



PROPOSED AGENDA
REGULAR MEETING OF THE CHARLOTTE CITY COUNCIL
7:00 P.M. Monday, March 1, 2021

PER PA 254 OF 2020 AND THE MICHIGAN OPEN MEETINGS ACT,
THIS MEETING WILL BE HELD ELECTRONICALLY

1. **Call to Order**
2. **Roll Call**
3. **Invocation**
4. **Pledge of Allegiance**
5. **Approval of Minutes**
 - a. Approval of February 16, 2021 – 7:00pm meeting minutes
6. **Absence of Council Members**
7. **Public Comment** - Limit presentation to five (5) minutes
8. **Approval of Regular Agenda and Unanimous Consent Agenda**

UNANIMOUS CONSENT PROCEDURE

Mayor asks Council members if there are any items to be added to or removed from the printed agenda and, after receiving a motion and second, conducts a vote to approve the agenda.

Mayor asks Council members if there are items on the printed agenda they wish to take up individually and notes them.

Mayor asks for a motion to approve the remaining items on the printed agenda by unanimous consent. After motion and second, Mayor asks for a roll call vote on the motion for unanimous consent.

9. **Special Presentations**
10. **Expedited Resolutions and Ordinances**
 - a. Consider approval of Resolution No. 2021-024 Approving the Payment of Claims and Accounts
 - b. Consider approval of Resolution No. 2021-025 Supporting Continued Local Control of 911 Fee Diversion
 - c. Consider approval of Resolution No. 2021-027 Approving the Appointment of Fire Chief
 - d. Consider approval of Resolution No. 2021-028 Authorizing a Contract with MDOT for the East Harris Street Project

11. Approval of Resolutions and Ordinances

- a. Consider Resolution 2021-020 Establishing an Ad Hoc Code Enforcement Committee
- b. Consider Resolution 2021-021 Authorizing a Petition for the Higby Drain
- c. Consider approval of Resolution No. 2021-023 Recognizing Martin Luther King, Jr. Day

12. Introduction of Resolutions and Ordinances

- a. Consider Resolution 2021-026 Determining Color for the North Water Tower
- b. Consider Ordinance 2021-01 to Amend Chapter 58 – Streets, Sidewalks and Other Public Places
- c. Consider Ordinance 2021-02 to Amend Chapter 30, Section 27 – Fire Prevention and Protection

13. Public Comment - Limit presentation to five (5) minutes

14. Communications and Committee Reports

- a. City Attorney Report
- b. City Manager Report
- c. Councilmember Committee Reports

15. Mayor and Council Comments

16. Adjourn

~Pearl Tidwell, City Clerk

ADDRESSING THE CITY COUNCIL

*Comments shall be made only during times set aside for that purpose.
Each citizen may speak for up to 5 minutes during each public hearing and comments period.
Comments made during public hearings shall be relevant to the subject of the public hearing.
Comments shall be made from the podium unless otherwise directed by the Mayor.
Comments shall be directed to the Mayor and Council members.
Speakers shall begin by stating their name and indicate if they are a resident or non-resident of the City.
Speakers shall refrain from using vulgarity, hate speech or “fighting words.”*

Connect to Zoom from your computer, tablet, or smartphone

Website: <https://us02web.zoom.us/j/85636032951>

Meeting ID: 856 3603 2951

Or

Call in by telephone:

Phone number: (312) 626-6799

Webinar ID: 856 3603 2951

**CITY OF CHARLOTTE
COUNCIL PROCEEDINGS**

**Regular Meeting
February 16, 2021**

CALL TO ORDER:

By Mayor Armitage on Monday, February 16, 2021 at 7:00 p.m

PRESENT:

Councilmembers: McRae, Baker, Weissenborn, Hoogstra, VanStee, Dyer & Mayor Armitage. All reported their remote meeting location as being in the City of Charlotte, County of Eaton and State of Michigan. Staff: Manager LaPere, Clerk Tidwell, DPW Director Amy Gilson; Public: Dennis Weeks with Chester Gospel Church

PLEDGE OF ALLEGIANCE:

Mayor Armitage led the Pledge of Allegiance to the Flag of the United States of America.

INVOCATION:

Pastor Weeks gave the invocation.

APPROVAL OF MINUTES:

Motion by Baker, supported by Dyer to approve the minutes from February 1, 2021 and February 9, 2021 as presented. Carried. 7 Yes. 0 No. 0 Absent.

EXCUSE ABSENT MEMBERS:

All members were present.

PUBLIC COMMENT:

DPW Director Gilson stated that the DPW crew had been plowing all night and throughout the day. Gilson expressed thanks to the DPW.

**APPROVAL OF REGULAR AGENDA AND UNANIMOUS
CONSENT AGENDA:**

Motion by VanStee, supported by Weissenborn to approve the Regular Meeting Agenda with the addition of 11) c) Resolution 2021-23 Recognizing Martin Luther King Day. Carried. 7 Yes. 0 No. 0 Absent.

Motion by Hoogstra, supported by Dyer to approve the Unanimous Consent Agenda as presented.

Dyer requested item 10) c) Resolution # 2021-017 and 11) a) Resolution #2021-020 be removed from the Unanimous Consent Agenda.

Weissenborn requested item 11) b) Resolution #2021-21 be removed from the Unanimous Consent Agenda.

Mayor Armitage requested item 10) e) Resolution #2021-19 be removed from the Unanimous Consent Agenda.

Carried with roll call vote. 7 Yes. 0 No. 0 Absent.

SPECIAL PRESENTATIONS:

There was no special presentation.

EXPEDITED RESOLUTIONS AND ORDINANCES:

**A. Consider approval of Resolution No. 2021-016 Approving the
Payment of Claims and Accounts**

RESOLUTION NO. 2021-016

**A RESOLUTION TO APPROVE EXPENDITURES OF THE
CITY OF CHARLOTTE**

FOR FEBRUARY 16, 2021

WHEREAS, Section 7.7(B) of the City Charter requires Council approval for the expenditure of city funds; and

WHEREAS, the February 12, 2021, payroll totaled \$182,021.94; and

WHEREAS, the February 16, 2021, claims total in the amount of \$160,737.08; and

THEREFORE, BE IT RESOLVED that the City Council approves claims and accounts for February 16, 2021, in the amount of \$342,759.02.

The foregoing resolution offered by Council member Hoogstra and supported by Dyer. Carried with roll call vote. 7 Yes. 0 No.

B. Consider approval of Resolution No. 2021-015 Authorizing Filling Vacant Positions

RESOLUTION NO. 2020-015

A RESOLUTION TO AUTHORIZE FILLING VACANT POSITIONS

WHEREAS, the City Council implemented a hiring freeze at the council meeting on June 8, 2020; and

WHEREAS, the Deputy Clerk position and the Accounting Clerk position is vacant; and

WHEREAS, both the Deputy Clerk and Accounting Clerk are crucial positions related to the operation and administrative support to the City of Charlotte; and

WHEREAS, the City Manager is requesting permission to fill the Deputy Clerk and Accounting Clerk position to make the administrative support staff whole.

THEREFORE, BE IT RESOLVED that the City Council approve the hiring of the Deputy Clerk and Accounting Clerk for the City of Charlotte.

The foregoing resolution offered by Council member Hoogstra and supported by Dyer. Carried with roll call vote. 7 Yes. 0 No.

C. Consider approval of Resolution No. 2021-017 Approving Council Policy 2021-02 Citizen Comments

RESOLUTION NO. 2021-017

A RESOLUTION TO APPROVE COUNCIL POLICY 2021-01 CITIZEN COMMENTS

WHEREAS, on July 25, 2016, the City Council approved Council Policy 2016-02 regarding standards for citizen conduct at Council meetings; and

WHEREAS, said policy sunset on September 30, 2020; and

WHEREAS, the City Council desires to make modifications to said policy and eliminate its sunset date;

THEREFORE, BE IT RESOLVED that Council Policy 2021-02 Citizen Comments at Council meetings is hereby approved.

The foregoing resolution offered by Council member Baker and supported by Dyer. Motion carried with roll call vote. 7 Yes. 0 No.

Council discussed Policy 2021-02. Dyer asked that the address requirement for speaking citizens be removed from the policy. McRae asked that Section 4.4 add the wording, “free from intentional falsehoods”. Council discussed the Open Meetings Act.

Motion by McRae, support by Dyer to add “intentional falsehoods” to section 4.4. Motion carried with roll call vote. 7 Yes. 0 No.

Motion by Dyer, support by Hoogstra to remove the address requirement for speaking citizens at meetings. Motion carried with roll call vote. 6 Yes. 1 No (Baker).

D. Consider approval of Resolution No. 2021-018 Approving Council Policy 2021-03 Considering and Adopting Ordinances

RESOLUTION NO. 2021-018

A RESOLUTION TO APPROVE COUNCIL POLICY 2021-03 PROCEDURE FOR CONSIDERING AND ADOPTING ORDINANCES

WHEREAS, on July 25, 2016, the City Council approved Council Policy 2016-03 regarding procedures for considering and adopting ordinances at Council meetings; and

WHEREAS, said policy sunset on September 30, 2020; and

WHEREAS, the City Council desires to make modifications to said policy and eliminate its sunset date;

THEREFORE, BE IT RESOLVED that Council Policy 2021-03 Procedure for Considering and Adopting Ordinances is hereby approved.

The foregoing resolution offered by Hoogstra and supported by Dyer. Carried with roll call vote. 7 Yes. 0 No.

E. Consider approval of Resolution No. 2021-019 Approving

Council Policy 2021-04 Order of Business at City Council Meetings

RESOLUTION NO. 2021-019

**A RESOLUTION TO APPROVE COUNCIL POLICY 2021-04
ORDER OF BUSINESS AT CITY COUNCIL
MEETINGS**

WHEREAS, on July 25, 2016, the City Council approved Council Policy 2016-04 regarding order of business at Council meetings; and

WHEREAS, said policy sunset on September 30, 2020; and

WHEREAS, the City Council desires to make modifications to said policy and eliminate its sunset date;

THEREFORE, BE IT RESOLVED that Council Policy 2021-04 regarding order of business at Council meetings is hereby approved.

Armitage discussed section 6.1.2 of Council Policy 2021-04 suggesting that “Finance Director” be changed to “Treasurer”. Manager LaPere agreed.

The foregoing resolution offered by Council member Dyer and supported by Baker with changes to section 6.1.2 of Council Policy 2021-04 replacing “Finance Director” with “Treasurer”. Carried with roll call vote. 7 Yes. 0 No.

**F. Consider approval of Resolution No. 2021-022
Appointment of Clerk-Treasurer**

RESOLUTION NO. 2021-022

**A RESOLUTION TO CONFIRM THE APPOINTMENT OF
PEARL TIDWELL AS CITY CLERK-TREASURER**

WHEREAS, the City Council confirmed the hire of Pearl Tidwell as the City Clerk at the regular meeting held December 7, 2020 which has created a vacancy in the office of Treasurer, a position that is essential to the efficient and effective functioning of Charlotte City government; and

WHEREAS, the City Charter has the role of Treasurer as an appointed officer of the City and the City Ordinance designates those duties and responsibilities to one office, known as Clerk-Treasurer; and

WHEREAS, City Manager LaPere has reviewed the skills and experience as they related to the position of interim city clerk-treasurer and has determined that Pearl Tidwell is well qualified to fulfill the responsibilities of the position; and

WHEREAS, the City Charter requires that City Council confirm the city manager’s appointment of city officers including the city clerk and city treasurer;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby confirm City Manager LaPere’s appointment of Pearl Tidwell as City Clerk-Treasurer.

The foregoing resolution offered by Council member Hoogstra and supported by Dyer. Carried with roll call vote. 7 Yes. 0 No.

INTRODUCTION OF RESOLUTIONS AND ORDINANCES:

A. Consider Resolution 2021-020 Establishing an Ad Hoc Code Enforcement Committee

RESOLUTION NO. 2021-020

**A RESOLUTION TO ESTABLISH AN AD HOC CODE
ENFORCEMENT COMMITTEE**

WHEREAS, City Council and the City administration have received input from the citizenry through the Vision 2025 strategic planning process, among other input methods, of the desire to see a proactive code enforcement presence in the community; and

WHEREAS, City Council wishes to ensure that code enforcement policies and practices, along with the methods used by the City and its departments to implement them, are effective and consistent for residents and staff, and that those methods are cost efficient to administer; and

WHEREAS, City Council believes that it is prudent to undertake an evaluation of the City's current code enforcement policies, practices, and methods by forming an ad hoc committee to review them and make recommendations to the City Council;

NOW, THEREFORE, BE IT RESOLVED that there is hereby established the Ad Hoc Code Enforcement Committee, the membership of which shall be appointed by the Mayor subject to the approval of the City Council and shall include 2 members of the City Council, 1 city employee, and 2 citizens of the city representing diverse socioeconomic or other demographic sections of the population; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall have the authority to elect its own chairman, promulgate its own rules of order and develop its own schedule of meetings, which meetings shall be conducted in accordance with the Open Meetings Act; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall 1) evaluate and make recommendations to the City Council on code enforcement operations; 2) develop a projected cost estimate for providing such services as deemed necessary; and 3) make a recommendation to City Council for alternatives to provide such services; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall issue a final written report of its findings and recommendations to the City Council not later May 1, 2021.

Motion by Dyer, support by Weissenborn to introduce the foregoing resolution for discussion. Carried with roll call vote. 7 Yes. 0 No.

Council discussed the formation of the Ad-hoc committee consisting of 2 council members, 3 residents and 1 non-voting ex-officio staff member.

B. Consider Resolution 2021-021 Authorizing a Petition for the Higby Drain

RESOLUTION NO. 2021-021

A RESOLUTION TO AUTHORIZE A PETITION FOR THE HIGBY DRAIN

WHEREAS, the Higby Drain is a County Drain that traverses the Airport and continues northeast to Parish Highway following Lansing Road; and

WHEREAS, the Eaton County Drain Commission had started a maintenance project on the Airport property until they encountered a direct conflict with City sanitary sewer; and

WHEREAS, there are several businesses along Lansing Road that are currently being adversely affected by the deteriorated 1912 drain; and

WHEREAS, according to the Drain Code of 1956, a municipality can petition the Drain Commission for a drain to be fixed; and

WHEREAS, it is recommended that the appropriate way to properly fix this drain and utility conflict would be for the City to petition the Eaton County Drain Commission to fix the Higby Drain.

THEREFORE, BE IT RESOLVED That the City Council approve the petition to the Eaton County Drain Commission for the improvements to the Higby Drain.

Motion by Baker, support by VanStee to introduce the foregoing resolution for discussion. Carried with roll call vote. 7 Yes. 0 No.

Weissenborn asked for clarification of the resolution. DPW Director Gilson explained the Higby Drain project.

C. Consider approval of Resolution No. 2021-023 Recognizing Martin Luther King Jr. Day as a Holiday in the City of Charlotte

RESOLUTION NO. 2021-23

A RESOLUTION TO RECOGNIZE MARTIN LUTHER KING

JR. DAY AS A HOLIDAY IN THE CITY OF CHARLOTTE

RECOGNIZING the third Monday of January, as Reverend Dr. Martin Luther King, Jr. Day in the City of Charlotte.

WHEREAS, the late Reverend Dr. Martin Luther King, Jr. was a leader of the American civil rights movement and whose legacy encompasses influential decisions, monumental actions and steadfast progressions of humanitarian rights reaching far beyond the civil rights movement; and

WHEREAS, as noted by the National Civil Rights Museum, "a leader of all people, Dr. King never chose fear, but always chose courage and determination when fighting for civil rights in the face of oppression, ignorance and violence. He refused to allow prison, violence or the threat of death to sway his end mission"; instead, Dr. King stood beside his goal of achieving rights for all through nonviolent protests; and

WHEREAS, he and other civil rights activists collectively influenced nationwide change, with Dr. King's leadership contributing to the overall success of the civil rights movement in the mid-20th century and which continues to impact civil rights movements today; and

WHEREAS, Dr. King's life was tragically cut short by an assassin's bullet on April 4, 1968 in Memphis, Tennessee while he was championing the cause of labor in the Sanitation Workers' Strike; and

WHEREAS, Dr. King's life will always shine as a light for those without hope and as an example to be emulated by all who care about their fellow human beings, regardless of race, religion, class or nationality; and

WHEREAS, due to the efforts of many dedicated community leaders and activists who sought national recognition for Dr. King, the third Monday in January is nationally recognized across the United States as a day to remember Dr. King, his legacy, and the causes for which he fought and died; now, therefore,

BE IT RESOLVED that the Mayor and this Council hereby recognize the third Monday in January as Reverend Dr. Martin Luther King, Jr. Day in the City of Charlotte. Further, the holiday will be observed by

the closure of city hall.

The foregoing resolution offered by Council member Hoogstra and supported by Dyer. Carried with roll call vote. 7 Yes. 0 No.

PUBLIC COMMENTS:

There was no public comment.

COMMUNICATIONS AND COMMITTEE REPORTS.

COUNCILMEMBER COMMENTS:

The City Attorney Report was received.

The City Manager Report was received.

The Finance Report was received.

Hoogstra had nothing to report.

VanStee had nothing to report.

Dyer thanked the DPW for snow removal assistance.

Weissenborn thanked the DPW for snow removal assistance and for putting ice on the ice rink.

McRae had nothing to report.

Baker had nothing to report.

ADJOURNMENT:

Council member Baker moved, supported by Weissenborn to adjourn the meeting at 8:10 p.m. Carried. 7 Yes. 0 No. 0 Absent.

Mayor Armitage

Pearl Tidwell, City Clerk

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-024

A RESOLUTION TO APPROVE EXPENDITURES OF THE CITY OF CHARLOTTE

FOR MARCH 1, 2021

WHEREAS, Section 7.7(B) of the City Charter requires Council approval for the expenditure of city funds;
and

WHEREAS, the February 26, 2021, payroll totaled \$181,442.26; and

WHEREAS, the February 24, 2021, claims total in the amount of \$201,625.19; and

WHEREAS, the February 22, 2021, insurance claims totaled \$2,364.63

THEREFORE, BE IT RESOLVED that the City Council approves claims and accounts for March 1, 2021, in the amount of \$385,432.08.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk / Treasurer
City of Charlotte

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-025

A RESOLUTION SUPPORTING CONTINUED LOCAL CONTROL OF 911 FEE DIVERSION

WHEREAS, The Federal Communications Commission (“FCC”) is accepting comments in its plan to eliminate the diversion of 911 fees for items it deems not directly related to the 911 process; and

WHEREAS, Michigan Public Act 32 of 1986 provides for each local 911 district to utilize 911 fees within certain limitations that are determined by the State and regularly audited for compliance with the limitations; and

WHEREAS, under Michigan law, allowable uses include radio systems, paging systems, pagers, automatic vehicle location (AVL) systems, and mobile data computers (MDCs); and

WHEREAS, FCC proposed rules impinge upon Michigan’s ability to determine the definition of allowable costs for 911 fees; and

WHEREAS, FCC proposed rules would eliminate the utilization of funds for radio infrastructure, mobile radios, portable radios, pagers, AVL systems and MDCs, critical to dispatching the 911 response; and

WHEREAS, the city of Charlotte believes a broader use and interpretation of the phrase “directly related to the 911 process” should be adopted to include the entire 911 dispatching communication process; and

WHEREAS, the city of Charlotte believes that local decision making and local control regarding the utilization of 911 fees is paramount.

