: Sprint Communications Company of Virginia, Inc., has requested renewal of a five-year telecommunications franchise ordinance that will expire on August 4, 2008. Sprint indicates that it would like to maintain its equipment within the City and continue operations, but has no plans to expand or alter the system at this time.

Discussion: The proposed franchise ordinance is the same ordinance language that was approved by City Council on August 4, 2003. This ordinance contains the same terms as the model telecommunications franchise ordinance developed by the City Attorney's Office and used in other franchises granted by the City.

Alternatives: Council may decline to adopt this ordinance.

Budgetary Impact: The proposed franchise has no anticipated budgetary impact. However, the franchise agreement reserves the right to collect the public-rights-of-way use fee to the extent allowed under Virginia law by passage of an ordinance providing for such fee. The fee is charged to consumers, collected by VDOT, and remitted to the City. Previously, Council has declined to adopt such a consumer fee.

Recommendation: Offer the attached franchise ordinance for first reading.

Attachment(s): Proposed Sprint Telecommunications Franchise Ordinance.

SPRINT COMMUNICATIONS COMPANY OF VIRGINIA, INC.
TELECOMMUNICATIONS FRANCHISE

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**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
SPRINT COMMUNICATIONS COMPANY OF VIRGINIA, INC., ITS
SUCCESSORS AND ASSIGNS
TO USE THE STREETS AND OTHER PUBLIC PLACES
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,
FOR A PERIOD OF FIVE (5) YEARS**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that SPRINT COMMUNICATIONS COMPANY OF VIRGINIA, INC. (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant

to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

SECTION 103 DEFINITIONS

103.1 CITY means the City of Charlottesville, Virginia, a municipal corporation.

103.2 COMPANY means Sprint Communications Company of Virginia, Inc., including its successors and assigns.

103.3 DIRECTOR means the Director of Public Works for the City of Charlottesville.

103.4 FACILITY means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

103.5 PATCH means a method of pavement replacement that is temporary in nature.

103.6 PAVEMENT means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be underground in rights-of-way currently owned by Norfolk & Southern Railroad, except at four locations where said equipment, lines, cables or other Facilities shall be

placed below City streets. Any additional installation of equipment, lines, cables or other Facilities shall also be underground unless it shall be determined by the Director as set forth in Article III that it is not feasible to do so.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such installations that have been adopted by the City from time to time.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate. Any additional installation of lines, cable, equipment or other Facilities shall be underground unless it shall be determined by the Director, pursuant to Article III, that it is not feasible to do so.

202.3 INSTALLATION OF OVERHEAD FACILITIES: Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

202.4 FUTURE ORDINANCES: Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 203 INSPECTION BY THE CITY

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

SECTION 206 OBSTRUCTION OF THE PROW

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative overhead, mobilization, material, labor, and equipment related to removing the obstruction.

206.2 NO OBSTRUCTION OF WATER: The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW: Private vehicles of those doing work for the Company in the PROW

must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

SECTION 303 GOOD CAUSE EXCEPTION

303.1 WAIVER: The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

303.2 EMERGENCY WORK: The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;
- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

ARTICLE V

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

502.2 TEMPORARY SURFACING: The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping

according to standards determined by, and with the materials determined by, the Director .

502.3 TIMING: After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

502.4 GUARANTEES: The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

502.6 FAILURE TO RESTORE: If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative overhead, mobilization, material, labor, and equipment related to such restoration.

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative overhead, mobilization, material, labor, and equipment related to such repair.

502.8 DIRECTOR'S STANDARD: All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

601.1 SCOPE OF INDEMNIFICATION: Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, officials and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any

duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;
- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

603.1 The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;

- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before execution of this franchise.

603.2 The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its agents or employees, or a permittee of the City.

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of twenty-five thousand dollars (\$25,000). The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. The Performance Bond shall be maintained at this amount through the term of this franchise.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;
- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance ;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and

- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

704.1 FEE OR PENALTY: The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

704.2 APPEAL: The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account. Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

SECTION 802 RESERVED

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS, INTEREST ON LATE PAYMENTS

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company 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 payments of real estate taxes.

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

SECTION 902 SEVERABILITY

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

SECTION 1002 TREE TRIMMING

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

ARTICLE XII

SECTION 1201 NOTICE

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

To the Company:

Sprint Communications Company of Virginia, Inc.
Attn: Manager, Transactions & Project Services
Mid-Atlantic Region
KSOPHT0101-Z2040
6391 Sprint Parkway
Overland Park, KS 66251-2040

To the City:

City of Charlottesville
Attn: City Manager
605 East Main Street
Charlottesville, VA 22902

All correspondence shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

SECTION 1202 EMERGENCY NOTIFICATION

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

To the Company:

For Demand/Emergency Activity, contact Sprint's "Local Telecommunications Division, Network Operations Center" at 1-888-230-4404, Option 2.

To the City:

Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Judith Mueller, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)
(434) 971-6645 (home)

SECTION 1203 REGISTRATION OF DATA

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;
- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall update all of the above information with the City within fifteen (15) days following its knowledge of any change.

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination;
or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or

commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

ARTICLE XIV

SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use ("IRU") in the Facilities owned by the Company, or any portion thereof, to

any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company’s rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the City in a less favorable manner with respect to any other similarly situated entity or person or user of the City’s Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the ___ day of July, 2008.

Jeanne Cox, Clerk of Council

ACCEPTED: This franchise is accepted, and we agree to be bound by its terms and conditions.

SPRINT COMMUNICATIONS
COMPANY OF VIRGINIA, INC.

By _____

Its _____

Date _____

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: July 7, 2008

Action Required: Ordinance adoption (first of two readings)

Presenter: Francesca Fornari, Assistant City Attorney

Staff Contacts: Francesca Fornari

Title: New Franchise Agreement for nTelos Network

Background: nTelos Network, Inc. (“nTelos”) is a certified telecommunications provider incorporated in Virginia. nTelos seeks a five-year telecommunications franchise in order to maintain approximately 34 miles of fiber optic cable located within the City of Charlottesville. nTelos previously held a telecommunications franchise with the City that has expired.

Discussion: The proposed franchise ordinance is the same ordinance language that was approved by City Council on October 7, 2002. This ordinance contains the same terms as the model telecommunications franchise ordinance developed by the City Attorney’s Office and used in other franchises granted by the City.

Alternatives: Council may decline to adopt this ordinance.

Budgetary Impact: The proposed franchise has no anticipated budgetary impact. However, the franchise agreement reserves the right to collect the public-rights-of-way use fee to the extent allowed under Virginia law by passage of an ordinance providing for such fee. The fee is charged to consumers, collected by VDOT, and remitted to the City. Previously, Council has declined to adopt such a consumer fee.

Recommendation: Offer the proposed ordinance for first reading.

Attachment(s): Proposed nTelos Telecommunications Franchise Ordinance.

NTELOS NETWORK, INC.
TELECOMMUNICATIONS FRANCHISE

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**AN ORDINANCE
GRANTING A TELECOMMUNICATIONS FRANCHISE TO
NTELOS NETWORK, INC., ITS SUCCESSORS AND ASSIGNS
TO USE THE STREETS AND OTHER PUBLIC PLACES
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA
FOR ITS POLE, WIRES, CONDUITS, CABLES AND FIXTURES,
FOR A PERIOD OF FIVE (5) YEARS**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia, that NTELOS NETWORK, Inc. (the “Company”), its successors and assigns, is hereby granted a telecommunications franchise for a period of five (5) years from the effective date hereof be and is hereby authorized and empowered to erect, maintain and operate certain telephone lines and associated equipment, including posts, poles, cables, wires and all other necessary overhead or underground apparatus and associated equipment on, over, along, in, under and through the streets, alleys, highways and other public places of the City of Charlottesville, Virginia (the “City”) as its business may from time to time require; provided that:

ARTICLE I

SECTION 101 PURPOSE AND SCOPE

To provide for the health, safety and welfare of its citizens and to ensure the integrity of its roads and streets and the appropriate use of the Public Rights-of-Way, the City strives to keep the right-of-way under its jurisdiction in a state of good repair and free from unnecessary encumbrances.

Accordingly, the City hereby enacts this Ordinance relating to a telecommunications right-of-way franchise and administration. This Ordinance imposes regulation on the placement and maintenance of Facilities and equipment owned by the Company currently within the City’s Public Rights-of-Way or to be placed therein at some future time. The Ordinance is intended to complement, and not replace, the regulatory roles of both state and federal agencies. Under this Ordinance, when excavating and obstructing the Public Rights-of-Way, the Company will bear financial responsibility for their work to the extent provided herein. Finally, this Ordinance provides for recovery of the City’s reasonable out-of-pocket costs related to the Company’s use of the Public Rights-of-Way, subject to the terms and conditions herein.

SECTION 102 AUTHORITY TO MANAGE THE RIGHT OF WAY

This Ordinance granting a telecommunications franchise is created to manage and regulate the Company’s use of the City’s Public Rights-of-Way along city roads pursuant to the authority granted to the City under Sections 15.2-2015, 56-460, and 56-462(A) of the Virginia Code and other applicable state and federal statutory, administrative and common law.

This Ordinance and any right, privilege or obligation of the City or Company hereunder, shall be interpreted consistently with state and federal statutory, administrative and common law, and such statutory, administrative or common law shall govern in the case of conflict. This Ordinance shall not be interpreted to limit the regulatory and police powers of the City to adopt and enforce other general ordinances necessary to protect the health, safety, and welfare of the public.

SECTION 103 DEFINITIONS

103.1 CITY means the City of Charlottesville, Virginia, a municipal corporation.

103.2 COMPANY means NTELOS NETWORK, Inc., including its successors and assigns.

103.3 DIRECTOR means the Director of Public Works for the City of Charlottesville.

103.4 FACILITY means any tangible asset in the Public Rights-of-Way required to provide utility service, which includes but is not limited to; cable television, electric, natural gas, telecommunications, water, sanitary sewer and storm sewer services.

103.5 PATCH means a method of pavement replacement that is temporary in nature.

103.6 PAVEMENT means any type of improved surface that is within the Public Rights-of-Way including but not limited to any improved surface constructed with bricks, pavers, bituminous, concrete, aggregate, or gravel or some combination thereof.

