

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

JOHN DOE AND JANE DOE NO. 1,  
JOHN DOE AND JANE DOE NO. 2,  
JOHN DOE AND JANE DOE NO. 3,  
JANE DOE NO. 4,

Plaintiffs,

v.

Case No.: 1123-80

CHARLOTTESVILLE CITY COUNCIL,  
Serve: Allyson Davies, Esq.  
City Attorney  
605 E. Main Street  
Charlottesville, VA

and

CITY OF CHARLOTTESVILLE,  
Serve: Allyson Davies, Esq.  
City Attorney  
605 E. Main Street  
Charlottesville, VA

Defendants.

### COMPLAINT

Plaintiffs, by counsel and proceeding pursuant to Virginia Code §§ 8.01-15.1, 8.01-184, et. seq., and 15.2-2204(E), bring this action seeking a declaration that the amendments to the Comprehensive Plan adopted by the Charlottesville City Council ("City Council") pursuant to its consent agenda on January 17, 2023, are void *ab initio* due to the failure to comply with the applicable statutory requirements for the adoption of such a plan. Specifically, the City of Charlottesville (the "City") and City Council failed to comply with the notice requirements set forth in Virginia Code § 15.2-2204(A).

FILED  
2/13/23 @ 4:00 pm  
(Date & Time)

City of Charlottesville  
Circuit Court Clerk's Office  
Lizette A. Dugger, Clerk