NOW, THEREFORE BE IT RESOLVED, that the city of Charlotte supports a broader use and interpretation of the phrase “directly related to the 911 process” and supports local decision making and local control regarding the utilization of 911 fees.

RESOLUTION DECLARED ADOPTED.The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk / Treasurer
City of Charlotte



Memo

Date: February 25, 2021
To: City Council
From: Honorable Mayor Armitage
Re: Diversion of 911 surcharge fees

On February 17, 2021 the Federal Communications Commission (FCC) passed a Notice of Proposed Rule Making (NPRM) in regards to 911 fee (surcharge) diversion. On December 27, 2020, new federal legislation (the Don't Break Up the T-Band Act of 2020) was signed into law that requires the FCC to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911.

While I agree with the intent of the proposed rules, language in the NRPM brings concerns to many public safety agencies in Michigan. Michigan has a strong reputation for NOT diverting fees by maintaining an 'allowable/disallowable' list, coupled with periodic compliance reviews of counties by the state 911 office. However, there is a conflict between what the FCC defines as allowable use of 911 fees and the definitions used by agencies in the state of Michigan. The NPRM appears to only identify costs in the PSAP (911 center) as allowable. In contrast, the State of Michigan looks at the '911 ecosystem' to include radio systems, in car computers, and location services for first responders that are directly dispatched by the 911 center. These systems are critical in allowing information sharing between 911 and first responders.

Failure by the FCC to include definitions of allowable expenses which are similar to those identified by the State of Michigan would result in Eaton County, along with many other counties in Michigan, being identified as diverting 911 fees. The recent investment in a radio system, including the tower infrastructure and handheld/mobile radios for first responders, is being funded utilizing a voter-approved 911 surcharge. Under the State rules this is considered allowable, but the FCC NPRM language would only identify radios located within the actual 911 center as being an allowable expense.

Considering that first responders in our city have been provided 70 radios and 50 pagers (at a value of over \$400,000) through voter approved 911 surcharge fees, I ask for your consideration in passing the proposed resolution. If adopted, a copy of the resolution will be included in comments to the FCC on this issue.

FCC FACT SHEET*

911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008

Notice of Proposed Rulemaking - PS Docket Nos. 20-291 and 09-14

Background:

Each year people in urgent need of assistance place over 200 million emergency calls to 911 call centers in the United States. Funding for the 911 system is provided in part by dedicated 911 fees established by each state and territory that appear as charges on customer bills for wireless, wireline, and other communications services. Despite the critical importance of 911 service, the Commission's annual reports to Congress on 911 fees show that some states divert a portion of the fees collected for 911 to other purposes.

On December 27, 2020, new federal legislation (the Don't Break Up the T-Band Act of 2020) was signed into law that requires the Commission to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, section 902 of the new legislation directs the Commission to issue final rules within 180 days defining what uses of 911 fees by states and taxing jurisdictions constitute 911 fee diversion. The Notice of Proposed Rulemaking seeks comment on proposed rules to implement these provisions.

What the Notice of Proposed Rulemaking Would Do:

- Propose rules that would define the types of expenditures of 911 fees by states and taxing jurisdictions that are acceptable under the criteria established in section 902 and the types of expenditures that constitute 911 fee diversion.
- Propose rules that would allow states and taxing jurisdictions to petition the Commission for a determination that expenditures of 911 fees not previously designated as acceptable by the Commission should be treated as acceptable under section 902.
- Propose a rule providing that any state or taxing jurisdiction identified as a 911 fee diverter in the Commission's annual 911 fee report to Congress would be ineligible to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) or any advisory committee established by the Commission.
- Propose a rule providing that if a state or taxing jurisdiction receives a federal 911 grant, as a condition of the grant it must provide information that the Commission requires in order to prepare the annual 911 fee report to Congress.

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in PS Docket Nos. 20-291 and 09-14, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR § 1.1200 *et seq.*

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
911 Fee Diversion	)	PS Docket No. 20-291
	)	
New and Emerging Technologies 911	)	PS Docket No. 09-14
Improvement Act of 2008	)	

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: (20 days after date of publication in the Federal Register)

Reply Comment Date: (30 days after date of publication in the Federal Register)

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I. INTRODUCTION

1. On December 27, 2020, the President signed the Don't Break Up the T-Band Act of 2020 as part of the Consolidated Appropriations Act, 2021.¹ Section 902 of the new legislation requires the

* This document has been circulated for tentative consideration by the Commission at its February open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Acting Chairwoman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The Commission's *ex parte* rules apply and presentations are subject to "permit-but-disclose" *ex parte* rules. See, e.g., 47 CFR §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. See 47 CFR §§ 1.1200(a), 1.1203.

Commission to take action to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. In particular, it directs the Commission to issue final rules, not later than 180 days after the date of enactment of section 902, designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. § 615a-1, as amended by section 902.² In this Notice of Proposed Rulemaking, we propose measures to implement section 902. We seek comment on these measures, which are designed to identify those uses of 911 fees by states and other jurisdictions that support the provision of 911 services.³

II. BACKGROUND

2. Congress has had a longstanding concern about the practice by some states and local jurisdictions of diverting 911 fees for non-911 purposes. In the ENHANCE 911 Act of 2004, Congress required states and local jurisdictions receiving federal 911 grants to certify that they were not diverting 911 funds.⁴ In the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Congress enacted additional measures to limit 911 fee diversion, codified in 47 U.S.C. § 615a-1 (section 615a-1).⁵ Specifically, section 615a-1(f)(1) provided that nothing in the NET 911 Act, the Communications Act of 1934,⁶ or any Commission regulation or order “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation . . . for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge.”⁷

3. The NET 911 Act also required the Commission to begin reporting annually on the status in each state of the collection and distribution of fees for the support or implementation of 911 or E911 services, including findings on the amount of revenues obligated or expended by each state “for any purpose other than the purpose for which any such fees or charges are specified.”⁸ Pursuant to this provision, the Commission has reported annually to Congress on 911 fee diversion every year since

(Continued from previous page) _____

¹ Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don’t Break Up the T-Band Act of 2020 (section 902).

² Section 902(c)(1)(C).

³ Comments on this Notice of Proposed Rulemaking are due within 20 days after publication of a summary of the document in the Federal Register, and reply comments are due within 30 days after such publication in the Federal Register. The Commission considers this time period necessary given the 180-day statutory deadline for its rulemaking and given the scope of the issues raised.

⁴ Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (relevant grant provisions codified as amended at 47 U.S.C. § 942) (*ENHANCE 911 Act*). Congress provided another round of 911 grant funding, with similar non-diversion requirements, in the NG911 Act. Next Generation 9-1-1 Advancement Act of 2012 (Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, Subtitle E), 126 Stat. 237 (relevant grant provisions codified at 47 U.S.C. § 942) (*NG911 Act*).

⁵ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (*NET 911 Act*). The NET 911 Act enacted 47 U.S.C. § 615a-1 and also amended 47 U.S.C. §§ 222, 615a, 615b, and 942. See 47 U.S.C. § 615a-1 Editorial Notes.

⁶ 47 U.S.C. § 151 *et seq.*

⁷ 47 U.S.C. § 615a-1(f)(1). Under the NET 911 Act, the Commission’s annual 911 fee report covers states, as well as U.S. territories and the District of Columbia. See 47 U.S.C. § 615b(2).

⁸ 47 U.S.C. § 615a-1(f)(2).

2009.⁹ All 12 of the annual reports issued to date have identified some states that have diverted 911 fees to other uses.¹⁰

4. In October 2020, the Commission released a Notice of Inquiry seeking comment on the effects of fee diversion and the most effective ways to dissuade states and jurisdictions from continuing or instituting the diversion of 911/E911 fees.¹¹ Noting that publicly identifying diverting states in the Commission's annual reports has helped discourage the practice but had not eliminated fee diversion, the Commission sought comment on whether it could take other steps to discourage fee diversion, such as conditioning state and local eligibility for FCC licenses, programs, or other benefits on the absence of fee diversion.¹² The Commission received eight comments and seven reply comments in response to the Notice of Inquiry.¹³

5. The newly enacted section 902 requires the Commission to take additional action with respect to 911 fee diversion. Specifically, section 902(c)(1)(C) adds a new paragraph (3)(A) to section 615a-1(f) that directs the Commission to adopt rules "designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable" for purposes of section 902 and the Commission's rules.¹⁴ The newly added section 615a-1(f)(3)(B) states that these purposes and functions shall be limited to "the support and implementation of 9-1-1 services" provided by or in the state or taxing jurisdiction imposing the fee or charge, and "operational expenses of public safety answering points" within such state or taxing jurisdiction.¹⁵ The new section also states that, in designating such purposes and functions, the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as the intended purposes and functions for their 911 fees or charges, and "determine whether such purposes and functions directly support providing 9-1-1 services."¹⁶

6. Section 902 also amends section 615a-1(f)(1) to provide that the rules adopted by the Commission for these purposes will apply to states and taxing jurisdictions that impose 911 fees or

⁹ The Chairman of the Federal Communications Commission submits the annual report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges, as mandated by the NET 911 Act and as prepared by the staff in the Public Safety and Homeland Security Bureau. See 47 U.S.C. § 155(a) (stating, inter alia, that "[i]t shall be [the Chairman's] duty ... to represent the Commission in all matters relating to legislation and legislative reports"). These annual reports can be viewed at <https://www.fcc.gov/general/911-fee-reports>.

¹⁰ The Twelfth Report found that five states diverted more than \$200 million in 911 fees or surcharges for non-911 purposes in 2019, or 6.6% of all fees collected. Federal Communications Commission (FCC), Twelfth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 49-50, para. 27, Table 16 (2020) (Twelfth Report), <https://www.fcc.gov/files/12thannual911feereport2020pdf>. Following release of the Twelfth Report, the Bureau sought "comment on the Twelfth Report and how it should impact the Commission's ongoing proceeding to end the practice of 911 fee diversion by states and localities." *Public Safety and Homeland Security Bureau Seeks Comment on Twelfth Annual Report to Congress on 911 Fee Diversion in Light of Ongoing Proceeding to Deter Such Practices*, PS Docket Nos. 20-291 and 09-14, Public Notice, 35 FCC Rcd 14144 (PSHSB 2020), <https://www.fcc.gov/document/pshsb-seeks-comment-twelfth-annual-report-911-and-e911-fees>.

¹¹ *911 Fee Diversion; New and Emerging Technologies 911 Improvement Act of 2008*, PS Docket Nos. 20-291 and 09-14, Notice of Inquiry, 35 FCC Rcd 11010, 11010, para. 1 (2020) (*Fee Diversion NOI*).

¹² *Fee Diversion NOI*, 35 FCC Rcd at 11011, 11016, paras. 5, 16.

¹³ These filings can be viewed in the FCC's electronic comment filing system (ECFS) at <https://www.fcc.gov/ecfs/>, under PS Docket Nos. 20-291 and 09-14.

¹⁴ 47 U.S.C. § 615a-1(f)(3)(A) (as amended).

¹⁵ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); Section 902(c)(1)(C).

¹⁶ 47 U.S.C. § 615a-1(f)(3)(B) (as amended); Section 902(c)(1)(C).

charges. Whereas the prior version of section 615a-1(f)(1) referred to fees or charges “obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge,”¹⁷ the amended version reads as follows:

Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State, political subdivision thereof, Indian tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act, as amended (85 Stat. 688) for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, *consistent with the purposes and functions designated in the final rules issued under paragraph (3) as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.*¹⁸

7. In addition, section 902(c) establishes a process for states and taxing jurisdictions to seek a determination that a proposed use of 911 fees should be treated as having such an acceptable purpose or function even if it is for a purpose or function that has not been designated as such in the Commission’s rules.¹⁹ Specifically, newly added section 615a-1(f)(5) provides that a state or taxing jurisdiction may submit to the Commission a petition for a determination that an obligation or expenditure of a 911 fee or charge “for a purpose or function other than a purpose or function designated under [section 615a-1(f)(3)(A)] should be treated as such a purpose or function,” i.e., as acceptable for purposes of this provision and the Commission’s rules.²⁰ The new section 615a-1(f)(5) provides that the Commission shall grant the petition if the state or taxing jurisdiction provides sufficient documentation that the purpose or function “(i) supports public safety answering point functions or operations,” or “(ii) has a direct impact on the ability of a public safety answering point to . . . (I) receive or respond to 9-1-1 calls; or (II) dispatch emergency responders.”²¹

8. Section 902(d) requires the Commission to create an “interagency strike force” to study “how the Federal Government can most expeditiously end diversion” by states and taxing jurisdictions and to report to Congress on its findings within 270 days of the statute’s enactment.²² It further provides that if the Commission obtains evidence that “suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges,” the Commission shall submit such information to the strike force.²³ In addition, Section 902(c)(1)(C) provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 942) after the date of the enactment of the new legislation, “such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the [annual report

¹⁷ 47 U.S.C. § 615a-1(f)(1) (prior version).

¹⁸ 47 U.S.C. § 615a-1(f)(1) (as amended) (emphasis added); Section 902(c)(1)(A).

¹⁹ 47 U.S.C. § 615a-1(f)(5) (as amended); Section 902(c)(1)(C).

²⁰ *Id.*

²¹ 47 U.S.C. § 615a-1(f)(5) (as amended); Section 902(c)(1)(C).

²² Section 902(d)(3).

²³ Section 902(d)(1). In addition, Section 902(d)(2) provides that, beginning with the first annual fee report “that is required to be submitted after the date that is 1 year after the date of the enactment of this Act,” the Commission shall include in each report “all evidence that suggests the diversion by a State or taxing jurisdiction of 9-1-1 fees or charges, including any information regarding the impact of any underfunding of 9-1-1 services in the State or taxing jurisdiction.”

to Congress on 911 fees].”²⁴ Finally, section 902(d)(4) prohibits any state or taxing jurisdiction identified as a fee diverter in the Commission’s annual report from participating or sending a representative to serve on any committee, panel, or council established to advise the First Responder Network Authority (FirstNet) under 47 U.S.C. § 1425(a) or any advisory committee established by the Commission.²⁵

9. Section 902 does not impose any requirement on states or taxing jurisdictions to impose any fee in connection with the provision of 911 service. As revised, the proviso to Section 615a-1 states that nothing in the Act or the Commission’s rules “shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or IP-enabled voice services” specifically designated by the taxing jurisdiction “for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, consistent with the purposes and functions designated in [the Commission’s forthcoming rules] as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.”²⁶

III. DISCUSSION

10. With this Notice of Proposed Rulemaking, we propose rules to implement the provisions of section 902 that require Commission action. Specifically, we propose to amend part 9 of our rules to establish a new subpart I that would address 911 fees and fee diversion in accordance with and for the purposes of the statute. Accordingly, we propose to (1) adopt rules that clarify what does and does not constitute the kind of diversion of 911 fees that has concerned Congress (and the Commission), (2) establish a declaratory ruling process for providing further guidance to states and taxing jurisdictions on fee diversion issues, and (3) codify the specific restrictions that section 902 imposes on states and taxing jurisdictions that engage in diversion as defined by our rules (i.e., a reporting requirement upon which eligibility for NTIA grants are to be conditioned, and the exclusion from eligibility to participate on certain committees, panels, councils, and Commission advisory commissions). We tentatively conclude that these proposed changes to part 9 would further Congress’s stated objectives in section 902 in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunications services or to state and taxing jurisdictions. We seek comment on this tentative conclusion and on the proposed changes we set forth below.

A. Definitions and Applicability

11. As a preliminary matter, we note that section 902 defines certain terms relating to 911 fees and fee diversion. To promote consistency, we propose to codify these definitions in our rules with certain modifications, as described below. We seek comment on these proposed definitions.

12. *911 fee or charge.* Section 902 defines “9-1-1 fee or charge” as “a fee or charge applicable to commercial mobile services or IP-enabled voice services specifically designated by a State or taxing jurisdiction for the support or implementation of 9-1-1 services.”²⁷ We propose to codify this definition in our rules. However, we note that the statutory definition in section 902 does not address services that may be subject to 911 fees other than Commercial Mobile Radio Services (CMRS) and IP-enabled voice services. The reason for this omission is unclear. For example, virtually all states impose 911 fees on wireline telephone services and have provided information on such fees for inclusion in the Commission’s annual fee reports. In addition, as 911 expands beyond voice to include text and other non-voice applications, states could choose to extend 911 fees to such services in the future.²⁸

²⁴ 47 U.S.C. § 615a-1(f)(4) (as amended); Section 902(c)(1)(C).

²⁵ Section 902(d)(4).

²⁶ 47 U.S.C. § 615a-1(f)(1) (as amended); Section 902(c)(1)(A).

²⁷ 47 U.S.C. § 615a-1(f)(3)(d) (as amended); Section 902(c)(1)(C), (f)(1).

²⁸ For example, the Commission has extended 911 obligations to providers of text messaging services. See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications*, PS Docket Nos. 10-255

(continued....)

13. To promote regulatory parity and avoid gaps that could inadvertently frustrate the rapid deployment of effective 911 services, including advanced Next Generation 911 (NG911) services, we propose to define “911 fee or charge” in our rules to include fees or charges applicable to “other emergency communications services” as defined in section 201(b) of the NET 911 Act. Under the NET 911 Act, the term “other emergency communications service” means “the provision of emergency information to a public safety answering point via wire or radio communications, and may include 9-1-1 and enhanced 9-1-1 service.”²⁹ The proposed modification will make clear that the rules in subpart I extend to all communications services regulated by the Commission that provide emergency communications, including wireline services, and not just to commercial mobile services and IP-enabled voice services.

14. We tentatively conclude that adoption of this proposed expanded definition of “911 fee or charge” is reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities under section 902 and other federal 911-related statutes that, taken together, establish an overarching federal interest in ensuring the effectiveness of the 911 system.³⁰ The Commission’s general jurisdictional grant includes the responsibility to set up and maintain a comprehensive and effective 911 system, encompassing a variety of communication services in addition to CMRS and IP-enabled voice services. Section 251(e)(3) of the Communications Act of 1934, which directs the Commission to designate 911 as the universal emergency telephone number, states that the designation of 911 “shall apply to both wireline and wireless telephone service,” which evidences Congress’s intent to grant the Commission broad authority over different types of communications services in the 911 context.³¹ Similarly, RAY BAUM’S Act directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls “regardless of the technological platform used.”³² In addition, section 615a-1(e)(2) provides that the Commission “shall enforce this section as if this section was a part of the Communications Act of 1934 [47 U.S.C. 151 et seq.]” and that “[f]or purposes of this section, any violations of this section, or any regulations promulgated under this section, shall be considered to be a violation of the Communications Act of 1934 or a regulation promulgated under that Act, respectively.”³³

(Continued from previous page)

and 11-153, Report and Order, 28 FCC Rcd 7556 (2013) (*Bounce-Back Report and Order*) (requiring covered text providers to provide consumers attempting to send a text to 911 with an automatic bounce-back message when the service is unavailable); *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (*Text-to-911 Second Report and Order*) (requiring covered text providers to implement text-to-911 service no later than June 30, 2015 or six months from the date of a PSAP’s request, whichever is later). Further, in RAY BAUM’S Act, which directed the Commission to consider adopting rules to ensure that dispatchable location is conveyed with 911 calls, Congress specifically defined the term “9-1-1 call” to include a voice call “or a message that is sent by other means of communication.” See Section 506 of the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM’S Act), Pub. L. No. 115-141, 132 Stat. 348, 1095 (codified at 47 U.S.C. § 615 note).