103.7 PUBLIC RIGHTS-OF-WAY or PROW means the area on, below, or above a public roadway, highway, street, cartway, bicycle lane, and public sidewalk in which the City has an interest, included other dedicated rights-of-way for travel purposes and utility easements of the City, paved or otherwise. This definition does not include a state highway system regulated pursuant to the direction of the Commonwealth Transportation Board.

ARTICLE II

SECTION 201 INITIAL INSTALLATION

The initial installation of equipment, lines, cables or other Facilities by the Company shall be a mixture of overhead and underground in Public Rights-of-Way as depicted in Exhibit A, attached hereto, and as may have been or may hereafter be modified, and incorporated by reference.

SECTION 202 SUBSEQUENT INSTALLATION

202.1 SUBSEQUENT INSTALLATION MADE PURSUANT TO AN APPROVED PROW PLAN:

Additional Facilities installed within the PROW may be placed overhead or underground pursuant to an approved request by the Company made pursuant to Article III, and in accordance with such generally applicable ordinances or regulations governing such

installations that have been adopted by the City from time to time.

202.2 GENERAL PREFERENCE FOR UNDERGROUND FACILITIES: As a matter of policy, the City prefers that the installation of any Facility within the PROW occur underground. Notwithstanding this preference, the City recognizes that in some circumstances the placement of Facilities underground may not be appropriate.

202.3 INSTALLATION OF OVERHEAD FACILITIES: Where a subsequent PROW plan is approved for overhead installation, the Company shall use its existing Facilities, or those of another utility where available. If the PROW plan calls for overhead installation and existing Facilities cannot accommodate the proposed installation, the Company will clearly indicate in the PROW plan its intended placement of new Facilities for the Director's review and consideration pursuant to Article III.

202.4 FUTURE ORDINANCES: Nothing herein shall be construed to limit the authority of the city to adopt an ordinance that will restrict the placement of overhead lines for all utilities using the PROW within a defined area of the City.

202.5 CONDITIONS FOR RELOCATING UNDERGROUND: The Company agrees that if, at some future time, the telephone and other utility lines on the posts, poles, and other overhead apparatus upon which the Company has placed some or all of its Facilities in the City's PROWs are relocated underground, the Company will also, at such time, relocate its Facilities on those posts, poles, and other overhead apparatus underground at its expense. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 203 INSPECTION BY THE CITY

The Company shall make the work-site available to the City and to all others as authorized by law for inspection at all reasonable times, during the execution of, and upon completion of, all work conducted pursuant to this Ordinance.

SECTION 204 AUTHORITY OF THE CITY TO ORDER CESSATION OF EXCAVATION

At the time of inspection, or any other time as necessary, the City may order the immediate cessation and correction of any work within the Public Rights-of-Way which poses a serious threat to the life, health, safety or well being of the public.

SECTION 205 LOCATION OF POSTS, POLES, CABLES AND CONDUITS

In general, all posts, poles, wires, cables and conduits which the Company places within the Public Rights-of-Way pursuant to this Ordinance shall in no way permanently obstruct or

interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the Public Rights-of-Way within the City of Charlottesville.

SECTION 206 OBSTRUCTION OF THE PROW

Generally, any obstruction of the PROW is limited to the manner clearly specified within an approved PROW plan.

206.1 REMOVAL OF OBSTRUCTIONS: Obstructions of the PROW not authorized by an approved PROW plan shall be promptly removed by the Company upon receipt of notice from the City. The City's notice of the Obstruction will include a specified reasonable amount of time determined by the Director for the Company's removal of the obstruction, given the location of the obstruction and its potential for an adverse effect on the public's safety and the public's use of the PROW. If the Company has not removed its obstruction from the PROW within the time designated within the notice, the City, at its election, will make such removal and the Company shall pay to the City its reasonable costs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the removal and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to administrative, overhead mobilization, material, labor, and equipment related to removing the obstruction.

206.2 NO OBSTRUCTION OF WATER: The Company shall not obstruct the PROW in a manner that interferes with the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterway.

206.3 PARKING, LOADING AND UNLOADING OF VEHICLES SHALL NOT OBSTRUCT THE PROW: Private vehicles of those doing work for the Company in the PROW must be parked in a manner that conforms to the City's applicable parking regulations. The loading or unloading of trucks must be done in a manner that will not obstruct normal traffic within the PROW, or jeopardize the safety of the public who use the PROW.

ARTICLE III

SECTION 301 ADMINISTRATION OF THE PUBLIC RIGHTS OF WAY

The Director is the principal City official responsible for the administration of this Ordinance granting a telecommunications franchise to the Company and any of its PROW Plans. The Director may delegate any or all of the duties hereunder to an authorized representative.

SECTION 302 SUBMISSION OF PROW PLAN

At least thirty (30) days before beginning any installation, removal or relocation of underground or overhead Facilities, the Company shall submit detailed plans of the proposed action to the Director for his or her review and approval, which approval shall not unreasonably be withheld, conditioned, or delayed.

SECTION 303 GOOD CAUSE EXCEPTION

303.1 WAIVER: The Director, at his or her sole judgment, is authorized to waive the thirty (30) day requirement in Section 302 for good cause shown.

303.2 EMERGENCY WORK: The Company shall immediately notify the Director of any event regarding its facilities that it considers to be an emergency. The Company will proceed to take whatever actions are necessary to respond to the emergency, or as directed by the Director.

If the City becomes aware of an emergency regarding the Company's facilities, the City will attempt to contact the Company's emergency representative as indicated in Section 1202. In any event, the City shall take whatever action it deemed necessary by the Director to make an appropriate and reasonable response to the emergency. The costs associated with the City's respond shall be borne by the person whose facilities occasioned the emergency.

SECTION 304 DECISION ON PROW PLAN BY THE DIRECTOR

304.1 DECISION: The Director, or his or her authorized representative, shall, within thirty (30) days, either approve the Company's plans for proposed action as described in Section 302 or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom officials of the Department of Public Works can communicate on all matters relating to equipment installation and maintenance.

304.2 APPEAL: Upon written request within thirty (30) days of the Director's decision, the Company may have the denial of a PROW Plan reviewed by the City Manager. The City Manager will schedule its review of the Director's decision within forty-five (45) days of receipt of such a request. A decision by the City Manager will be in writing and supported by written findings establishing the reasonableness of its decision.

SECTION 305 MAPPING DATA

Upon completion of each project within the Public Rights-of-Way pursuant to this Ordinance, the Company shall provide to the City such information necessary to maintain its records, including but not limited to:

- (a) location and elevation of the mains, cables, conduits, switches, and related equipment and other Facilities owned by the Company located in the PROW, with

the location based on (i) offsets from property lines, distances from the centerline of the Public Rights-of-Way, and curb lines; (ii) coordinates derived from the coordinate system being used by the City; or (iii) any other system agreed upon by the Company and the City;

- (b) the outer dimensions of such Facilities; and
- (c) a description of above ground appurtenances.

ARTICLE IV

SECTION 401 COMPLIANCE WITH ALL LAW AND REGULATIONS

Obtaining this telecommunications franchise shall in no way relieve the Company of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by any applicable state or federal rule, law or regulation. The Company shall comply with and fulfill all generally applicable laws and regulations, including ordinances, regulations and requirements of the City, regarding excavations and any other work in or affecting the Public Rights-of-Way. The Company shall perform all work in conformance with all applicable codes and established rules and regulations, and it is responsible for all work conducted by the Company, another entity or person acting on its behalf pursuant to this Ordinance in the Public Rights-of-Way.

ARTICLE V

SECTION 501 RELOCATION OF COMPANY FACILITIES WITHIN THE PUBLIC RIGHTS-OF WAY

Upon written notice from the Director of a planned and authorized improvement or alteration of City sidewalks, streets or other property, or of a proposed relocation of any City-owned utilities that necessitate relocation of some or all of the Facilities owned by the Company and lines to accommodate same, the Company shall relocate at its own expense any such Facilities within one hundred eighty (180) days of receipt of the notice. At Company's request, the city may consent to a longer period, such consent not to be unreasonably or discriminatorily withheld, conditioned or delayed. Notwithstanding the foregoing, the City shall reimburse Company for any such relocation expense if such reimbursement is required by Section 56-468.2 of the Code of Virginia, or other applicable law.

SECTION 502 RIGHTS-OF WAY PATCHING AND RESTORATION

502.1 RESTORATION STANDARD: Where the Company disturbs or damages the Public Rights-of-Way, the Director shall have the authority to determine the manner and extent of the restoration of the Public Rights-of-Way, and may do so in written procedures of general application or on a case-by-case basis. In exercising this authority, the Director will

consult with any state or federal standards for rights-of-way restoration and shall be further guided by the following considerations:

- (a) the number, size, depth and duration of the excavations, disruptions or damage to the Public Rights-of-Way;
- (b) the traffic volume carried by the Public Rights-of-Way; the character of the neighborhood surrounding the right-of-way;
- (c) the pre-excavation condition of the Public Rights-of-Way and its remaining life expectancy;
- (d) the relative cost of the method of restoration to the Company balanced against the prevention of an accelerated deterioration of the right-of-way resulting from the excavation, disturbance or damage to the Public Rights-of-Way; and
- (e) the likelihood that the particular method of restoration would be effective in slowing the depreciation of the Public Rights-of-Way that would otherwise take place.

502.2 TEMPORARY SURFACING: The Company shall perform temporary surfacing patching and restoration including, backfill, compaction, and landscaping according to standards determined by, and with the materials determined by, the Director.

502.3 TIMING: After any excavation by the Company pursuant to this Ordinance, the patching and restoration of the Public Rights-of-Way must be completed promptly and in a manner determined by the Director.

502.4 GUARANTEES: The Company guarantees its restoration work and shall maintain it for twenty-four (24) months following its completion. The previous statement notwithstanding, the Company will guarantee and maintain plantings and turf for twelve (12) months. During these maintenance periods, the Company shall, upon notification by the City, correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of notice from the Director, within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure. Notwithstanding the foregoing, the Company's guarantees set forth hereunder concerning restoration and maintenance, shall not apply to the extent another company, franchisee, licensee, permittee, other entity or person, or the City disturbs or damages the same area, or a portion thereof, of the Public Rights-of-Way.