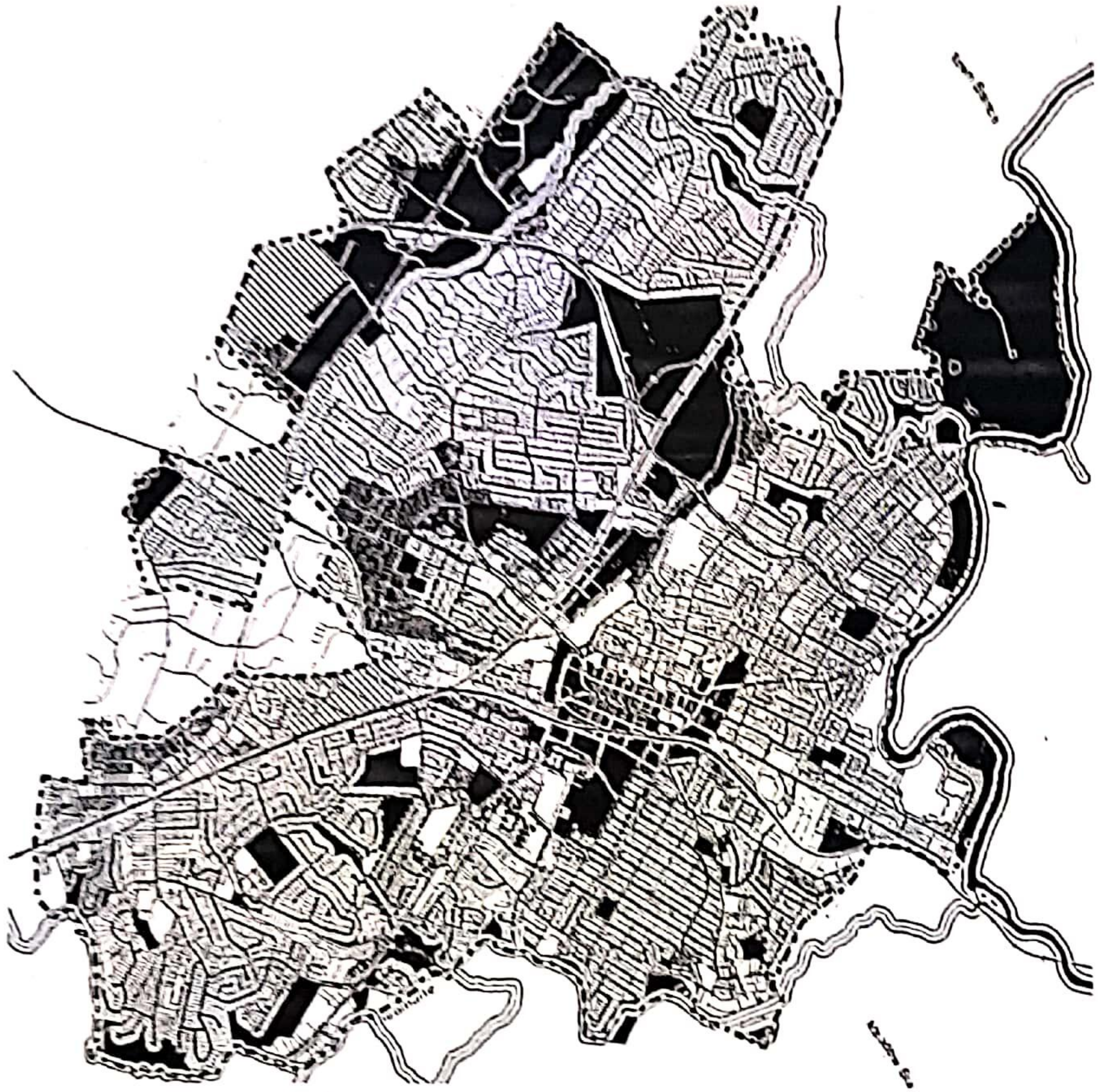
By [Signature]  
Deputy Clerk

## THE PARTIES

1. John Doe and Jane Doe No. 1 ("First Does") own real property in the City of Charlottesville located on Rugby Road.
2. John Doe and Jane Doe No. 2 ("Second Does") own real property located in the City of Charlottesville on Altavista Avenue.
3. John Doe and Jane Doe No. 3 ("Third Does") own real property located in the City of Charlottesville on Locust Avenue.
4. Jane Doe No. 4 ("Fourth Doe") owns property in the City of Charlottesville on Rugby Avenue.
5. The City is a municipal corporation and political subdivision of the Commonwealth of Virginia.
6. City Council is the governing body of the City. Its powers are conferred by the General Assembly of the Commonwealth of Virginia.

## BACKGROUND

7. On December 13, 2022, City Council and City of Charlottesville Planning Commission (the "Planning Commission") held a joint public hearing "for consideration of a proposed action to amend and re-enact the Comprehensive Plan for the City of Charlottesville" (hereinafter the "Plan"). See Notice of Public Hearing (the "Notice") attached as **Exhibit A**.
8. The Plan includes a Future Land Use Map (the "FLUM") that identifies new zoning districts on a parcel-by-parcel basis, as reflected in the image below:



9. The residential zoning classifications that apply to the various colors on the FLUM are as follows:

**Table 2 Land Use Category Descriptions**

<b>RESIDENTIAL</b>			
<i>Limited commercial uses allowed in all residential districts, to be further described in the Zoning Ordinance. Zoning tools will regulate affordability and maximum allowable development for all categories and will consider demolition disincentives, as feasible.</i>			
Description	Form	Height	Use and Affordability
<p><b>General Residential</b> Allow for additional housing choice within existing residential neighborhoods throughout the city.</p>	<p>Compatible with existing context, including house-sized structures with similar ground floor footprint area and setbacks as surrounding residential structures. Zoning tools will define contextual building form and neighborhood compatibility criteria for development.</p>	<p>Up to 2.5 stories.</p>	<p>Up to 3-unit dwellings including existing single-family splits, accessory dwelling units (ADUs), and new housing infill. Zoning ordinances will consider ways to support townhomes in this category on a site-specific basis. Allow up to 4-unit dwellings if the existing structure is maintained. Allow additional units and height under an affordability bonus program or other zoning mechanism.</p>
<p><b>General Residential (Sensitive Community Areas)</b> Allow for additional housing choice, and tools to mitigate displacement, within existing residential neighborhoods that have high proportions of populations that may be sensitive to displacement pressures (Note: The boundaries for these areas should evolve during the zoning update process, as described on page 27.)</p>	<p>Compatible with existing context, including house-sized structures with similar ground floor footprint area and setbacks as surrounding residential structures. Zoning tools will define contextual building form and neighborhood compatibility criteria for development.</p>	<p>Up to 2.5 stories.</p>	<p>Allow 1 unit per lot. (Zoning ordinance to consider support for existing "plexes" - e.g., duplexes - at the base level.) Allow up to 3-unit dwellings if the first unit meets affordability requirements. Allow up to 4-unit dwellings if the existing structure is maintained and at least one affordable unit is provided. Consider allowing additional units and height under a bonus program or other zoning mechanism with greater and deeper affordability than non-sensitive areas.</p>
<p><b>Medium Intensity Residential</b> Increase opportunities for housing development including affordable housing, along neighborhoods corridors, near community amenities, employment centers, and in neighborhoods that are traditionally less affordable.</p>	<p>Compatible with existing residential and historic neighborhood context. House-sized infill to include structures with similar building height, building width, and side and front yard setbacks as surrounding residential structures. Zoning tools will define building form and neighborhood compatibility criteria for development (e.g., lot coverage, topography, parking, environmental resources, etc.)</p>	<p>Up to 4 stories.</p>	<p>Allow small, "house-sized" multi-unit buildings (up to 12-unit dwellings), accessory dwelling units (ADUs), cottage courts, and rowhouses / townhouses. Utilize a bonus program or other inclusionary zoning mechanism to support affordability.</p>
<p><b>Higher-Intensity Residential</b> Provide opportunities for higher density, multi-family focused development. Incentivize affordability and increased intensity to meet Affordable Housing Plan goals.</p>	<p>Compatible with existing residential and historic neighborhood context. Highest building heights according to context. Zoning tools will define building form and neighborhood compatibility criteria for development (e.g., lot coverage, topography, parking, environmental resources, etc.)</p>	<p>Up to 5 stories.</p>	<p>Multi-unit housing (13+ units per lot). May include large and/or smaller-scaled buildings. Limited ground floor commercial uses are encouraged. Requirements for affordability to be determined in the inclusionary zoning study, following the adoption of the Comprehensive Plan.</p>

10. The Notice attached as Exhibit A provided as follows:

**2. Notice of Intent to Amend and Re-enact City Comprehensive Plan**

**PUBLIC HEARING NOTICE:** notice is hereby given by the Charlottesville City Council that, on Tuesday, December 13, 2022, beginning at 6:00 p.m., the Charlottesville City Council and the Charlottesville Planning Commission will conduct a joint public hearing for consideration of a proposed action to amend and re-enact the Comprehensive Plan for the City of Charlottesville. Persons affected by the proposed action may appear virtually or in person at the meeting and present their views. On that same date, following the public hearing, it is the intention of the City that the Planning Commission will vote on the proposed action (City Council's vote would take place at a later City Council meeting agenda, following receipt of the Commission's recommendation). The 2021 Comprehensive Plan, as amended, that is proposed to be amended and re-enacted is currently available for viewing on the City's website:

<https://www.charlottesville.gov/DocumentCenter/View/7073/Comprehensive-Plan-Document---2021-1115-Final?bidId=>

and the previous (2013) Comprehensive Plan, as amended, is also available:

<https://www.charlottesville.gov/DocumentCenter/View/477/2013-Comprehensive-Plan-PDF?bidId=>

**Proposed Action:** the proposed action is as follows: amendment and re-enactment of the 2021 Comprehensive Plan (previously approved 11-15-2021 by City Council Resolution # R-21-162 and amended by Resolution #R-22-01E), including, without limitation, the enactment, or re-enactment, of the following provisions modifying the organization, content, goals and strategies of the prior Comprehensive Plan (2013), as amended:

2013 Comprehensive Plan	2021 Comprehensive Plan (11-15-2021), as proposed to be amended and re-enacted
<b>6 Land Use Categories:</b> low-density residential, high density residential, mixed use, neighborhood commercial, business & technology, public or semi-public, parks & open space, University of Virginia. A map (Future Land Use Map) was provided to allow citizens to see which categories apply within their neighborhoods.	<b>10 Land Use Categories (defined on pp. 29-30):</b> general residential (GR); GR (Sensitive Community Areas); Medium-Intensity Residential; Higher-Intensity Residential; Neighborhood Mixed-Use Corridor; Neighborhood Mixed-Use Node; Business and Technology Mixed Use; Urban Mixed Use Corridor; Urban Mixed Use Node; Downtown Core. A map (Future Land Use Map) is provided to allow citizens to see which categories apply within their neighborhoods.
"Low-density residential" defined as an area for single- and two-family units; developed at 12 or less dwelling units per acre (DUA); building height not addressed. No density ranges specified.	Low-density residential land use category eliminated. New "General residential" (GR) category allows 3- and 4-unit dwellings and townhome developments, at building heights of up to 2.5 stories. Additional units and building height are allowable under an affordability bonus program. For certain sensitive areas planned for GR only one unit per lot would be allowed 3- and 4-unit dwellings would be allowed if affordable units are provided.
N/A	New "Medium Intensity residential" category contemplates buildings up to 4 stories, including 12-unit multifamily buildings as well as townhouse developments.
"High-density residential" defined as an area for multifamily units, to be developed at more than 12 dwelling units per acre. No density ranges specified.	High-density residential land use category eliminated. New "Higher-Intensity Residential" contemplates multifamily-focused development (up to 5 stories and 13+ units per lot), incentivized to meet affordable housing goals. Ground floor commercial uses will be encouraged.
N/A	Urban Rappahannock River Corridor Plan (amendment approved by City Council Feb. 7, 2022)
N/A	Amendment to Ch. 4 (Land Use, Urban Form, and Historic & Cultural Preservation) and 5 (Housing), to add provisions promoting manufactured housing as a source of affordable housing. <a href="https://www.charlottesville.gov/DocumentCenter/View/8764/202212-PC-Report-Manufactured-Housing-Comp-Plan-Update?bidId=">https://www.charlottesville.gov/DocumentCenter/View/8764/202212-PC-Report-Manufactured-Housing-Comp-Plan-Update?bidId=</a>
Climate Protection Chapter included a "Report on the Local Climate Action Planning Process" with a framework and action strategies.	Amendment to Ch. 7 (Environment, Climate and Food Equity), to add the City's Climate Action Plan as a component of the Comprehensive Plan, expanding the city's action strategies related to climate change mitigation through greenhouse gas emissions reductions, and providing guides for action that address equity, focus on co-benefits, and plan for community engagement and capacity building. <a href="https://charlottesville.gov/DocumentCenter/View/8776/Charlottesville-Climate-Action-Plan-PDF">https://charlottesville.gov/DocumentCenter/View/8776/Charlottesville-Climate-Action-Plan-PDF</a>

Charlottesville City Council and the Charlottesville Planning Commission will jointly conduct public hearings to receive public comment on the above-referenced applications. Each application and related materials are available for inspection viewed online (at least 5 days before the meeting) at [www.charlottesville.gov/agenda](http://www.charlottesville.gov/agenda). Please contact Neighborhood Development Services at 434-970-3182 with any questions.

11. At the meeting on December 13, 2022, the Planning Commission recommended approval of the "proposed amendments and re-enactment of the Comprehensive Plan."

12. On January 17, 2023, City Council adopted the "proposed amendments and re-enactment of the Comprehensive Plan" pursuant to its Consent Agenda without any additional public notice or hearing. See City Council Agenda for January 17, 2023, attached as Exhibit B.