²⁹ 47 U.S.C. § 615b(8).

³⁰ See, e.g., *Comcast Corp. v. FCC*, 600 F.3d 642, 646-47 (D.C. Cir. 2010).

³¹ 47 U.S.C. § 251(e)(3). Section 251(e)(3) was added as part of the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (911 Act), which established 911 as the national emergency number and required the Commission to provide for appropriate transition periods for areas in which 911 was not in use. Congress broadly stated the purpose of the 911 Act as “to encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation’s public safety and other communications needs.” 911 Act § 2(b), codified at 47 U.S.C. § 615 note.

³² See RAY BAUM’S Act.

³³ 47 U.S.C. § 615a-1(e)(2).

15. Based on the foregoing, we tentatively conclude that including “other emergency communications services” within the scope of the definition of 911 fees we propose is also reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities for ensuring that the 911 system, including 911, E911, and NG911 calls and texts from any type of service, is available, that these 911 services function effectively, and that 911 fee diversion by states and other jurisdictions does not detract from these critical, statutorily recognized purposes.³⁴ Diverting fees collected for 911 service of any type, whether it be wireline, wireless, IP based, or text, undermines the purpose of these federal statutes by depriving the 911 system of the funds it needs to function effectively and to modernize 911 operations.³⁵ We seek comment on this tentative conclusion and on the extent to which our proposed rules would strengthen the effectiveness of a nationwide 911 service.

16. In addition, we seek comment on extending the definition of “911 fee or charge” to include fees or charges designated for the support of “public safety,” “emergency services,” or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services.³⁶ This would be consistent with the approach taken in the agency’s annual fee reports, which found that the mere labelling of a fee is not dispositive and that one must examine the underlying purpose of the fee to determine whether it is (or includes) a 911 fee within the meaning of the NET 911

³⁴ See, e.g., 47 U.S.C. § 151 *et seq.*; 47 U.S.C. § 601; *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996); 911 Act § 3(a), and as codified at 47 U.S.C. §§ 222, 251, 615, 615a, 615b; 47 CFR § 64.3000 *et seq.*, renumbered as 47 CFR § 9.4 *et seq.*; 47 CFR § 20.18, renumbered as 47 CFR § 9.10; 47 CFR § 9.1 *et seq.*, renumbered as 47 CFR § 9.11 *et seq.*; *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Nuvio Corp. v. FCC*, 473 F.3d 302, 312 (D.C. Cir. 2007) (Kavanaugh, J., concurring); NET 911 Act, as codified at §§ 222, 615a, 615a-1, 615b, 942; CVAA § 106, as codified in part at 47 U.S.C. § 615c(a), (g); *Bounce-Back Report and Order; Text-to-911 Second Report and Order; NG911 Act* §§ 6503-6509, and as codified at 47 U.S.C. §§ 942, 1471-1473; Kari’s Law Act of 2017, Pub. L. No. 115-127, 132 Stat. 326 (2018), codified at 47 U.S.C. § 623; RAY BAUM’S Act, codified at 47 U.S.C. § 615 note; *Implementing Kari's Law and Section 506 of RAY BAUM'S Act; 911 Access, Routing, and Location in Enterprise Communications Systems; Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, PS Docket Nos. 18-261 and 17-239, GN Docket No. 11-117, Report and Order, 34 FCC Rcd 6607 (2019), *corrected by* Erratum, 34 FCC Rcd 11073 (PSHSB Dec. 2, 2019).

³⁵ The 2016 report of the Task Force on Optimal PSAP Architecture (TFOPA) recounted how fee diversion practices have “delayed plans in several states to meet the deployment schedule for the transition to an NG9-1-1 system.” See TFOPA Report at 153-154; *see generally* Legal and Regulatory Framework for Next Generation 911 Services, Report and Recommendations, at Sec. 4.1.4 (2013) (Report to Congress Pursuant to the Next Generation 911 Advancement Act of 2012 (Pub. L. No. 112-96 (2012))), https://www.911.gov/pdf/FCC_Report_Legal_Regulatory_Framework_NG911_Services_2013.pdf. Other commenters have noted instances of fee diversion resulting in the delay of 911 improvements. See New Jersey Wireless Association Reply Comments, PS Docket No. 09-14, at 2 (rec. Feb. 12, 2019) (noting that instead of upgrading to NG911 technology, New Jersey is maintaining a 911 selective router system that is “past its useful life and is now costing more to maintain from previous years, due to its obsolescence”); Letter from Matthew Grogan, 1st Vice President, Nevada APCO at 1 (Feb. 15, 2019) (noting that Nevada 911 funds have been used to purchase police body cameras at a time when “several counties and jurisdictions ... are still not equipped with enhanced 9-1-1 services”), https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=36516&fileDownloadName=SB%2025_Testimony%20in%20Opposition_Matthew%20Grogan%20Nevada%20Fee%20Diverison.pdf.

³⁶ We also propose a safe harbor in the rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. See *infra* para. 28.

Act.³⁷ We seek comment on these conclusions.

17. We propose that for purposes of implementing section 902, our definition of “911 fee or charge” should similarly extend to fees or charges that are expressly identified by the state or taxing jurisdiction as supporting 911, even if the fee is not labelled as a 911 fee. We tentatively conclude that this is consistent with the purpose of section 902 with respect to diversion of 911 fees and charges.³⁸ We seek comment on this proposal. Does the proposed definition of 911 fees or charges capture the universe of 911 fees or charges that can be diverted? Is the definition overinclusive or underinclusive? Are there other modifications to the definition that would help to prevent 911 fee diversion?

18. *Diversion.* Section 902(f) defines “diversion” as follows:

The term “diversion” means, with respect to a 9-1-1 fee or charge, the obligation or expenditure of such fee or charge for a purpose or function other than the purposes and functions designated in the final rules issued under paragraph (3) of section 6(f) of the Wireless Communications and Public Safety Act of 1999, as added by this Act, as purposes and functions for which the obligation or expenditure of such a fee or charge is acceptable.³⁹

We propose to codify this definition, with minor changes to streamline it. Specifically, we propose to define diversion as “[t]he obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to [the applicable rule section in subpart I].”⁴⁰ In addition, we propose to clarify that diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated by the Commission. We believe this provision will clarify that states and taxing jurisdictions are also responsible for diversion of 911 fees by political subdivisions, such as counties, that may receive 911 fees. We seek comment on these proposals.

19. *State or taxing jurisdiction.* Section 902 defines a state or taxing jurisdiction as “a State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).”⁴¹ We propose to codify this definition in our rules. We note that the existing language in section 615a-1 directs the Commission to submit an annual report to Congress on the use of 911 fees by “each State or political subdivision thereof,” and section 902 does not revise this language. We also note that section 902 does not alter the definition of “State” in the existing legislation. Under section 615b, the term “State” means “any of the several States, the District of Columbia, or any territory or possession of the United States.”⁴² Accordingly, provisions in subpart I that apply to any “State or taxing jurisdiction” would apply to the District of Columbia and any United States territory or possession as well. To clarify this and to assist users of the regulations, we propose to add the definition of State to subpart I.

20. Regarding the scope of proposed subpart I, we propose that the rules apply to states or taxing jurisdictions that collect 911 fees or charges (as defined in that subpart) from commercial mobile

³⁷ *E.g.*, Twelfth Report at 51-52, para. 31 (“We do not agree that a fee or charge must be exclusively designated for 911 or E911 purposes in order to constitute a fee or charge ‘for the support or implementation of 9-1-1 or enhanced 9-1-1 services’ under section 6(f)(1) of the NET 911 Act.”); *see also* Eleventh Report at 43, para. 34.

³⁸ *See, e.g.*, Section 902(c), codified at 47 U.S.C. § 615a-1(f)(3)(A).

³⁹ Section 902(f)(4).

⁴⁰ As proposed for the new Subpart I, “[a]cceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to: (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.”

⁴¹ 47 U.S.C. § 615a-1(f)(3)(d) (as amended); Section 902(c)(1)(C), (f)(5).

⁴² 47 U.S.C. § 615b(2).

services, IP-enabled voice services, and other emergency communications services. And as the proposed definitions make clear, such fees or charges would include fees or charges designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fees or charges include the support or implementation of 911 services. We seek comment on these proposals.

B. Designation of Obligations or Expenditures Acceptable for Purposes of Section 902

21. Section 902 requires the Commission to issue rules “designating purposes and functions for which the obligation or expenditure of 9-1-1 fees or charges, by any State or taxing jurisdiction authorized to impose such a fee or charge, is acceptable” for purposes of the statute.⁴³ In addition, section 902 provides that the purposes and functions designated as acceptable for such purposes “shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction.”⁴⁴ Section 902 also provides that the Commission shall consider the purposes and functions that states and taxing jurisdictions specify as their intended purposes and “determine whether such purposes and functions directly support providing 9-1-1 services.”⁴⁵ Moreover, Section 902 provides states and taxing authorities with the right to file a petition with the Commission for a determination that an obligation or expenditure of a 911 fee or charge that is imposed for a purpose or function other than those designated as acceptable for purposes of the statute in the Commission rules should nevertheless be treated as having an acceptable purpose or function for such purposes.⁴⁶

22. We propose to codify the statutory standard for acceptable purposes and functions for the obligation or expenditure of 911 fees or charges by providing that acceptable purposes and functions for purposes of the statute are limited to (1) support and implementation of 911 services provided by or in the state or taxing jurisdiction imposing the fee or charge, and (2) operational expenses of PSAPs within such state or taxing jurisdiction. This proposed language tracks the language in section 902.⁴⁷ In addition, we propose to specify in the rules that examples of such acceptable purposes and functions include, but are not limited to, the following, provided that the state or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:

- (1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
- (2) PSAP personnel costs, including telecommunicators’ salaries and training;
- (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
- (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations; and

⁴³ 47 U.S.C. § 615a-1(f)(3)(A).

⁴⁴ 47 U.S.C. § 615a-1(f)(3)(B).

⁴⁵ 47 U.S.C. § 615a-1(f)(3)(B).

⁴⁶ 47 U.S.C. § 615a-1(f)(5). Such a petition must be granted if the Commission finds that the State or taxing jurisdiction has provided sufficient documentation to demonstrate that the purpose or function in question supports PSAP functions or operations, or that the purpose or function has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. *Id.*

⁴⁷ See 47 U.S.C. § 615a-1(f)(3)(B) (as amended); Section 902(c)(1)(C) (stating that “[t]he purposes and functions designated [by the Commission] shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction”).

- (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.

23. We believe these purposes and functions are consistent with the general standard for designating acceptable uses of 911 fees and charges set out in section 902. They also are consistent with the Commission's past analysis of 911 fee diversion in its annual fee reports, and, as required under section 902, they reflect the Commission's consideration of the purposes and functions that states have specified for their 911 fees and charges. In particular, the Commission has stated in its annual fee reports that the requisite nexus to 911 includes expenditures that (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 911 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs (or otherwise ensures the reliable reception and processing of emergency calls and their dispatch to first responders).⁴⁸ In addition, the Commission has stated that expenses associated with integrating public safety dispatch and 911 systems (e.g., purchase of CAD hardware and software to support integrated 911 and dispatch operations) may be 911 related, provided the state or other jurisdiction can document a connection to 911.⁴⁹ We seek comment on our proposed inclusion of these examples of acceptable purposes and functions and any additional examples that should be specified in the rules.

24. We also seek comment on specifying certain examples of purposes and functions that are *not* acceptable for the obligation or expenditure of 911 fees or charges for purposes of the statute. These would include, but are not limited to:

- (1) Transfer of 911 fees into a state or other jurisdiction's general fund or other fund for non-911 purposes;
- (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks); and
- (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.

25. Identifying these examples as unacceptable expenditures for purposes of the statute is consistent with the manner in which such expenditures were analyzed in our annual 911 fee reports. For example, the fee reports have repeatedly found that transferring 911 fees to the state's general fund or using 911 fees for the expansion of commercial cellular networks constitutes fee diversion.⁵⁰ The fee reports also have found that expenditures to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911 related.⁵¹ The Eleventh Report explained that the purchase or upgrade of public safety radio equipment was not considered to be 911 related because "radio networks used by first responders are technically and operationally distinct from the 911 call-handling

⁴⁸ See Tenth Report at 49, para. 40. Under this analysis, funding for 911 dispatcher salaries and training would have a sufficient nexus to 911, but equipment and infrastructure for law enforcement, firefighters, and other first responders generally would not. See also Eleventh Report at 74, para. 59 ("CTIA supports the Commission in requiring documentation sufficient to demonstrate that the expenditures (1) support PSAP functions or operations, (2) have a reasonable nexus to PSAPs' ability to receive 9-1-1 calls and/or dispatch emergency responders, or (3) relate to communications infrastructure that connects PSAPs.").

⁴⁹ See Twelfth Report at 48-49, para. 26; Eleventh Report at 39, para. 26; Tenth Report at 42, para. 26.

⁵⁰ E.g., Twelfth Report at 52-54, paras. 32, 35, 37; Eleventh Report at 40, 42-43, paras. 28, 32, 35; Tenth Report at 43-44, 46-47, paras. 30, 32, 35, 37.

⁵¹ See Twelfth Report at 48-49, para. 26; Eleventh Report at 39, para. 26; Tenth Report at 42, para. 26.

system.”⁵² We seek comment on whether we should reexamine any of these prior findings in light of the impact of the coronavirus pandemic on public safety and emergency communications services, if any.

26. Our proposed designation of acceptable purposes and functions for purposes of the statute is also consistent with the legislative history of the NET 911 Act. In its report on H.R. 3403 (the bill that was enacted as the NET 911 Act), the House Committee on Energy and Commerce noted that several states were known to be using 911 fees for “purposes other than 911 or emergency communications services.”⁵³ The Report also noted that under section 6(f) of the proposed legislation, “[s]tates and their political subdivisions should use 911 or E-911 fees only for direct improvements to the 911 system. Such improvements could include improving the technical and operational aspects of PSAPs; establishing connections between PSAPs and other public safety operations, such as a poison control center; or implementing the migration of PSAPs to an IP-enabled emergency network.”⁵⁴ Further, “[t]his provision is not intended to allow 911 or E-911 fees to be used for other public safety activities that, although potentially worthwhile, are not directly tied to the operation and provision of emergency services by the PSAPs.”⁵⁵

27. We seek comment on our proposed designation of acceptable purposes and functions under the statute. Are the proposed purposes and functions that would be deemed acceptable overinclusive or underinclusive? If the proposed purposes are overinclusive, commenters should explain how and why. What purposes and functions have states and taxing jurisdictions specified as the intended functions for 911 fees and charges, and how should we take these specifications into account as we designate acceptable purposes and functions under section 902? CTIA contends that allowable 911 expenditures should include the nonrecurring costs of establishing a 911 system, the cost of emergency telephone and dispatch equipment, and costs for training for maintenance and operation of the 911 system but should exclude costs for leasing real estate, cosmetic remodeling of facilities, salaries or benefits, or emergency vehicles.⁵⁶ The Commission has found in its 911 fee reports, however, that some PSAP overhead costs, such as 911 telecommunicator salaries, are 911 related.⁵⁷ To the extent that the proposed purposes and functions are underinclusive, commenters should identify what additional purposes and functions should be deemed acceptable, and why.

28. We also propose to define acceptable purposes and functions under section 902 for states and taxing jurisdictions that impose multi-purpose fees or charges intended to support 911 services as well as other public safety purposes. In such instances, we believe states and taxing jurisdictions should have the flexibility to apportion the collected funds between 911-related and non-911 related programs, but that safeguards are needed to ensure that such apportionment is not subject to manipulation that would constitute fee diversion. We therefore propose to adopt a safe harbor in our rules providing that the obligation or expenditure of such fees or charges will not constitute diversion so long as the state or taxing jurisdiction: (1) specifies the amount or percentage of such fees or charges that is dedicated to 911 services; (2) ensures that the 911 portion of such fees or charges is segregated and not commingled with

⁵² See Eleventh Report at 42, para. 32; *see also* Eleventh Report at 44, para. 37 (finding that there was no 911 fee diversion where Virginia allocated a portion of its wireless E911 funding to the Virginia State Police for costs incurred for answering wireless 911 telephone calls and to support sheriff’s 911 dispatchers).

⁵³ See House of Representatives Committee on Energy and Commerce, Report on 911 Modernization and Public Safety Act of 2007 at 11 (Nov. 13, 2007), <https://www.congress.gov/110/crpt/hrpt442/CRPT-110hrpt442.pdf> (“The most recent data available indicate that four states use 911 fees, including wireless and wireline fees, for purposes other than 911 or emergency communications services.”).

⁵⁴ *Id.* at 15.

⁵⁵ *Id.*

⁵⁶ CTIA Comments on NOI at 5-6.

⁵⁷ *See, e.g.*, Eleventh Report at 21, para. 18; Tenth Report at 44-45, para. 33.

any other funds; and (3) obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section. This provision would provide transparency in the use of 911 fees when a state or taxing jurisdiction collects a fee for both 911 and non-911 purposes. It would also enable the Commission to verify through the annual fee report data collection that the 911 portion of such fees or charges is not being diverted.⁵⁸

29. We seek comment on our proposal for determining whether there is diversion of a fee or charge collected for both 911 and non-911 purposes. Are the measures we propose sufficient to provide transparency with respect to diversion in the use of such fees? Are there other measures that would help ensure that 911 fees or charges are fully traceable in states or taxing jurisdictions with such funding mechanisms? In addition, some state laws and regulations provide that any excess 911 funds left over after all 911 expenditures have been covered can be used for non-911 related purposes.⁵⁹ Similarly, some state laws and regulations provide that if the 911 service is *discontinued*, the remaining 911 funds can be disbursed to non-911 uses, such as a general fund. Does the existence or implementation of such provisions for non-911 related disbursements constitute diversion?