502.5 DUTY TO CORRECT DEFECTS: The Company shall correct defects in patching, or restoration performed by it or its agents. Upon notification from the City, the Company shall correct all restoration work to the extent necessary, using the method determined by the Director. Such work shall be completed after receipt of the notice from the Director

within a reasonably prompt period, with consideration given for days during which work cannot be done because of circumstances constituting force majeure.

502.6 FAILURE TO RESTORE: If the Company fails to restore the Public Rights-of-Way in the manner and to the condition required by the Director pursuant to Section 502.5, or fails to satisfactorily and timely complete all restoration required by the Director pursuant to the foregoing, the City shall notify the Company in writing of the specific alleged failure or failures and shall allow the Company at least ten (10) days from receipt of the notice to cure the failure or failures, or to respond with a plan to cure. In the event that the Company fails to cure, or fails to respond to the City's notice as provided above, the City may, at its election, perform the necessary work and the Company shall pay to the City its reasonable costs for such restoration within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within the thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such restoration.

502.7 DAMAGE TO OTHER FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY: The Company shall be responsible for the cost of repairing any Facilities existing within the Public Rights-of-Way that it or the Facilities owned by the Company damage. If the Company damages the City's Facilities within the Public Rights-of-Way, such as, but not limited to, culverts, road surfaces, curbs and gutters, or tile lines, the Company shall correct the damage within a prompt period after receiving written notification from the City. If the Company does not correct the City's damaged Facilities pursuant to the foregoing, the City may make such repairs as necessary and charge all of the reasonable costs of such repairs within thirty (30) days of billing accompanied by an itemized statement of the City's reasonable costs. If payment is not received by the City within such thirty (30) day period, the City Attorney may bring an action to recover the reasonable costs of the restoration and reasonable attorney's fees in a court of competent jurisdiction pursuant to Section 56-467 of the Virginia Code. Reasonable costs may include, but are not limited to, administrative, overhead mobilization, material, labor, and equipment related to such repair.

502.8 DIRECTOR'S STANDARD: All determinations to be made by the Director with respect to the manner and extent of restoration, patching, repairing and similar activities under the franchise granted by this Ordinance, shall be reasonable and shall not be unreasonably conditioned, withheld, or delayed. The Company may request additional time to complete restoration, patching, repair, or other similar work as required under the franchise granted by this Ordinance, and the Director shall not unreasonably withhold, condition, or delay consent to such requests.

ARTICLE VI

SECTION 601 INDEMNIFICATION AND LIABILITY

601.1 SCOPE OF INDEMNIFICATION: Subject to the following, the Company agrees and binds itself to indemnify, keep and hold the City council members, and its employees free and harmless from liability on account of injury or damage to persons, firms or corporations or property growing out of or directly or indirectly resulting from:

- (a) the Company's use of the streets, alleys, highways, sidewalks, rights-of-way and other public places of the City pursuant to the franchise granted by this Ordinance;
- (b) the acquisition, erection, installation, maintenance, repair, operation and use of any poles, wires, cables, conduits, lines, manholes, facilities and equipment by the Company, its authorized agents, subagents, employees, contractors or subcontractors; or
- (c) the exercise of any right granted by or under the franchise granted by this Ordinance or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under the franchise granted by this Ordinance.

601.2 DUTY TO INDEMNIFY, DEFEND AND HOLD HARMLESS: If a suit arising out of subsection (a), (b), (c) of Section 601.1, claiming such injury, death, or damage shall be brought or threatened against the City, either independently or jointly with the Company, the Company will defend, indemnify and hold the City harmless in any such suit, at the cost of the Company, provided that the City promptly provides written notice of the commencement or threatened commencement of the action or proceeding involving a claim in respect of which the City will seek indemnification hereunder. The Company shall be entitled to have sole control over the defense through counsel of its own choosing and over settlement of such claim provided that the Company must obtain the prior written approval of City of any settlement of such claims against the City, which approval shall not be unreasonably withheld or delayed more than thirty (30) days. If, in such a suit, a final judgment is obtained against the City, either independently or jointly with the Company, the Company will pay the judgment, including all reasonable costs, and will hold the City harmless therefrom.

SECTION 602 WAIVER BY THE CITY

The City waives the applicability of these indemnification provisions in their entirety if it:

- (a) elects to conduct its own defense against such claim;

- (b) fails to give prompt notice to the Company of any such claim such that the Company's ability to defend against such claim is compromised;
- (c) denies approval of a settlement of such claim for which the Company seeks approval; or
- (d) fails to approve or deny a settlement of such claim within thirty (30) days of the Company seeking approval.

SECTION 603 INSURANCE

603.1 The Company shall also maintain in force a comprehensive general liability policy in a form satisfactory to the City Attorney, which at minimum must provide:

- (a) verification that an insurance policy has been issued to the Company by an insurance company licensed to do business in the State of Virginia, or a form of self insurance acceptable to the City Attorney;
- (b) verification that the Company is insured against claims for personal injury, including death, as well as claims for property damage arising out of (i) the use and occupancy of the Public Rights-of-Way by the Company, its agents, employees and permittees, and (ii) placement and use of Facilities owned by the Company in the Public Rights-of-Way by the Company, its officers, agents, employees and permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (c) verification that the City Attorney will be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (d) verification that comprehensive liability coverage, automobile liability coverage, workers compensation and umbrella coverage established by the City Attorney in amounts sufficient to protect the City and the public and to carry out the purposes and policies of this Ordinance; and
- (e) verification that the policy has a combined single limit coverage of not less than two million dollars (\$2,000,000).

The policy shall include the City as an additional insured party, and the Company shall provide the City Attorney with a certificate of such coverage before beginning installation of any lines, cable or equipment.

603.2 The Company shall also require similar indemnification and insurance coverage from any contractor working on its behalf in the public right-of-way.

SECTION 604 NEGLIGENCE AND INTENTIONAL ACTS

Nothing herein contained shall be construed to render the Company liable for or obligated to indemnify the City, its agents, or employees, for the negligence or intentional acts of the City, its Council members, its Board, its agents or employees, or a permittee of the City.

ARTICLE VII

SECTION 701 GENERAL REQUIREMENT OF A PERFORMANCE BOND

Prior to the Effective Date of this Ordinance, the Company has deposited with the City a Performance Bond made payable to the city in the amount of one hundred thousand dollars (\$100,000). The Performance Bond is to guarantee that the project is done in a proper manner without damage to the PROW. The bond shall be written by a corporate surety acceptable to the City and authorized to do business in the Commonwealth of Virginia. Upon completion of construction of the Facilities, the Company may reduce the Performance Bond to the amount of twenty-five thousand dollars (\$25,000) and made payable to the City, and the Performance Bond shall be maintained at this amount through the term of this Agreement.

SECTION 702 CHANGED AMOUNT OF THE PERFORMANCE BOND

At any time during the Term, the City may, acting reasonably, require or permit the Company to change the amount of the Performance Bond if the City finds that new risk or other factors exist that reasonably necessitate or justify a change in the amount of the Performance Bond. Such new factors may include, but not be limited to, such matters as:

- (a) material changes in the net worth of the Company;
- (b) changes in the identity of the Company that would require the prior written consent of the City;
- (c) material changes in the amount and location of Facilities owned by the Company;
- (d) the Company's recent record of compliance with the terms and conditions of this Ordinance; and
- (e) material changes in the amount and nature of construction or other activities to be performed by the Company pursuant to this Ordinance.

SECTION 703 PURPOSE OF PERFORMANCE BOND

The Performance Bond shall serve as security for:

- (a) the faithful performance by the Company of all terms, conditions and obligations of this Ordinance;
- (b) any expenditure, damage or loss incurred by the City occasioned by the Company's failure to comply with all rules, regulations, orders, permits and other directives of the City issued pursuant to this Ordinance;
- (c) payment of compensation required by this Ordinance;
- (d) the payment of premiums for the liability insurance required pursuant to this Ordinance;
- (e) the removal of Facilities owned by the Company from the Streets at the termination of the Ordinance, at the election of the City, pursuant to this Ordinance;
- (f) any loss or damage to the Streets or any property of the City during the installation, operation, upgrade, repair or removal of Facilities by the Company;
- (g) the payment of any other amounts that become due to the City pursuant to this Ordinance or law;
- (h) the timely renewal of any letter of credit that constitutes the Performance Bond; and
- (i) any other costs, loss or damage incurred by the City as a result of the Company's failure to perform its obligations pursuant to this Ordinance.

SECTION 704 FEES OR PENALTIES FOR VIOLATIONS OF THE ORDINANCE

704.1 FEE OR PENALTY: The Company shall be subject to a fee or a penalty for violation of this Ordinance as provided for in applicable law.

704.2 APPEAL: The Company may, upon written request within thirty (30) days of the City's decision to assess a fee or penalty and for reasons of good cause, ask the City to reconsider its imposition of a fee or penalty pursuant to this Ordinance unless another period is provided for in applicable law. The City shall schedule its review of such request to be held within forty-five (45) days of receipt of such request from the Company. The City's decision on the Company's appeal shall be in writing and supported by written findings establishing the reasonableness of the City's decision. During the pendency of the appeal before the City or any subsequent appeal thereafter, the Company shall place any such fee or penalty in an interest-bearing escrow account.

Nothing herein shall limit the Company's right to challenge such assessment or the City's decision on appeal, in a court of competent jurisdiction.

ARTICLE VIII

SECTION 801 COMPENSATION/PROW USE FEE.

The City reserves the right to impose at any time on the Company consistent with Section 253(c) of the Communications Act of 1934, as amended:

- (a) a PROW Use Fee in accordance with Section 56-468.1(G) of the Code of Virginia, and/or
- (b) any other fee or payment that the City may lawfully impose for the occupation and use of the Streets.

The Company shall be obligated to remit the PROW Use Fee and any other lawful fee enacted by the City, so long as the City provides the Company and all other affected certificated providers of local exchange telephone service appropriate notice of the PROW Use Fee as required by Section 56-468.1(G) of the Code of Virginia. If the PROW Use Fee is eliminated, discontinued, preempted or otherwise is declared or becomes invalid, the Company and the City shall negotiate in good faith to determine fair and reasonable compensation to the City for use of the Streets by the Company for Telecommunications.