**Declaration that Failure to Comply with  
Virginia Code § 15.2-2204(A) Renders the Plan Void *Ab Initio***

13. Plaintiffs incorporate the preceding allegations.

14. Virginia Code § 15.2-2204(A) provides in relevant part that:

Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. **Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined . . . (emphasis added).**

15. Notices must contain three elements to satisfy the requirements of this statute:

(1) a descriptive summary of the proposed amendments; (2) a reference to the place within the locality where the proposed amendments may be examined; and (3) notice of the governing body's intention to adopt the proposed amendments.

Gas Mart Corp. v. Bd. of Sup'rs of Loudoun Cty., 269 Va. 334, 345 (2005). The Notice fails to satisfy these elements.

16. First, the Notice failed to provide a "descriptive summary." For a notice to be adequate, a citizen must be able "reasonably [to] determine, from the notice, whether he or she was affected by the proposed amendments." Glazebrook v. Board of Sup'rs of Spotsylvania Cty., 266 Va. 550, 556 (2003). Although the City provides a chart that compares zoning classifications in the 2013 Comprehensive Plan to those included in the Plan, that chart fails to provide sufficient information for a citizen to determine whether he or she would be affected by the Plan.

17. To determine whether he or she would be affected by the Plan, the citizen would have to at least look at the color coded FLUM and the associated descriptions of the land use categories to determine the new land use designation for his or her property. Because that

information was not included in the Notice, the Notice fails to provide a “descriptive summary” as required by law.

18. Second, the Notice fails to provide “notice of the governing body’s intention to adopt the proposed amendments.” Gas Mart, 269 Va. at 345. Although the Notice provides that “it is the intention of the City that the *Planning Commission* will vote on the proposed action” (emphasis added), it fails to provide notice of when City Council’s would vote on the Plan. Instead, the Notice merely provides that “City Council’s vote would take place at a later City Council meeting agenda . . .” That suggests to the reader that City Council will vote on the Plan at a later meeting for which notice would be provided.

19. Third, the City Council failed to comply with the requirement that it provide the public with “a reference to the *place or places within the locality* where the copies of the proposed plans, ordinances or amendments may be examined.” (emphasis added). This language contemplates that the City will provide access to the Plan in a physical location within the City. See Gas Mart, 269 Va. at 347-48 (notice provided that copies “may be examined in the Loudoun County Building and Development Department, 1 Harrison Street, S.E., 2<sup>nd</sup> Floor, Leesburg, Virginia”). The City failed to do that, choosing instead to provide only a link to an internet website.

20. By failing to meet the notice requirements of Virginia Code § 15.2-2204, City Council “acted outside the authority granted by the General Assembly,” rendering the Plan void *ab initio*. Glazebrook, 266 Va. at 554.

WHEREFORE Plaintiffs respectfully request that this Court enter an Order finding that the Plan is void *ab initio* due to the failure to abide by statutory requirements and is otherwise invalid and for such other and further relief as this Court deems appropriate.

Respectfully submitted,

PLAINTIFFS

By Counsel



Michael E. Derdeyn, Esq. (VSB No.: 40240)

Marc A. Peritz, Esq. (VSB No.: 39054)

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**OTHER P**

### NOTICE OF PUBLIC HEARING

Notice is hereby given that the Charlottesville Planning Commission and City Council will hold a Hybrid Joint Public Hearing on Tuesday December 13, 2022 beginning at 6:00 p.m. at Cityspace, 100 5th St NE, Charlottesville, VA 22902 and by Zoom Webinar. Limited in person seating will be available for public hearings with advanced registration beginning with the May 2022 Planning Commission meeting and will continue at this time. For additional information, instructions and registration see <https://www.charlottesville.gov/955/Planning-Commission> or call 434-970-3182. Public hearings and other matters from the public will also be heard via the Zoom webinar for which advanced registration and can be found here: [www.charlottesville.gov/zoom](https://www.charlottesville.gov/zoom). The webinar is broadcast on Comcast Channel 10 and on all of the City's streaming platforms including: Facebook, Twitter, and [www.charlottesville.gov/streaming](https://www.charlottesville.gov/streaming). Interested persons may also participate via telephone and a number is provided with the Zoom registration or by contacting staff at 434-970-3182 to ask for the dial in number for the meeting.