C. Petition for Determination

30. Section 902(c)(1)(C) provides that a state or taxing jurisdiction may petition the Commission for a determination that “an obligation or expenditure of a 911 fee or charge for a purpose or function other than a purpose or function designated as 911-related under paragraph (3)(A) [support for 911 services/PSAP expenditures] should be treated as such a purpose or function.”⁶⁰ The state or taxing jurisdiction must demonstrate that the expenditure: (1) “supports public safety answering point functions or operations,” or (2) has a direct impact on the ability of a public safety answering point to “receive or respond to 911 calls” or to “dispatch emergency responders.”⁶¹ If the Commission finds that the state or taxing jurisdiction has provided sufficient documentation to make this demonstration, section 902 provides that the Commission shall grant the petition.⁶²

31. We propose to codify these provisions in new subpart I of the rules. We believe Congress intended this petition process to serve as a safety valve allowing states to seek further refinement of the definition of obligations and expenditures that are considered 911 related. At the same time, the proposed rule would set clear standards for what states must demonstrate to support a favorable ruling, including the requirement to provide sufficient documentation. To promote efficiency in reviewing such petitions, we also propose that states or taxing jurisdictions seeking such a determination

⁵⁸ This proposal is consistent with the agency’s review of the U.S. Virgin Islands’ “Emergency Service” surcharge, which is dedicated for both 911 and non-911 purposes. The Eleventh Report noted that under the U.S. Virgin Islands’ statute, surcharge funds are deposited in an Emergency Service Fund (ESF), with ESF funds allocated 40% to the Virgin Islands Emergency Management Agency (VITEMA) and the other 60% allocated to other specific public safety, non-911 uses. See Eleventh Report at 44-45, paras. 39-40. In addition, the percentage of the ESF allocated to VITEMA must be used entirely for 911/E911 support of PSAPs, and the ESF cannot be commingled with or redirected to the general fund or any other account. See *id.* at 45, para. 40. The Commission concluded that the collection and use of these surcharge funds did not constitute diversion of 911 fees. See Eleventh Report at 44-45, paras. 39-40.

⁵⁹ The Task Force on Optimal PSAP Architecture (TFOPA) report noted, “The legislative practice of sweeping uncommitted balances of 9-1-1-related accounts, especially those intended to fund NG9-1-1 system infrastructure generally occurs quietly without much public scrutiny.” FCC, Task Force on Optimal PSAP Architecture (TFOPA), Final Report at 153-154 (Jan. 29, 2016), <https://www.fcc.gov/about-fcc/advisory-committees/general/task-force-optimal-public-safety-answering-point> (TFOPA Final Report). The TFOPA Final Report proposed measures to deter such sweeps and advised “there should ultimately be consequences for *repeated* diversions.” *Id.* at 161-162.

⁶⁰ 47 U.S.C. § 615a-1(f)(5)(A).

⁶¹ 47 U.S.C. § 615a-1(f)(5)(B).

⁶² 47 U.S.C. § 615a-1(f)(5)(A).

must do so by filing a petition for declaratory ruling under section 1.2 of the Commission's rules.⁶³ The declaratory ruling process would promote transparency regarding the ultimate decisions about 911 fee revenues that legislatures and executive officials make and how such decisions promote effective 911 services and deployment of NG911. Consistent with the declaratory ruling process outlined in section 1.2(b), we anticipate docketing the petition within an existing or new proceeding.⁶⁴ In addition, we anticipate the Public Safety and Homeland Security Bureau will seek comment on petitions via public notice and with a comment and reply comment cycle.⁶⁵ We propose to delegate authority to the Bureau to rule on these petitions. We seek comment on these proposals and on any possible alternative processes for entertaining such petitions.

D. Other Section 902 Provisions

32. Pursuant to section 902(d)(4), any state or taxing jurisdiction identified by the Commission in the annual 911 fee report as engaging in diversion of 911 fees or charges "shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 . . . or any advisory committee established by the Commission."⁶⁶ We propose to codify this restriction in subpart I and seek comment on this proposal. We also seek comment on the extent to which state and local governments currently diverting 911 fees (based on the Commission's most recent report) now participate in such Commission advisory committees and the impact on them from being prohibited from doing so. Would it be helpful to provide a mechanism for states and taxing jurisdictions to raise questions regarding their eligibility to serve on an advisory committee?

33. Section 902(c)(1)(C) also provides that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after the date of enactment of Section 902, "such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare [the annual report to Congress on 911 fees]."⁶⁷ We propose to codify this provision in subpart I and seek comment on this proposal. What effect does this statutory provision and its proposed codification in the Commission's rules have on states or taxing jurisdictions that receive such grants? Does this provision, combined with other statutory anti-diversion restrictions that already apply to 911 grant recipients, increase the likelihood that diverting states and taxing jurisdictions will change their diversion practices?⁶⁸ Are there any aspects of our proposed implementation of section 902 that might create obstacles to state fiscal needs?

⁶³ See 47 CFR § 1.2.

⁶⁴ See 47 CFR § 1.2(b).

⁶⁵ See 47 CFR § 1.2(b).

⁶⁶ Section 902(d)(4) (internal citations omitted). The committees, panels, and councils referred to in section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 are those established to assist FirstNet. See 47 U.S.C. § 1425.

⁶⁷ 47 U.S.C. § 615a-1(f)(4) (as amended); Section 902(c)(1)(C).

⁶⁸ The ENHANCE 911 Act authorizes matching grants for eligible projects, required grant applicants to certify that no portion of 911 charges were obligated or expended for "any purpose other than the purposes for which such charges are designated or presented." See *ENHANCE 911 Act* (codified at 47 U.S.C. § 942(c)(2)). The Middle Class Tax Relief and Job Creation Act of 2012 requires grant recipients that improperly obligated or expended designated 911 charges to return all granted funds to the 9-1-1 Implementation Coordination Office. Sec. 6503, § 158(c)(3), 126 Stat. at 239 (codified at 47 U.S.C. § 942(c)(3)).

IV. PROCEDURAL MATTERS

34. *Initial Paperwork Reduction Act of 1995 Analysis.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.⁶⁹ If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁷⁰ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁷¹

35. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁷² requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁷³ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is contained in Appendix B.

36. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filing in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the Commission’s rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

37. *Comment Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in CG Docket No. 02-278. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).⁷⁵

⁶⁹ Pub. L. No. 104-13.

⁷⁰ Public Law 107-198.

⁷¹ 44 U.S.C. § 3506(c)(4).

⁷² 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷³ *Id.* § 605(b).

⁷⁴ 47 CFR §§ 1.1200 *et seq.*

⁷⁵ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

38. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

39. *Additional Information.* For additional information on this proceeding, contact Brenda Boykin, Brena.Boykin@fcc.gov or 202-418-2062, or John A. Evanoff, John.Evanoff@fcc.gov or 202-418-0848 of the Public Safety and Homeland Security Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up The T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b, that this *Notice of Proposed Rulemaking* is hereby ADOPTED.

41. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the *Notice of Proposed Rulemaking* on or before 20 days after publication in the Federal Register, and reply comments on or before 30 days after publication in the Federal Register.

42. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend part 9 of Title 47 of the Code of Federal Regulations as follows:

PART 9 – 911 Requirements

1. Revise the authority citation for part 9 to read as follows: [TO BE INSERTED PRIOR TO FEDERAL REGISTER PUBLICATION]
2. Amend part 9 by adding subpart I to read as follows:

Subpart I – 911 Fees

Sec.

9.21 Applicability.

9.22 Definitions.

9.23 Designation of acceptable obligations or expenditures.

9.24 Petition regarding additional purposes and functions.

9.25 Participation in annual fee report data collection.

9.26 Advisory committee participation.

§ 9.21 Applicability.

The rules in this subpart I apply to States or taxing jurisdictions that collect 911 fees or charges (as defined in this subpart) from commercial mobile services, IP-enabled voice services, and other emergency communications services.

§ 9.22 Definitions.

For purposes of this subpart I, the terms below have the following meaning:

911 fee or charge. A fee or charge applicable to commercial mobile services, IP-enabled voice services, or other emergency communications services specifically designated by a State or taxing jurisdiction for the support or implementation of 911 services. A 911 fee or charge shall also include a fee or charge designated for the support of public safety, emergency services, or similar purposes if the purposes or allowable uses of such fee or charge include the support or implementation of 911 services.

Diversion. The obligation or expenditure of a 911 fee or charge for a purpose or function other than the purposes and functions designated by the Commission as acceptable pursuant to § 9.23. Diversion also includes distribution of 911 fees to a political subdivision that obligates or expends such fees for a purpose or function other than those designated as acceptable by the Commission pursuant to § 9.23.

Other emergency communications services. The provision of emergency information to a public safety answering point via wire or radio communications, and may include 911 and E911 service.

State. Any of the several States, the District of Columbia, or any territory or possession of the United States.

State or taxing jurisdiction. A State, political subdivision thereof, Indian Tribe, or village or regional corporation serving a region established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

§ 9.23 Designation of acceptable obligations or expenditures.

- (a) Acceptable purposes and functions for the obligation or expenditure of 911 fees or charges are limited to:
 - (1) Support and implementation of 911 services provided by or in the State or taxing jurisdiction imposing the fee or charge; and
 - (2) Operational expenses of public safety answering points within such State or taxing jurisdiction.
- (b) Examples of acceptable purposes and functions include, but are not limited to, the following, provided that the State or taxing jurisdiction can adequately document that it has obligated or spent the fees or charges in question for these purposes and functions:
 - (1) PSAP operating costs, including lease, purchase, maintenance, and upgrade of customer premises equipment (CPE) (hardware and software), computer aided dispatch (CAD) equipment (hardware and software), and the PSAP building/facility;
 - (2) PSAP personnel costs, including telecommunicators' salaries and training;
 - (3) PSAP administration, including costs for administration of 911 services and travel expenses associated with the provision of 911 services;
 - (4) Integrating public safety/first responder dispatch and 911 systems, including lease, purchase, maintenance, and upgrade of CAD hardware and software to support integrated 911 and public safety dispatch operations;
 - (5) Providing for the interoperability of 911 systems with one another and with public safety/first responder radio systems.
- (c) Examples of purposes and functions that are not acceptable for the obligation or expenditure of 911 fees or charges include, but are not limited to, the following:
 - (1) Transfer of 911 fees into a State or other jurisdiction's general fund or other fund for non-911 purposes;
 - (2) Equipment or infrastructure for constructing or expanding non-public safety communications networks (e.g., commercial cellular networks);
 - (3) Equipment or infrastructure for law enforcement, firefighters, and other public safety/first responder entities, including public safety radio equipment and infrastructure, that does not have a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders.
- (d) If a State or taxing jurisdiction collects fees or charges designated for "public safety," "emergency services," or similar purposes that include the support or implementation of 911 services, the obligation or expenditure of such fees or charges shall not constitute diversion provided that the State or taxing jurisdiction:
 - (1) Specifies the amount or percentage of such fees or charges that is dedicated to 911 services;
 - (2) Ensures that the 911 portion of such fees or charges is segregated and not commingled with any other funds; and
 - (3) Obligates or expends the 911 portion of such fees or charges for acceptable purposes and functions as defined under this section.

§ 9.24 Petition regarding additional purposes and functions.

- (a) A State or taxing jurisdiction may petition the Commission for a determination that an obligation or expenditure of 911 fees or charges for a purpose or function other than the purposes or functions designated as acceptable in § 9.23 should be treated as an acceptable purpose or function. Such a petition must meet the requirements applicable to a petition for declaratory ruling under § 1.2 of this chapter.
- (b) The Commission shall grant the petition if the State or taxing jurisdiction provides sufficient documentation to demonstrate that the purpose or function:
 - (1) supports public safety answering point functions or operations, or
 - (2) has a direct impact on the ability of a public safety answering point to:
 - (i) receive or respond to 911 calls, or
 - (ii) dispatch emergency responders.

§ 9.25 Participation in annual fee report data collection.

If a State or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such State or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)).

§ 9.26 Advisory committee participation.

Notwithstanding any other provision of law, any State or taxing jurisdiction identified by the Commission in the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)) as engaging in diversion of 911 fees or charges shall be ineligible to participate or send a representative to serve on any committee, panel, or council established under section 6205(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C. 1425(a)) or any advisory committee established by the Commission.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The *NPRM* proposes and seeks comment on ways to implement section 902 of the Consolidated Appropriations Act of 2021.⁴ On December 27, 2020, the President signed the Don't Break Up The T-Band Act of 2020, which is Division FF, Title IX, Section 902 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). Section 902 directs the Commission to issue final rules 180 days after enactment on December 27, 2020 designating acceptable purposes and functions for the obligation or expenditure of 911 fees by states and taxing jurisdictions. Section 902 also provides that the use of 911 fees for any purpose or function other than those designated by the Commission constitutes 911 fee diversion.

3. To implement section 902 of the Act, the *NPRM* seeks comment on the Commission's proposals to amend part 9 of the rules to establish a new subpart I regarding "911 Fees." Section 902 defines several terms which the *NPRM* proposes to codify these definitions in the new subpart I of the rules. In addition, section 902 directs the Commission to issue final rules designating purposes and functions for which the obligation or expenditure of 911 fees is acceptable. It also provides that the purposes and functions identified by the Commission as acceptable "shall be limited to the support and implementation of 9-1-1 services provided by or in the State or taxing jurisdiction imposing the fee or charge and operational expenses of public safety answering points within such State or taxing jurisdiction." The *NPRM* seeks comments on proposals to develop an illustrative, non-exhaustive list of permissible and non-permissible uses for purposes of section 902.

4. Section 902 provides that a state or taxing jurisdiction may petition the FCC for a determination that an obligation or expenditure of a 911 fee for a purpose or function other than those deemed acceptable by the Commission should be treated as an acceptable expenditure. Per section 902, the petition must demonstrate that the expenditure: (1) supports public safety answering point (PSAP) functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. In addition, the Commission seeks comment on amending the rules to require that if a state or

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ *Id.*

⁴ Consolidated Appropriations Act of 2021, Pub. L. No. 116-260, Division FF, Title IX, Section 902, Don't Break Up the T-Band Act of 2020 (section 902).

taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such state or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the Commission to prepare the annual report to Congress required by the NET 911 Act. The *NPRM* seeks comment on proposals to codify these provisions in subpart I of part 9 of the rules.

B. Legal Basis

5. This action was taken pursuant to Sections 1, 4(i), 4(j), 4(o), 201(b), 251(e), 301, 303(b), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 154(o), 201(b), 251(e), 301, 303(b), and 303(r), the Don't Break Up The T-Band Act of 2020, Section 902 of Title IX, Division FF of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Section 101 of the New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 47 U.S.C. § 615a-1, and the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, and 615b.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁷ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA's) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.¹¹

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The

⁵ See 5 U.S.C. § 603(b)(3).

⁶ See *id.* § 601(6).

⁷ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ See 15 U.S.C. § 632.

⁹ See 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, “What's New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2017 Census of Governments¹⁶ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number there were 36,931 general purpose governments (county¹⁸, municipal and town or township¹⁹) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁰ with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2017 U.S. Census of Governments data, we

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁷ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁸ See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁰ See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²¹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments (continued....)

estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²²

10. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁴ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.²⁵ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.²⁶ Thus, under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

11. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁷ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁸ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.²⁹ Of this total, 3,083 operated with fewer than 1,000 employees.³⁰ Thus, under

(Continued from previous page) _____

category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²³ See U.S. Census Bureau, 2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517312&search=2017+NAICS+Search&search=2017>.

²⁴ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

²⁵ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁷ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

²⁸ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

²⁹ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

this size standard, the majority of firms in this industry can be considered small.

12. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³¹ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³² Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³³ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with annual receipts of \$35 million or less.³⁴ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.³⁵ Of those firms, a total of 1,400 had annual receipts less than \$25 million, and 15 firms had annual receipts of \$25 million to \$49,999,999.³⁶ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. As indicated in Section A above, the *NPRM* seeks comment on proposed rules to implement section 902. The *NPRM* generally does not propose specific reporting or recordkeeping requirements. The *NPRM* does, however, propose and seek comment on codifying the requirement that states or taxing jurisdictions seeking a Commission determination on 911 fee diversion satisfy certain criteria established in section 902. In such cases, a state or taxing jurisdiction would have to show that a proposed expenditure: (1) supports PSAP functions or operations, or (2) has a direct impact on the ability of a PSAP to receive or respond to 911 calls or to dispatch emergency responders. If the Commission finds that a state or taxing jurisdiction has provided sufficient documentation to make this demonstration, the statute provides that it shall grant the petition. The information and documentation that a state or taxing jurisdiction will have to provide the Commission to make the requisite showing will impact the reporting and recordkeeping requirements for small entities and others subject to the requirements. The Commission proposes to apply the existing declaratory ruling procedures and obligations under section 1.2 of the Commission’s rules, which small entities may already be familiar with, to petitions for determination.

14. In addition, the *NPRM* seeks comment on amending the rules to require that if a state or taxing jurisdiction receives a grant under section 158 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 942) after December 27, 2020, such state or taxing jurisdiction shall, as a condition of receiving such grant, provide the information requested by the

(Continued from previous page) _____

³⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³¹ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

³² *Id.*

³³ *Id.*

³⁴ See 13 CFR § 121.201, NAICS Code 517919.

³⁵ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

³⁶ *Id.*

Commission to prepare the report required under section 6(f)(2) of the Wireless Communications and Public Safety Act of 1999 (47 U.S.C. 615a–1(f)(2)). This proposed requirement is consistent with the requirements of Section 902. Under OMB Control No. 3060-1122, the Office of Management and Budget previously approved and renewed the information collection requirements associated with filing annual 911 fee reports as mandated by the NET 911 Act.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁷

16. In the *NPRM*, the Commission seeks to implement the provisions of section 902 that require Commission action by proposing changes to part 9 of our rules that would achieve the stated objectives of Congress’s mandated rules in a cost-effective manner that is not unduly burdensome to providers of emergency telecommunication services or to states and taxing jurisdictions. Using this approach, we inherently take steps to minimize any significant economic impact or burden for small entities. Specifically, we propose to adopt and codify the definitions in section 902 for certain terms relating to 911 fees and fee diversion in part 9 of our rules. For a few terms, we make limited modifications to the definition to avoid gaps and promote the apparent intent of the new statute.³⁸ In addition to promoting consistency, we believe our proposals will help small entities and others who will be subject to section 902 and our rules avoid additional expenses for compliance which may have resulted if the Commission in the alternative proposed and adopted different definitions for certain terms in section 902 relating to 911 fees and fee diversion.

17. Similarly, to fulfill the Commission obligations associated with issuing rules designating acceptable purposes and functions, for consistency we propose to use language from section 902 codifying the statutory standard for which the obligation or expenditure of 911 fees or charges by any state or taxing jurisdiction is considered acceptable. We also propose to specify in the rules examples of both acceptable and unacceptable purposes and functions for the obligation or expenditure of 911 fees or charges. If adopted, identifying and including these examples in the Commission’s rules should enable small entities to avoid unacceptable expenditures in violation of our rules, which could impact eligibility for federal grants and participation in federal advisory committees.

18. Finally, the Commission expects to more fully consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.

³⁷ 5 U.S.C. § 603(c)(1) - (4).

³⁸ The definitions for the terms “911 fee or charge” and “Diversion” include modifications.