SECTION 802 FRANCHISING COSTS

Prior to the execution of this Ordinance, the City incurred costs for the services of third parties (including, without limitation, attorneys and other consultants) in connection with the award of this telecommunications Franchise. Within thirty (30) days after receipt from the City of an invoice for such costs, the Company shall pay at such time and in such manner as the City shall specify to the City or, at the direction of the City, to third parties an amount equal to the costs the City incurs for the services of such third parties. Payment by Company of such franchising costs shall not in any way be offset nor deducted from applicable PROW use fees required pursuant to Section 801 herein. In the event of any renewal, renegotiations, transfer, amendment or other modification of this Ordinance or the Franchise, the Company will reimburse the City in the same manner for such third party costs, if any are incurred. The Company's obligations under this Section shall not exceed two thousand five hundred dollars (\$2500.00).

SECTION 803 NO CREDITS OR DEDUCTIONS

The compensation and other payments to be made pursuant to Article VIII: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by Section 56-468.1 of the Code of Virginia, shall be in addition to any and all taxes or other fees or charges that the Company shall be required to pay to the City or to any state or federal agency or authority, all of which shall be separate and distinct obligations of the Company.

**SECTION 804 REMITTANCE OF COMPENSATION/LATE PAYMENTS,
INTEREST ON LATE PAYMENTS**

(1) If any payment required by this Ordinance is not actually received by the City on or before the applicable date fixed in this Ordinance, or (2), in the event the City adopts an ordinance imposing a PROW Use Fee, if such Fee has been received by the Company from its customers, and has not been actually received by the City on or before the applicable date fixed in this Ordinance or thirty (30) days after receipt of the PROW Use Fee from its customers, whichever is later, then the Company 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 payments of real estate taxes.

ARTICLE IX

SECTION 901 RESERVATION OF ALL RIGHTS AND POWERS

The City reserves the right by ordinance or resolution to establish any reasonable regulations for the convenience, safety, health and protection of its inhabitants under its police powers, consistent with state and federal law. The rights herein granted are subject to the exercise of such police powers as the same now are or may hereafter be conferred upon the City. Without limitation as to the generality of the foregoing the City reserves the full scope of its power to require by ordinance substitution of underground service for overhead service, or the transfer of overhead service from the front to the rear of property whenever reasonable in all areas in the City and with such contributions or at such rates as may be allowed by law.

Notwithstanding anything herein to the contrary, nothing herein shall be construed to extend, limit or otherwise modify the authority of the City preserved under Sections 253 (b) and (c) of the Communications Act of 1934, as amended. Nothing herein shall be construed to limit, modify, abridge or extend the rights of the Company under the Communications Act of 1934, as amended.

SECTION 902 SEVERABILITY

If any portion of this Ordinance is for any reason held to be invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

ARTICLE X

SECTION 1001 MAINTENANCE OBLIGATION

The Company will maintain the poles, wires, cable, conduits, lines, manholes, equipment and other Facilities it owns within the City's PROW in good order and operating condition throughout the term of the franchise granted by this Ordinance.

SECTION 1002 TREE TRIMMING

Should the Company install any overhead lines, it shall have the authority to trim trees upon or overhanging the streets, alleys, walkways or Public Rights-of-Way to prevent the branches of such trees from interfering with its lines or other Facilities. However, all such trimmings shall be performed in a safe and orderly manner under the general direction of the Director of Public Works or his or her designee and in compliance with the pruning standards of the National Arborists Association as currently in effect.

ARTICLE XI

SECTION 1101 INITIAL TERM OF TELECOMMUNICATIONS FRANCHISE

The term of the franchise granted by this Ordinance shall be for a period of five (5) years from the effective date of this Ordinance.

SECTION 1102 APPLICATION FOR NEW TELECOMMUNICATIONS FRANCHISE

If the Company wishes to maintain its equipment within the City and to continue the operation of the system beyond the term of the franchise granted by this Ordinance, it shall give written notice to the City at least one hundred twenty (120) days before expiration of the franchise granted by this Ordinance, stating that it wishes to apply for a new franchise. Such application shall include a report of the location of the Facilities owned by the Company within the City's PROW, and a statement as to whether the Company has complied with the provisions of this Ordinance.

SECTION 1103 OPERATION OF FACILITIES OWNED BY THE COMPANY WHILE RENEWAL IS PENDING

Upon a timely request by the Company prior to the expiration of its initial franchise, the Company shall be permitted to continue operations of the Facilities owned by the Company within the City under the terms of the franchise granted by this Ordinance until the City acts. Nothing herein shall be construed to grant the Company a perpetual franchise interest.

ARTICLE XII

SECTION 1201 NOTICE

All notices, except for in cases of emergencies, required pursuant to the franchise granted by this Ordinance shall be in writing and shall be mailed or delivered to the following address:

To the Company:
NTELOS NETWORK, Inc.
Attn: OSP Const. Mgr.
1524 New Hope Road
Waynesboro, VA 22980

To the City:
City of Charlottesville
Attn: City Manager
605 East Main Street
Charlottesville, VA 22902

All correspondences shall be by registered mail, certified mail or regular mail with return receipt requested; and shall be deemed delivered when received or refused by the addressee. Each Party may change its address above by like notice.

SECTION 1202 EMERGENCY NOTIFICATION

Notices required pursuant to Section 303.2 shall be made orally and by facsimile to the following:

To the Company:

To the City:

Gas Dispatchers
(434) 970-3800 (office)
Emergency (434)293-9164 (leaks)
(434) 970-3817 (facsimile)

Judith Mueller, Director of Public Works
(434) 970-3301 (office)
(434) 970-3817 (facsimile)
(434) 971-6645 (home)

SECTION 1203 REGISTRATION OF DATA

The Company, including any subleasee or assigns, must keep on record with the City the following information:

- (a) Name, address and e-mail address if applicable, and telephone and facsimile numbers;

- (b) Name, address and e-mail address if applicable, and telephone and facsimile numbers of a local representative that is available for consultation at all times. This information must include how to contact the local representative in an emergency; and
- (c) A certificate of insurance as required under Article VI, Section 603 of this telecommunications franchise, and a copy of the insurance policy.

The Company shall keep update all of the above information with the City within fifteen (15) days following its knowledge of any change.

ARTICLE XIII

SECTION 1301 TERMINATION OF TELECOMMUNICATIONS FRANCHISE

The franchise granted by this Ordinance may be terminated:

- (a) by the Company, at its election and without cause, by written notice to the City at least sixty (60) days prior to the effective date of such termination; or
- (b) by either the Company or the City, after thirty (30) days written notice to the other party of the occurrence or existence of a default of the franchise granted by this Ordinance, if the defaulting party fails to cure or commence good faith efforts to cure, such default within sixty (60) days after delivery of such notice.

Notwithstanding the provisions of this Section, the terms and conditions of the franchise granted by this Ordinance pertaining to indemnification shall survive a termination under this Section.

ARTICLE XIV

SECTION 1401 REMOVAL OF FACILITIES FROM THE PUBLIC RIGHTS-OF-WAY

The Company shall remove all Facilities owned by the Company from the streets, alleys and public places of the City at the expense of the Company within six (6) months after the termination, abandonment, or expiration of this franchise granted by this Ordinance, or by such reasonable time to be prescribed by the City Council, whichever is later. No such removal will be required while any renewal requests as provided for in Section 1102 and Section 1103, are pending before the City. If such renewal request is denied, the six (6) month period provided above shall commence on the date of denial or expiration, whichever is later. The City reserves the right to waive this requirement, as provided for in Section 1402 herein. The City shall grant the Company access to the Public Rights-of-Way in order to remove its telecommunications Facilities owned by the Company pursuant to this paragraph.

SECTION 1402 ABANDONMENT OF FACILITIES OWNED BY THE COMPANY IN THE PUBLIC RIGHTS-OF-WAY

The telecommunications Facilities owned by the Company may be abandoned without removal upon request by the Company and approval by the City. This Section survives the expiration or termination of this franchise granted by this Ordinance.

ARTICLE XV

SECTION 1501 PRIOR WRITTEN CONSENT FOR ASSIGNMENT

The franchise granted by this Ordinance shall not be assigned or transferred without the expressed written approval of the City, which shall not be unreasonably or discriminatorily conditioned, withheld or delayed.

In addition, the City agrees that nothing in this Ordinance shall be construed to require Company to obtain approval from the City in order to lease any Facilities owned by the Company or any portion thereof in, on, or above the PROW, or grant an indefeasible right of use (“IRU”) in the Facilities owned by the Company, or any portion thereof, to any entity or person. The lease or grant of an IRU in such Facilities owned by the Company, or any portion or combination thereof, shall not be construed as the assignment or transfer of any franchise rights granted under this Ordinance.

SECTION 1502 SUCCESSORS AND ASSIGNS

Notwithstanding Section 1501, the Company may assign, transfer, or sublet its rights, without the consent of the City, to any person or entity that controls, is controlled by or is under common control with the Company, any company or entity with which or into which the Company may merge or consolidate, to any lender of the Company provided the City is advised of the action prior to enactment. Any successor(s) of the Company shall be entitled to all rights and privileges of this franchise granted by this Ordinance and shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed.

ARTICLE XVI

SECTION 1601 NONEXCLUSIVE FRANCHISE

Nothing in the franchise granted by this Ordinance shall be construed to mean that this is an exclusive franchise, as the City Council reserves the right to grant additional telecommunications franchises to other parties.

ARTICLE XVII

SECTION 1701 ALL WAIVERS IN WRITING AND EXECUTED BY THE PARTIES

Subject to the foregoing, any waiver of the franchise granted by this Ordinance or any of its provisions shall be effective and binding upon the Parties only if it is made in writing and duly signed by the Parties.

SECTION 1702 NO CONSTRUCTIVE WAIVER RECOGNIZED

If either Party fails to enforce any right or remedy available under the franchise granted by this Ordinance, that failure shall not be construed as a waiver of any right or remedy with respect to any breach or failure by the other Party. Nothing herein shall be construed as a waiver of any rights, privileges or obligations of the City or the Company, nor constitute a waiver of any remedies available at equity or at law.

ARTICLE XVIII

SECTION 1801 NO DISCRIMINATION

The Company's rights, privileges and obligations under the franchise granted by this Ordinance shall be no less favorable than those granted by the City to and shall not be interpreted by the City in a less favorable manner with respect to any other similarly situated entity or person or user of the City's Public Rights-of-Way.