1. Charlottesville Capital Improvement Program FY 2024-2028: Consideration of the proposed 5-year Capital Improvement Program in the areas of Affordable Housing, Education, Economic Development, Public Safety & Justice, Facilities Management, Transportation & Access, Parks & Recreation, and Technology Infrastructure. A copy of the proposed CIP is available for review at: <https://www.charlottesville.gov/budget>

**EXHIBIT**

A

**2. Notice of Intent to Amend and Re-enact City Comprehensive Plan**

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<p><b>8 Land Use Categories:</b> low-density residential, high density residential, mixed use, neighborhood commercial, business &amp; technology, public or semi-public, parks &amp; open space, University of Virginia. A map (Future Land Use Map) was provided to allow citizens to see which categories apply within their neighborhoods.</p>	<p><b>10 Land Use Categories (defined on pp. 29-30):</b> general residential (GR); GR (Sensitive Community Areas); Medium-Intensity Residential; Higher-Intensity Residential, Neighborhood Mixed-Use Corridor; Neighborhood Mixed-Use Node; Business and Technology Mixed Use; Urban Mixed Use Corridor; Urban Mixed Use Node; Downtown Core. A map (Future Land Use Map) is provided to allow citizens to see which categories apply within their neighborhoods.</p>
<p>"Low-density residential" defined as an area for single- and two-family units; developed at 12 or less dwelling units per acre (DUA); building height not addressed. No density ranges specified.</p>	<p>Low-density residential land use category eliminated. New "General residential" (GR) category allows 3- and 4-unit dwellings and townhome developments, at building heights of up to 2.5 stories. Additional units and building height are allowable under an affordability bonus program. For certain sensitive areas planned for GR only one unit per lot would be allowed 3- and 4-unit dwellings would be allowed if affordable units are provided.</p>
<p>N/A</p>	<p>New "Medium Intensity residential" category contemplates buildings up to 4 stories, including 12-unit multifamily buildings as well as townhouse developments</p>
<p>"High-density residential" defined as an area for multifamily units, to be developed at more than 12 dwelling units per acre. No density ranges specified.</p>	<p>High-density residential land use category eliminated. New "Higher-Intensity Residential" contemplates multifamily-focused development (up to 5 stories and 13+ units per lot), incentivized to meet affordable housing goals. Ground floor commercial uses will be encouraged.</p>
<p>N/A</p>	<p>Urban Rivanna River Corridor Plan (amendment approved by City Council Feb. 7, 2022)</p>
<p>N/A</p>	<p><b>Amendment to Ch. 4 (Land Use, Urban Form, and Historic &amp; Cultural Preservation) and 5 (Housing), to add provisions promoting manufactured housing as a source of affordable housing.</b>  <a href="https://www.charlottesville.gov/DocumentCenter/View/8764/202212-PC-Report-Manufactured-Housing-Comp-Plan-Update?bidId=">https://www.charlottesville.gov/DocumentCenter/View/8764/202212-PC-Report-Manufactured-Housing-Comp-Plan-Update?bidId=</a></p>
<p>Climate Protection Chapter included a "Report on the Local Climate Action Planning Process" with a framework and action strategies.</p>	<p><b>Amendment to Ch. 7 (Environment, Climate and Food Equity), to add the City's Climate Action Plan as a component of the Comprehensive Plan, expanding the city's action strategies related to climate change mitigation through greenhouse gas emissions reductions, and providing guides for action that address equity, focus on co-benefits, and plan for community engagement and capacity building.</b> <a href="https://charlottesville.gov/DocumentCenter/View/8776/Charlottesville-Climate-Action-Plan-PDF">https://charlottesville.gov/DocumentCenter/View/8776/Charlottesville-Climate-Action-Plan-PDF</a></p>