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-027

**A RESOLUTION TO CONFIRM THE CITY MANAGER'S
APPOINTMENT OF TYGER FULLERTON AS FIRE CHIEF**

WHEREAS, Section 6.2 of the City Charter provides that the City Manager shall appoint the administrative officers of the City subject to confirmation of said appointments by the City Council; and

WHEREAS, the City Manager has appointed Tyger Fullerton to the position of Fire Chief effective May 1, 2021 to fill a vacancy created through retirement; and

WHEREAS, the City Manager has requested the City Council to confirm said appointment;

NOW, THEREFORE, BE IT RESOLVED the City Council does hereby confirm the City Manager's appointment of Tyger Fullerton as Fire Chief.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk / Treasurer
City of Charlotte



Memo

Date: February 26, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Fire Chief Appointment

Background

In April, the Fire Chief will be retiring which necessitates the appointment of a replacement. Chief Fullerton has served the department and the City of Charlotte for a significant period of time. Given the importance of this role in the community as well as the time needed to properly ensure a smooth transition, the process to consider his replacement has begun. In addition to serving the city residents, the Charlotte fire department provides fire and emergency services to five neighboring townships through a contract with the Rural Fire Association (RFA).

Appointment Process

Per the City Charter the administrative officers of the city, except the attorney, are appointed by the manager and confirmed by Council. Additionally, Section 6.12 states that primary consideration of the appointment of Fire Chief shall be given to the recommendation made by the members of the Fire Department. In a letter dated December 9, 2020 the members of the Volunteer Fire Department voiced their recommendation to appoint Assistant Chief Fullerton as the replacement Fire Chief. Council was presented the recommendation letter in December and I have included a copy of that letter for reference.

In addition to the Charter provisions, the terms of the contract with the RFA outline a process by which a selection committee is established to hire a Fire Chief. There is a clause in that section which bypasses the RFA process if the City and the Fire Department concur on the desired candidate. At their meeting held February 11th the RFA was given an opportunity to exercise their right to form a selection committee and they declined. They expressed confidence in the ability of the City and Fire Department to find a candidate through the process as outlined in the Charter for appointment of a Fire Chief.

Pursuant to the City Charter, I am recommending the appointment of Tyger Fullerton to be the Fire Chief effective May 1, 2021. Mr. Fullerton has firsthand knowledge of the department and the city, as such he has a thorough understanding of the opportunities and obstacles facing Charlotte and will be a key role in working with the Council and the other members of city administration to ensure the long-term success of the fire department and the city as a whole.

Tyger has voiced his enthusiasm at rising to the challenge. He has 14 years of experience in the fire department, beginning as a volunteer in 2007 working his way up to captain in 2011. In addition to his full-time position as a captain, Tyger was voted to serve as the assistant chief by the volunteer department in 2013. Outside of the fire department, he served the city in the DPW department from 2007 to 2011. He also works as an instructor for fire training through the Eaton County Fire School and Lansing Community College. Given his experience in the fire department and history of service to the community along with the recommendation from the Volunteer Department, I am optimistic that Mr. Fullerton will provide the leadership necessary to guide the department into the future.

A resolution of approval of this appointment is included for your review and consideration.

eel

attachment

CHARLOTTE FIRE DEPARTMENT
& RURAL FIRE ASSOCIATION
111 E. Lawrence Avenue

CHARLOTTE
Ph. 517-543-0241



MICHIGAN
48813

KEVIN FULLERTON
Fire Chief

December 9, 2020

To: City Manager Thomas and Charlotte City Council

From: Charlotte Volunteer Fire Department

Re: Fire Chief Selection

In the recent organizational analysis conducted by Vettraino Consulting L.L.C. and Municipal Analytics, the recommendation was made that "... Charlotte and the RFA begin the selection process for a new Fire Chief as soon as possible... following the FSA process first then following the Charter process." For reference, the existing Fire Service Agreement dated 12/19/2006 includes the following verbiage in regard to Fire Chief Selection:

"Appointment of a New Chief. If at any time, the City of Charlotte seeks to hire, promote, or otherwise replace the Fire Chief, the City of Charlotte shall establish a Fire Chief Selection Committee, subject to the terms and conditions of this Agreement... **If the Fire Department and the City of Charlotte agree on who to appoint as the new Fire Chief, the mutually agreed upon Fire Chief shall be appointed without the need for the creation of a Fire Chief Selection Committee."**

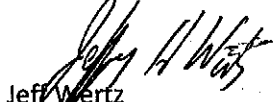
In keeping with the recommendation made by the consulting service, the volunteers recommend Tyger Fullerton, the current Asst. Chief, be selected as the next Fire Chief of the Charlotte Fire Department effective the day the current Fire Chief, Kevin Fullerton, retires. All that is needed now, is for the manager to appoint Tyger as Fire Chief and for the council to approve the appointment. Accepting our recommendation now will ensure continuity in leadership of the Fire Department without incurring the additional expense of contracting a recruiting service.

There are several reasons that the volunteers feel that Asst. Chief Fullerton is the right choice to take over as Fire Chief:

1. He is well trained and very familiar with the current operations of the department.
2. The volunteers have full trust in the Asst. Chief's decision-making ability under high stress and dangerous situations to keep us all safe.
3. He has the respect and trust of the Fire Chiefs in many neighboring departments.
4. He has accumulated several credentials including fire officer, fire inspector, fire instructor, Haz-mat technician, arson investigator, and National Incident Management System certification.

The history of the Charlotte Fire Department and Charlotte Police Department is that the Chief has been promoted from within the ranks.

Please take the recommendation of the volunteers into consideration and make the right choice for the City of Charlotte and the Charlotte Fire Department & Rural Fire Association.


Jeff Wertz
Secretary/Treasurer

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-028

**A RESOLUTION TO AUTHORIZE A CONTRACT WITH MICHIGAN DEPARTMENT OF
TRANSPORTATION FOR THE EAST HARRIS STREET PROJECT**

WHEREAS, the Michigan Department of Transportation (MDOT) has presented their standard contract for the purpose of fixing the rights and obligations of the City and MDOT as it relates to the reconstruction of East Harris Street from Cochran Avenue (M-50). to Lansing Road; and

WHEREAS, the contract outlines the administrative duties of both parties; and

WHEREAS, the contract states that the grant shall be applied to the eligible items of the project cost up to the lesser of \$375,000 or an amount such that 81.85% of the eligible costs is not exceeded; and

WHEREAS, the City is responsible for payment of unfunded grant eligible activities as well as one hundred percent of non-participating items; and

WHEREAS, it is estimated by MDOT that the City will be responsible for approximately \$1,147,000 for their portion of the project, of which \$503,900 is related to utilities.

THEREFORE, BE IT RESOLVED that the City enter into Contract No. 20-5549 with MDOT for the terms and conditions related to the reconstruction of East Harris Street from Cochran Avenue (M-50) to Lansing Road and that the City Clerk and Director of Public Works be directed to sign said contract on behalf of the City.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk / Treasurer
City of Charlotte

Memo

To: City Council
From: Amy E. Gilson, P.E., Director of Public Works
Date: February 26, 2021
Re: MDOT Contract for E. Harris Street



As you are aware, the City will be reconstructing East Harris Street this year. The project is being done in conjunction with Michigan Department of Transportation's (MDOT) Local Agency Program. With that, we are receiving a \$375,000 grant. The project has been bid and awarded through MDOT process, and this agreement allows them to administer the construction contract. It is a standard agreement that MDOT uses for all Local Agency projects. It is anticipated that with approval of this standard contract that construction will begin at the end of March/ beginning of April.

There is a resolution in the Council packet that needs approval.

Please let me know if you have any questions.

STP

DA

Control Section	STUL 23000
Job Number	208362CON
Project	21A0(203)
CFDA No.	20.205 (Highway Research Planning & Construction)
Contract No.	20-5549

PART I

THIS CONTRACT, consisting of PART I and PART II (Standard Agreement Provisions), is made by and between the MICHIGAN DEPARTMENT OF TRANSPORTATION, hereinafter referred to as the "DEPARTMENT"; and the CITY OF CHARLOTTE, a Michigan municipal corporation, hereinafter referred to as the "REQUESTING PARTY"; for the purpose of fixing the rights and obligations of the parties in agreeing to the following improvements, in the city of Charlotte, Michigan, hereinafter referred to as the "PROJECT" and estimated in detail on EXHIBIT "I", dated February 3, 2021, attached hereto and made a part hereof:

PART A – FEDERAL PARTICIPATION

Hot mix asphalt surfacing work along East Harris Street from Cochran Avenue (Highway M-50) easterly to Lansing Road (Highway I-69 BL); including concrete curb and gutter, storm sewer, concrete sidewalk and ramps, and pavement marking work; and all together with necessary related work.

PART B – NO FEDERAL PARTICIPATION

Water main and sanitary sewer installation work within the limits as described in PART A; and all together with necessary related work.

WITNESSETH:

WHEREAS, pursuant to Federal law, monies have been provided for the performance of certain improvements on public roads; and

WHEREAS, the reference "FHWA" in PART I and PART II refers to the United States Department of Transportation, Federal Highway Administration; and

WHEREAS, the PROJECT, or portions of the PROJECT, at the request of the REQUESTING PARTY, are being programmed with the FHWA, for implementation with the use of Federal Funds under the following Federal program(s) or funding:

SURFACE TRANSPORTATION PROGRAM

WHEREAS, the parties hereto have reached an understanding with each other regarding the performance of the PROJECT work and desire to set forth this understanding in the form of a written contract.

NOW, THEREFORE, in consideration of the premises and of the mutual undertakings of the parties and in conformity with applicable law, it is agreed:

1. The parties hereto shall undertake and complete the PROJECT in accordance with the terms of this contract.

2. The term "PROJECT COST", as herein used, is hereby defined as the cost of the physical construction necessary for the completion of the PROJECT, including any other costs incurred by the DEPARTMENT as a result of this contract, except construction engineering and inspection.

No charges will be made by the DEPARTMENT to the PROJECT for any inspection work or construction engineering.

The costs incurred by the REQUESTING PARTY for preliminary engineering, construction engineering, construction materials testing, inspection, and right-of-way are excluded from the PROJECT COST as defined by this contract.

The Michigan Department of Environment, Great Lakes, and Energy (EGLE) has informed the DEPARTMENT that it adopted new administrative rules (R 325.10101, et. seq.) which prohibit any governmental agency from connecting and/or reconnecting lead and/or galvanized service lines to existing and/or new water main. Questions regarding these administrative rules should be directed to EGLE. The cost associated with replacement of any lead and/or galvanized service lines, including but not limited to contractor claims, will be the sole responsibility of the REQUESTING PARTY.

3. The DEPARTMENT is authorized by the REQUESTING PARTY to administer on behalf of the REQUESTING PARTY all phases of the PROJECT, including advertising and awarding the construction contract for the PROJECT or portions of the PROJECT. Such administration shall be in accordance with PART II, Section II of this contract.

Any items of the PROJECT COST incurred by the DEPARTMENT may be charged to the PROJECT.

4. The REQUESTING PARTY, at no cost to the PROJECT or to the DEPARTMENT, shall:

A. Design or cause to be designed the plans for the PROJECT.

B. Appoint a project engineer who shall be in responsible charge of the PROJECT and ensure that the plans and specifications are followed.

- C. Perform or cause to be performed the construction engineering, construction materials testing, and inspection services necessary for the completion of the PROJECT.

The REQUESTING PARTY will furnish the DEPARTMENT proposed timing sequences for trunkline signals that, if any, are being made part of the improvement. No timing adjustments shall be made by the REQUESTING PARTY at any trunkline intersection, without prior issuances by the DEPARTMENT of Standard Traffic Signal Timing Permits.

5. The PROJECT COST shall be met in accordance with the following:

PART A

Federal Surface Transportation Funds shall be applied to the eligible items of the PART A portion of the PROJECT COST up to the lesser of: (1) \$375,000, or (2) an amount such that 81.85 percent, the normal Federal participation ratio for such funds, for the PART A portion of the PROJECT is not exceeded at the time of the award of the construction contract. The balance of the PART A portion of the PROJECT COST, after deduction of Federal Funds, shall be charged to and paid by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

PART B

The PART B portion of the PROJECT COST is not eligible for Federal participation and shall be charged to and paid 100 percent by the REQUESTING PARTY in the manner and at the times hereinafter set forth.

Any items of PROJECT COST not reimbursed by Federal Funds will be the sole responsibility of the REQUESTING PARTY.

6. No working capital deposit will be required for this PROJECT.

In order to fulfill the obligations assumed by the REQUESTING PARTY under the provisions of this contract, the REQUESTING PARTY shall make prompt payments of its share of the PROJECT COST upon receipt of progress billings from the DEPARTMENT as herein provided. All payments will be made within 30 days of receipt of billings from the DEPARTMENT. Billings to the REQUESTING PARTY will be based upon the REQUESTING PARTY'S share of the actual costs incurred less Federal Funds earned as the PROJECT progresses.

7. At such time as traffic volumes and safety requirements warrant, the REQUESTING PARTY will cause to be enacted and enforced such ordinances as may be necessary to prohibit parking in the traveled roadway throughout the limits of the PROJECT.

8. The performance of the entire PROJECT under this contract, whether Federally funded or not, will be subject to the provisions and requirements of PART II that are applicable to a Federally funded project.

In the event of any discrepancies between PART I and PART II of this contract, the provisions of PART I shall prevail.

Buy America Requirements (23 CFR 635.410) shall apply to the PROJECT and will be adhered to, as applicable, by the parties hereto.

9. The REQUESTING PARTY certifies that it is not aware if and has no reason to believe that the property on which the work is to be performed under this agreement is a facility, as defined by the Michigan Natural Resources and Environmental Protection Act [(NREPA), PA 451, 1994, as amended 2012]; MCL 324.20101(1)(s). The REQUESTING PARTY also certifies that it is not a liable party pursuant to either Part 201 or Part 213 of NREPA, MCL 324.20126 et seq. and MCL 324.21323a et seq. The REQUESTING PARTY is a local unit of government that has acquired or will acquire property for the use of either a transportation corridor or public right-of-way and was not responsible for any activities causing a release or threat of release of any hazardous materials at or on the property. The REQUESTING PARTY is not a person who is liable for response activity costs, pursuant to MCL 324.20101 (vv) and (ww).

10. If, subsequent to execution of this contract, previously unknown hazardous substances are discovered within the PROJECT limits, which require environmental remediation pursuant to either state or federal law, the REQUESTING PARTY, in addition to reporting that fact to the Department of Environmental Quality, shall immediately notify the DEPARTMENT, both orally and in writing of such discovery. The DEPARTMENT shall consult with the REQUESTING PARTY to determine if it is willing to pay for the cost of remediation and, with the FHWA, to determine the eligibility, for reimbursement, of the remediation costs. The REQUESTING PARTY shall be charged for and shall pay all costs associated with such remediation, including all delay costs of the contractor for the PROJECT, in the event that remediation and delay costs are not deemed eligible by the FHWA. If the REQUESTING PARTY refuses to participate in the cost of remediation, the DEPARTMENT shall terminate the PROJECT. The parties agree that any costs or damages that the DEPARTMENT incurs as a result of such termination shall be considered a PROJECT COST.

11. If federal and/or state funds administered by the DEPARTMENT are used to pay the cost of remediating any hazardous substances discovered after the execution of this contract and if there is a reasonable likelihood of recovery, the REQUESTING PARTY, in cooperation with the Department of Environmental Quality and the DEPARTMENT, shall make a diligent effort to recover such costs from all other possible entities. If recovery is made, the DEPARTMENT shall be reimbursed from such recovery for the proportionate share of the amount paid by the FHWA and/or the DEPARTMENT and the DEPARTMENT shall credit such sums to the appropriate funding source.

12. The DEPARTMENT'S sole reason for entering into this contract is to enable the REQUESTING PARTY to obtain and use funds provided by the Federal Highway Administration pursuant to Title 23 of the United States Code.

Any and all approvals of, reviews of, and recommendations regarding contracts, agreements, permits, plans, specifications, or documents, of any nature, or any inspections of work by the DEPARTMENT or its agents pursuant to the terms of this contract are done to assist the REQUESTING PARTY in meeting program guidelines in order to qualify for available funds. Such approvals, reviews, inspections and recommendations by the DEPARTMENT or its agents shall not relieve the REQUESTING PARTY and the local agencies, as applicable, of their ultimate control and shall not be construed as a warranty of their propriety or that the DEPARTMENT or its agents is assuming any liability, control or jurisdiction.

The providing of recommendations or advice by the DEPARTMENT or its agents does not relieve the REQUESTING PARTY and the local agencies, as applicable of their exclusive jurisdiction of the highway and responsibility under MCL 691.1402 et seq., as amended.

When providing approvals, reviews and recommendations under this contract, the DEPARTMENT or its agents is performing a governmental function, as that term is defined in MCL 691.1401 et seq., as amended, which is incidental to the completion of the PROJECT.

Upon completion of the PROJECT, the REQUESTING PARTY shall accept the facilities constructed as built to specifications within the contract documents. It is understood that the REQUESTING PARTY shall own the facilities and shall operate and maintain the facilities in accordance with applicable law.

13. The DEPARTMENT, by executing this contract, and rendering services pursuant to this contract, has not and does not assume jurisdiction of the highway, described as the PROJECT for purposes of MCL 691.1402 et seq., as amended. Exclusive jurisdiction of such highway for the purposes of MCL 691.1402 et seq., as amended, rests with the REQUESTING PARTY and other local agencies having respective jurisdiction.

14. The REQUESTING PARTY shall approve all of the plans and specifications to be used on the PROJECT and shall be deemed to have approved all changes to the plans and specifications when put into effect. It is agreed that ultimate responsibility and control over the PROJECT rests with the REQUESTING PARTY and local agencies, as applicable.

15. The REQUESTING PARTY agrees that the costs reported to the DEPARTMENT for this contract will represent only those items that are properly chargeable in accordance with this contract. The REQUESTING PARTY also certifies that it has read the contract terms and has made itself aware of the applicable laws, regulations, and terms of this contract that apply to the reporting of costs incurred under the terms of this contract.

16. Each party to this contract will remain responsible for any and all claims arising out of its own acts and/or omissions during the performance of the contract, as provided by this contract or by law. In addition, this is not intended to increase or decrease either party's liability for or immunity from tort claims. This contract is also not intended to nor will it be interpreted as giving either party a right of indemnification, either by contract or by law, for claims arising out of the performance of this contract.

17. The parties shall promptly provide comprehensive assistance and cooperation in defending and resolving any claims brought against the DEPARTMENT by the contractor, vendors or suppliers as a result of the DEPARTMENT'S award of the construction contract for the PROJECT. Costs incurred by the DEPARTMENT in defending or resolving such claims shall be considered PROJECT COSTS.

18. The DEPARTMENT shall require the contractor who is awarded the contract for the construction of the PROJECT to provide insurance in the amounts specified and in accordance with the DEPARTMENT'S current Standard Specifications for Construction and to:

- A. Maintain bodily injury and property damage insurance for the duration of the PROJECT.
- B. Provide owner's protective liability insurance naming as insureds the State of Michigan, the Michigan State Transportation Commission, the DEPARTMENT and its officials, agents and employees, the REQUESTING PARTY and any other county, county road commission, or municipality in whose jurisdiction the PROJECT is located, and their employees, for the duration of the PROJECT and to provide, upon request, copies of certificates of insurance to the insureds. It is understood that the DEPARTMENT does not assume jurisdiction of the highway described as the PROJECT as a result of being named as an insured on the owner's protective liability insurance policy.
- C. Comply with the requirements of notice of cancellation and reduction of insurance set forth in the current standard specifications for construction and to provide, upon request, copies of notices and reports prepared to those insured.