ARTICLE XIX

SECTION 1901 FORCE MAJEURE

Neither the Company nor the City shall be liable for any delay or failure in performance of any part of the franchise granted by this Ordinance from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations embargoes, epidemics, terrorist acts, riots insurrections, fires,

explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, or unusually severe weather conditions.

ARTICLE XX

SECTION 2001 EFFECTIVE DATE

This Ordinance shall be effective upon its passage.

Adopted by the Council of the City of Charlottesville on the 21st day of July, 2008.

Jeanne Cox, Clerk of Council



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

Agenda Date: July 7, 2008

Action Required: Ordinance adoption (first of two readings)

Presenter: Francesca Fornari, Assistant City Attorney

Staff Contacts: Francesca Fornari

Title: New Franchise Agreement for Martha Jefferson Hospital

Background: Martha Jefferson Hospital (MJH) has requested renewal of a five-year franchise agreement to allow it to continue to operate its fiber optic cable connection within the City's public rights-of-way from Locust Avenue to the Rivanna River during its transition to the Pantops location in Albemarle County. On July 7, 2003 City Council approved a five-year telecommunications franchise for MJH.

Discussion: The route begins at 459 Locust Avenue and continues south on 10th street, NE, to Little High Street, then continues east to 11th Street, NE, then continues south to East Market Street, then continues east to Riverview Avenue and then through Riverview Park and across the Rivanna River. The end point of the fiber optic cable is at Peter Jefferson Place in Pantops in Albemarle County. MJH is the sole user of the cable. As part of the 2003 franchise agreement, MJH furnished and installed a fiber optic cable to run from the City parks administration building to the Meadowcreek Golf Course pro shop (approximately 2000 feet in length) at a cost of about \$18,000.

The proposed MJH franchise ordinance is identical to the prior franchise agreement, except that it removes the requirement to install the City fiber optic line since that was completed in 2003. This franchise agreement is based on the City's model telecommunications franchise ordinance and is very similar to the nTelos and Sprint agreements, except for a few provisions which differ because MJH is not a certified provider of telecommunications services and therefore not subject to certain state laws. The MJH franchise does contain the same requirements governing the use of the public right-of-way, insurance and bonding, etc.

Alternatives: Council may decline to adopt this ordinance.

Budgetary Impact: The proposed franchise has no anticipated budgetary impact.

Recommendation: Offer the attached franchise ordinance for first reading.

Attachment(s): Letter from Martha Jefferson Hospital; Drawing of Route; Proposed Martha Jefferson Hospital Telecommunications Franchise Ordinance.

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date: July 7, 2008

Action Required: Ordinance adoption (first of two readings)

Presenter: Francesca Fornari, Assistant City Attorney

Staff Contacts: Francesca Fornari

Title: Government ownership and nonconforming status under the Zoning Code

Background: The addition of the word “acquisition” to Division 5, section 34-81(c) of the zoning ordinance (Compliance and Enforcement) is proposed.

Discussion: This zoning ordinance amendment was the subject of a joint public hearing with the Planning Commission on June 10, 2008. The Planning Commission recommended in a unanimously approved motion that Council adopt the amendment, but changed the proposed language from “ownership” to “acquisition.”

Alternatives: Council may decline to adopt this ordinance.

Budgetary Impact: The proposed amendment has no anticipated budgetary impact.

Recommendation: Staff recommends that section 34-81(c) of the zoning ordinance be amended to add the word “acquisition.”

Attachment(s):

- A proposed ordinance amending 34-81(c)
- A memo dated June 2, 2008 to the Planning Commission and City Council

**AN ORDINANCE
AMENDING AND REORDAINING ARTICLE 1 (Administration),
DIVISION 5 (Compliance and Enforcement)
OF THE CHARLOTTESVILLE CITY CODE, 1990, AS AMENDED,
RELATING TO COMPLIANCE AND ENFORCEMENT OF THE ZONING
ORDINANCE.**

BE IT ORDAINED by the Council of the City of Charlottesville, Virginia that Section 34-81 of Article I of Chapter 34 of the Charlottesville City Code, as amended, is hereby amended and reordained, to read as follows:

DIVISION 5. COMPLIANCE AND ENFORCEMENT

Sec. 34-81. Compliance with chapter.

(a) The regulations set forth in this chapter shall be considered the minimum requirements to protect public health, safety, comfort, prosperity and general welfare, and to provide a remedy for existing conditions that are detrimental thereto.

(b) No land, building, or structure shall be erected, converted, enlarged, altered, used or occupied, and no building or structure shall hereafter be located, erected, constructed, reconstructed, altered, repaired or moved except in conformity with the regulations specified within this zoning ordinance.

(c) No lot or parcel shall be reduced or diminished in area such that required yard or other spaces shall be smaller than prescribed by this zoning ordinance. This provision shall not preclude the construction of a residence on a lot of record existing before January 21, 1958. Notwithstanding the foregoing, any lot, parcel, building or structure originally established in conformity with city regulations, which is later placed in violation thereof by or on account of the acquisition, purchase or condemnation of a portion thereof by an agency of the federal, state or local government possessing the power of eminent domain shall not be considered nonconforming.



**OFFICE OF THE CITY ATTORNEY
MEMORANDUM**

TO: Planning Commission
CC: City Council
FROM: Francesca Fornari, Assistant City Attorney
Missy Creasy, Planning Manager
DATE: June 2, 2008
RE: Government ownership and nonconforming status; Amendment to 34-81(C) of the zoning ordinance

A minor change to Division 5 of the zoning ordinance, Compliance and Enforcement, is proposed. The entire division is provided below, with one new word proposed to be added to subsection (c): 'ownership'.

As it is written now, if the government purchases or condemns a portion of someone's property, and a zoning violation occurs as a result, the property owner will still enjoy conforming status. However, if the property is obtained by the government through other means (e.g. gift, devise, bequest) and a zoning violation occurs, the property owner is not afforded conforming status. Adding the general concept of government ownership to the Code will allow owners to enjoy conforming status regardless of the means by which the government has obtained the property (gift, purchase, devise, bequest, condemnation, or otherwise).

The impetus for this change to the Code is the Meadow Creek Restoration Project, for which funding by the Army Corps of Engineers has been approved to conduct a significant "natural stream design" restoration project on a degraded 7,000 foot portion of Meadow Creek. It is important to make this change to the zoning code now because of the federal funds component. The project will improve water quality and enhance habitat for wildlife by addressing erosion and sedimentation issues and establishing a healthy forested buffer along the stream.

Part of the project involves adding private property adjacent to Meadow Creek to the City park system, so that the project scope includes a critical part of Meadow Creek necessary to achieve the restoration goals. The property owners wish to participate in this project by donating a portion of their parcel to be added to the City park system and undergo stream restoration. In order to participate, the property owners need to maintain their conforming status under the zoning code. In this particular case, it means being able to maintain their current density despite giving away a portion of the land the DUA

calculation is based on. In other cases, it could mean being able to maintain current setbacks, etc.

While the immediate driver of this change is the Meadow Creek Restoration Project, the addition of government 'ownership' to the code will function as an incentive to other property owners to participate in city projects and meet public needs voluntarily, through gift for example.

If there are any questions or concerns, please do not hesitate to contact either of us.

DIVISION 5. COMPLIANCE AND ENFORCEMENT

Sec. 34-81. Compliance with chapter.

(a) The regulations set forth in this chapter shall be considered the minimum requirements to protect public health, safety, comfort, prosperity and general welfare, and to provide a remedy for existing conditions that are detrimental thereto.

(b) No land, building, or structure shall be erected, converted, enlarged, altered, used or occupied, and no building or structure shall hereafter be located, erected, constructed, reconstructed, altered, repaired or moved except in conformity with the regulations specified within this zoning ordinance.

(c) No lot or parcel shall be reduced or diminished in area such that required yard or other spaces shall be smaller than prescribed by this zoning ordinance. This provision shall not preclude the construction of a residence on a lot of record existing before January 21, 1958. Notwithstanding the foregoing, any lot, parcel, building or structure originally established in conformity with city regulations, which is later placed in violation thereof by or on account of the ownership, purchase or condemnation of a portion thereof by an agency of the federal, state or local government possessing the power of eminent domain shall not be considered nonconforming.

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



Agenda Date:	July 7, 2008
Action Required:	Yes (First reading of ordinance)
Presenter:	James E. Tolbert, AICP, Director
Staff Contacts:	James E. Tolbert
Title:	Affordability Criteria for Water and Sewer Connection Fees

Background: At your meeting last month when you adopted the new utility rate ordinance, you agreed that houses meeting affordability criteria would be exempt from the new increased water and sewer connection (facility) fees, and would continue to pay the old fees. That was done with the understanding that at the July 7th meeting, we would present language that would define affordability for the terms of this ordinance.

Discussion: Our research shows that the few communities that charge a reduced fee for affordable units tie it to those that are constructed either with financial or other participation by the local government, are done to satisfy a requirement for affordability by the local government or in rare cases, happen to be constructed at affordable prices or rental rates by a developer who has not involved the local government in any way.

All of the City's current definitions for affordability are based on area median income and VHDA loan program maximum sales prices. We propose that this definition of affordability also be related to those. The following language is proposed to define affordability for the purposes of the utility connection fee.

“Affordable housing” means a dwelling unit (1) to be purchased and occupied by an individual or family with a household income less than eighty percent (80%) of the Area Median Income (“AMI”); and (2) that has a sales price no greater than the maximum sales price established by the Virginia Housing Development Authority for its first time homebuyer loan programs in the Charlottesville metropolitan statistical area (non-federal targeted area); or that is developed as rental property with financial assistance from a federal, state or local program requiring the dwelling units to be leased to tenants with a household income less than eighty percent (80%) of the AMI.

The maximum VHDA sales price referenced in this paragraph is currently \$293,900.

We also believe that the City should enter into an agreement with anyone receiving the reduced connection fee that states that if the property is sold or transferred within a five year period either at a price exceeding the VHDA limits or to a non-qualifying low income purchaser then the difference in the connection fee charged and the newly adopted connection fee shall be paid back to the City. When someone makes application for this lower fee, they should have to document and certify the sales price and the income of the purchaser and they should agree to the repayment of the waived amount of the fee.