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## CITY COUNCIL AGENDA January 17, 2023

J. Lloyd Snook, III, Mayor  
Juandiego Wade, Vice Mayor  
Michael K. Payne, Councilor  
Brian R. Pinkston, Councilor  
(Councilor vacancy)  
Kyna Thomas, Clerk

### 4:00 PM OPENING SESSION

Register at [www.charlottesville.gov/zoom](http://www.charlottesville.gov/zoom). The public may view this portion of the meeting electronically by registering in advance for the Zoom webinar or on the City's streaming platforms and local government Channel 10. Individuals with disabilities who require assistance or special arrangements to participate in the public meeting may call (434) 970-3182 or submit a request via email to [ada@charlottesville.gov](mailto:ada@charlottesville.gov). The City of Charlottesville requests that you provide a 48-hour notice so that proper arrangements may be made.

### Call to Order/Roll Call

### Agenda Approval

### Reports

1. Presentation: Central Virginia Regional Housing Partnership introduction and strategic plan overview
2. Report: Albemarle-Charlottesville Regional Jail Authority: Jail Renovation Project - Plan of Finance

### 5:15 PM Police Chief Swearing In

### 5:30 PM CLOSED SESSION pursuant to Sections 2.2-3711 and 2.2-3712 of the Virginia Code (Boards and Commissions)

### 6:30 PM BUSINESS SESSION

This portion of the meeting will accommodate a limited number of in-person public participants in City Council Chamber at City Hall as we employ a hybrid approach to public meetings. Registration is available for a lottery-based seating selection at [www.charlottesville.gov/1543/Reserve-a-Seat-for-City-Council-Meeting](http://www.charlottesville.gov/1543/Reserve-a-Seat-for-City-Council-Meeting). Reservation requests may also be made by contacting the Clerk of Council office at [clerk@charlottesville.gov](mailto:clerk@charlottesville.gov) or 434-970-3113.

### Moment of Silence

### Announcements

### Recognitions/Proclamations

### Board/Commission

### Appointments

3. Resolution: Appointing the membership of the Charlottesville Housing Advisory Committee (1 reading)
4. Resolution: Appointing the membership of the Charlottesville Affordable Housing Fund Committee (1 reading)

### Consent Agenda\*

5. Minutes: December 19 meeting
6. Resolution: Adopting the Amendment and Re-enactment of the November 15, 2021 Comprehensive Plan for the City of Charlottesville, as amended (2nd reading)
7. Resolution: Approving a Lease Agreement with McGuffey Arts Associates, Inc. for the lease of 201 2nd Street NW (1 reading; tabled from January 3 pending lease revision)

EXHIBIT

B

8. Resolution: Appropriating Bond Proceeds for the Woodland Drive subdivision - \$192,453.98 (2nd reading)

**City Manager Report**

- Report: Quarterly financial report

**Community Matters**

Public comment for up to 16 speakers (limit 3 minutes per speaker). Preregistration available for first 8 spaces at <https://www.charlottesville.gov/692/Request-to-Speak>; speakers announced by Noon on meeting day (9:00 a.m. sign-up deadline). Additional public comment at end of meeting.

**Action Items**

9. Ordinance: Re-precincting the City of Charlottesville (1 of 2 readings)
10. Resolution: Appropriating Grant Funds for improvements at 10th Street NW and Grady Avenue - \$500,106 (1 of 2 readings)

**General Business**

11. Report: Rivanna Authorities Quarterly Update

**Other Business**

**Community Matters (2)**

**Adjournment**