19. This contract shall become binding on the parties hereto and of full force and effect upon the signing thereof by the duly authorized officials for the parties hereto and upon the adoption of the necessary resolutions approving said contract and authorizing the signatures thereto of the respective officials of the REQUESTING PARTY, a certified copy of which resolution shall be attached to this contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed as written below.

CITY OF CHARLOTTE

MICHIGAN DEPARTMENT
OF TRANSPORTATION

By _____
Title:

By _____
Department Director MDOT

By _____
Title:



February 3, 2021

EXHIBIT I

CONTROL SECTION	STUL 23000
JOB NUMBER	208362 CON
PROJECT	21A0(203)

ESTIMATED COST

CONTRACTED WORK

	<u>PART A</u>	<u>PART B</u>	<u>TOTAL</u>
Estimated Cost	\$1,018,100	\$503,900	\$1,522,000

COST PARTICIPATION

GRAND TOTAL ESTIMATED COST	\$1,018,100	\$503,900	\$1,522,000
Less Federal Funds*	<u>\$ 375,000</u>	<u>\$ 0</u>	<u>\$ 375,000</u>
BALANCE (REQUESTING PARTY'S SHARE)	\$ 643,100	\$503,900	\$1,147,000

*Federal Funds for the PROJECT are limited to an amount as described in Section 5.

NO DEPOSIT

DOT

TYPE B
BUREAU OF HIGHWAYS
03-15-93

PART II

STANDARD AGREEMENT PROVISIONS

SECTION I COMPLIANCE WITH REGULATIONS AND DIRECTIVES

SECTION II PROJECT ADMINISTRATION AND SUPERVISION

SECTION III ACCOUNTING AND BILLING

SECTION IV MAINTENANCE AND OPERATION

SECTION V SPECIAL PROGRAM AND PROJECT CONDITIONS

SECTION I

COMPLIANCE WITH REGULATIONS AND DIRECTIVES

- A. To qualify for eligible cost, all work shall be documented in accordance with the requirements and procedures of the DEPARTMENT.
- B. All work on projects for which reimbursement with Federal funds is requested shall be performed in accordance with the requirements and guidelines set forth in the following Directives of the Federal-Aid Policy Guide (FAPG) of the FHWA, as applicable, and as referenced in pertinent sections of Title 23 and Title 49 of the Code of Federal Regulations (CFR), and all supplements and amendments thereto.
 - 1. Engineering
 - a. FAPG (6012.1): Preliminary Engineering
 - b. FAPG (23 CFR 172): Administration of Engineering and Design Related Service Contracts
 - c. FAPG (23 CFR 635A): Contract Procedures
 - d. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
 - 2. Construction
 - a. FAPG (23 CFR 140E): Administrative Settlement Costs-Contract Claims
 - b. FAPG (23 CFR 140B): Construction Engineering Costs
 - c. FAPG (23 CFR 17): Recordkeeping and Retention Requirements for Federal-Aid Highway Records of State Highway Agencies
 - d. FAPG (23 CFR 635A): Contract Procedures
 - e. FAPG (23 CFR 635B): Force Account Construction
 - f. FAPG (23 CFR 645A): Utility Relocations, Adjustments and Reimbursement

- g. FAPG (23 CFR 645B): Accommodation of Utilities (PPM 30-4.1)
 - h. FAPG (23 CFR 655F): Traffic Control Devices on Federal-Aid and other Streets and Highways
 - i. FAPG (49 CFR 18.22): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments—Allowable Costs
- 3. Modification Or Construction Of Railroad Facilities
 - a. FAPG (23 CFR 140I): Reimbursement for Railroad Work
 - b. FAPG (23 CFR 646B): Railroad Highway Projects
- C. In conformance with FAPG (23 CFR 630C) Project Agreements, the political subdivisions party to this contract, on those Federally funded projects which exceed a total cost of \$100,000.00 stipulate the following with respect to their specific jurisdictions:
 - 1. That any facility to be utilized in performance under or to benefit from this contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities issued pursuant to the requirements of the Federal Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended.
 - 2. That they each agree to comply with all of the requirements of Section 114 of the Federal Clean Air Act and Section 308 of the Federal Water Pollution Control Act, and all regulations and guidelines issued thereunder.
 - 3. That as a condition of Federal aid pursuant to this contract they shall notify the DEPARTMENT of the receipt of any advice indicating that a facility to be utilized in performance under or to benefit from this contract is under consideration to be listed on the EPA List of Violating Facilities.
- D. Ensure that the PROJECT is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless modified or deleted by approval of the FHWA.
- E. All the requirements, guidelines, conditions and restrictions noted in all other pertinent Directives and Instructional Memoranda of the FHWA will apply to this contract and will be adhered to, as applicable, by the parties hereto.

SECTION II

PROJECT ADMINISTRATION AND SUPERVISION

- A. The DEPARTMENT shall provide such administrative guidance as it determines is required by the PROJECT in order to facilitate the obtaining of available federal and/or state funds.
- B. The DEPARTMENT will advertise and award all contracted portions of the PROJECT work. Prior to advertising of the PROJECT for receipt of bids, the REQUESTING PARTY may delete any portion or all of the PROJECT work. After receipt of bids for the PROJECT, the REQUESTING PARTY shall have the right to reject the amount bid for the PROJECT prior to the award of the contract for the PROJECT only if such amount exceeds by ten percent (10%) the final engineer's estimate therefor. If such rejection of the bids is not received in writing within two (2) weeks after letting, the DEPARTMENT will assume concurrence. The DEPARTMENT may, upon request, readvertise the PROJECT. Should the REQUESTING PARTY so request in writing within the aforesaid two (2) week period after letting, the PROJECT will be cancelled and the DEPARTMENT will refund the unused balance of the deposit less all costs incurred by the DEPARTMENT.
- C. The DEPARTMENT will perform such inspection services on PROJECT work performed by the REQUESTING PARTY with its own forces as is required to ensure compliance with the approved plans & specifications.
- D. On those projects funded with Federal monies, the DEPARTMENT shall as may be required secure from the FHWA approval of plans and specifications, and such cost estimates for FHWA participation in the PROJECT COST.
- E. All work in connection with the PROJECT shall be performed in conformance with the Michigan Department of Transportation Standard Specifications for Construction, and the supplemental specifications, Special Provisions and plans pertaining to the PROJECT and all materials furnished and used in the construction of the PROJECT shall conform to the aforesaid specifications. No extra work shall be performed nor changes in plans and specifications made until said work or changes are approved by the project engineer and authorized by the DEPARTMENT.

- F. Should it be necessary or desirable that portions of the work covered by this contract be accomplished by a consulting firm, a railway company, or governmental agency, firm, person, or corporation, under a subcontract with the REQUESTING PARTY at PROJECT expense, such subcontracted arrangements will be covered by formal written agreement between the REQUESTING PARTY and that party.

This formal written agreement shall: include a reference to the specific prime contract to which it pertains; include provisions which clearly set forth the maximum reimbursable and the basis of payment; provide for the maintenance of accounting records in accordance with generally accepted accounting principles, which clearly document the actual cost of the services provided; provide that costs eligible for reimbursement shall be in accordance with clearly defined cost criteria such as 49 CFR Part 18, 48 CFR Part 31, 23 CFR Part 140, OMB Circular A-87, etc. as applicable; provide for access to the department or its representatives to inspect and audit all data and records related to the agreement for a minimum of three years after the department's final payment to the local unit.

All such agreements will be submitted for approval by the DEPARTMENT and, if applicable, by the FHWA prior to execution thereof, except for agreements for amounts less than \$100,000 for preliminary engineering and testing services executed under and in accordance with the provisions of the "Small Purchase Procedures" FAPG (23 CFR 172), which do not require prior approval of the DEPARTMENT or the FHWA.

Any such approval by the DEPARTMENT shall in no way be construed as a warranty of the subcontractor's qualifications, financial integrity, or ability to perform the work being subcontracted.

- G. The REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, shall make such arrangements with railway companies, utilities, etc., as may be necessary for the performance of work required for the PROJECT but for which Federal or other reimbursement will not be requested.
- H. The REQUESTING PARTY, at no cost to the PROJECT, or the DEPARTMENT, shall secure, as necessary, all agreements and approvals of the PROJECT with railway companies, the Railroad Safety & Tariffs Division of the DEPARTMENT and other concerned governmental agencies other than the FHWA, and will forward same to the DEPARTMENT for such reviews and approvals as may be required.
- I. No PROJECT work for which reimbursement will be requested by the REQUESTING PARTY is to be subcontracted or performed until the DEPARTMENT gives written notification that such work may commence.

- J. The REQUESTING PARTY shall be responsible for the payment of all costs and expenses incurred in the performance of the work it agrees to undertake and perform.
- K. The REQUESTING PARTY shall pay directly to the party performing the work all billings for the services performed on the PROJECT which are authorized by or through the REQUESTING PARTY.
- L. The REQUESTING PARTY shall submit to the DEPARTMENT all paid billings for which reimbursement is desired in accordance with DEPARTMENT procedures.
- M. All work by a consulting firm will be performed in compliance with the applicable provisions of 1980 PA 299, Subsection 2001, MCL 339.2001; MSA 18.425(2001), as well as in accordance with the provisions of all previously cited Directives of the FHWA.
- N. The project engineer shall be subject to such administrative guidance as may be deemed necessary to ensure compliance with program requirement and, in those instances where a consultant firm is retained to provide engineering and inspection services, the personnel performing those services shall be subject to the same conditions.
- O. The DEPARTMENT, in administering the PROJECT in accordance with applicable Federal and State requirements and regulations, neither assumes nor becomes liable for any obligations undertaken or arising between the REQUESTING PARTY and any other party with respect to the PROJECT.
- P. In the event it is determined by the DEPARTMENT that there will be either insufficient Federal funds or insufficient time to properly administer such funds for the entire PROJECT or portions thereof, the DEPARTMENT, prior to advertising or issuing authorization for work performance, may cancel the PROJECT, or any portion thereof, and upon written notice to the parties this contract shall be void and of no effect with respect to that cancelled portion of the PROJECT. Any PROJECT deposits previously made by the parties on the cancelled portions of the PROJECT will be promptly refunded.
- Q. Those projects funded with Federal monies will be subject to inspection at all times by the DEPARTMENT and the FHWA.

SECTION III

ACCOUNTING AND BILLING

A. Procedures for billing for work undertaken by the REQUESTING PARTY:

1. The REQUESTING PARTY shall establish and maintain accurate records, in accordance with generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this contract, said records to be hereinafter referred to as the "RECORDS". Separate accounts shall be established and maintained for all costs incurred under this contract.

The REQUESTING PARTY shall maintain the RECORDS for at least three (3) years from the date of final payment of Federal Aid made by the DEPARTMENT under this contract. In the event of a dispute with regard to the allowable expenses or any other issue under this contract, the REQUESTING PARTY shall thereafter continue to maintain the RECORDS at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.

The DEPARTMENT, or its representative, may inspect, copy, or audit the RECORDS at any reasonable time after giving reasonable notice.

If any part of the work is subcontracted, the REQUESTING PARTY shall assure compliance with the above for all subcontracted work.

In the event that an audit performed by or on behalf of the DEPARTMENT indicates an adjustment to the costs reported under this contract, or questions the allowability of an item of expense, the DEPARTMENT shall promptly submit to the REQUESTING PARTY, a Notice of Audit Results and a copy of the audit report which may supplement or modify any tentative findings verbally communicated to the REQUESTING PARTY at the completion of an audit.

Within sixty (60) days after the date of the Notice of Audit Results, the REQUESTING PARTY shall: (a) respond in writing to the responsible Bureau or the DEPARTMENT indicating whether or not it concurs with the audit report, (b) clearly explain the nature and basis for any disagreement as to a disallowed item of expense and, (c) submit to the DEPARTMENT a written explanation as to any questioned or no opinion expressed item of expense, hereinafter referred to as the "RESPONSE". The RESPONSE shall be clearly stated and provide any supporting documentation necessary to resolve any disagreement or questioned or no opinion expressed item of expense. Where the documentation is voluminous, the REQUESTING PARTY may supply appropriate excerpts and make alternate

arrangements to conveniently and reasonably make that documentation available for review by the DEPARTMENT. The RESPONSE shall refer to and apply the language of the contract. The REQUESTING PARTY agrees that failure to submit a RESPONSE within the sixty (60) day period constitutes agreement with any disallowance of an item of expense and authorizes the DEPARTMENT to finally disallow any items of questioned or no opinion expressed cost.

The DEPARTMENT shall make its decision with regard to any Notice of Audit Results and RESPONSE within one hundred twenty (120) days after the date of the Notice of Audit Results. If the DEPARTMENT determines that an overpayment has been made to the REQUESTING PARTY, the REQUESTING PARTY shall repay that amount to the DEPARTMENT or reach agreement with the DEPARTMENT on a repayment schedule within thirty (30) days after the date of an invoice from the DEPARTMENT. If the REQUESTING PARTY fails to repay the overpayment or reach agreement with the DEPARTMENT on a repayment schedule within the thirty (30) day period, the REQUESTING PARTY agrees that the DEPARTMENT shall deduct all or a portion of the overpayment from any funds then or thereafter payable by the DEPARTMENT to the REQUESTING PARTY under this contract or any other agreement, or payable to the REQUESTING PARTY under the terms of 1951 PA 51, as applicable. Interest will be assessed on any partial payments or repayment schedules based on the unpaid balance at the end of each month until the balance is paid in full. The assessment of interest will begin thirty (30) days from the date of the invoice. The rate of interest will be based on the Michigan Department of Treasury common cash funds interest earnings. The rate of interest will be reviewed annually by the DEPARTMENT and adjusted as necessary based on the Michigan Department of Treasury common cash funds interest earnings. The REQUESTING PARTY expressly consents to this withholding or offsetting of funds under those circumstances, reserving the right to file a lawsuit in the Court of Claims to contest the DEPARTMENT'S decision only as to any item of expense the disallowance of which was disputed by the REQUESTING PARTY in a timely filed RESPONSE.

The REQUESTING PARTY shall comply with the Single Audit Act of 1984, as amended, including, but not limited to, the Single Audit Amendments of 1996 (31 USC 7501-7507).

The REQUESTING PARTY shall adhere to the following requirements associated with audits of accounts and records:

- a. Agencies expending a total of \$500,000 or more in federal funds, from one or more funding sources in its fiscal year, shall comply with the requirements of the federal Office of Management and Budget (OMB) Circular A-133, as revised or amended.

The agency shall submit two copies of:

The Reporting Package
The Data Collection Form
The management letter to the agency, if one issued by the audit firm

The OMB Circular A-133 audit must be submitted to the address below in accordance with the time frame established in the circular, as revised or amended.

b. Agencies expending less than \$500,000 in federal funds must submit a letter to the Department advising that a circular audit was not required. The letter shall indicate the applicable fiscal year, the amount of federal funds spent, the name(s) of the Department federal programs, and the CFDA grant number(s). This information must also be submitted to the address below.

c. Address: Michigan Department of Education
Accounting Service Center
Hannah Building
608 Allegan Street
Lansing, MI 48909

d. Agencies must also comply with applicable State laws and regulations relative to audit requirements.

e. Agencies shall not charge audit costs to Department's federal programs which are not in accordance with the OMB Circular A-133 requirements.

f. All agencies are subject to the federally required monitoring activities, which may include limited scope reviews and other on-site monitoring.

2. Agreed Unit Prices Work - All billings for work undertaken by the REQUESTING PARTY on an agreed unit price basis will be submitted in accordance with the Michigan Department of Transportation Standard Specifications for Construction and pertinent FAPG Directives and Guidelines of the FHWA.
3. Force Account Work and Subcontracted Work - All billings submitted to the DEPARTMENT for Federal reimbursement for items of work performed on a force account basis or by any subcontract with a consulting firm, railway company, governmental agency or other party, under the terms of this contract, shall be prepared in accordance with the provisions of the pertinent FHPM Directives and the procedures of the DEPARTMENT. Progress billings may be submitted monthly during the time work is being performed provided, however, that no bill of a lesser amount than \$1,000.00 shall be submitted unless it is a final

or end of fiscal year billing. All billings shall be labeled either "Progress Bill Number _____", or "Final Billing".

4. Final billing under this contract shall be submitted in a timely manner but not later than six months after completion of the work. Billings for work submitted later than six months after completion of the work will not be paid.
5. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with Federal monies, the DEPARTMENT will act as billing agent for the REQUESTING PARTY, consolidating said billings with those for its own force account work and presenting these consolidated billings to the FHWA for payment. Upon receipt of reimbursement from the FHWA, the DEPARTMENT will promptly forward to the REQUESTING PARTY its share of said reimbursement.
6. Upon receipt of billings for reimbursement for work undertaken by the REQUESTING PARTY on projects funded with non-Federal monies, the DEPARTMENT will promptly forward to the REQUESTING PARTY reimbursement of eligible costs.

B. Payment of Contracted and DEPARTMENT Costs:

1. As work on the PROJECT commences, the initial payments for contracted work and/or costs incurred by the DEPARTMENT will be made from the working capital deposit. Receipt of progress payments of Federal funds, and where applicable, State Critical Bridge funds, will be used to replenish the working capital deposit. The REQUESTING PARTY shall make prompt payments of its share of the contracted and/or DEPARTMENT incurred portion of the PROJECT COST upon receipt of progress billings from the DEPARTMENT. Progress billings will be based upon the REQUESTING PARTY'S share of the actual costs incurred as work on the PROJECT progresses and will be submitted, as required, until it is determined by the DEPARTMENT that there is sufficient available working capital to meet the remaining anticipated PROJECT COSTS. All progress payments will be made within thirty (30) days of receipt of billings. No monthly billing of a lesser amount than \$1,000.00 will be made unless it is a final or end of fiscal year billing. Should the DEPARTMENT determine that the available working capital exceeds the remaining anticipated PROJECT COSTS, the DEPARTMENT may reimburse the REQUESTING PARTY such excess. Upon completion of the PROJECT, payment of all PROJECT COSTS, receipt of all applicable monies from the FHWA, and completion of necessary audits, the REQUESTING PARTY will be reimbursed the balance of its deposit.

2. In the event that the bid, plus contingencies, for the contracted, and/or the DEPARTMENT incurred portion of the PROJECT work exceeds the estimated cost therefor as established by this contract, the REQUESTING PARTY may be advised and billed for the additional amount of its share.