If approved by Council we will develop an application form to be used in the Utilities Office that can be completed by any applicant. We suggest that Council require each of those to be reviewed and approved by Neighborhood Development Services to make sure that they meet current income and sales price limits.

Budget Impact: There will be a reduction in the amount of utility connection fees collected, but that has already been calculated in the adoption of the rate ordinance. This proposal simply defines affordability for the terms of that ordinance.

Recommendations: Staff recommends that Council pass the attached ordinance.

Attachment: Proposed ordinance

**AN ORDINANCE
AMENDING AND REORDAINING
ARTICLE III OF CHAPTER 31 (UTILITIES) OF THE
CODE OF THE CITY OF CHARLOTTESVILLE, 1990, AS AMENDED,
BY ADDING NEW SECTIONS 31-102.1 AND 31-106.1 RELATED TO
WATER AND SEWER FACILITY FEES FOR AFFORDABLE HOUSING**

BE IT ORDAINED by the Council for the City of Charlottesville, Virginia that Article III of Chapter 31 of the Code of the City of Charlottesville, 1990, as amended, is hereby amended by adding new sections numbered 31-102.1 and 31-106.1, which new sections shall read as follows:

ARTICLE III. WATER AND SEWERS GENERALLY

Sec. 31-102. Application for water service; water connection charges generally; installation of meters, etc.

....

Sec. 31-102.1. Reduced water facility fees for affordable housing.

(a) In lieu of the water facility fee imposed pursuant to section 31-102, the water facility fee, regardless of meter size or equivalent residential connections, for connecting a unit of affordable housing to the city water system shall be \$800.00.

(b) As used herein, “affordable housing” means a dwelling unit (1) to be purchased and occupied by an individual or family with a household income less than eighty percent (80%) of the Area Median Income (“AMI”); and (2) that has a sales price no greater than the maximum sales price established by the Virginia Housing Development Authority for its first time homebuyer loan programs in the Charlottesville metropolitan statistical area (non-federal targeted area); or that is developed as rental property with financial assistance from a federal, state or local program requiring the dwelling units to be leased to tenants with a household income less than eighty percent (80%) of the AMI.

(c) An applicant for the reduced water facility fee shall agree to pay the difference between the reduced water facility fee and the standard water facility fee if the dwelling unit ceases to be affordable housing, as defined herein, at any time within five (5) years from the date the connection to the city water system is made.

....

Sec. 31-106. Sewer connections generally.

....

Sec. 31-106.1. Reduced sewer facility fees for affordable housing.

(a) In lieu of the sewer facility fee imposed pursuant to section 31-106, the sewer facility fee, regardless of meter size or equivalent residential connections, for connecting a unit of affordable housing to the city sewer system shall be \$800.00.

(b) As used herein, “affordable housing” means a dwelling unit (1) to be purchased and occupied by an individual or family with a household income less than eighty percent (80%) of the Area Median Income (“AMI”); and (2) that has a sales price no greater than the maximum sales price established by the Virginia Housing Development Authority for its first time homebuyer loan programs in the Charlottesville metropolitan statistical area (non-federal targeted area); or that is developed as rental property with financial assistance from a federal, state or local program requiring the dwelling units to be leased to tenants with a household income less than eighty percent (80%) of the AMI.

(c) An applicant for the reduced sewer facility fee shall agree to pay the difference between the reduced sewer facility fee and the standard sewer facility fee if the dwelling unit ceases to be affordable housing, as defined herein, at any time within five (5) years from the date the connection to the city sewer system is made.

These ordinance amendments establishing reduced water and sewer facility fees for affordable housing shall be in effect as of July 1, 2008.

Charlottesville Social Services Advisory Board

City of Charlottesville, City Hall Annex, P.O. Box 911,
Charlottesville, VA 22902



Board Members:

Lisa Barmore
Wanda Cabell
Holly Edwards
Cindy Fredrick
Connie Jorgensen
Valerie L'Herrou
Kaye Monroe
Carolyn Tandler
Rachel Thielmann

TO: Charlottesville City Council Members
FROM: Connie Jorgensen, Chair, Social Services Advisory Board
DATE: May 19, 2008
SUBJECT: 2008 Annual Report to City Council

A handwritten signature in blue ink, appearing to read "Connie Jorgensen", is written over the "FROM:" line of the header.

The Social Services Advisory Board is pleased to provide you its 2008 Annual Report to City Council, as required by City Code Section 25-1. I will formally present the report at your July 7, 2008 meeting.

Our report outlines notable areas of progress that the Charlottesville Social Service Department has made over the last year. We also note several Social Services challenges currently facing our community. The members of the Advisory Board continue to be impressed with the quality of services the Department provides to our community. We are proud of their accomplishments and support their efforts to continually improve services.

Our report includes the following recommendations:

- Continue support for the Department's Foster Care Prevention team to reduce the necessity for and cost of placing children in foster care.
- Support the creation of jobs and training programs that enable people with limited education and job skills to earn a living wage.
- If additional State funds are received for child care assistance, appropriate the required local match so that additional families and children can be served.

We trust you will find this report helpful as you consider effective resource allocation for services to Charlottesville residents.

Thank you for the opportunity to provide this information. We are honored to be of service to the Charlottesville community and we appreciate your leadership in guiding the progress of our city.

Enclosure

Charlottesville Social Services Advisory Board

ANNUAL REPORT TO CITY COUNCIL March 2008

Year Overview

The Social Services Advisory Board is pleased to present its 2008 annual report to City Council. We appreciate the Council's support for the Department in its mission to meet the critical needs of low income and disadvantaged residents of Charlottesville.

The Department provides more than 20 programs as a "safety net" for people who lack other means of meeting their basic needs. In FY 2007, Social Services served **5,517 unduplicated City households** (individuals or families). In all program categories, the Department served **10,924 cases** (some households received services in more than one program). More than **\$47 million in benefits and service payments** were provided for City residents and **for each City dollar allocated for this purpose, \$237 in federal and State funds were received.**

This year's report highlights, as last year's did, successes and challenges in the welfare-to-work, foster care, and child care assistance programs. It also provides information on two new grant-funded services that are addressing some long standing unmet needs.

In support of City Council's Vision for "America's Healthiest City" and "Economic Sustainability", we make the following recommendations for Council's consideration:

- **Continue support for the Department's Foster Care Prevention team to reduce the necessity for and cost of placing children in foster care.**
- **Support the creation of jobs and training programs that enable people with limited education and job skills to earn a living wage.**
- **If additional State funds are received for child care assistance, appropriate the required local match so that additional families and children can be served.**

Notable Progress

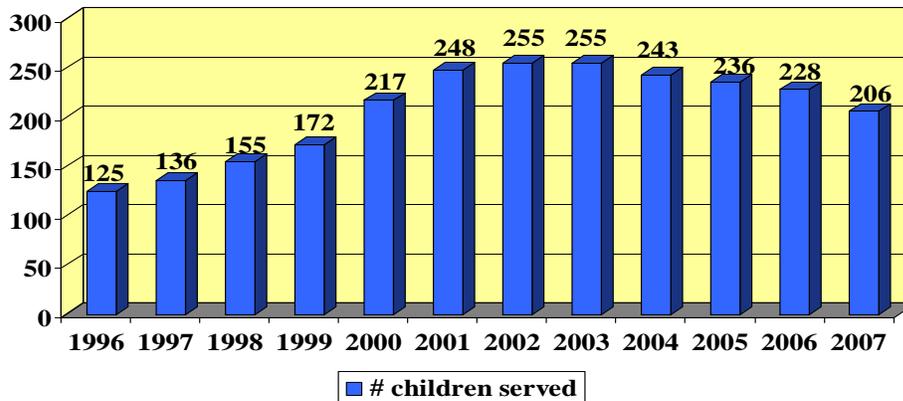
Foster Care Prevention Success Continues; Foster Care Caseload Declines for Fourth Consecutive Year

- Intensive casework by the Department's foster care prevention team reduces foster care, keeps families together, and avoids the high cost of placement services.
- In FY 2007, the team served 166 children (14% more than last year) of which 79 were considered at very high risk for foster care. Only 20 of them did enter foster care, 59 did not (75% success).
- The **estimated cost savings** to the City by keeping these 59 children out of foster care was **\$318,343** calculated based on the average annual per child cost for foster care less the cost

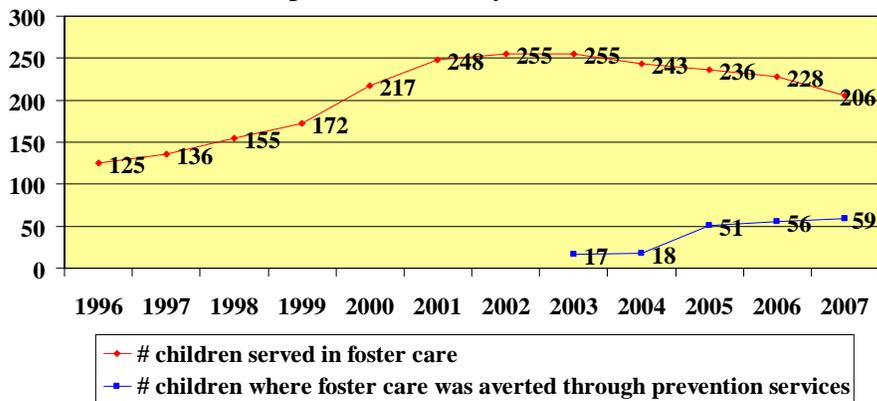
of the prevention services provided. Also, \$1,285,418 in Federal and State funding was saved.

- The number of children placed in foster care declined in FY 2007 by 9.6%, the fourth consecutive year of decline. Since FY 2003, the number of children in foster care per year has decreased from 255 to 206, 19%. Prior to FY 2003 the caseload had grown in 12 of the past 13 years.