C. General Conditions:

1. The DEPARTMENT, in accordance with its procedures in existence and covering the time period involved, shall make payment for interest earned on the balance of working capital deposits for all projects on account with the DEPARTMENT. The REQUESTING PARTY in accordance with DEPARTMENT procedures in existence and covering the time period involved, shall make payment for interest owed on any deficit balance of working capital deposits for all projects on account with the DEPARTMENT. This payment or billing is processed on an annual basis corresponding to the State of Michigan fiscal year. Upon receipt of billing for interest incurred, the REQUESTING PARTY promises and shall promptly pay the DEPARTMENT said amount.
2. Pursuant to the authority granted by law, the REQUESTING PARTY hereby irrevocably pledges a sufficient amount of funds received by it from the Michigan Transportation Fund to meet its obligations as specified in PART I and PART II. If the REQUESTING PARTY shall fail to make any of its required payments when due, as specified herein, the DEPARTMENT shall immediately notify the REQUESTING PARTY and the State Treasurer of the State of Michigan or such other state officer or agency having charge and control over disbursement of the Michigan Transportation Fund, pursuant to law, of the fact of such default and the amount thereof, and, if such default is not cured by payment within ten (10) days, said State Treasurer or other state officer or agency is then authorized and directed to withhold from the first of such monies thereafter allocated by law to the REQUESTING PARTY from the Michigan Transportation Fund sufficient monies to remove the default, and to credit the REQUESTING PARTY with payment thereof, and to notify the REQUESTING PARTY in writing of such fact.
3. Upon completion of all work under this contract and final audit by the DEPARTMENT or the FHWA, the REQUESTING PARTY promises to promptly repay the DEPARTMENT for any disallowed items of costs previously disbursed by the DEPARTMENT. The REQUESTING PARTY pledges its future receipts from the Michigan Transportation Fund for repayment of all disallowed items and, upon failure to make repayment for any disallowed items within ninety (90) days of demand made by the DEPARTMENT, the DEPARTMENT is hereby authorized to withhold an equal amount from the REQUESTING PARTY'S share of any future distribution of Michigan Transportation Funds in settlement of said claim.

4. The DEPARTMENT shall maintain and keep accurate records and accounts relative to the cost of the PROJECT and upon completion of the PROJECT, payment of all items of PROJECT COST, receipt of all Federal Aid, if any, and completion of final audit by the DEPARTMENT and if applicable, by the FHWA, shall make final accounting to the REQUESTING PARTY. The final PROJECT accounting will not include interest earned or charged on working capital deposited for the PROJECT which will be accounted for separately at the close of the State of Michigan fiscal year and as set forth in Section C(1).
5. The costs of engineering and other services performed on those projects involving specific program funds and one hundred percent (100%) local funds will be apportioned to the respective portions of that project in the same ratio as the actual direct construction costs unless otherwise specified in PART I.

SECTION IV

MAINTENANCE AND OPERATION

- A. Upon completion of construction of each part of the PROJECT, at no cost to the DEPARTMENT or the PROJECT, each of the parties hereto, within their respective jurisdictions, will make the following provisions for the maintenance and operation of the completed PROJECT:

1. All Projects:

Properly maintain and operate each part of the project, making ample provisions each year for the performance of such maintenance work as may be required, except as qualified in paragraph 2b of this section.

2. Projects Financed in Part with Federal Monies:

- a. Sign and mark each part of the PROJECT, in accordance with the current Michigan Manual of Uniform Traffic control Devices, and will not install, or permit to be installed, any signs, signals or markings not in conformance with the standards approved by the FHWA, pursuant to 23 USC 109(d).

- b. Remove, prior to completion of the PROJECT, all encroachments from the roadway right-of-way within the limits of each part of the PROJECT.

With respect to new or existing utility installations within the right-of-way of Federal Aid projects and pursuant to FAPG (23 CFR 645B): Occupancy of non-limited access right-of-way may be allowed based on consideration for traffic safety and necessary preservation of roadside space and aesthetic quality. Longitudinal occupancy of non-limited access right-of-way by private lines will require a finding of significant economic hardship, the unavailability of practicable alternatives or other extenuating circumstances.

- c. Cause to be enacted, maintained and enforced, ordinances and regulations for proper traffic operations in accordance with the plans of the PROJECT.

- d. Make no changes to ordinances or regulations enacted, or traffic controls installed in conjunction with the PROJECT work without prior review by the DEPARTMENT and approval of the FHWA, if required.

- B. On projects for the removal of roadside obstacles, the parties, upon completion of construction of each part of the PROJECT, at no cost to the PROJECT or the DEPARTMENT, will, within their respective jurisdictions, take such action as is necessary to assure that the roadway right-of-way, cleared as the PROJECT, will be maintained free of such obstacles.
- C. On projects for the construction of bikeways, the parties will enact no ordinances or regulations prohibiting the use of bicycles on the facility hereinbefore described as the PROJECT, and will amend any existing restrictive ordinances in this regard so as to allow use of this facility by bicycles. No motorized vehicles shall be permitted on such bikeways or walkways constructed as the PROJECT except those for maintenance purposes.
- D. Failure of the parties hereto to fulfill their respective responsibilities as outlined herein may disqualify that party from future Federal-aid participation in projects on roads or streets for which it has maintenance responsibility. Federal Aid may be withheld until such time as deficiencies in regulations have been corrected, and the improvements constructed as the PROJECT are brought to a satisfactory condition of maintenance.

SECTION V

SPECIAL PROGRAM AND PROJECT CONDITIONS

- A. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the acquisition of right-of-way must be under construction by the close of the twentieth (20th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that right-of-way.
- B. Those projects for which the REQUESTING PARTY has been reimbursed with Federal monies for the performance of preliminary engineering must be under construction by the close of the tenth (10th) fiscal year following the fiscal year in which the FHWA and the DEPARTMENT projects agreement covering that work is executed, or the REQUESTING PARTY may be required to repay to the DEPARTMENT, for forwarding to the FHWA, all monies distributed as the FHWA'S contribution to that preliminary engineering.
- C. On those projects funded with Federal monies, the REQUESTING PARTY, at no cost to the PROJECT or the DEPARTMENT, will provide such accident information as is available and such other information as may be required under the program in order to make the proper assessment of the safety benefits derived from the work performed as the PROJECT. The REQUESTING PARTY will cooperate with the DEPARTMENT in the development of reports and such analysis as may be required and will, when requested by the DEPARTMENT, forward to the DEPARTMENT, in such form as is necessary, the required information.
- D. In connection with the performance of PROJECT work under this contract the parties hereto (hereinafter in Appendix "A" referred to as the "contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix A, attached hereto and made a part hereof. The parties further covenant that they will comply with the Civil Rights Acts of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d, and 2000a-2000h-6 and the Regulations of the United States Department of Transportation (49 C.F.R. Part 21) issued pursuant to said Act, including Appendix "B", attached hereto and made a part hereof, and will require similar covenants on the part of any contractor or subcontractor employed in the performance of this contract.
- E. The parties will carry out the applicable requirements of the DEPARTMENT'S Disadvantaged Business Enterprise (DBE) program and 49 CFR, Part 26, including, but not limited to, those requirements set forth in Appendix C.

APPENDIX A

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

In connection with the performance of work under this contract; the contractor agrees as follows:

1. In accordance with Public Act 453 of 1976 (Elliott-Larsen Civil Rights Act), the contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, treatment, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight, or marital status. A breach of this covenant will be regarded as a material breach of this contract. Further, in accordance with Public Act 220 of 1976 (Persons with Disabilities Civil Rights Act), as amended by Public Act 478 of 1980, the contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment or a matter directly or indirectly related to employment because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants will be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinabove set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or any disability that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment; treatment; upgrading; demotion or transfer; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or its collective bargaining representative shall send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding a notice advising such labor union or workers' representative of the contractor's commitments under this Appendix.
6. The contractor shall comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission that may be in effect prior to the taking of bids for any individual state project.

7. The contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor, as well as the contractor itself, and said contractor shall permit access to the contractor's books, records, and accounts by the Michigan Civil Rights Commission and/or its agent for the purposes of investigation to ascertain compliance under this contract and relevant rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this contract, the Michigan Civil Rights Commission may, as a part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which State Administrative Board may order the cancellation of the contract found to have been violated and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, including the governing boards of institutions of higher education, until the contractor complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
9. The contractor shall include or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Michigan Civil Rights Commission; all subcontracts and purchase orders will also state that said provisions will be binding upon each subcontractor or supplier.

Revised June 2011

APPENDIX B TITLE VI ASSURANCE

During the performance of this contract, the contractor, for itself, its assignees, and its successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** For all federally assisted programs, the contractor shall comply with the nondiscrimination regulations set forth in 49 CFR Part 21, as may be amended from time to time (hereinafter referred to as the Regulations). Such Regulations are incorporated herein by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed under the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection, retention, and treatment of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contractor covers a program set forth in Appendix B of the Regulations.
3. **Solicitation for Subcontracts, Including Procurements of Materials and Equipment:** All solicitations made by the contractor, either by competitive bidding or by negotiation for subcontract work, including procurement of materials or leases of equipment, must include a notification to each potential subcontractor or supplier of the contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and facilities as may be determined to be pertinent by the Department or the United States Department of Transportation (USDOT) in order to ascertain compliance with such Regulations or directives. If required information concerning the contractor is in the exclusive possession of another who fails or refuses to furnish the required information, the contractor shall certify to the Department or the USDOT, as appropriate, and shall set forth the efforts that it made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Department shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to, the following:
 - a. Withholding payments to the contractor until the contractor complies; and/or
 - b. Canceling, terminating, or suspending the contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor shall include the provisions of Sections (1) through (6) in every subcontract, including procurement of material and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Department or the USDOT may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event a contractor becomes involved in or is threatened with litigation from a subcontractor or supplier as a result of such direction, the contractor may request the Department to enter into such litigation to protect the interests of the state. In addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Revised June 2011

APPENDIX C

TO BE INCLUDED IN ALL FINANCIAL ASSISTANCE AGREEMENTS WITH LOCAL AGENCIES

Assurance that Recipients and Contractors Must Make (Excerpts from US DOT Regulation 49 CFR 26.13)

- A. Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance:**

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any US DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by US DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract MDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:**

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-020

A RESOLUTION TO ESTABLISH AN AD HOC CODE ENFORCEMENT COMMITTEE

WHEREAS, City Council and the City administration have received input from the citizenry through the Vision 2025 strategic planning process, among other input methods, of the desire to see a proactive code enforcement presence in the community; and

WHEREAS, City Council wishes to ensure that code enforcement policies and practices, along with the methods used by the City and its departments to implement them, are effective and consistent for residents and staff, and that those methods are cost efficient to administer; and

WHEREAS, City Council believes that it is prudent to undertake an evaluation of the City's current code enforcement policies, practices, and methods by forming an ad hoc committee to review them and make recommendations to the City Council;

NOW, THEREFORE, BE IT RESOLVED that there is hereby established the Ad Hoc Code Enforcement Committee, the membership of which shall be appointed by the Mayor subject to the approval of the City Council and shall include 2 members of the City Council and 3 citizens of the city representing diverse socioeconomic or other demographic sections of the population, and 1 city employee who will be a non-voting, ex-officio member; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall have the authority to elect its own chairman, promulgate its own rules of order and develop its own schedule of meetings, which meetings shall be conducted in accordance with the Open Meetings Act; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall 1) evaluate and make recommendations to the City Council on code enforcement operations; 2) develop a projected cost estimate for providing such services as deemed necessary; and 3) make a recommendation to City Council for alternatives to provide such services; and

BE IT FURTHER RESOLVED that the Ad Hoc Code Enforcement Committee shall issue a final written report of its findings and recommendations to the City Council not later May 1, 2021.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk
City of Charlotte



Memo

Date: February 17, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Code Enforcement Ad-Hoc Committee

On the agenda for Council's consideration is a resolution to form an ad-hoc committee to study options to provide code enforcement services as discussed at the February 9th study session with amendments to the membership as discussed at the February 16th regular Council meeting.

A resolution of approval of this committee is included for your review and consideration.

eel

attachment

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-021

A RESOLUTION TO AUTHORIZE A PETITION FOR THE HIGBY DRAIN

WHEREAS, the Higby Drain is a County Drain that traverses the Airport and continues northeast to Parish Highway following Lansing Road; and

WHEREAS, the Eaton County Drain Commission had started a maintenance project on the Airport property until they encountered a direct conflict with City sanitary sewer; and

WHEREAS, there are several businesses along Lansing Road that are currently being adversely affected by the deteriorated 1912 drain; and

WHEREAS, according to the Drain Code of 1956, a municipality can petition the Drain Commission for a drain to be fixed; and

WHEREAS, it is recommended that the appropriate way to properly fix this drain and utility conflict would be for the City to petition the Eaton County Drain Commission to fix the Higby Drain.

THEREFORE, BE IT RESOLVED That the City Council approve the petition to the Eaton County Drain Commission for the improvements to the Higby Drain.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk
City of Charlotte

Memo

To: City Council
From: Amy E. Gilson, P.E., Director of Public Works
Date: February 11, 2021
Re: Higby Drain Petition

In your packet you will find a resolution to approve petitioning the Eaton County Drain Commission (ECDC) for improvements to the Higby Drain. The ECDC has been performing piecemeal repairs to the Drain as allowed under the Drain Code. The most recent required repair crosses the west side of the Airport. Apparently in the 1970's when the City constructed their sanitary sewer, they crossed the drain at the same elevation as the 1912 drain in what is called a conflict structure. This structure does not meet current best practices. Because the Drain Code only allows the ECDC to replace a drain at the same elevation and route, the changes required would need to be paid for solely by the City. Even if the City were to pay for the required changes at the Airport property, it does nothing to help the businesses located upstream.

After meetings with the ECDC, it has been determined that the best course of action would be to petition the project so that everyone in the Drainage District will get relief. Several of the businesses that are currently experiencing flooding in their buildings are located in the City. Additionally, there are opportunities to make minor adjustments to the alignment of the drain that will move it from underneath one building, make one vacant lot more saleable, and it could cross the grass runway closer to the end of it. Additionally, it will better drain the airport property allowing for more area to be leased for farming.

Once the project is petitioned, the ECDC will hold a Board of Determination to see if the project is warranted. If it is deemed necessary, the project will move to the engineering phase and construction phase. If it is not, then the project will die, but the City would still need to pay to resolve the utility conflict. If the project moves to the bidding phase, there will be a Day of Review for the affected property owners to review their assessments and costs for the project. It will be at that time that we know the City's portion of the project cost.

Because the ECDC would sell bonds for the project, the City would be assessed their costs over 10-15 years instead of having to come up with more than \$60,000 this year to complete the fix at the Airport.

Therefore, we are recommending that Council approve the petition for the improvements to the Higby Drain.

Please let me know if you have any questions.

M:\Memo\2021\council memo regarding Higby Drain Petition.doc

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-23

**A RESOLUTION TO RECOGNIZE MARTIN LUTHER KING JR. DAY AS A HOLIDAY IN
THE CITY OF CHARLOTTE**

RECOGNIZING the third Monday of January, as Reverend Dr. Martin Luther King, Jr. Day in the City of Charlotte.

WHEREAS, the late Reverend Dr. Martin Luther King, Jr. was a leader of the American civil rights movement and whose legacy encompasses influential decisions, monumental actions and steadfast progressions of humanitarian rights reaching far beyond the civil rights movement; and

WHEREAS, as noted by the National Civil Rights Museum, "a leader of all people, Dr. King never chose fear, but always chose courage and determination when fighting for civil rights in the face of oppression, ignorance and violence. He refused to allow prison, violence or the threat of death to sway his end mission"; instead, Dr. King stood beside his goal of achieving rights for all through nonviolent protests; and

WHEREAS, he and other civil rights activists collectively influenced nationwide change, with Dr. King's leadership contributing to the overall success of the civil rights movement in the mid-20th century and which continues to impact civil rights movements today; and

WHEREAS, Dr. King's life was tragically cut short by an assassin's bullet on April 4, 1968 in Memphis, Tennessee while he was championing the cause of labor in the Sanitation Workers' Strike; and

WHEREAS, Dr. King's life will always shine as a light for those without hope and as an example to be emulated by all who care about their fellow human beings, regardless of race, religion, class or nationality; and

WHEREAS, due to the efforts of many dedicated community leaders and activists who sought national recognition for Dr. King, the third Monday in January is nationally recognized across the United States as a day to remember Dr. King, his legacy, and the causes for which he fought and died; now, therefore,

BE IT RESOLVED that the Mayor and this Council hereby recognize the third Monday in January as Reverend Dr. Martin Luther King, Jr. Day in the City of Charlotte. Further, the holiday will be observed by the closure of city hall.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

In witness whereof, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk
City of Charlotte

CITY OF CHARLOTTE, COUNTY OF EATON, STATE OF MICHIGAN

RESOLUTION NO. 2021-026

A RESOLUTION TO DETERMINE COLOR FOR THE NORTH WATER TOWER

WHEREAS, City Council awarded a contract to Nelson Tank Engineering & Consulting, Inc. for repairs and repainting of the north water tower at their meeting on February 1, 2021; and

WHEREAS, a determination of the general color scheme and logo must be made for the contract documents; and

WHEREAS, City staff is recommending an off-white to beige color with green logos depicting the word CHARLOTTE on two sides.

THEREFORE, BE IT RESOLVED that the City Council allow the staff to determine the final colors based on Council's wishes.

The foregoing resolution offered by Council member _____ and supported by _____.

Upon roll call vote, the following voted:

Aye:

Nay:

Absent:

I, the undersigned, the duly qualified and acting Clerk of the City of Charlotte, County of Eaton, State of Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City of Charlotte at a regularly scheduled meeting held on Monday, March 1, 2021, relevant to the Michigan Open Meetings Act, the original of which is on file in my office as part of council minutes.

IN WITNESS WHEREOF, I have hereunto set my official signature this 1st day of March 2021.

Pearl Tidwell, City Clerk / Treasurer
City of Charlotte

Memo

To: City Council
From: Amy E. Gilson, P.E., Director of Public Works
Date: February 23, 2021
Re: North Water Tower Painting



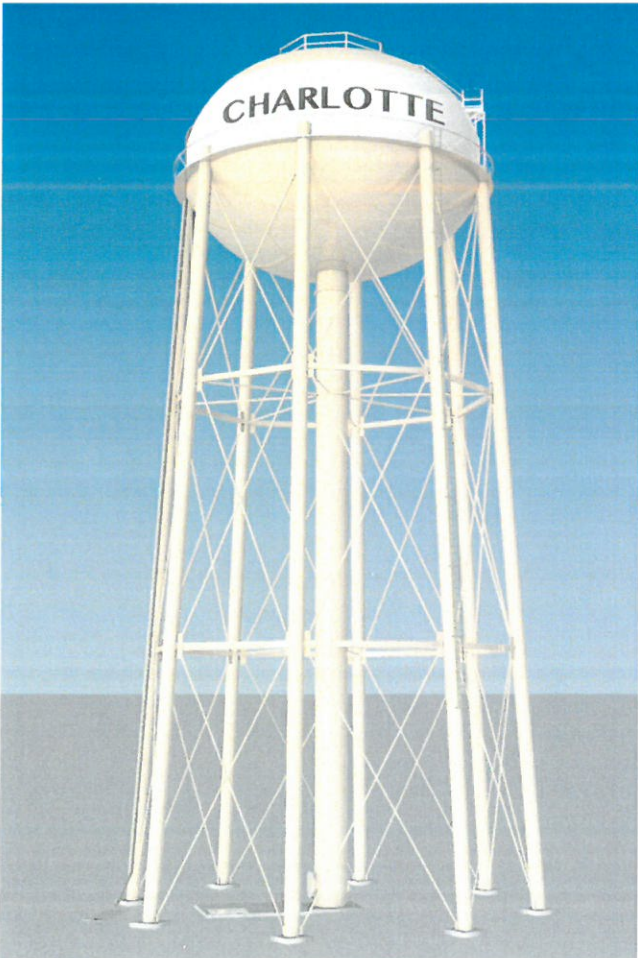
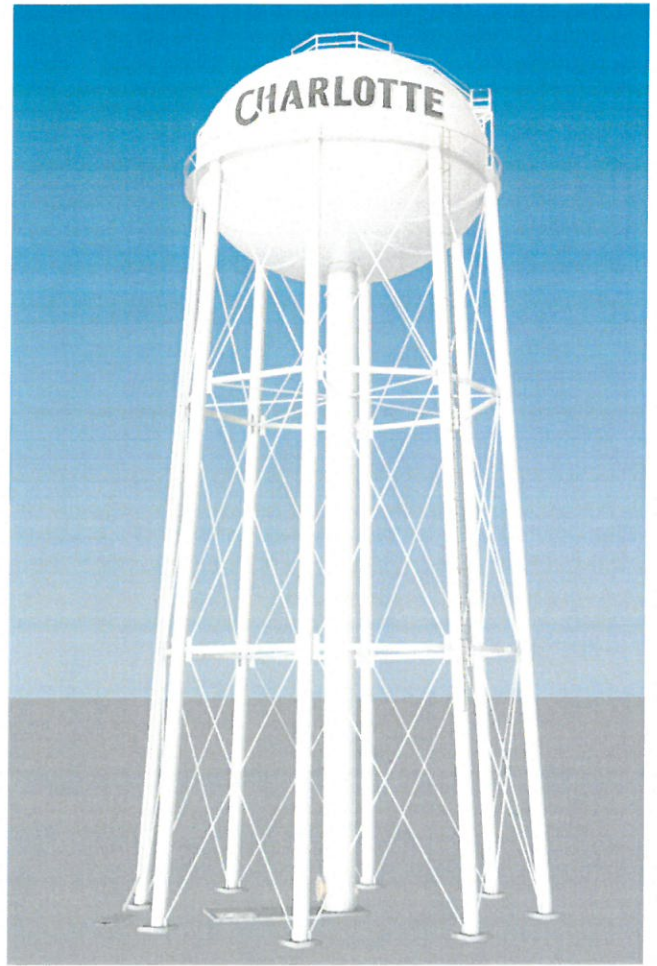
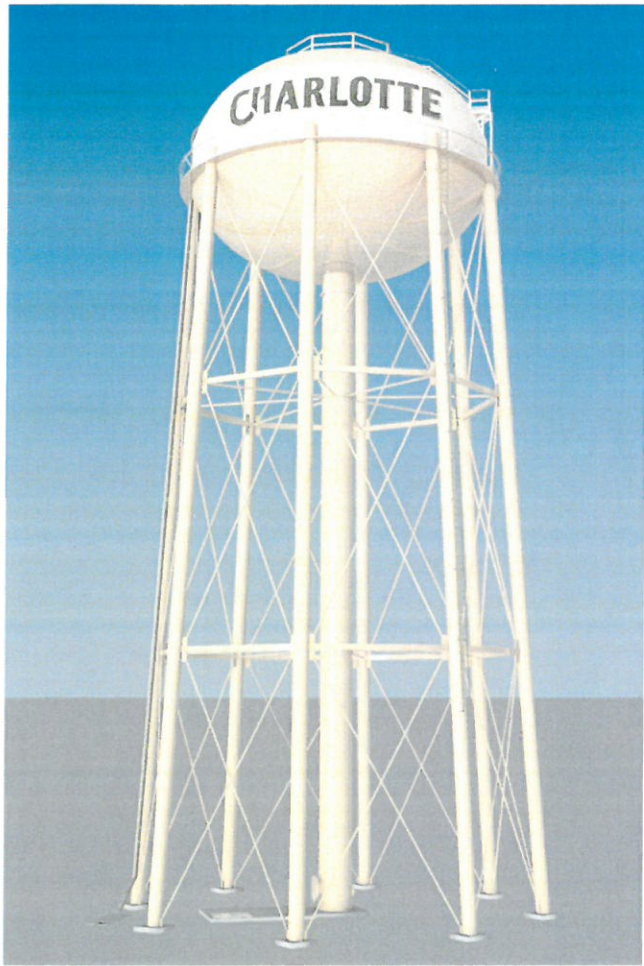
At the City Council meeting on February 1st, a contract was awarded to Nelson Tank Engineering & Consulting, Inc. (NTEC) for repairs and repainting of the north water tower. As part of the bid documents, they include general paint colors and a logo to be painted on the tank.

It is the opinion of this department and its staff that the color needs to be in the off-white to beige range for a couple of reasons. A pure white tank tends to show all the dirt and any discolorations and would need frequent cleaning to keep up its appearance. Dark colored tanks can heat the water in the summer which may encourage the growth of undesirable constituents in the tower. The last reason is that with the City logo being green, an off-white or beige color would accentuate it.

We are proposing to just put the word "CHARLOTTE" on two sides of the tank. Since the two tanks were last painted in 2004, there have been several official logo changes, and yet we're stuck with the old one.

What we are asking is that the Council decide if they want to use the current logo's font or standard block letters for the painting on the tank. We are also asking that you allow staff to try and match the logo with a green that is as close as possible to the current logo. Additionally, we are asking that Council allows the staff to make a final choice on the shade of off-white or beige color when the time comes to choose a specific paint color.

Please let me know if you have any questions.





Memo

Date: February 26, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Ordinance to update Chapter 58 – Streets, Sidewalks, and Other Public Places

On the agenda for a first reading by Council is an amendment to Chapter 58 Streets, Sidewalks, and Other Public Places. Section 58-116 of the Code was adopted in 2017 as a continuation of the ordinance passed in 2014 which expanded the provisions for sidewalk clearing to apply to most properties in the city. This section is scheduled to sunset on October 1, 2021. I am proposing Council consider this language now to ensure there is not an inadvertent lapse in effect prior to next winter season. Attached please find a draft ordinance to amend Section 58-116 to remove the sunset provision. The language has been reviewed by Attorney Hitch.

Procedurally, ordinances except for those related to Zoning are adopted pursuant to the applicable sections of the Home Rule City Act and the City Charter, and per Council Policy 2021-03. A first reading is held at which time Council may set a public hearing and second reading/adoption. Upon Council adoption, the ordinance or a summary must be published and 20 days elapsed prior to the language taking effect.

Council Policy 2021-03 requires a public hearing notice to be published seven days prior to the hearing date. Therefore, I recommend Council schedule a public hearing and second reading for the March 15th meeting.

eel

attachment

Introduced: March 1, 2021

Adopted:

Effective:

CITY OF CHARLOTTE
ORDINANCE NO. 2021-01

**AN ORDINANCE TO AMEND CHAPTER 58 – STREETS, SIDEWALKS, AND OTHER
PUBLIC PLACES – OF THE CODE OF THE CITY OF CHARLOTTE BY AMENDING
SECTION 58-116 TO REMOVE THE SUNSET PROVISION**

Councilmember _____ moved the following:

THE CITY OF CHARLOTTE ORDAINS:

- 1. Section 58-116 Clearing of Sidewalks, of Chapter 58 – Streets, Sidewalks and Other Public Places – of the Code of the City of Charlotte, is hereby amended to read as follows:**

§ 58-116 CLEARING OF SIDEWALKS.

(A) Except as otherwise provided in the establishment of special assessment districts by the City Council for the purpose of snow removal, no person having the care, either as owner or occupant, of any house, building or lot shall permit any snow or ice to remain on any sidewalk in front of any house, building or lot within the City of Charlotte.

(B) (1) Any person who is found to have violated § [58-116](#)(A) shall be deemed responsible for a municipal civil infraction as defined by § 113(1) of the Revised Judicature Act [M.C.L.A. § 600.113(1)] and punished by a civil fine as provided by § [32-6](#) of this Code.

(2) For purposes of this section, a **PRIOR OFFENSE** means a prior or current resident of the property or prior or current owner of the property for which the current violation applies has had a judgment entered against them for a violation of § [58-116](#) for that property within the same snow season.

(3) For purposes of this section, a **SNOW SEASON** shall mean from October 1 to April 30 of the following year.

(4) To charge a violation as a subsequent offense, the issuing officer shall note on the citation that it is a subsequent offense and all dates of the prior offenses and all of the names of all persons or entities to whom the prior citations were issued that make this a subsequent offense.

(5) The Chief of Police is charged with the enforcement of § [58-116](#) and may for such purpose assign enforcement to limited duty parking and property maintenance officers who shall be authorized to issue and serve citations for municipal civil infractions as provided by § 8707 of the Revised Judicature Act.

~~—(C)— This section, as well as §§ [58-117](#) and [58-118](#) shall be null, void and of no force and effect on October 1, 2021, and thereafter.~~

This ordinance shall become effective 20 days after adoption.

Second _____. Yea ____ Nay ____

Dated: _____

Michael Armitage, Mayor

Pearl Tidwell, Clerk



Memo

Date: February 26, 2021
To: Honorable Mayor Armitage; City Council
From: Erin LaPere, City Manager
Re: Ordinance to update Chapter 30 – Fire Prevention and Protection

On the agenda for a first reading by Council is an amendment to Chapter 30 Fire Prevention and Protection. Section 30-27 of the Code was adopted in 2015 with a four-year sunset provision. In addition to the expiration pursuant to the sunset section, the Building Board of Appeals was established as the appeals body for this section of the code. Attached please find a draft ordinance to amend Section 30-27 to establish the Zoning Board of Appeals as the appeals body and to remove the sunset provision. The language has been reviewed by Attorney Hitch.

Procedurally, ordinances except for those related to Zoning are adopted pursuant to the Home Rule City Act, City Charter, and Council Policy 2021-03. A first reading is held at which time Council may set a public hearing and second reading/adoption. Upon Council adoption, the ordinance or a summary must be published and 20 days elapsed prior to the language taking effect.

Council Policy 2021-03 requires a public hearing notice to be published seven days prior to the hearing date. Therefore, I recommend Council schedule a public hearing and second reading for the March 15th meeting.

eel

attachment

Introduced:

Adopted:

ve:

CITY OF CHARLOTTE

ORDINANCE NO. ____

AN ORDINANCE TO AMEND CHAPTER 30 - FIRE PREVENTION AND PROTECTION - OF THE CODE OF THE CITY OF CHARLOTTE BY AMENDING SECTION 30-27 TO PROVIDE THAT THE ~~BUILDING ZONING~~ BOARD OF APPEALS SHALL BE CONSTITUTED AS THE BOARD OF APPEALS UNDER THE FIRE PREVENTION CODE FOR THE CITY OF CHARLOTTE AND TO REMOVE THE SUNSET PROVISION.

Councilmember _____ moved that the following ordinance be passed to a second reading:

THE CITY OF CHARLOTTE ORDAINS:

SECTION 1. PURPOSE. The purpose of this ordinance is to designated the ~~building board of appeals in lieu of the~~ zoning board of appeals as the board that considers appeals under the International Fire Code ~~so as to have those appeals considered and decided by a board constituted of members with knowledge and experience in the building trades so as to more effectively decide matters brought before it.~~

SECTION 2.

Section 30-27 of Chapter 30 - Fire Prevention and Protection - of the Code of the City of Charlotte is hereby amended to read as follows:

§ 30-27 CHANGES IN INTERNATIONAL FIRE CODE.

The following articles or sections of the International Fire Code are hereby added, amended, or deleted as hereinafter set forth. Subsequent article, division and section numbers used in this § 30-27 shall refer to the like numbered articles, divisions, and sections of the International Fire Code, unless specified otherwise.

Sec. 101.1: Insert: City of Charlotte.

Section 102.10 is hereby added to read as follows:

Sec. 102.10. Inspection of Structures. The code official shall inspect all structures and premises except single-family dwellings, and dwelling units in two-family dwellings as often as may be necessary for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire, contribute to the spread of fire, interfere with firefighting operations, endanger life or any violations of the provisions or intent of this code or any other ordinance affecting fire safety.

Section 108.1 shall be amended to read as follows:

Sec. 108.1. Board of Appeals. The ~~Zoning Building~~ Board of Appeals of the City of Charlotte is hereby constituted the Board of Appeals under this Fire Prevention Code.

Section 109.3 shall be amended to read as follows:

Sec. 109.3. Violation Penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair, or do work in violation of the approved construction documents or directions of the code official, or of a permit or certificate used under provisions of this code, shall be responsible for a municipal civil infraction, and sanctioned by a civil fine, plus costs, including reasonable attorneys fees, as provided by law. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

Section 111.4 shall be amended to read as follows:

Sec. 111.4. Failure to Comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than One Hundred Dollars (\$100) or more than Five Hundred Dollars (\$500).

Section 302 shall be amended to read as follows:

Sec. 302. Definitions.

Add to definition of "Recreational Fire": "Fuel used for a recreational fire shall only be untreated wood or charcoal."

Add definition of "Contained Outdoor Fireplace:"

Contained Outdoor Fireplace shall mean a fireplace no larger than three (3) feet wide, three (3) feet deep, and three (3) feet high (exclusive of legs and chimneys) which is capable of fully enclosing the fire by means of screening or other non-combustible materials with sufficiently small openings to contain embers.

Add definition of "Freestanding Wood Burning Furnace:"

Freestanding Wood Burning Furnace shall mean any device or structure that is:

(a) Designed, intended, or used to provide heat and/or hot water to any residence or any structure; and

(b) Operated by the burning of wood or other solid fuel; and

(c) Not located within the structure for which it is providing the heat or hot water.

Excluded from the definition of a freestanding wood burning furnace is any device which is not designed or used to heat a structure other than the structure in which it is located.

Section 304.4 shall be added to read as follows:

Sec. 304.4. Special Permit. Under certain conditions, the fire chief or his designee may allow the burning of brush by permit.

Section 307.2 shall be amended to read as follows:

Sec. 307.2. Permit Required. A permit shall be obtained from the code official prior to kindling a fire for recognized silvicultural or range or wildlife management or practices, prevention or control of disease or pests, a bonfire or a recreational fire. Applications for such approval shall only be presented by and permits issued to the owner of the lands upon which the fire is to be kindled.

Section 307.6 shall be added to read as follows:

Sec. 307.6. Outdoor Fireplace: Permit Required. No person shall kindle or maintain any fire or authorize any such fire to be kindled or maintained in a contained outdoor fireplace unless an annual contained outdoor fireplace permit is first obtained and in effect authorizing the owner of

the property to maintain a fire in a contained outdoor fireplace and the fire is maintained in accordance with the regulations proposed by the Fire Marshall and adopted by resolution of the City Council for such fires.

Section 316 is hereby added to read as follows:

Sec. 316. Freestanding Wood Burning Furnace.

Sec. 316.1. Prohibition. Except as provided below, it shall be unlawful to install, use, maintain, or operate a freestanding wood burning furnace, and to cause or permit the installation or operation of a freestanding wood burning furnace, within the city of Charlotte.

Sec. 316.2. Separation Requirements and Permit. A freestanding wood burning furnace shall be permitted under the following circumstances:

(a) Where it is located no closer than 660 feet from any adjoining residential or commercial structure (excluding in this calculation the structure for which it is used to provide heat and/or hot water);

(b) That the unit be inspected and a boiler permit be obtained, as required under the applicable mechanical code;

(c) That a permit be obtained pursuant to section 105 of this code.

Sec. 316.3 Existing Uses. This ordinance shall apply to any freestanding wood burning furnace that was installed, connected, and operating as of the effective date of this ordinance and, unless the conditions are met pursuant to section 316.2 above, such use, maintenance, and operation of the freestanding wood burning furnace is hereby prohibited.

Section 3204.3.1.1 is amended to provide that the geographic limits shall be the city limits of the city of Charlotte.

Section 3301.1.3 Fireworks is amended to add a new subsection (5) under exceptions which shall read as follows:

(5) The possessions, storage, sale, handling and use of sparklers.

Section 3404.2.9.5.1 is amended so that the geographic limits shall be the city limits of the city of Charlotte.

Section 3406.2.4.4 is amended so that the geographic limits shall be the city limits of the city of Charlotte.

Section 3804.2 is amended so that the geographic limits shall be the city limits of the city of Charlotte.

~~The ordinance codified herein will sunset after four years.
(1993 Code, § 30-27) (Am. Ord. passed 9-22-2003)~~

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective 20 days after adoption.

Second, _____. _____ () Yeas. () Nays.

Dated: _____

Michael Armitage, Mayor

Pearl Tidwell, Clerk

MEMORANDUM

TO: Charlotte City Council

FROM: Thomas M. Hitch, City Attorney

RE: **CITY ATTORNEY REPORT**

DATE: February 24, 2021

The following is my report to the City Council on issues in which our office has been engaged since the last Council meeting:

1. Extension of water main along Lansing Road. I am in the process of contacting the interested parties at 1761 Lansing Road regarding this project. I will keep Amy Gilson and the Council apprised as to its progress.

2. The Meadows/Tree cutting project. I am in the process of reaching out to the managers, M. Shapiro Real Estate Group, regarding the plans to expand and upgrade the manufactured housing development. The City needs to coordinate tree cutting, to the extent that it occurs with its plans to expand the City's control over the airspace at the airport so that the City can resume instrument rated take-offs and landings at the airport.

3. Contacts with the City Manager. I continue to have contacts with the City Manager regarding various matters ongoing in the City, particularly as they are Covid related.

TMH:cf



Manager's Report March 1st Council Meeting

City Hall Maintenance/Repairs

There are two major items which will require maintenance repairs at city hall. The roof at city hall is leaking and in need of repairs and potential partial replacement. The winter weather, especially the heavy snowfalls, have put additional strain on the aging structure and there are several leaks in the roof above the Council chambers. We will need to seek bids in early spring for companies to evaluate and complete the necessary repairs or replacement of that section of roofing.

The two boilers at city hall are approximately 20 years old and reaching the end of their useable life. We will need to repair or replace both before next winter. Administration is working with contractor to evaluate the options for repairs or replacement and determine the recommended path forward. In addition to replacing the appliances, upgrades to the boiler system would offset utility costs and will be a consideration in the decision-making process.

March 15th Meeting

At the March 15th Council meeting there will be a special presentation from the Michigan Independent Citizens Redistricting Commission. Commissioner Erin Wagner will provide a brief overview of the commission's work and answer any questions. More information about the commission can be found here: https://www.michigan.gov/sos/0,4670,7-127-1633_91141---,00.html

Union Negotiations

Three union contracts are up for renewal this June. The City has been contacted by the non-supervisory police bargaining unit seeking to begin negotiations. We have initial dates set for mid-March and I will keep Council apprised as to the ongoing nature of those discussions.