Children in Foster Care
Unduplicated count by Fiscal Year



Foster Care and Foster Care Prevention
Unduplicated count by Fiscal Year



*T. was a three year old with a neglectful mother who had passed him around among family members and friends as she could not provide stable care for him. The case was in Juvenile Court on a custody petition by a relative, and there seemed to be no appropriate custodian available. The Court asked the Department to do an assessment of foster care prevention needs and provide services. Child Protective Services had been involved in the case in the past. Assessments were made of all the potential caregivers and the Department recommended custody be given to T.'s father and that services be provided and the situation monitored. Family therapy was arranged to support the transition of T. into this new family. T. himself was assessed and found to suffer from reactive attachment disorder and a speech impairment. Treatment services were arranged for both problems and he is now doing well in a pre-school program. His father and stepmother attended parenting classes. After about a year of services, it was determined there was no longer a risk of foster care and the judge dismissed the matter from the Juvenile Court docket. The average cost per year in City dollars saved by preventing foster care for one child is \$5,395, and the average length of time a child stays in foster care is 37 months. Preventing T. from needing to enter foster care saved the City an estimated \$16,635.**

Recommendation: Continue support for the Department's Foster Care Prevention team to reduce the necessity for and cost of placing children in foster care.

Social Work Services in City Schools – New Grant Funded Program

What it is:

- A Department of Social Services Social Worker located on-site at Johnson Elementary school to work with children in the pre-school program and their families.
- A pilot project under the community's Smart Beginnings grant received by the Partnership for Children from the Virginia Early Childhood Foundation (VECF).

What it does:

- Increases children's readiness for success in school.
- Supports families in meeting children's needs with a wide variety of services.

Results:

- Started in the fall of 2007, the program has provided services to 25 children and their families so far.
- Examples of services provided include pre-school enrollment, applications for special education services, access to medical insurance and medical care, arranging tutoring services, and help for parents in finding jobs, improving parenting skills, getting financial assistance and child care services, and locating housing.
- A similar program of Albemarle Social Services in all the county elementary schools for several years has demonstrated positive results including improved school attendance and classroom behavior, improved academic performance, and very low rates of child abuse and neglect and foster care placements.

*The Johnson School social worker assisted the family of four year old J. in completing his enrollment in the Johnson pre-school program. The family lacks medical insurance, so the social worker brought them the application for medical assistance from Social Services and helped them complete the process. Living with relatives in overcrowded conditions, the family was assisted with applications for their own housing. They have no car, and the social worker provided transportation to find housing and to school for parent/teacher conferences. Learning that J. was distracted in school by toothaches, the social worker helped to access dental services and transported the child to appointments. J. was underachieving in his class and the social worker helped the family access a specialized assessment of his learning needs and understand and follow through on the recommendations. **

Adult Guardianship Program – New Grant Funded Program

What it is:

- A grant funded Public Guardian and Conservator program in Charlottesville Social Services serving all of Planning District Ten since fall 2006.
- Provides a substitute decision maker for indigent adults with physical or mental impairments when no one else is able to serve in this capacity, so the local sheriff does not have to be the "guardian of last resort."

What it does:

- The program's social worker assesses the needs of each adult referred to determine appropriate services.
- The program assumes legal guardianship by court appointment or locates alternative services that meet the needs.

Results:

- The program has served 37 referred adults in its first 15 months.
- Fifteen adults are currently receiving guardianship services through the program.

*Mr. S. is 70 years old and lived alone until recently moving to an assisted living facility. He has dementia due to Alzheimer's disease, and accrued a large unpaid bill from the facility because he could not understand the need to pay or how to do so. The Guardianship Program arranged for appointment of a conservator for his financial affairs, and the social worker monitors his care and needs in the facility, authorizes medical treatment and accompanies him to medical appointments, and will soon be arranging for a change of residence to a specialized Alzheimer's facility where his increasing safety needs can be better met. **

Summer Youth Internship Program

- The six week summer internship program placed 32 low income and at-risk City youth ages 14 to 18 in workplace settings during the summer of 2007.
- Interns worked 18.5 hours a week, attended weekly work readiness groups, and received a \$600 stipend.
- 29 participants successfully completed their internships, learned workplace skills, and were exposed to job settings.
- Expansion to 45 participants is being planned for the summer of 2008.

Annual Community Energy Fair

- This annual community event offers information about ways to conserve energy and reduce home heating costs. Public and private agencies and non-profit vendors participate. In FY 2007 participant organizations included, in addition to the Social Services Department, the City Gas and Fire Departments, the Virginia Weatherization Program, Virginia Dominion Power, the Charlottesville Design Center, U.Va. Facilities Management, and the City Utilities Division.
- This event also provides City residents information about resources that are available to help pay their heat bills. Information was available this year from the Low Income Energy Assistance Program, the Gas Assistance Program, and Coalition Assisting Residents with Emergencies (CARES).
- This event is an important component of outreach for the Low Income Energy Assistance Program. The Department gave out 30 program applications at this event.

Annual Job Fair

- The Department's VIEW Team partners with the Charlottesville Office of Economic Development, the Virginia Employment Commission, Urban Vision, and other community service providers to hold an annual job fair.
- All 33 employers attending the April 4, 2007 event had openings in entry-level positions. Social Services clients attending the event could submit applications for jobs that are open in the community.
- 16 employers indicated they were considering hiring applicants they met at the event.

- Offers the opportunity for persons moving from welfare-to-work to apply for entry-level jobs in a wide variety of employment sectors.

Continuing Positive Outcomes in Welfare-to-Work (VIEW Program)

- The “Virginia Initiative for Employment Not Welfare” (VIEW) helps Temporary Assistance for Needy Families (TANF) recipients prepare for and find employment in order to achieve independence from public assistance.
- 330 participants were enrolled in FY 2007, and 70% (231) got jobs (the statewide average was 66%).
- The Department is ranked 10th out of 120 local departments in the State in overall VIEW program performance since FY 1997 (ranked on percent employed, average earnings, and rate of job retention) and 1st in percent employed. Since FY 1997, 1,577 people have been served and 86% have gone to work.
- In FY 2007, the average hourly wage of working clients was \$7.82, up slightly from the year before and higher than the statewide average of \$7.50

*Ms. C. is a single mother with an eight year old son whose father is incarcerated. Starting in 2004 she cycled on and off the TANF public assistance program, getting several jobs but soon losing them due to poor communication skills, lack of reliable transportation and child care, and difficulty managing her son’s behavior problems. The Department’s VIEW team worked with Ms. C. in its “Strategies” job readiness group, helping her improve her communication skills, stabilize her child care arrangements, and connected her with resources to help manage her son’s behavior problems. After a series of temporary jobs at U.Va., Ms. C. has been offered and accepted full time employment as an administrative assistant with a starting wage of \$13.00 an hour. **

Notable Challenges

Welfare-to-Work Challenges Continue

Although the Department’s VIEW program has achieved notable success, the following continue to be challenges:

- Although first in the State in overall percent employed (86%) since FY 1997, Charlottesville’s ranking for FY 2007 was 40th. More program participants today have difficult barriers to employment than in the program’s earlier years, and there are less funds for specialized services to help them.
- Federal changes to the TANF program in FY 2007 eliminated work participation exemptions for many TANF recipients, including significant physical and mental disabilities. Helping these clients become successfully employed is especially difficult.
- **Although higher than the State average, the employment earnings of Charlottesville’s program participants is still below the federal poverty level of \$17,170 a year for a family of three, and only about half the income needed to be self-sufficient in our community (\$14.86 an hour for one parent and two school age children, according to the 2006 update of The Self-Sufficiency Standard of Virginia published by study by Voices for Virginia’s Children).**
- The rate of job retention after three months was only 60% in FY 2007, down from 71% the year before.

- Program funding has remained fairly flat while program costs have increased over time, leaving less available to pay for supportive services for participants.

*Ms. B. is a 22 year old single mother of a 20 month old child who has been receiving TANF assistance since her son was born. She has a 10th grade education, no work experience, a history of domestic violence, and is a substance abuser. She is required to participate in employment services as a condition of TANF assistance. The VIEW team got her enrolled in Adult Education classes and connected with the State Department of Rehabilitation Services (DRS) for employment services and Region Ten's Project Link for help with substance abuse. Ms. B. has failed to follow through with these services, causing her to twice lose her TANF eligibility. DRS closed her case due to the substance abuse problem. She has been periodically homeless and referred to Child Protective Services. She reports she is now expecting another child. **

Recommendation: Support the creation of jobs and training programs that enable people with limited education and job skills to earn a living wage.

Foster Care and the Comprehensive Services Act

Although the number has been declining, Charlottesville still has a relatively high rate of children entering foster care for the size of its population, and a high percentage of them are older children with serious problems requiring expensive services paid for through the Comprehensive Services Act program.

Changing Characteristics of Children in Foster Care

- The age of children entering foster care has increased in recent years. Today 80% of City children in foster care are over age 13, and 55% are over age 16. This compares with 55% over age 13 statewide and 36% over 16.
- 46% of City children in foster care were placed there due to behavior problems, compared with 25% statewide.
- Child abuse and neglect, which used to be the primary reason for foster care, now accounts for just 23% of the Department's foster care cases. Children placed in foster care by the court for the primary reasons of illegal activity and substance abuse, running away, truancy, other court involvement, and other child behavior problems account for 51%.
- Mental and emotional illness account for 16% of City children in foster care. Although the number of foster care cases per year has declined 19% since 2003, costs have continued to grow due to the increasingly expensive service needs of children who in the past would have been served in State mental health or juvenile correctional facilities.

Child Care Assistance for Low Income Working Families

The Social Services Advisory Board has chosen to focus on child care assistance this year. The Board is a participating member of Virginia's Working Families Child Care Coalition, a statewide coalition seeking more State funding for child assistance for low income working families. Although child care assistance payments are a legally mandated, fully funded part of the VIEW program's services to TANF recipients, there is limited funding for families who have left TANF for low wage employment and other low income working families.

The Program

- The Social Services “Fee Child Care Program” (so called because parents have a co-payment) provides a financial subsidy for child care expenses for children of low income working families who are not on the public assistance program, Temporary Assistance for Needy Families (TANF).
- The United Way’s Child Care Scholarship program also provides subsidies for low income working families, using City, County, and donated funds. Prior to FY 2007, these local funds were matched dollar for dollar by the same federal block grant funds that support the Social Services Fee Program. Social Services and the United Way operate their programs cooperatively, with a single waiting list.
- The Fee System subsidy from Social Services serviced 104 families with 178 children from July 2007 through December 2007.

Benefits of Quality Child Care

From the Governor’s Early Childhood Summit, July 2007

(http://www.grcc.com/page/name/sb6_home):

- High quality early childhood programs can narrow the achievement gap and increase educational attainment.
- Children who don’t participate in quality early childhood programs are five times more likely to commit a crime by age 27.
- Research shows that every dollar spent on early childhood development programs creates a return on investment of more than \$7.00 due to reduction in crime rates, increased tax revenues, reduction in special education and grade retention, reduced welfare costs, and increased earnings.

The Perry Pre-school Study (<http://www.tyc.state.tx.us/prevention/hiscope.html>), a longitudinal pre-school-effectiveness study now in its third decade, found that children who received a high quality, active learning pre-school program had, compared with a control group:

- a significantly higher level of schooling completed (with 71% vs. 54% completing 12th grade or higher)
- a significantly lower percentage receiving social services at some time in the previous 10 years (59% vs. 80%)

Effectiveness of child care subsidies reported by the Thomas Jefferson Area United Way for FY 2006:

- 95% of parents remained employed
- 20% received a wage increase during the year
- 82% of children had stable child care for at least one year
- 81% received care from licensed providers

Child Care Cost

- For pre-school children in the Charlottesville area, child care costs between \$100 and \$200/week depending on the type of care (center or family) and age of the child (0-5).
- **The annual cost of child care for two children – one infant and one toddler – could be up to \$13,680. For a single parent family making \$7.82/hour (the current average wage**

of Charlottesville participants in the welfare-to-work program, VIEW), or \$16,266 annually if employed full time, this would be 84% of gross income. If the family had two employed parents each making the same wage, the annual cost would be 42% of gross income. With assistance from the Fee Program, the two-parent family's cost would be about \$3,200, and the single-parent's cost about \$1,600.

Loss of Funding

- Statewide, total expenditures of federal funds for Fee Program child care subsidies decreased by \$12,513,092 (20%) from FY 06 to FY 07, reflecting a shift of funds to the TANF program.
- Locally, this funding reduction has impacted Charlottesville families through the United Way's Child Care Scholarship program, which lost its federal "pass through" funds when they were diverted to serve families receiving TANF. The United Way program lost over \$200,000 in subsidy funds for Charlottesville and Albemarle in FY 07.
- Charlottesville Social Services' funding allocations for the Fee Program have been essentially flat for the past five years. The program is not publicized, and a waiting list is maintained.
- Currently Virginia has allocated all available federal child care block grant dollars, so additional public funds would need to come from the State and localities.

Unmet Need for Child Care Assistance

- The number of potentially eligible families in Charlottesville is difficult to estimate but based on Census figures and program eligibility requirements is likely well in excess of 500 families.
- Low income working families cannot afford the full cost of quality child care, which can mean substandard care for some children. Ironically, if a parent stops working, applies and qualifies for TANF assistance, she can return to work with the cost of child care paid in full while she is in the TANF/VIEW program.
- In FY 2007 the State diverted federal child care assistance funds to the mandated TANF/VIEW program due to anticipated caseload growth resulting from federal reauthorization of TANF. Charlottesville lost \$244,000 that had been administered through the United Way program.
- City Council appropriated additional funds to the United Way program for FY 2008 to partially offset the federal reduction.
- The Governor's proposed budget for FY 09 -10 includes \$18 million in additional State funding for this program. A statewide coalition of advocates for low income working families is supporting this initiative. If approved by the General Assembly and allocated to local departments, these funds will require a local match.

*Ms. J. is a single mother of four children, ages 11, 9, 7, and 6. The family lives in subsidized housing, receives food stamps, and the children have Medicaid coverage. Ms. J. has no health insurance. She works full time at McDonalds earning \$1,425 a month. The intermittent child support she receives averages \$48 a month for a gross monthly income of \$1,473. Total child care costs for her children during the school year is \$915 monthly (62% of monthly income), and \$2,322 per month (\$157% of monthly income) during the summer. With her co-pay of 10% of monthly income and an above market cost of \$34, Ms. J. pays \$181 for childcare each month. The Fee System Child Care Program pays the remainder of this family's child care costs. **

Recommendation: If additional state funds are received for child care assistance, appropriate the required local match so that additional families and children can be served.

* Names and other identifying characteristics in the case vignettes have been changed in order to maintain client confidentiality.

Charlottesville Social Services Advisory Board Members

- Lisa Barmore
- Wanda Cabell, Vice Chair
- Holly Edwards
- Cindy Fredrick
- Connie Jorgensen, Chair
- Valerie L'Herrou
- Kaye Monroe
- Carolyn Tandler
- Rachel Thielmann

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



Agenda Date:	July 7, 2008
Action Required:	Discussion
Presenter:	Robert A. Cox, III Director of Social Services
Staff Contacts:	Robert A. Cox, III Maurice Jones
Title:	City Council Work Session on Poverty

Background and Discussion:

Several Councilors have expressed an interest in holding a work session this fall on the issue of poverty in Charlottesville. The session would be led by the Department of Social Services with participation from several of the community agencies tasked with addressing issues of poverty.

Staff proposes the following as possible topics of discussion for the work session:

- New information on the cost of living in Charlottesville and its impact on poverty
- Detailed discussion on the poverty statistics in Charlottesville and what services are already being provided to address poverty
- Best practice research on other anti-poverty programs nationwide including the Prosperous Athens Campaign in Athens, Georgia

Alternatives:

The City Council could choose not to host a work session at this time.

Budgetary Impact:

None

Recommendation:

Staff recommends Council holds a work session in September or October to review poverty issues in Charlottesville. This work session could serve as the beginning of a larger community discussion about the issues surrounding poverty, which ultimately could lead to the development of a comprehensive plan to address those issues.

Attachments:

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



Agenda Date:	July 7, 2008
Action Required:	Discussion
Presenter:	Maurice Jones, Assistant City Manager
Staff Contacts:	Maurice Jones Gary O'Connell
Title:	Quality of Service and Efficiency Study

Background and Discussion:

It is the responsibility of any public entity to periodically engage in a thorough review of its administrative and operational policies and practices. These reviews can provide helpful guidance in maximizing organizational resources ultimately resulting in a more effective, efficient government focused on quality customer service.

Several Councilors have expressed an interest in conducting an examination of the City's operations and overall efficiency. To that end we have researched other localities around the country that have commissioned similar studies. The scope of work varied from in-depth studies of large departments only to broad, wholesale review of each department in a locality. We have also reviewed vendor options from both the public and private sectors.

The Quality of Service and Efficiency Study could extensively review and assess the efficiency and effectiveness of the following, in relation to the City Council's 2025 Vision for Charlottesville; our commitment to providing high quality services; and our shared goals of programmatic sustainability:

- Administrative and operational support systems, and processes including Police, Fire, Public Works and Utilities, Neighborhood Development Services, Parks, Recreation and Golf, Social Services, Finance and Information Technology
- Long term fiscal planning, budgeting and related areas
- Long term planning and facility needs to accommodate service delivery
- Availability, organization and delivery of City services for our residents, businesses and visitors
- Local policy development and regulatory systems including staff and community involvement, and communications
- Where available, review departmental accreditation processes

As part of the assessment process, the study team will solicit input from the Charlottesville City

Government, the City Council and the residents and business owners in the City. It is envisioned that this will be accomplished in several ways – through departmental documentation, interviews with City employees, focus group sessions with residents and business owners and external surveys to our customers.

The scope of the study will include a comparison of Charlottesville's service delivery systems and fiscal management with our peer cities around the country, preferably small to mid-sized cities that host major universities. This benchmarking exercise will ensure a more accurate assessment of the City's operations against comparable jurisdictions with similar commitments to providing high quality services.

Additional deliverables will include a detailed report on the City's overall productivity and business processes, recommendations on best practices that are feasible and can be implemented with relative ease, and detailed improvement and implementation plans for the affected departments. These plans should include short term objectives that can realistically be met within one year and long term goals that could be accomplished in one to five years. The study could commence by no later than September 1, 2008 with a final report delivered to the City by February 1, 2009.

The study could serve as Phase 1 of the City's long term approach to providing high quality services in an efficient manner. It is anticipated that Phase 2 will be completed in December of 2009 and will include a mid-point or interim report on the City's progress in addressing the recommendations of the study. Phase 3, due in May 2010, will bring the process to a close with a final report on the organization's overall improvement.

As previously stated, the objective of this study extends beyond a simple examination of efficiency. The City government's overall effectiveness related to service delivery will be reviewed along with an assessment of best management practices.

Alternatives:

Broad Review

The City would contract with an outside group to evaluate the efficiency and effectiveness of each of the City's departments. This review would offer policymakers and citizens a general glimpse of the City's stewardship of tax dollars, as determined through the City's utilization of its employees, equipment and facilities and within the context of the City Council's commitment to quality services. This type of board review, although very effective in determining the general efficiency of departments, will not provide an in-depth examination of every operational process.

Narrow Review

A number of the cities researched have staggered the study of their departments, reviewing two or three large departments per year over a span of a few years. This provides a more detailed review of a department's internal processes however it extends the study period and in most cases adds a significant cost to the project.

No Review

The City Council could choose not to initiate a study at this time.

Budgetary Impact:

The City's Budget Office has earmarked \$50,000 to cover the cost of the study. Of the localities reviewed, the minimum cost was \$30,000 in Evansville, Indiana. The remainder of our research

indicated a range of cost from \$100,000 to \$700,000 depending on the scope of the study and size of the locality.

Locally, the Albemarle County School System has recently conducted a broad examination of its operations at a cost of \$96,000. The Charlottesville school division has budgeted \$50,000 to conduct a review solely of its Central Administration Office.

Recommendation:

It is the staff recommendation that Council enters into a contractual agreement with an external group to conduct a broad review of the overall effectiveness of service delivery and efficiency in each of the City's departments. More specifically the staff believes the Weldon Cooper Center offers the expertise and experience to properly manage this "manager to manager" study within the allotted budget of \$50,000.

The study team would be required to collect data on the City's services, interview City Councilors and City employees, conduct focus group sessions with residents and business owners and develop external surveys for our customers. The study should also include a detailed five year action plan with recommendations for improving resource management, any cost savings associated with those specific recommendations and practical deadlines for achievement of the study's recommendations.

Attachments: